

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 43, NUMBER 2
MONDAY, AUGUST 1, 2016

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, July 15, 2016.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet August 4, 2016, at 11:00 a.m. in room 149 Capitol Annex. See **tentative agenda** on pages **165-166** of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2016 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, AUGUST 4, 2016, at 11:00 a.m., Room 149 Capitol Annex

GENERAL ASSEMBLY
Legislative Ethics Commission

Commission

- 2 KAR 2:010. Required forms.
- 2 KAR 2:020. Statement of financial disclosure.
- 2 KAR 2:040. Updated registration short forms for employers and legislative agents.
- 2 KAR 2:050. Preliminary inquiries.
- 2 KAR 2:060. Adjudicatory hearings.
- 2 KAR 2:070. Advisory opinions.

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission

Commission

- 9 KAR 1:040 & E. Registration and expenditure statements; financial transactions and termination forms; and enforcement. ("E" exp. 11/9/2016) (Deferred from July)

HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

Kentucky Educational Excellence Scholarship Program

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

PUBLIC PROTECTION CABINET
Office of Occupations and Professions

Athlete Agents

- 200 KAR 30:010. Definitions for 200 KAR Chapter 30. (Deferred from July)
- 200 KAR 30:020. Complaint review. (Deferred from July)
- 200 KAR 30:030. Procedure for registration. (Deferred from July)
- 200 KAR 30:040. Fees. (Deferred from July)
- 200 KAR 30:051. Repeal of 200 KAR 30:050 and 200 KAR 30:060. (Deferred from July)
- 200 KAR 30:070. Records retention. (Deferred from July)

GENERAL GOVERNMENT CABINET
Board of Social Work

Board

- 201 KAR 23:055. Inactive status of license. (Amended After Comments)
- 201 KAR 23:075. Continuing education for renewal. (Amended After Comments)

Board of Licensure for Marriage and Family Therapists

Board

- 201 KAR 32:030. Fees. (Amended After Comments)

Kentucky Applied Behavior Analysis Licensing Board

Board

- 201 KAR 43:110. Per Diem.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Board of Emergency Medical Services

Board

- 202 KAR 7:501. Ambulance and medical first response agencies.
- 202 KAR 7:520. Allocation of block grant funding assistance for emergency medical services.

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Air Quality

Attainment and Maintenance of the National Ambient Air Quality Standards

- 401 KAR 51:010. Attainment status designations. (Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

Office of the Secretary

- 501 KAR 6:110. Roederer Correctional Complex.
- 501 KAR 6:160. Correctional Industries.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Fire Commission

Commission on Fire Protection Personnel Standards and Education

- 739 KAR 2:140. Volunteer fire department reporting requirements.

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

Occupational Safety and Health

803 KAR 2:412. Fall protection.

Department of Workers' Claims

Department

803 KAR 25:010. Procedure for adjustments of claims. (Amended After Comments)(Deferred from July)

803 KAR 25:014. Repeal of 803 KAR 25:009. (Deferred from May)

803 KAR 25:089. Workers' compensation medical fee schedule for physicians. (Not Amended After Comments)

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

Mortgage Loan Companies and Mortgage Loan Brokers

808 KAR 12:021. Licensing and registration.

808 KAR 12:055. Uniform standards for mortgage loan processor applicant employee background checks.

Horse Racing Commission

Thoroughbred Racing

810 KAR 1:009. Jockeys and apprentices.

Quarter Horse, Paint Horse, Appaloosa and Arabian Racing

811 KAR 2:190. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian Development Fund.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning**

Communicable Diseases

902 KAR 2:020 & E. Reportable disease surveillance.

Office of Inspector General

Health Services and Facilities

902 KAR 20:058. Operation and services; primary care center.

**Department for Aging and Independent Living
Division of Operations and Support**

Aging Services

910 KAR 1:210. Kentucky long-term care ombudsman program.

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

Energy Assistance Program/Weatherization

921 KAR 4:119. Repeal of 921 KAR 4:118.

Division of Protection and Permanency

Child Welfare

922 KAR 1:500. Educational and training vouchers.

Adult Services

922 KAR 5:081. Repeal of 922 KAR 5:080.

REMOVED FROM AUGUST'S AGENDA

**GENERAL GOVERNMENT CABINET
Board of Licensed Diabetes Educators**

Board

201 KAR 45:110. Supervision and work experience. (Not Amended After Comments) (Deferred from November)

**TRANSPORTATION CABINET
Division of Driver Licensing**

Administration

601 KAR 2:030 & E. Ignition interlock. ("E" expires 10/25/2016) (Not Amended After Comments) (Deferred from August)

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

School Terms, Attendance and Operation

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics. (Comments Received)

Learning Results Services

703 KAR 4:041. Repeal of 703 KAR 4:040. (Deferred from August)

Office of Instruction

704 KAR 3:342. Repeal of 704 KAR 3:340. (Deferred from August)

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, mailing address, e-mail 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 letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
103 KAR 15:180E

This emergency administrative regulation is being promulgated in order to provide qualified community development entities procedures necessary when applying for and administering the New Markets Development Program tax credit. \$5 million of the \$10 million New Markets Development Program credit cap is available for allocation after June 30, 2016. An ordinary administrative regulation is not sufficient, because qualified community development entities will begin applying for the \$5 million increase in New Markets Development Program tax credits on July 15, 2016. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
DANIEL BORK, Commissioner

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

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

RELATES TO: KRS 131.131, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, 141.020, 141.040, 141.0401, 141.050, 141.432, 141.433, 141.434, 304.3-270, 26 U.S.C. 45D

STATUTORY AUTHORITY: KRS 141.433(7)

EFFECTIVE: July 13, 2016

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

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

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

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

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

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

(6) "Certification form" means Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification, that is published by the department and filed by a CDE certifying to the department receipt of a cash investment.

(7) "Certified purchase price" means the purchase price of a qualified equity investment contained in the application approved

by the department.

~~(8)~~~~(7)~~ "Department" means the Kentucky Department of Revenue.

~~(9)~~~~(8)~~ "Department's approval" means certified by the department as provided by KRS 141.433(3).

~~(10)~~~~(9)~~ "Identification number" means the:

(a) Social Security Number for an individual;

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

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

~~(11)~~~~(10)~~ "Long-term debt security" is defined by KRS 141.432(3).

~~(12)~~ "Notice of recapture" means Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture, that is published by the department and sent to the CDE and each taxpayer from whom a credit is to be recaptured as a final order of recapture.

~~(13)~~~~(11)~~ "Performance fee" is defined by KRS 141.433(8).

~~(14)~~~~(12)~~ "Qualified active low-income community business" is defined by KRS 141.432(5).

~~(15)~~~~(13)~~ "Qualified community development entity" is defined by KRS 141.432(6).

~~(16)~~~~(14)~~ "Qualified equity investment" is defined by KRS 141.432(7).

~~(17)~~~~(15)~~ "Qualified low-income community investment" is defined by KRS 141.432(8).

~~(18)~~~~(16)~~ "Tax credit" is defined by KRS 141.432(9).

~~(19)~~~~(17)~~ "Taxpayer" is defined by KRS 141.432(10).

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

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

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

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

(c) 1. The department shall:

a. Accept an application on or after July 15, 2016~~2014~~, if the application is received via hand-delivery, mail, express mail, or courier; and

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

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

3. An application received prior to July 15, 2016~~2014~~, shall be recorded as received on July 15, 2016~~2014~~.

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

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

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

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

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

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

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

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

(8) A statement that the entity has received a new markets tax credit allocation from the CDFI Fund ~~that~~^{which} includes the Commonwealth of Kentucky within the service area as set forth in the allocation, and the date of the allocation agreement. A copy of the new markets tax credit allocation agreement shall be attached to the application;

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

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

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

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

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

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

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

(14) The application fee; and

(15) The refundable performance fee.

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

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

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

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

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

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

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

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

~~(b) The identification number of the taxpayer;~~

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

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

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

~~(6) Certification by the executive director of the CDE, declaring~~

~~under the penalty of perjury that the form, including all accompanying documents and statements, is true, correct and complete.]~~

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

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

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

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

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

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

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

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

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

~~(b) The identification number of the taxpayer;~~

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

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

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

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

~~(7) An explanation of the recapture;~~

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

~~and~~

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

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

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

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

~~1. Schedule K-1, Form 720S (Revenue Form 41A720S(K-1));~~

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

~~3. Schedule K-1, Form 765-GP (Revenue Form 42A765-GP(K-1)).~~

~~(2) Form 8874(K)-B.~~

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

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

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

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

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

~~(a) Revenue Form 41A720-S80, Application for Certification of~~

~~Qualified Equity Investments Eligible for Kentucky New Markets Development Program Tax Credit, May 2014;~~

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

~~(c) Revenue Form 41A720-S82, Notice of Kentucky New Markets Development Program Tax Credit Recapture, May 2014;~~

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

DANIEL BORK, Commissioner

APPROVED BY AGENCY: July 13, 2016

FILED WITH LRC: July 13, 2016 at 4 p.m.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Finance and Administration Cabinet, Department of Revenue, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-6785, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes guidelines and the filing requirements of a qualified community development entity for new markets development program applications received on or after July 15, 2016.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary in order to allow application process for community development entities seeking approval for qualified equity investments under the new markets development program tax credit for applications received on or after July 15, 2016.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.433(7) authorizes the Department of Revenue to promulgate administrative regulations in accordance with KRS Chapter 13A to provide rules to implement the provisions of KRS 141.432 to 141.434, and to administer the allocation of tax credits issued for qualified equity investments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation prescribes for applications received on or after July 15, 2016, procedures to be followed by a qualified community development entity in order to certify a qualified equity investment and report a recapture of new markets development program tax credits.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes guidelines and the filing requirements of a qualified community development entity for applications received on or after July 15, 2016.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the filing requirements of a qualified community development entity for applications received on or after July 15, 2016.

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

(d) How the amendment will assist in the effective administration of the statutes: For applications received on or after July 15, 2016, this amendment will provide qualified community development entities procedures to be used in order to certify a qualified equity investment, allocate the tax credits to persons or entities making the qualified equity investment, and recapture tax credits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All qualified community development

entities applying for new markets development program tax credits on or after July 15, 2016 will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: For applications received on or after July 15, 2016, qualified community development entities will use the guidelines contained in this administrative regulation when applying for and administering the new markets development program tax credits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not increase the cost of qualified community development entities to apply for the new markets development program tax credit as provided by KRS 141.432 to KRS 141.434.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The guidance and clarification contained in this amended administrative regulation should simplify the application process for qualified community development entities seeking approval for new markets development program tax credits provided by KRS 141.432 to KRS 141.434.

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

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

(b) On a continuing basis: The department will not incur additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds will be provided by the department.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 applies to all qualified community development entities applying for new markets development program tax credits on or after July 15, 2016.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

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

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

(c) How much will it cost to administer this program for the first

year? A very small increase in expenditures will occur in the administrative regulation process that will be absorbed by the department's operating budget.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY
804 KAR 4:400E**

During its 2016 regular session, the General Assembly passed Senate Bill 11, which amended numerous provisions within the statutory scheme that regulates the alcoholic beverage industry. See 2016 Ky Acts ch. 80. Senate Bill 11 is effective on July 15, 2016. Senate Bill 11 created new license types and made certain businesses eligible for existing licenses. The new license types are Rectifier's Class A license, Rectifier's Class B license, and Authorized Public Consumption license. In addition, Senate Bill 11 made distilleries and bed and breakfasts eligible for an NQ3 license. This emergency administrative regulation will ensure that the Department may issue the newly created licenses established by the General Assembly in Senate Bill 11 on its effective date. This emergency administrative regulation will also allow distilleries and bed and breakfasts to apply for an NQ3 license on the effective date of Senate Bill 11. The Department's existing forms do not reflect these provisions of Senate Bill 11, so the forms must be amended. Therefore, this emergency administrative regulation is required pursuant to KRS 13A.190(a)(3) to meet a deadline for the promulgation of an administrative regulation that is established by state law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
DAVID A. DICKERSON, Secretary
STEVEN A. EDWARDS, Commissioner

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

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

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

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

EFFECTIVE: July 15, 2016

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

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

(1) A special agent/solicitor license, out-of-state producer/supplier of distilled spirits/wine license,[~~or~~] out-of-state

producer/supplier of malt beverage license, or a transporter license; or

(2) A temporary license[~~;~~ or

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

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

~~Section 3.] A licensee seeking to renew[who is renewing] a license pursuant to KRS 243.090 shall complete and submit to the department[~~of Alcoholic Beverage Control~~] the Application for License Renewal.~~

Section 3.[~~4.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

(a) "Basic Application for Alcoholic Beverage License", July 2016[~~June 2015~~]; and

(b) "Application for License Renewal", July 2016[~~June 2015~~].

(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/>.

STEVEN A. EDWARDS, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at 11 a.m.

CONTACT PERSON: Melissa McQueen, Staff Attorney, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479, email Melissa.McQueen@ky.gov.

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 incorporates the forms the department uses to issue and renew alcoholic beverage licenses.

(b) The necessity of this administrative regulation: This regulation is necessary because the department is required by statute to set forth what information is needed to obtain or renew an alcoholic beverage license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.380 and 243.390 require the department to set forth what information is required to obtain or renew a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies what information needs to be provided to the department in order to obtain or renew an alcoholic beverage license. By incorporating the application and renewal application, the information that is required to apply for, or renew, an alcoholic beverage license is ascertainable.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the renewal form and includes information on how to utilize the Kentucky One-Stop Business ("KyBOS") Portal for on-line renewals. Additionally, the basic application and renewal application forms have also changed in order to comply with the numerous provisions of Senate Bill 11 ("SB 11"), which created several new license types.

(b) The necessity of the amendment to this administrative regulation: The renewal application needed to be amended to add information about the KyBoS Portal website for licensees to renew

online through that portal, and this amended form needs to be incorporated into the administrative regulation. Additionally, the basic application and renewal application forms have also been amended to account for new license types created by SB 11.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.380 and 243.390 require the department to set forth what information is required to obtain or renew a license. This amendment updates the renewal form to clarify what website licensees need to use to utilize the KyBoS Portal if they wish to renew online. With this amendment, the basic application and renewal application forms will also comply with the requirements of SB 11, which goes into effect on July 15, 2016.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will make the basic application and renewal application compliant with the provisions of SB 11, which adds new license types. Additionally, it clarifies what information licensees need in order to renew their alcoholic beverage licenses through the KyBoS Portal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any person or entity who wishes to apply for any alcoholic beverage license, or renew an alcoholic beverage license online, will be affected by this administrative regulation. The Department of Alcoholic Beverage Control will also 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: The required actions of applying, or renewing, a license are no different than the process the licensees and applicants currently follow to obtain or renew an alcoholic beverage license, although they will be receiving information on how to do this through the KyBos Portal instead of going directly through the department's website.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KyBos Portal will be utilized for on-line renewals and is incorporated by reference on the revised renewal form. The Department's proposed budget allocates \$290,000 per year of its restricted funds for on-line renewals through the KyBos Portal. Throughout discussions with the Department about utilizing the KyBos Portal for online renewals, the Commonwealth Office of Technology ("COT"), through its representative(s), has repeatedly stated that the Department will have no additional costs for using the KyBos Portal.

(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: It is estimated that this will cost the Department approximately \$290,000 per year to utilize the KyBos Portal.

(b) On a continuing basis: It is estimated that this will cost the Department approximately \$290,000 per year to utilize the KyBoS Portal for online license renewals.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: It is estimated that it will cost the Department approximately \$290,000 per year to utilize the KyBos Portal for online license renewals.

(7) Provide an assessment of whether an 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 based upon representations by COT.

(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 establish or increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control and the Commonwealth Office of Technology are the only government agencies expected to 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 241.060(1) authorizes the board to promulgate administrative regulations. The One-Stop Business Portal was created by KRS 14.250.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Department of Alcoholic Beverage Control is expected to spend approximately \$290,000 per year on this program. No revenue will be generated by this administrative regulation.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be approximately \$290,000 for the first year.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be approximately \$290,000 for each subsequent 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: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be approximately \$290,000 per year.

STATEMENT OF EMERGENCY
804 KAR 4:410E

During its 2016 regular session, the General Assembly passed Senate Bill 11, which amended numerous provisions within the statutory scheme that regulates the alcoholic beverage industry. See 2016 Ky Acts ch. 80. Senate Bill 11 is effective on July 15, 2016. Senate Bill 11 amended KRS 243.120 to create the new Class A Rectifier's license and the new Class B Rectifier's license. Previously, only a single Rectifier's license existed. The new Class B Rectifier's license will aid small businesses by saving them \$1,755 upon licensure renewal. Additionally, Senate Bill 11 amended KRS 243.0305, KRS 243.086, and KRS 243.120 to allow distilleries in certain territories to sell alcohol by the drink on the distillery's premises. This emergency administrative regulation will ensure that the Department may review, consider, and issue licenses established by the General Assembly in Senate Bill 11 on its effective date. The Department's existing forms are insufficient to give intent to Senate Bill 11, so they must be amended. Therefore, this emergency regulation is required pursuant to KRS 13A.190(a)(3) to meet a deadline for the promulgation of an administrative regulation that is established by state law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is

identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
 DAVID A. DICKERSON, Secretary
 STEVEN A. EDWARDS, Commissioner

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

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

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

EFFECTIVE: July 15, 2016

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 ~~additional~~^{special} application forms for specific licenses and required registration forms.

Section 1. ~~Additional~~^{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 ~~additional~~^{special} application form for the specific license type for which the application is made. The ~~additional~~^{special} application forms are listed below:

- (1) ~~Transporter/Solicitor/Out-Of-State~~^{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) ~~Rectifier's~~^{Distiller's} License: Change of License Application.

Section 2. Registration Forms. ~~If~~^{An} applicable, ~~a~~ 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 form. It may~~^{to} be completed electronically at:

(1)~~(a)~~
<https://www.productregistrationonline.com/GetStarted/Ky#selectPermit>;

(2)~~(b)~~
<https://www.productregistrationonline.com/distributor/login>; or

(3)~~(c)~~
<https://www.productregistrationonline.com/producer/login>.

Section 3. Additional Forms. An applicable licensee shall complete and submit the following additional forms:

- (1) Dormancy Request for Quota Retail Licenses;
- (2) Amendment to Application Authorization Form;
- (3) ABC Retailer Sampling ~~Notification~~^{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) ~~"Transporter/Solicitor/Out-Of-State~~^{Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage} Application", ~~July 2016~~^{September 2014};
- (b) "Special Temporary License Application", ~~July~~

~~2016~~^{September 2014};

(c) "Supplemental License Application", July ~~2016~~²⁰¹⁵;

(d) ~~"Presentation/Speaker Request Form", March 2016~~^{Microbrewer's Retail Gross Receipts Report to Distributor", June 2015};

(e) "Product Registration Online", September 2014;

(f) ~~"Rectifier's~~^{Distiller's} License: Change of License Application", ~~May 2016~~^{July 2014};

(g) "Dormancy Request for Quota Retail Licenses", June 2013;

(h) "Amendment to Application Authorization Form", ~~May 2016~~^{July 2014};

(i) "ABC Retailer Sampling ~~Notification~~^{Request}", ~~May 2016~~^{June 26, 2013};

(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~~

(p) "Remittance Form", ~~February 2016; and~~

(q) "Order Form", ~~2015~~^{3/27/2015}.

(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>.

STEVEN A. EDWARDS, Commissioner
 DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016
 FILED WITH LRC: July 15, 2016 at 11 a.m.

CONTACT PERSON: Melissa McQueen, Staff Attorney,
 Department of Alcoholic Beverage Control, 1003 Twilight Trail,
 Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479, email Melissa.McQueen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference special application forms for specific licenses and required registration forms.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to notify applicants and licensees of the forms used by the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 authorizes the board to promulgate administrative regulations relating to the licensing of alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist applicants and licensees in determining which forms the department uses in the alcoholic beverage licensing process.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates forms the department uses and changes the applications to comply with the provisions of Senate Bill 11 ("SB 11"), which is effective July 15, 2016. Additionally, this amendment removes the "Microbrewer's Retail Gross Receipts Report to Distributor" form from the list of forms used by this department. The form was created by this department but is used by the Department of Revenue and they have agreed to take custody of this form and incorporate it into their regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with statutory changes to comply with SB 11, which added new license types and amended numerous alcoholic beverage statutes in Chapters KRS

241 to 244.

(c) How the amendment conforms to the content of the authorizing statutes: The department is authorized to promulgate administrative regulations pursuant to KRS 214.060(1).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make the department's forms compatible with the provisions of SB 11, which will allow the department to review applications, and issue licenses for the new license types that have been created.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees and potential licensees will be affected by this amendment as several of the department's applications and forms have changed. The Department of Revenue is affected by this regulation as they have agreed to maintain the "Microbrewer's Retail Gross Receipts Report to Distributor" as that form is used by that department and not by the Department of Alcoholic Beverage Control.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Current licensees who have a Rectifier's license will have to determine if they meet the criteria for a Class B license, and if so, they will have to fill out the form requesting the change and submit it to the department. Applicable licensees will need to submit the appropriate form as needed in order to comply with various statutes. These are processes they are already required to complete.

(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 not expected to be any benefits to licensees as a result of this administrative regulation. A licensee which qualifies for the new Class B Rectifier's license and completes the license change form will see a benefit of paying a lesser licensing fee.

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

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

(b) On a continuing basis: None.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control and the Department of Revenue 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 241.060(1) authorizes the board to promulgate administrative regulations.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures are expected.

(a) How much 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 amendment is not expected to generate any revenue.

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

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

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

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

Revenues (+/-): This administrative regulation amendment is not expected to generate any revenue.

Expenditures (+/-):

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

**STATEMENT OF EMERGENCY
804 KAR 11:010E**

During its 2016 regular session, the General Assembly passed Senate Bill 11, which amended numerous provisions within the statutory scheme that regulates the alcoholic beverage industry. See 2016 Ky Acts ch. 80. Senate Bill 11 is effective on July 15, 2016. KRS 244.590 generally prohibits brewers and distributors from furnishing, giving, renting, lending, or selling equipment, services, or other things of value to retailers, except as permitted by the director of the Division of Malt Beverages upon consideration of public health, the quantity and value of the articles involved, and the prevention of monopoly. Senate Bill 11 amended KRS 244.590 to permit a brewer or distributor to give, rent, loan, or sell certain retailers a refrigerated cooler that bears the advertising matter of the brewer or distributor. This emergency administrative regulation is required to define the term "refrigerated coolers" until such time as the department may establish the standards for giving, renting, loaning, or selling refrigerated coolers bearing advertising materials to a retailer. Without a definition for this term, the Department of Alcoholic Beverage Control would be without the standards necessary to enforce the provisions of Senate Bill 11 relating to refrigerated coolers. Therefore, this action is taken in accordance with KRS 13A.190(1)(a)(3) to meet a deadline for the promulgation of an administrative regulation that is established by state law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is not identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
DAVID A. DICKERSON, Secretary
STEVEN A. EDWARDS, Commissioner

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

804 KAR 11:010E. Equipment and supplies.

RELATES TO: KRS 244.500, 244.590

STATUTORY AUTHORITY: KRS 241.060(1), 244.590(1)(c), (2)

EFFECTIVE: July 14, 2016

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations governing procedures relative to the supervision and control of the use, manufacture, sale, advertising, and trafficking of alcoholic beverages. KRS 244.590(1)(c) authorizes the administrator of the malt beverage unit to prescribe by administrative regulation the types of equipment or other things of value a brewer or distributor may furnish to a malt beverage retailer. This administrative regulation establishes the items that a brewer or distributor may furnish to a retail licensee and other licensees.

Section 1. Definition. "Refrigerated cooler" means an electrical appliance that has:

- (1) No more than twenty-five (25) cubic feet of storage space;
- (2) Adjustable temperature controls; and
- (3) Adjustable shelving inside the appliance.

Section 2. (1) A brewer or distributor may furnish the following equipment to retail licensees that sell draft malt beverages:

- (a) Tapping accessories;
- (b) Rods
- (c) Vents;
- (d) Taps;
- (e) Hoses;
- (f) Washers;
- (g) Couplings;
- (h) Vent tongues;
- (i) Check valves; and
- (j) Tap knobs.

(2) If tap knobs, or similar devices, bearing brand names are furnished they shall not be used to dispense malt beverages of a different brand from that designated on the knob. Other equipment shall not be furnished to retail malt beverage licensees.

Section 3. [2.] A brewer or distributor may furnish vats, tubs, tanks, or portable dispensing units to special temporary licensees, picnics, bazaars and carnivals. The equipment may bear a trade name, trademark, trade slogan or a facsimile of a product, container or display, associated with a particular brand that is visible to the consumer.

Section 4. A brewer or distributor may furnish a refrigerated cooler to a retail licensee that sells malt beverages.

STEVEN A. EDWARDS, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 15, 2016

FILED WITH LRC: July 15, 2016 at 11 a.m.

CONTACT PERSON: Melissa McQueen, Staff Attorney, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479, email Melissa.McQueen@ky.gov.

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 defines the term refrigerated coolers in KRS 244.590.

(b) The necessity of this administrative regulation: This regulation is necessary to define the term refrigerated coolers until such time as an ordinary regulation can be promulgated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 241.060(1) authorizes the promulgation of administrative regulations to define this term.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines the term refrigerated coolers in

KRS 244.590.

(2) If 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 defines refrigerated coolers to provide needed clarity until such time as an ordinary regulation is promulgated.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as a result of the amendment of KRS 243.590.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the promulgation of administrative regulations to define this term.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides needed clarity until such time as an ordinary regulation is promulgated on this subject.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Brewers, distributors and malt beverage retailers will be affected by this administrative regulation. The Department of Alcoholic Beverage Control will also 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: In order to comply with the regulation, the regulated entities will have to consult the definition provided for refrigerated coolers.

(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 complying with this administrative regulation amendment.

(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: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no continuing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional costs associated with 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: No increase in fees or funding is necessary to implement 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. No tiering is applied because the regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control is the only government agency 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 244.590(1)(c) authorizes the promulgation of administrative regulations on this subject.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues 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 amendment will not require any additional expenditure for the time it 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? No revenue will be generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? There are no additional costs to administer this amendment for the time it is in effect.

(d) How much will it cost to administer this program for subsequent years? These emergency regulations will be replaced by an ordinary regulation on this subject.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There are no additional costs to administer this amendment.

**STATEMENT OF EMERGENCY
907 KAR 7:010E**

This emergency administrative regulation is being promulgated to establish that coverage of services addressed in this administrative regulation is contingent upon federal approval and funding. This action must be taken on an emergency basis to prevent a loss of state funds by ensuring the receipt of federal funding and approval for this program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
VICKIE YATES BROWN GLISSON, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Emergency Amendment)**

907 KAR 7:010E, Home and community based waiver services version 2.

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

EFFECTIVE: June 30, 2016

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements for home and community based waiver services version 2.

Section 1. Definitions. (1) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "Abuse" regarding:

(a) An adult is defined by KRS 209.020(8); or

(b) A child means abuse pursuant to KRS Chapter 600 or 620.

(3) "ADHC" means adult day health care.

(4) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(5) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a participant who:

(a) Does not require twenty-four (24) hour care in an institutional setting; and

(b) May need twenty-four (24) hour respite services when experiencing a short-term crisis due to the temporary or permanent loss of the primary caregiver.

(6) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(7) "Area agency on aging and independent living" means:

(a) An area agency on living as defined by 42 U.S.C. 3002(6); and

(b) A local agency designated by the Department for Aging and Independent Living to administer funds received under Title III for a given planning and service area.

(8) "Assessment" means an evaluation completed using the Kentucky Home Assessment Tool (K-HAT).

(9) "Blended services" means a non-duplicative combination of HCB waiver services that are not participant-directed services as well as participant-directed services.

(10) "Center for independent living" is defined by 42 U.S.C. 796a(1).

(11) "Certified nutritionist" is defined by KRS 310.005(12).

(12) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(13) "Chemical restraint" means a drug or medication:

(a) Used to restrict an individual's:

1. Behavior; or

2. Freedom of movement; and

(b)1. That is not a standard treatment for the individual's condition; or

2. Dosage that is not an appropriate dosage for the individual's condition.

(14) "Communicable disease" means a disease that is transmitted:

(a) Through direct contact with an infected individual;

(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another or a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another; or

(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(15) "DAIL" means the Department for Aging and Independent Living.

(16) "DCBS" means the Department for Community Based Services.

(17) "Department" means the Department for Medicaid Services or its designee.

(18) "Electronic signature" is defined by KRS 369.102(8).

(19) "Experimental goods or services" means goods or services that are serving the ends of or used as a means of experimentation.

(20) "Exploitation" regarding:

(a) An adult is defined by KRS 209.020(9); or

(b) A child means exploitation pursuant to KRS Chapter 600 or 620.

(21) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(22) "Home and community based waiver services" or "HCB waiver services" means home and community based waiver services:

(a) Covered by the department pursuant to this administrative regulation; and

(b) For individuals who meet the requirements of Section 4 of this administrative regulation.

(23)[(22)] "Home and community support services" means

nonresidential and nonmedical home and community based services and supports that:

- (a) Meet the participant's needs; and
- (b) Constitute a cost-effective use of funds.

~~(24)~~~~(23)~~ "Home delivered meal provider" means a food service establishment as defined by KRS 217.015(21).

~~(25)~~~~(24)~~ "Home health agency" means an agency that is:

- (a) Licensed in accordance with 902 KAR 20:081; and
- (b) Medicare and Medicaid certified.

~~(26)~~~~(25)~~ "Illicit drug" means:

- (a) A drug, prescription or not prescription, used illegally or in excess of therapeutic levels; or
- (b) A prohibited drug.

~~(27)~~~~(26)~~ "Immediate family member" is defined by KRS 205.8451(3).

~~(28)~~~~(27)~~ "Informed choice" means a choice among options based on accurate and thorough knowledge and understanding to the participant regarding:

- (a) The services and supports to be received; and
- (b) From whom services and supports will be received.

~~(29)~~~~(28)~~ "Legally responsible individual" means an individual who:

- (a) Has a duty under state law to care for another person; and
- (b) 1. Is a parent (biological, adoptive, or foster) of a minor child and provides care to the child;
- 2. Is the guardian of a minor child and provides care to the child; or
- 3. Is a spouse of a participant.

~~(30)~~~~(29)~~ "Licensed clinical social worker" means an individual who meets the requirements established by KRS 335.100.

~~(31)~~~~(30)~~ "Licensed dietitian" is defined by KRS 310.005(11).

~~(32)~~~~(31)~~ "Licensed medical professional" means:

- (a) A physician;
- (b) An advanced practice registered nurse;
- (c) A physician assistant;
- (d) A registered nurse;
- (e) A licensed practical nurse; or
- (f) A pharmacist.

~~(33)~~~~(32)~~ "Licensed practical nurse" or "LPN" means a person who:

- (a) Meets the definition established by KRS 314.011(9); and
- (b) Works under the supervision of a registered nurse.

~~(34)~~~~(33)~~ "Licensed social worker" means an individual who meets the requirements established by KRS 335.090.

~~(35)~~~~(34)~~ "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal located at <http://chfs.ky.gov/dms/mwma.htm>.

~~(36)~~~~(35)~~ "Natural supports" means a non-paid person, persons, primary caregiver, or community resource who can provide or has historically provided assistance to the participant or due to the familial relationship would be expected to provide assistance.

~~(37)~~~~(36)~~ "Neglect" regarding:

- (a) An adult is defined by KRS 209.020(016); or
- (b) A child means neglect pursuant to KRS Chapter 600 or 620.

~~(38)~~~~(37)~~ "NF" means nursing facility.

~~(39)~~~~(38)~~ "NF level of care" means a high intensity or low intensity patient status determination made by the department in accordance with 907 KAR 1:022.

~~(40)~~~~(39)~~ "Normal baby-sitting" means general care provided to a child that includes custody, control, and supervision.

~~(41)~~~~(40)~~ "Normal care sitting" means general care:

- (a) Provided to an adult who is at least eighteen (18) years of age; and
- (b) That includes custody, control, and supervision.

~~(42)~~~~(41)~~ "Participant" means a recipient who meets the:

- (a) NF level of care criteria established in 907 KAR 1:022; and
- (b) Eligibility criteria for HCB waiver services established in Section 4 of this administrative regulation.

~~(43)~~~~(42)~~ "Participant corrective action plan" means a written plan that is developed by the case manager or service advisor in conjunction with the participant or representative to identify,

eliminate, and prevent future violations from occurring by:

(a) Providing the participant or representative with the specific administrative regulation that has been violated;

(b) Identifying factual information regarding the violation; and

(c) Reaching an agreement between the case manager and the participant or representative to the resolution and being in compliance within the timeframe established in the participant corrective action plan being issued.

~~(44)~~~~(43)~~ "PDS" means participant-directed services.

~~(45)~~~~(44)~~ "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 7 of this administrative regulation.

~~(46)~~~~(45)~~ "Person-centered team" means a participant, the participant's guardian or representative, and other individuals who are natural or paid supports and who:

(a) Recognize that evidenced based decisions are determined within the basic framework of what is important for the participant and within the context of what is important to the participant based on informed choice;

(b) Work together to identify what roles they will assume to assist the participant in becoming as independent as possible in meeting the participant's needs; and

(c) Include providers who receive payment for services and who shall:

1. Be active contributing members of the person-centered team meetings;
2. Base their input upon evidence-based information; and
3. Not request reimbursement for person-centered team meetings.

~~(47)~~~~(46)~~ "Physical restraint" means any manual method or physical or mechanical device, material, or equipment that:

(a) Immobilizes or reduces the ability of a person to move his or her arms, legs, body, or head freely; and

(b) Does not include:

1. Orthopedically prescribed devices or other devices, surgical dressings or bandages, or protective helmets; or
2. Other methods that involve the physical holding of a person for the purpose of:

- a. Conducting routine physical examinations or tests;
- b. Protecting the person from falling out of bed; or
- c. Permitting the person to participate in activities without the risk of physical harm.

~~(48)~~~~(47)~~ "Physician assistant" or "PA" is defined by KRS 311.840(3).

~~(49)~~~~(48)~~ "Plan of treatment" means a care plan developed and used by an ADHC center based on the participant's individualized ADHC service needs, goals, interventions, and outcomes.

~~(50)~~~~(49)~~ "Prohibited drug" means a drug or substance that is illegal under KRS Chapter 218A.

~~(51)~~~~(50)~~ "Public health department" means an agency recognized by the Department for Public Health pursuant to 902 KAR Chapter 8.

~~(52)~~~~(51)~~ "Recipient" is defined by KRS 205.8451(9).

~~(53)~~~~(52)~~ "Registered nurse" or "RN" means a person who:

- (a) Meets the definition established by KRS 314.011(5); and
- (b) Has one (1) year or more experience as a professional nurse.

~~(54)~~~~(53)~~ "Representative" is defined by KRS 205.5605(6).

~~(55)~~~~(54)~~ "Service advisor" is defined by KRS 205.5605(7).

~~(56)~~~~(55)~~ "Sex crime" is defined by KRS 17.165(1).

~~(57)~~~~(56)~~ "Violent crime" is defined by KRS 17.165(3).

~~(58)~~~~(57)~~ "Violent offender" is defined by KRS 17.165(2).

Section 2. Provider Participation Requirements Excluding Participant-Directed Services. (1) In order to provide HCB waiver services version 2, excluding participant-directed services, an HCB waiver provider shall:

(a) Be:

1. Approved by the department, licensed, or certified; and
- 2.a. An adult day health care center;
- b. A home health agency;

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- c. A center for independent living;
 - d. A public health department;
 - e. A home delivered meal provider; or
 - f. An area agency on aging and independent living; and
- (b) Meet the service requirements specified in Section 5 of this administrative regulation for any service provided by the provider.
- (2) An out-of-state HCB waiver provider shall comply with the requirements of this administrative regulation.
- (3) An HCB waiver provider:
- (a) Shall comply with:
 - 1. 907 KAR 1:671;
 - 2. 907 KAR 1:672;
 - 3. 907 KAR 1:673;
 - 4. 907 KAR 7:005 if the provider is a certified waiver provider;
 - 5. 902 KAR 20:081 if the provider is a home health agency;
- and
- 6. This administrative regulation;
- (b) Shall not enroll a participant for whom the provider cannot provide HCB waiver services;
- (c) Shall choose to accept or not accept a participant;
- (d)1. Shall implement a procedure to ensure that critical incident reporting is done in accordance with Section 9 of this administrative regulation;
2. Shall implement a process for communicating the critical incident, the critical incident outcome, and the critical incident prevention plan to the participant, a family member of the participant, or participant's guardian or legal representative; and
3. Shall maintain documentation of any communication provided in accordance with subparagraph 2 of this paragraph by:
- a. Entering a record of the communication in the:
 - (i) MWMA; and
 - (ii) Participant's case record; and
 - b. Having the documentation signed and dated by the staff member making the entry;
- (e) Shall inform a participant or any interested party in writing of the provider's:
- 1. Hours of operation; and
 - 2. Policies and procedures;
- (f) Shall not permit a staff member who has contracted a communicable disease to provide a service to a participant until the condition is determined to no longer be contagious;
- (g) Shall ensure that a staff supervisor is available at all times to provide oversight and technical assistance;
- (h) Shall ensure that each staff person:
- 1. Prior to independently providing a direct service, is trained regarding:
 - a. Abuse, neglect, fraud, and exploitation;
 - b. The reporting of abuse, neglect, fraud, and exploitation;
 - c. Person-centered planning principles;
 - d. Documentation requirements; and
 - e. HCB services definitions and requirements;
 - 2. Receives DAIL attendant care certification training initially and then annually thereafter;
 - 3. Receives cardio pulmonary resuscitation certification and first aid certification provided by a nationally accredited entity within six (6) months of employment;
 - 4. Maintains current CPR certification and first aid certification for the duration of the staff person's employment;
 - 5.a. Completes a tuberculosis (TB) risk assessment performed by a licensed medical professional within the past twelve (12) months and annually thereafter; and
 - b.(i) If a TB risk assessment resulted in a TB skin test being performed, have a negative result within the past twelve (12) months as documented on test results received by the provider within thirty (30) days of the date of hire; and
 - (ii) If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work, be administered follow-up testing by his or her physician or physician assistant with the testing indicating the person does not have active TB disease; and
 - 6. Prior to the beginning of employment, has successfully

- passed a drug test with no indication of prohibited or illicit drug use;
- (i) Shall maintain documentation:
 - 1.a. Of an annual TB risk assessment or negative TB test for each staff who provides services or supervision; or
 - b. Annually for each staff with a positive TB test that ensures no active disease symptoms are present; and
 - 2. Of the results of a drug test for each staff;
- (j)1. Shall:
 - a. Prior to hiring an individual, obtain:
 - (i) The results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment;
 - (ii) The results of a Nurse Aide Abuse Registry check as described in 906 KAR 1:100 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment; and
 - (iii) The results of a Caregiver Misconduct Registry check as described in 922 KAR 5:120 and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment; and
 - b. Within thirty (30) days of the date of hire, obtain the results of a Central Registry check as described in 922 KAR 1:470 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment; or
 - 2. May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subparagraph 1 of this paragraph; and
 - (k) Shall not allow a staff person to provide HCB waiver services if the individual:
 - 1. Has a prior conviction of or pled guilty to a:
 - a. Sex crime; or
 - b. Violent crime;
 - 2. Is a violent offender;
 - 3. Has a prior felony conviction;
 - 4. Has a drug related conviction, felony plea bargain, or amended plea bargain conviction within the past five (5) years;
 - 5. Has a positive drug test for an illicit or a prohibited drug;
 - 6. Has a conviction of abuse, neglect, or exploitation;
 - 7. Has a Cabinet for Health and Family Services finding of:
 - a. Child abuse or neglect pursuant to the Central Registry as described in 922 KAR 1:470; or
 - b. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Registry as described in 922 KAR 5:120;
 - 8. Is listed on the Nurse Aide Abuse Registry pursuant to 906 KAR 1:100;
 - 9. Within twelve (12) months prior to employment, is listed on or has a finding indicated on another state's equivalent of the:
 - a. Nurse Aide Abuse Registry as described in 906 KAR 1:100 if the other state has an equivalent;
 - b. Caregiver Misconduct Registry as described in 922 KAR 5:120 if the other state has an equivalent; or
 - c. Central Registry as described in 922 KAR 1:470 if the other state has an equivalent; or
 - 10. Has been convicted of Medicaid or Medicare fraud.
- (4) A home delivered meal provider shall:
- (a) Comply with KRS Chapter 217 and 902 KAR 45:005 requirements regarding food and food service establishments; and
 - (b) Be subject to:
 - 1. Monitoring; and
 - 2. Annual certification by DAIL in accordance with 907 KAR 7:005.

- Section 3. Maintenance of Records. (1)(a) Regarding each participant, an HCB waiver provider shall maintain:
- 1. A case record;
 - 2. Fiscal reports and service records regarding services provided; and
 - 3. Critical incident reports.
- (b) A case record shall:
- 1. Be maintained in the MWMA; and

2. Contain:
 - a. A comprehensive assessment approved by the department;
 - b. A completed person-centered service plan;
 - c. A copy of the MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form signed by the participant or participant's legal representative at the time of application or reapplication and each recertification thereafter;
 - d. The name of the:
 - (i) Case manager or service advisor; and
 - (ii) Independent assessor;
 - e. Documentation of all level of care determinations;
 - f. Documentation related to prior authorizations including requests, approvals, and denials;
 - g. Documentation of each contact with, or on behalf of, the participant;
 - h. Documentation that the participant, if receiving ADHC services, was provided a copy of the ADHC center's posted hours of operation;
 - i. Documentation that the participant or participant's legal representative was informed of the procedure for reporting complaints and critical incidents; and
 - j. Documentation of each service provided, which shall include:
 - (i) The date the service was provided;
 - (ii) The duration of the service;
 - (iii) The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant's home;
 - (iv) Itemization of each service delivered;
 - (v) The participant's arrival and departure time, excluding travel time, if the service was provided at the ADHC center;
 - (vi) A monthly progress note each month, which shall include documentation of changes, responses, and services utilized to evaluate the participant's health, safety, and welfare needs; and
 - (vii) The signature of the service provider.
 - (c)1. Fiscal reports regarding services provided, service records regarding services provided, and critical incident reports shall be retained:
 - a. At least six (6) years from the date that a covered service is provided unless the participant is a minor; or
 - b. If the participant is a minor, the longer of:
 - (i) Three (3) years after the participant reaches the age of majority under state law; or
 - (ii) Six (6) years from the date that a covered service is provided.
 2. If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in subparagraph 1. of this paragraph, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.
 - (2) Upon request, an HCB provider shall make information regarding service and financial records available to the:
 - (a) Department;
 - (b) Cabinet for Health and Family Services, Office of Inspector General or its designee;
 - (c) DAIL;
 - (d) The United States Department for Health and Human Services or its designee;
 - (e) General Accounting Office or its designee;
 - (f) Office of the Auditor of Public Accounts or its designee; or
 - (g) Office of the Attorney General or its designee.
- Section 4. Participant Eligibility Determinations and Redeterminations. (1)(a) To be eligible to receive HCB waiver services, an individual:
1. Shall be determined by the department to meet NF level of care requirements;
 2. Without waiver services may be admitted by a physician's order to an NF;
 3. Shall be screened by the department for the purpose of making a preliminary determination of whether the individual might qualify for HCB waiver services; and
 4. Shall meet the Medicaid eligibility requirements established in 907 KAR 20:010.
 - (b) In addition to the individual meeting the requirements

established in paragraph (a) of this subsection, the individual, a representative on behalf of the individual, or independent assessor shall:

1. Apply for 1915(c) home and community based waiver services via the MWMA; and
 2. Complete and upload into the MWMA a:
 - a. MAP - 115 Application Intake - Participant Authorization; and
 - b. MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form.
 - (c) A participant, participant's guardian, or participant's legal representative shall annually sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form at the time of each recertification to document that the participant was informed of the choice to receive HCB waiver or institutional services.
 - (2) The department shall perform a level of care determination for each participant:
 - (a) At least once every twelve (12) months; and
 - (b) More often if there is a change in function or condition.
 - (3) An HCB waiver service shall not be provided to a participant who:
 - (a) Does not require a service other than:
 1. An environmental or minor home adaptation;
 2. A home delivered meal;
 3. Conflict free case management; or
 4. Goods and services;
 - (b) Is an inpatient of:
 1. A hospital;
 2. An NF; or
 3. An intermediate care facility for individuals with an intellectual disability;
 - (c) Is a resident of a licensed personal care home;
 - (d) Has a primary diagnosis that is not related to age or a disability; or
 - (e) Is receiving services from another Medicaid 1915(c) home and community based services waiver program.
 - (4) An eligible participant or the participant's legal representative shall select a participating HCB waiver provider from which the participant wishes to receive HCB waiver services.
 - (5) An HCB waiver provider shall notify in writing electronically or in print the local DCBS office and the department of a participant's:
 - (a) Termination from the HCB waiver program;
 - (b)1. Admission to an NF for less than sixty (60) consecutive days; and
 2. Return to the HCB waiver program from an NF within sixty (60) consecutive days; or
 - (c) Failure to access services within the parameters of the participant's level of care determination for greater than sixty (60) days.
- Section 5. Covered Services and Related Requirements. (1)(a) HCB waiver services shall include:
1. Conflict free case management;
 2. Attendant care;
 3. Specialized respite care services;
 4. Environmental or minor home adaptations;
 5. ADHC services;
 6. Goods and services; or
 7. Home delivered meals.
- (b)1. Participant-directed services shall include:
- a. Environmental or minor home adaptations;
 - b. Goods and services;
 - c. Home and community supports;
 - d. Non-specialized respite care services; or
 - e. PDS coordination services.
2. Participant-directed services provided to a participant shall not replace the participant's natural support system.
- (2)(a) An HCB waiver service and a PDS, except as established in subparagraph 3 of this paragraph, shall:
1. Be prior authorized by the department based upon a request that provides all of the information needed to ensure that the service or modification of the service meets the needs of the

participant;

2. Be provided pursuant to the participant's person-centered service plan;

3. Except for PDS, not be provided by an immediate family member, guardian, or legally responsible individual of the participant;

4. Be accessed within sixty (60) days of the date of prior authorization;

5. Be a one (1) on one (1) encounter except for:

a. An ADHC service in which case the ADHC center providing the service shall comply with the ADHC personnel requirements established in 902 KAR 20:066; or

b. A service for which a one (1) on one (1) encounter is not appropriate due to the participant's circumstances or condition in which case the circumstances or condition shall be documented in the:

(i) Assessment; and

(ii) Person-centered service plan;

6. Not occur at the same time as another service, regardless of payer source, except for a:

a. Doctor visit; or

b. Physical therapy, occupational therapy, or speech-language pathology service appointment; and

7. Be provided by an individual who:

a. Does not have a communicable disease pursuant to Section 2(3)(f) of this administrative regulation; and

b. Provides services at a level that appropriately and safely meets the needs of the participant.

(b) A 1915(c) home and community based waiver service that is not part of a hospice service package may be covered in conjunction with hospice services.

(3) To request prior authorization:

(a) For a non-PDS HCB waiver service, a case manager shall submit a completed person-centered service plan to the department; or

(b) For a PDS, a service advisor shall submit a completed person-centered service plan to the department.

(4) Except for case management and PDS coordination, services shall not begin and payment shall not be made for services until:

(a) A level of care determination has been approved by the department;

(b) A person-centered service plan has been:

1. Developed by the person-centered team; and

2. Approved by the department; and

(c)1. DCBS has determined that the individual meets financial eligibility requirements and valid documentation of eligibility is on file for a new applicant for Medicaid; or

2. The first day of the month following the level of care determination if the applicant is a recipient currently enrolled with a managed care organization. The managed care organization shall be responsible for ensuring the applicant's health, safety, and welfare during the period between the level of care determination and the first day of the month following the level of care determination.

(5)(a) Case management requirements shall be as established in Section 8 of this administrative regulation.

(b) Except for the requirement established in Section 8(7)(b), the requirements established in Sections 6 and 8 of this administrative regulation shall apply to service advisors.

(6)(a) An attendant care service shall provide care that consists of:

1. General household activities including:

a. Cleaning;

b. Cooking; or

c. Chores;

2. Personal care services including assistance with:

a. Bathing;

b. Grooming;

c. Dressing;

d. Eating;

e. Toileting;

f. Transferring;

g. Assistance with self-administration of medication; or

h. Ambulation; or

3. Transporting a participant to a needed place as specified in the participant's person-centered service plan including:

a. A grocery;

b. A pharmacy; or

c. An appointment.

(b)1. An individual transporting a participant shall have a valid driver's license.

2. A minimum of current liability insurance shall be required for a vehicle used to transport a participant.

(c)1. An attendant care provider shall maintain a sign in and out log documenting the provision of services to participants.

2. Documentation shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider;

d. A description of the service provided; and

e. The name, title, and signature of the staff who provided the service.

(7)(a) A specialized respite care service shall:

1. Be short-term care based on the absence or need for relief of the non-paid primary caregiver;

2. Be provided by staff who provides services at a level that appropriately and safely meets the needs of the participant;

3. Be provided to a participant who has care needs beyond normal baby-sitting or normal care sitting;

4. If the participant receiving the service is assessed pursuant to 907 KAR 7:015 as qualifying the provider for Level II reimbursement, have twenty-four (24) hour access to an RN for emergency situations and consultations; and

5. If applicable, be provided in accordance with 902 KAR 20:066.

(b)1. A provider of specialized respite care shall maintain a sign in and out log documenting the provision of services to participants.

2. Documentation shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider;

d. A description of the service provided; and

e. The name, title, and signature of the staff who provided the service.

(8)(a) An environmental or minor home adaptation service shall:

1. Be a physical adaptation to a home owned by the participant or family member of the participant that is necessary to ensure the health, welfare, and safety of the participant;

2. Meet all applicable safety and local building codes;

3. Relate strictly to the participant's disability and needs;

4. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the participant;

5. Be provided by a licensed and insured provider qualified to provide the modification;

6. Not add to the total square footage of a home except if necessary to complete an adaptation;

7. Be submitted on the person-centered service plan for prior authorization; and

8. Not be covered unless prior authorized.

(b) A personal emergency response system shall be considered a covered environmental or minor home adaptation if it meets the requirements established in this subsection.

(9)(a) An ADHC service shall:

1. Be provided to a participant who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to participants during the posted hours of operation:

a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as

required;

- c. Snacks;
- d. The presence of an RN or LPN;
- e. Age and diagnosis appropriate daily activities; and
- f. Routine services that meet the daily personal and health care needs of a participant, including:

- (i) Monitoring of vital signs;
- (ii) Assistance with activities of daily living; and
- (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a participant;

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include specialized respite care services pursuant to subsection (7) of this section;

5. Be provided to a participant by the health team in an ADHC center, which may include:

- a. A physician;
- b. A physician assistant;
- c. An APRN;
- d. An RN;
- e. An LPN;
- f. An activities director;
- g. A licensed social worker;
- h. A certified social worker;
- i. A licensed clinical social worker;
- j. A certified nutritionist; or
- k. A health aide; and

6. Be provided pursuant to a plan of treatment that is included in the participant's person-centered service plan.

(b) A plan of treatment shall:

1. Be developed and signed by each member of the plan of treatment team, which shall include the participant, participant's guardian, or participant's legal representative;

2. Include:

- a. Pertinent diagnoses;
- b. Mental status;
- c. Services required;
- d. Medication or food allergies and special diet;
- e. Contradictions for specific types of activities and preventive health care measures;

f. Frequency of visits to the ADHC center;

g. Prognosis;

h. Rehabilitation potential;

i. Functional limitation;

j. Activities permitted;

k. Nutritional requirements;

l. Medication;

m. Treatment;

n. Safety measures to protect against injury;

o. Instructions for timely discharge; and

p. Other pertinent information; and

3. Be developed annually from information on the assessment and revised as needed.

(c)1. Modification of an ADHC unit of service shall require:

a. Modification of the participant's person-centered service plan; and

b. Prior authorization.

2. Upon approval or denial of a prior authorization request, the department shall provide written notification to the case manager and to the participant.

3. A case manager shall:

- a. Inform the ADHC center of approval or denial; and
- b. Document the approval or denial in the case record.

(d)1. An ADHC center shall maintain a sign in and out log documenting the provision of services to participants.

2. Documentation shall include:

- a. The date the service was provided;
- b. The duration of the service;
- c. The arrival and departure time of the participant;
- d. A description of the service provided; and
- e. The title, name, and signature of the staff who provided the

service.

(11) Goods and services shall:

(a) Be individualized;

(b) Meet identified needs required by the participant's person-centered service plan that are necessary to ensure the health, welfare, and safety of the participant;

(c) Be items that are utilized to reduce the need for personal care or to enhance independence within the participant's home or community;

(d) Not include experimental goods or services;

(e) Not include chemical or physical restraints; and

(f) Not be covered unless prior authorized by the department.

(12) A home delivered meal shall:

(a) Meet at least one-third (1/3) of the recommended daily allowance per meal and meet the requirements of the current version of the Dietary Guidelines for Americans published by United States Department of Agriculture and the United States Department of Health and Human Services;

(b) Be provided to a participant who is unable to prepare his or her own meals and for whom there are no other persons available to do so including natural supports;

(c) Be furnished in accordance with menus that are approved in writing by a licensed dietitian;

(d) Take into consideration the participant's medical restrictions; religious, cultural, and ethnic background; and dietary preferences;

(e) Be individually packaged heated meals;

(f)[4-] Be provided for inclement weather, holidays, or emergencies if prior approval is provided by the department and if the meals:

1. Are individually packaged if not heated;

2. Are shelf stable; or

3. Have components separately packaged if the components are clearly marked as components of a single meal; and

(g) Not:

1. Supplement or replace meal preparation activities that occur during the provision of attendant care services or any other similar service;

2. Supplement or replace the purchase of food or groceries;

3. Include bulk ingredients, liquids, and other food used to prepare meals independently or with assistance;

4. Be provided while the participant is hospitalized, residing in an institutional setting, or while in attendance at an ADHC center; or

5. Duplicate a service provided through other programs operated by any governmental agency.

(13)(a) Home and community support services shall consist of:

1. General household activities including;

a. Cleaning;

b. Cooking; or

c. Chores;

2. Personal care services including assistance with:

a. Bathing;

b. Grooming;

c. Dressing;

d. Eating;

e. Toileting;

f. Transferring;

g. Assistance with self-administration of medication; or

h. Ambulation; or

3. Transporting a participant to a needed place as specified in the participant's person-centered service plan including:

a. A grocery;

b. A pharmacy; or

c. An appointment.

(b)1. An individual transporting a participant shall have a valid driver's license.

2. A minimum of current liability insurance shall be required for a vehicle used to transport a participant.

(14) Non-specialized respite care shall be provided:

(a) To a participant who has care needs beyond normal baby-sitting or normal care sitting; and

(b) In relief of a non-paid primary caregiver.

(15)(a) PDS coordination services shall include service advisory and management of funds.

(b) The financial management service provider shall:

1. Perform, on behalf of the participant, the employer responsibilities of payroll processing, which shall include:

a. Issuing paychecks;

b. Withholding federal, state, and local tax and making tax payments to the appropriate tax authorities; and

c. Issuing W-2 forms;

2. Be responsible for performing all fiscal accounting procedures at least every thirty (30) days including issuing expenditure reports to:

a. The participant, the participant's guardian, or the participant's legal representative;

b. The participant's case manager; and

c. Upon request, the department;

3. Maintain a separate account for each participant while continually tracking and reporting funds, disbursements, and the balance of the participant's prior authorizations; and

4. Process and pay invoices for:

a. PDS goods and services approved in the person-centered service plan; and

b. Environmental or minor home adaptations in the person-centered service plan.

Section 6. Miscellaneous Participant-Directed Services Requirements. (1) A PDS provider shall:

(a) Be selected by the participant;

(b) Be at least eighteen (18) years of age;

(c) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(d) Be able to communicate effectively with the participant, representative, participant's guardian, or family of the participant;

(e) Be able to understand and carry out instructions;

(f) Be able to keep records as required by the participant;

(g) Comply with the requirements for background and related checks established in Section 2(3)(j) of this administrative regulation;

(h) Not be a PDS provider excluded from providing services in accordance with Section 2(3)(k) of this administrative regulation;

(i) 1. Prior to the beginning of employment, complete training on the:

a. Reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030; and

b. Needs of the participant; and

2. Receive DAILE attendant care training initially and then annually thereafter;

(j) 1. Obtain first aid certification within six (6) months of providing PDS services; and

2. Maintain first aid certification for the duration of being a PDS provider;

(k) 1. Except as established in subparagraph 2 of this paragraph:

a. Obtain cardiopulmonary resuscitation (CPR) certification by a nationally accredited entity within six (6) months of employment; and

b. Maintain CPR certification for the duration of being a PDS provider; or

2. If the participant to whom a PDS provider provides services has a signed Do Not Resuscitate order, not be required to meet the requirements established in subparagraph 1 of this paragraph;

(l) Comply with the TB risk assessment and test requirements established in Section 2(3)(h)5. of this administrative regulation;

(m) Maintain and submit timesheets:

1. Signed by the:

a. Participant or representative; and

b. Provider; and

2. Documenting:

a. Hours worked;

b. The provision of a service including:

(i) A full description of the service provided; and

(ii) Any concerns or issues, if existing, regarding the general well-being of the participant; and

c. The participant's choice of daily activities and services; and
(n) Submit a completed Kentucky Consumer Directed Options/Participant Directed Services Employee/Provider Contract to the service advisor.

(2)(a) A participant may designate a representative to act on the participant's behalf.

(b) A representative shall:

1. Submit to all of the background and related checks established in Section 2(3)(j) of this administrative regulation;

2. Be at least eighteen (18) years of age;

3. Be chosen by the participant, except as established in paragraph (c) of this subsection, to manage and direct all related aspects of the participant's PDS; and

4. Not be a PDS representative if found in violation of the provisions established in subsection (1)(h) of this section.

(c) A representative shall be chosen for a participant if a condition established in this paragraph exists. If the participant:

1. Is under eighteen (18) years of age, a family member of the participant shall appoint a representative for the participant;

2. Has a guardian or legal representative, the participant's guardian or legal representative shall appoint a representative for the participant; or

3. Has failed to adhere to the terms of a participant corrective action plan and chooses to continue receiving PDS, the participant's person-centered team shall present a list of multiple potential representatives to the participant from which the participant shall choose a representative.

(d) A participant's choice of representative shall be made via a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS), which the participant shall submit to the participant's service advisor.

(3) A participant may voluntarily terminate PDS by completing a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS) and submitting it to the participant's service advisor.

(4) The department shall immediately terminate a participant from receiving PDS if:

(a) Imminent danger to the participant's health, safety, or welfare exists; or

(b) The participant's person-centered service plan indicates he or she requires more hours of service than the program can provide, which may jeopardize the participant's safety and welfare due to being left alone without a caregiver present.

(5) A service advisor:

(a) Providing PDS coordination shall:

1. Meet the case manager requirements established in Section 8(1) and (2) of this administrative regulation; and

2. Within seven (7) days of receiving a referral regarding a participant from an independent assessor, schedule a face-to-face visit with the participant, the participant's guardian, or the participant's legal representative;

(b) Shall work with the participant or participant's legal representative to develop a participant corrective action plan:

1. If the participant, participant's legal representative, or PDS employee has exhibited abusive, intimidating, or threatening behavior; or

2. Pursuant to Section 8(7)(d) of this administrative regulation;

(c) For a participant with a participant corrective action plan:

1. Shall monitor the progress of the participant corrective action plan; and

2.a. Shall determine that the participant corrective action plan has been satisfied and continue with PDS;

b. May assist or direct the participant in appointing a representative pursuant to subsection (2)(c) of this section; or

c. Shall proceed with involuntary termination of PDS if the participant or legal representative is unable or unwilling to comply with the participant corrective action plan;

(d) If proceeding with involuntary termination, shall:

1. Notify the independent assessor in writing of termination of PDS within thirty (30) days;

2. Provide the participant or participant's legal representative with written information regarding the traditional waiver program and traditional waiver providers;

3. Provide the participant or participant's legal representative with information regarding the right to appeal the PDS denial in accordance with 907 KAR 1:563;

4. Complete and submit to the department a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS) terminating the participant from PDS; and

5. Document the:

a. Reason for the termination;

b. Actions taken to assist the participant with the participant corrective action plan; and

c. Outcomes; and

(e) Shall conduct at least one (1) in person visit with:

1. The participant each month at the:

a. Participant's residence; or

b. ADHC center if the participant receives services at an ADHC center; and

2. The participant's representative each three (3) months if designated by the participant.

(6) Except as provided in subsection (4) or (5) of this section regarding a participant's termination from PDS, the participant's service advisor shall:

(a) Notify the independent assessor and service provider of potential termination;

(b) Assist the participant in developing a participant corrective action plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the participant to resolve the issue, develop and implement a prevention plan, or designate a PDS representative;

(d) Complete and submit to the department a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS) terminating the participant from receiving PDS if the participant fails to meet the requirements established in paragraph (c) of this subsection; and

(e) Assist the participant in transitioning back to traditional HCB services by providing a current list of traditional HCB service providers.

(7) A personal services agency shall:

(a) Meet the requirements established in 906 KAR 1:180; and

(b) Comply with the requirements of this section.

(8) An immediate family member, guardian, or legally responsible individual may provide a PDS upon written approval from the department if:

(a) The individual submits to the department a completed PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as a Paid Service Provider;

(b) The individual has unique abilities necessary to meet the needs of the participant;

(c) The individual has obtained education, job experience, volunteerism, or training beyond the direct care of the participant;

(d) The services being provided are not natural supports;

(e) The individual enables the participant to be integrated in the community; and

(f) 1. The nearest provider is more than thirty (30) miles from the participant's residence; or

2. A qualified provider cannot:

a. Provide the necessary services according to the person-centered service plan; or

b. Accommodate the participant's schedule.

(9) A service advisor through PDS coordination shall:

(a) Advise a participant regarding any aspect of PDS or blended services and facilitate access to services;

(b) Provide information for accessing assistance twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with all applicable federal and state laws and requirements;

(d) Continually monitor a participant's health, safety, and welfare and provide information on how to access resources;

(e) Request a:

1. Copy of the participant's current person-centered service plan; or

2. Reassessment through the independent assessor; and

(f) Conduct at least one (1) face-to-face visit:

1. With the participant monthly;

2. With the participant and the participant's representative, if the participant has a representative, at least once every three (3) months; and

3. At the participant's residence at least once every three (3) months.

(10) A participant shall be responsible for all employer-related expenses and responsibilities.

(11) A PDS provider shall not provide more than forty (40) hours of PDS in a calendar week (Sunday through Saturday).

Section 7. Person-centered Service Plan Requirements. (1) A person-centered service plan shall:

(a) Be established for each participant;

(b) Be developed by:

1. The participant, the participant's guardian, or the participant's legal representative;

2. The participant's case manager or service advisor;

3. The participant's person-centered team; and

4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;

(c) Use a process that:

1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;

2. Is timely and occurs at times and locations convenient for the participant;

3. Reflects cultural considerations of the participant;

4. Provides information:

a. Using plain language in accordance with 42 C.F.R. 435.905(b); and

b. In a way that is accessible to an individual with a disability or who has limited English proficiency;

5. Offers an informed choice;

6. Includes a method for the participant to request updates to the person-centered service plan as needed;

7. Enables all parties to understand how the participant:

a. Learns;

b. Makes decisions; and

c. Chooses to live and work in the participant's community;

8. Discovers the participant's needs, likes, and dislikes; and

9. Empowers the participant's person-centered team to create a person-centered service plan that:

a. Is based on the participant's:

(i) Assessed clinical and support needs;

(ii) Strengths;

(iii) Preferences; and

(iv) Ideas;

b. Encourages and supports the participant's:

(i) Rehabilitative needs;

(ii) Habilitative needs; and

(iii) Long term satisfaction;

c. Is based on reasonable costs given the participant's support needs;

d. Includes:

(i) The participant's goals;

(ii) The participant's desired outcomes; and

(iii) Matters important to the participant;

e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;

f. Includes:

(i) Information necessary to support the participant during times of crisis; and

(ii) Risk factors and measures in place to prevent crises from occurring;

g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;

h. Records the alternative home and community-based

settings that were considered by the participant;

i. Reflects that the setting in which the participant resides was chosen by the participant;

j. Is understandable to the participant and to the individuals who are important in supporting the participant;

k. Identifies the individual or entity responsible for monitoring the person-centered service plan;

l. Is finalized and agreed to with the informed consent of the participant or participant's representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;

m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;

n. Includes those services that the individual elects to self-direct; and

o. Prevents the provision of unnecessary or inappropriate services and supports; and

(d) Include in all settings the ability for the participant to:

1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience; and

2.a. Choose when and what to eat;

b. Have access to food at any time;

c. Choose with whom to eat or whether to eat alone; and

d. Choose appropriate clothing according to the:

(i) Participant's preference;

(ii) Weather; and

(iii) Activities to be performed.

(2) If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.

(3)(a) A participant's person-centered service plan shall be:

1. Entered into the MWMA by the participant's case manager or service advisor; and

2. Updated in the MWMA by the participant's case manager or service advisor.

(b) A participant or participant's authorized representative shall complete and upload into the MWMA a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA.

Section 8. Case Management Requirements. (1) A case manager shall:

(a) Have:

1.a. A bachelor's degree in a health or human services field from an accredited college or university; and

b.(i) At least one (1) year of experience in a health or human services field; or

(ii) The educational or experiential equivalent in the field of aging or disabilities; or

(b) Be a registered nurse who has:

1. At least two (2) years of experience as a professional nurse in the field of aging or disabilities; or

2. A master's degree in a health or human services field from an accredited college or university.

(2) A case manager shall be supervised by a case management supervisor who:

(a) Has at least four (4) years of experience as a case manager in the field of aging or disabilities; and

(b) Meets the requirements established in subsection (1) of this section.

(3) A case manager shall meet with a participant, the participant's guardian, or the participant's legal representative within seven (7) days of receiving a referral from an independent assessor regarding the participant.

(4) A case manager shall:

(a) Communicate in a way that ensures the best interest of the participant;

(b) Be able to identify and meet the needs of the participant;

(c)1. Be competent in the participant's language either through personal knowledge of the language or through interpretation; and

2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;

(d) Ensure that:

1. The participant is educated in a way that addresses the participant's:

a. Need for knowledge of the case management process;

b. Personal rights; and

c. Risks and responsibilities as well as awareness of available services; and

2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;

(e) Have a code of ethics to guide the case manager in providing case management that shall address:

1. Advocating for standards that promote outcomes of quality;

2. Ensuring that no harm is done;

3. Respecting the rights of others to make their own decisions;

4. Treating others fairly; and

5. Being faithful and following through on promises and commitments;

(f)1. Lead the person-centered service planning team; and

2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's person-centered service plan;

(g)1. Include the participant's participation, guardian's participation, or legal representative's participation in the case management process; and

2. Make the participant's preferences and participation in decision making a priority;

(h) Document:

1. A participant's interactions and communications with other agencies involved in implementing the participant's person-centered service plan; and

2. Personal observations;

(i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's person-centered service plan;

(j) Be accountable to:

1. A participant to whom the case manager provides case management in ensuring that the participant's needs are met;

2. A participant's person-centered team and provide leadership to the team and follow through on commitments made; and

3. The case manager's employer by following the employer's policies and procedures;

(k) Stay current regarding the practice of case management and case management research;

(l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant's person-centered service plan is successful and done so in a way that is efficient regarding the participant's financial assets and benefits;

(m) Accurately reflect in the MWMA if a participant is:

1. Terminated from the HCB waiver program;

2. Admitted to a hospital;

4. Admitted to a skilled nursing facility;

4. Transferred to another Medicaid 1915(c) home and community based waiver service program; or

5. Relocated to a different address; and

(n) Provide information about participant-directed services to the participant, participant's guardian, or participant's legal representative:

1. At the time the initial person-centered service plan is developed; and

2. At least annually thereafter and upon inquiry from the participant, participant's guardian, or participant's legal representative.

(5)(a) Case management for any individual who begins receiving HCB waiver services shall be conflict free except as allowed in paragraph (b) of this subsection.

(b)1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only

willing and qualified HCB waiver provider within thirty (30) miles of the participant's residence.

2. An exemption to the conflict free case management requirement shall be granted if:

a. A participant requests the exemption;

b. The participant's case manager provides documentation of evidence to the department that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;

c. The participant or participant's representative and case manager signs a completed MAP 531 Conflict-Free Case Management Exemption; and

d. The participant, participant's representative, or case manager uploads the completed MAP 531 Conflict-Free Case Management Exemption into the MWMA.

3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall document conflict of interest protections, separating case management and service provision functions within the provider entity and demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.

(c) A participant who receives HCB waiver services shall transition to conflict free case management when the participant's next level of care determination occurs.

(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant's:

1. Case manager; or

2. Provider of non-case management HCB waiver services.

(e) If a participant chooses a new case manager in order to comply with the conflict free case management requirement, the new case manager and the participant's assessment team shall be responsible for:

1. Developing the material necessary for the participant's next level of care determination;

2. Submitting the material associated with the participant's next level of care determination to the MWMA;

3. Developing the participant's next person-centered service plan; and

4. Submitting the participant's next person-centered service plan to the MWMA.

(6) Case management shall involve:

(a) A constant recognition of what is and is not working regarding a participant; and

(b) Changing what is not working.

(7) A case manager shall:

(a) Arrange for a service but not provide a service directly;

(b) Contact the participant at least monthly by telephone or through a face-to-face visit with a minimum of one (1) face-to-face visit between the case manager and the participant:

1. Every other month in:

a. An adult day health care center; or

b. The participant's residence; and

2. At least three (3) times a calendar year in the participant's residence;

(c) Ensure that services are provided in accordance with the participant's person-centered service plan;

(d) Issue a participant corrective action plan if:

1. The participant does not comply with the person-centered service plan;

2. The participant, a family member of the participant, an employee of the participant, the participant's guardian, or a legal representative of the participant threatens, intimidates, or consistently refuses services from any HCB waiver provider;

3. Imminent threat of harm to the participant's health, safety, or welfare exists;

4. The participant, a family member of the participant, an employee of the participant, the participant's guardian, or a legal

representative of the participant interferes with or denies the provision of an assessment, case management, or service advisory; or

5. If the PDS provider does not comply with the PDS provider requirements established in Section 6(1) of this administrative regulation; and

(e) Issue a recommendation to the department for termination from HCB waiver services or PDS if a participant corrective action plan cannot be agreed upon or fulfilled by the participant, participant's guardian, or participant's legal representative.

Section 9. Critical Incident Reporting. (1)(a) An event that potentially or actually impacts the health, safety, or welfare of the participant shall be a critical incident.

(b) A critical incident may include:

1. Death;

2. Alleged or suspected abuse, neglect, or exploitation;

3. Homicidal or suicidal ideation;

4. Missing person;

5. A medication error resulting in consultation or intervention of a licensed medical professional;

6. An event involving police or emergency response personnel intervention; or

7. Other action or event that may result in harm to the participant.

(2)(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant.

(b) If the critical incident:

1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA by the individual who witnessed or discovered the critical incident; or

2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported by the individual who witnessed or discovered the critical incident via the MWMA within eight (8) hours of discovery.

(c) The HCB waiver provider shall:

1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and

2. Prepare a report of the investigation, which shall be recorded in the MWMA and shall include:

a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;

b. Details of the critical incident; and

c. Relevant participant information including:

(i) A listing of recent medical concerns;

(ii) An analysis of causal factors; and

(iii) Recommendations for preventing future occurrences.

(d) The participant's case manager shall follow up to ensure that the participant's health, safety, and welfare are not jeopardized.

(3) An HCB provider shall report a medication error by making an entry into the MWMA.

Section 10. Involuntary Termination of HCB Waiver Services.

(1) If the department involuntarily terminates a participant's participation in the HCB waiver program, the department shall:

(a) Notify in writing of the decision to terminate services the:

1. Participant's independent assessor;

2. Participant, participant's guardian, or participant's legal representative;

3. Participant's case manager; and

4. Participant's HCB waiver service providers; and

(b) Inform the participant, participant's guardian, or participant's legal representative of the right to appeal the department's decision to terminate HCB waiver services.

(2)(a) If an HCB waiver provider involuntarily terminates providing HCB waiver services to a participant, the HCB waiver provider shall:

1. At least thirty (30) days prior to the effective date of the termination:

a. Simultaneously notify in writing the:

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(i) Participant, participant's guardian, or participant's legal representative;

(ii) Participant's case manager;

(iii) The participant's independent assessor; and

(iv) Department;

2. Document the termination in the MWMA; and

3. In conjunction with the participant's case manager:

a. Provide the participant, participant's guardian, or participant's legal representative with the name, address, and telephone number of each HCB waiver provider in Kentucky;

b. Provide assistance to the participant, participant's guardian, or participant's legal representative in contacting another HCB waiver provider; and

c. Provide a copy of pertinent information to the participant, participant's guardian, or participant's legal representative.

(b) The notice referenced in paragraph (a) of this subsection shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the intended action is taken; and

4. The participant's right to appeal the intended action through the provider's appeal or grievance process.

Section 11. Use of Electronic Signatures. The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 12. Applicability and Transition to Version 2. (1) The provisions and requirements established in this administrative regulation shall not apply to individuals receiving HCB waiver services version 1 pursuant to 907 KAR 1:160.

(2) A participant receiving services pursuant to 907 KAR 1:160 shall transition to receiving services pursuant to this administrative regulation upon the participant's next level-of-care determination if the determination confirms that the individual is eligible for HCB waiver services version 2.

Section 13. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage.

Section 14. Appeal Rights. An appeal of a department determination regarding NF level of care or services to a participant shall be in accordance with 907 KAR 1:563.

Section 15.[14.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP – 115 Application Intake – Participant Authorization", May 2015;

(b) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(c) "MAP – 531 Conflict-Free Case Management Exemption", May 2015;

(d) "PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as a Paid Service Provider", August 2015;

(e) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;

(f) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS)", June 2015;

(g) "Kentucky Consumer Directed Options/Participant Directed Services Employee/Provider Contract", June 2015; and

(h) "Kentucky Home Assessment Tool (K-HAT)", July 1, 2015.

(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 at: <http://www.chfs.ky.gov/dms/incorporated.htm>.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 17, 2016

FILED WITH LRC: June 30, 2016 at 11 a.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, (502) 564-4321, stuart.owen@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding a new version – Version 2 – of home and community based (HCB) waiver services. The HCB program enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for a new version – Version 2 - of Medicaid's home and community based waiver program and in accordance with federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a new version of a program that enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(2) If 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 inserts a section establishing that coverage of services will be contingent upon federal funding and approval.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to protect the viability of the Medicaid Program by ensuring that services' coverage is contingent on federal approval and federal funding.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring that services' coverage is contingent on federal approval and federal funding.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by ensuring that services' coverage is contingent on federal approval and federal funding.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Currently sixty-three (63) providers (home health departments and adult day health care centers) are enrolled as HCB waiver program providers and over 9,500 individuals are receiving services through the 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: No action is required as a result of the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Parties will benefit from the receipt of federal funding for the program which is necessary to maintain the program.

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

(a) Initially: The amendment imposes no cost as it ensures that services' coverage is contingent on federal approval and funding.

(b) On a continuing basis: The amendment imposes no cost as it ensures that services' coverage is contingent on federal approval and funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 1915(c) home and community based waiver programs are not federally mandated.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 1915(c) home and community based waiver programs are not federally mandated.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 1915(c) home and community based waiver programs are not federally mandated.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 1915(c) home and community based waiver programs are not federally mandated.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

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

(c) How much will it cost to administer this program for the first year? The amendment imposes no cost as it ensures that services' coverage is contingent on federal approval and funding.

(d) How much will it cost to administer this program for subsequent years? The amendment imposes no cost as it ensures that services' coverage is contingent on federal approval and funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 907 KAR 7:015E

This emergency administrative regulation is being promulgated to establish that reimbursement of services addressed in this administrative regulation is contingent upon federal approval and funding. This action must be taken on an emergency basis to prevent a loss of state funds by ensuring the receipt of federal funding and approval for this program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

VICKIE YATES BROWN GLISSON, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Community Alternatives (Emergency Amendment)

907 KAR 7:015E, Reimbursement for home and community based waiver services version 2.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: June 30, 2016

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program reimbursement requirements and provisions for home and community based waiver services version 2.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20:066; and

(b) Certified for Medicaid participation by the department.

(3) "Department" means the Department for Medicaid Services or its designee.

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(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Fixed upper payment limit" means the maximum amount the department shall reimburse per unit.

(6)(5) "HCB" means home and community based waiver.

(7)(6) "Participant" means a recipient who:

(a) Meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) Meets the eligibility criteria for HCB services established in 907 KAR 7:010.

(8)(7) "Recipient" is defined by KRS 205.8451(9).

Section 2. HCB Service Reimbursement. (1)(a) Except as provided in Section 3, 4, or 5 of this administrative regulation, the department shall reimburse for a home and community based waiver service or item at the lesser of the billed charges or the fixed upper payment limit for each unit.

(b) The fixed upper payment limits, unit amounts, and reimbursement maximums established in the following table shall apply:

Service	Fixed Upper Payment Limit	Unit Amount	Maximum
PDS coordination	\$162.50 per unit		Two (2) units per month
Case management	\$100.00	One (1) month	One (1) unit per month
Attendant care not as a PDS	\$24.00 per hour	One (1) hour	\$200 per day alone or in combination with ADHC services. Travel to and from the participant's residence shall be excluded
Home and community supports	\$2.88 per unit	Fifteen (15) minutes	Forty-five (45) hours per week; Maximum of \$200 per day alone or in combination with ADHC services; Travel to and from the participant's residence shall be excluded
Non-specialized respite	\$2.75 per unit	Fifteen (15) minutes	\$200 per day alone or in combination with specialized respite. Non-specialized respite alone or in combination with specialized respite shall not exceed \$4,000 per level of care year.
Goods and services	\$3,500 per level of care year	Level of care year	\$3,500 per level of care year; shall not be covered unless prior authorized
Home delivered meals	\$7.50 per hot meal	One (1) hot meal	One (1) hot meal per day and five (5) hot meals per week
Adult day health care services	\$2.83 per unit for Level I services; \$3.43 per unit for Level II services except for specialized respite, which shall be \$10.00 per unit for Level II	Fifteen (15) minutes	200 units per week
Specialized respite	\$4.00 per unit for Level I; \$10.00 per unit for Level II	Fifteen (15) minutes	\$200 per day alone or in combination with non-specialized respite. Specialized respite alone or in combination with non-specialized respite shall not exceed \$4,000 per level of care year.
Environmental or minor home adaptation	\$2,500 per level of care year	One (1) level of care year	\$2,500 per level of care year; shall not be covered unless prior authorized

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(2)(a) Reimbursement for a service provided as a PDS shall not exceed the department's allowed reimbursement for the same service as established in the table in subsection (1) of this section.

(b) Participants receiving services through the PDS option shall have three (3) months from the date of level of care recertification to comply with the reimbursement limit established in paragraph (a) of this subsection.

(3)(a) Three (3) quotes from a prospective provider shall be required for:

1. An environmental or minor home adaptation; or
2. Goods and services.

(b) Documentation justifying the need for the following shall be uploaded into the MWMA:

1. An environmental or minor home adaptation; or
2. Goods and services.

(5) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

Section 3. Local Health Department HCB Service Reimbursement. (1) The department shall reimburse a local health department for HCB services:

(a) Pursuant to Section 2 of this administrative regulation; and

(b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall:

(a) Each year complete a Home Health and Home and Community Based Cost Report completed in accordance with the Home Health and Home and Community Based Cost Reporting Instructions; and

(b) Submit the Home Health and Home and Community Based Cost Report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual Home Health and Home and Community Based Cost Report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department's HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

(a) Payments received for HCB services provided during a fiscal year; and

(b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual Home Health and Home and Community Based Cost Report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's Home Health and Home and Community Based Cost Report if it determines an audit is necessary.

Section 4. Reimbursement for an ADHC Service. (1) Reimbursement for an ADHC service shall:

(a) Be made:

1. Directly to an ADHC center; and
2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 200 units per calendar week per participant.

(2) Level I reimbursement shall be the lesser of:

(a) The provider's usual and customary charges; or

(b) Two (2) dollars and eighty-three (83) cents per unit of service.

(3)(a) Except as established in paragraph (b) of this subsection, Level II reimbursement shall be the lesser of:

1. The provider's usual and customary charges; or

2. Three (3) dollars and forty-three (43) cents per unit of

service.

(b)1. The department shall pay a Level II reimbursement for specialized respite provided by a:

a. Registered nurse; or

b. Licensed practical nurse under the supervision of a registered nurse.

2. The Level II reimbursement for specialized respite shall be the lesser of:

a. The ADHC center's usual and customary charges; or

b. Ten (10) dollars per unit of service.

(c) An ADHC center's reimbursement for Level II services shall be:

1. Per participant; and

2. Based upon the participant's assessed level of care and most recent person-centered service plan.

(4) An ADHC basic daily service shall constitute care for one (1) participant.

(5) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.

(6) The level of and reimbursement rate for any ADHC service provided to a participant shall be determined by an assessment of the participant using the Kentucky Home Assessment Tool (K-HAT).

Section 5. Criteria for High Intensity Level II Reimbursement and Home Health Level II Reimbursement. (1) Any ADHC service provided to a participant by an ADHC center shall qualify for Level II reimbursement if the participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT).

(2)(a) Specialized respite care provided to a participant by a home health agency shall qualify for Level II reimbursement if:

1. The participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT); and

2. Provided by a:

a. Registered nurse; or

b. Licensed practical nurse under the supervision of a registered nurse.

(b) The Level II reimbursement for specialized respite provided by a home health agency shall be the reimbursement established in Section 4(3)(b) of this administrative regulation.

(3) If a participant's assessment determines that:

(a) ADHC services to the participant do not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center for services provided to the participant; or

(b) Specialized respite care to the participant does not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center or home health agency for the specialized respite care service.

Section 6. Applicability. The reimbursement provisions and requirements established in this administrative regulation shall:

(1) Apply to services or items provided to individuals who receive home and community based services version 2 pursuant to 907 KAR 7:010; and

(2) Not apply to services or items provided to individuals receiving home and community based services version 1 pursuant to 907 KAR 1:160.

Section 7. Federal Approval and Federal Financial Participation. The department's reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the reimbursement.

Section 8. Appeal Rights. An HCB service provider may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9.[8-] Incorporation by Reference. (1) The following

material is incorporated by reference:

- (a) "Kentucky Home Assessment Tool (K-HAT)", July 1, 2015;
- (b) "The Home Health and Home and Community Based Cost Report", November 2007; and
- (c) "The Home Health and Home and Community Based Cost Report Instructions", November 2007.

(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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.; or
- (b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: June 17, 2016

FILED WITH LRC: June 30, 2016 at 11 a.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, (502) 564-4321, stuart.owen@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program reimbursement provisions and requirements regarding a new version – Version 2 – of home and community based (HCB) waiver services. The HCB program enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish reimbursement policies for a new version – Version 2 - of Medicaid's home and community based waiver program and in accordance with federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid reimbursement provisions and requirements for a new version of a program that enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid reimbursement provisions and requirements for a program that enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(2) If 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 inserts a section establishing that reimbursement of services will be contingent upon federal funding and approval.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to protect the viability of the Medicaid Program by ensuring that reimbursement of services is contingent on federal approval and federal funding.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring that reimbursement of services is contingent on federal approval and federal funding.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by ensuring that reimbursement of services is contingent on federal approval and federal funding.

(3) List the type and number of individuals, businesses,

organizations, or state and local government affected by this administrative regulation: Currently sixty-three (63) providers (home health departments and adult day health care centers) are enrolled as HCB waiver program providers and over 9,500 individuals are receiving services through the 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: No action is required as a result of the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Parties will benefit from the department's receipt of federal funding for the program as it is necessary to maintain the program.

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

(a) Initially: The amendment imposes no cost as it ensures that reimbursement of services is contingent on federal approval and funding.

(b) On a continuing basis: The amendment imposes no cost as it ensures that reimbursement of services is contingent on federal approval and funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 1915(c) home and community based waiver programs are not federally mandated.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 1915(c) home and community based waiver programs are not federally mandated.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 1915(c) home and community based waiver programs are not federally mandated.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 1915(c) home and community based waiver programs are not federally mandated.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment imposes no cost as it ensures that reimbursement of services is contingent on federal approval and funding.

(d) How much will it cost to administer this program for subsequent years? The amendment imposes no cost as it ensures that reimbursement of services is contingent on federal approval and funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Board of Medical Licensure
(As Amended at ARRS, July 14, 2016)

201 KAR 9:250. Registration and oversight of pain management facilities.

RELATES TO: KRS 218A.175, 311.530-311.620, 311.990
STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the requirements for registration and oversight for pain management facilities.

Section 1. Definitions. (1) "Board" is defined by KRS 311.550(1).

(2) "In good standing" means an active license to practice medicine or osteopathy that is not currently subject to any final order imposing any disciplinary sanction authorized by KRS 311.595, agreed order, or letter of agreement issued by or entered into with the board.

(3) "Pain management facility" is defined by KRS 218A.175(1), and each separate operating location of a physician's practice that meets the criteria established by this definition shall be considered a separate pain management facility.

(4) "Practitioner" means a licensed or certified health care practitioner who is legally authorized to prescribe or dispense controlled substances.

Section 2. Ownership or Investment Interest. (1)(a) A physician who has an ownership or investment interest in a pain management facility during any period when the physician is not licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall be deemed to be:

1. In violation of KRS 311.595(12); and
2. Practicing medicine without a license and subject to criminal sanctions.

(b) If the board determines that a physician has maintained an ownership or investment interest in a pain management facility during a period when that physician was not licensed to practice medicine or osteopathy within the Commonwealth of Kentucky, it may deny an application for licensing filed by that physician or may take appropriate disciplinary action against a license previously issued to the physician.

(2) A physician who maintains an ownership or investment interest in a pain management facility during any period when the physician's Kentucky license is not in good standing shall be in violation of KRS 311.595(12) and subject to disciplinary action by the Board.

Section 3. ~~Divestiture of Ownership or Investment Interest.~~ (1) ~~A physician who has an ownership or investment interest in a pain management facility shall immediately divest that ownership or investment interest if:~~

~~(a) The physician's Kentucky license is no longer active for any reason; or~~

~~(b) The physician's Kentucky license becomes subject to any final order imposing any disciplinary sanction authorized by KRS 311.595, agreed order, or letter of agreement issued by or entered into with the board.~~

~~(2)(a) If a physician fails to immediately divest the ownership or investment interest in the pain management facility as required by subsection (1) of this section, the board may institute an action for injunctive relief pursuant to KRS 311.605(3) and (4) to require the physician to immediately divest the ownership or investment interest in the pain management facility.~~

~~(b) An unlawful ownership or investment interest in a pain management facility shall be considered the unlawful practice of medicine and shall be considered to cause irreparable injury to the Commonwealth, acting through this board.~~

Section 4.] Registration; Amended Registration; Fee; New Facility Registration. (1) On or before September 1, 2012 and September 1 of each succeeding year, every pain management facility operating as the private office or clinic of a physician within the Commonwealth of Kentucky shall register with the board, providing the following specific information in writing:

(a) The name, business address, profession, current professional licensing status, and nature and extent of ownership or investment interest of each person who has or maintains an ownership or investment interest in the pain management facility;

(b) The names and addresses of every pain management facility in which the person has an ownership or investment interest;

(c) The hours of operation of every pain management facility in which the person has an ownership or investment interest;

(d) The names and professional status of each employee at each practice location owned and operated by that pain management facility;

(e) The name, professional license number, and practice address of the qualified physician owner or owner's physician designee who will be physically present practicing medicine in the pain management facility for at least fifty (50) percent of the time patients are present at the facility. The facility shall also state its plan for ensuring that the designated physician owner or owner's physician designee will be physically present practicing medicine in the facility and, if the facility owns and operates multiple practice locations, the plan to ensure that a physician owner or owner's physician designee is physically present practicing medicine in each practice location for at least fifty (50) percent of the time that patients are seen at each pain management facility;

(f) For each owner's physician designee who will fulfill the oversight responsibility, an attestation that the physician designee is employed by the owner and the plan for owner supervision of the physician designee; and

(g) An attestation by the physician owner that the owner or owner's physician designee:

1. Meets one (1) of the requirements established in KRS 218A.175(3) and specifying each qualification met by the physician owner or owner's physician designee; or

2. Was an owner of that specific pain management facility prior to and continuing through July 20, 2012 and meets one (1) of the following qualifications:

a. Successfully completed a residency program in physical medicine and rehabilitation, anesthesiology, addiction medicine, neurology, neurosurgery, family practice, preventive medicine, internal medicine, surgery, orthopedics, or psychiatry approved by the Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS); or

b.(i) Registered the ownership or investment interest in that pain management facility with this board on or before September 1, 2012;

(ii) ~~Was/is~~ eligible for and ~~has~~ provided the board with written verification that the licensee ~~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

(iii) ~~Became/Becomes~~ certified by the American Board of Pain Medicine or by the American Board of Interventional Pain Physicians by September 1, 2013.

(2) If the physician ~~failed/fails~~ the certification examination or ~~failed/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 to provide the on-site supervision required by Section 5[6] of this administrative regulation.

(3) At the time of filing of the registration required by subsection (1) of this section, each pain management facility operating as the private office or clinic of a physician shall pay an annual fee of \$500 for each pain management facility to the board to defray the costs of registration and enforcement of this administrative regulation.

(4) If, during the effective period of the annual registration, a new or different physician obtains an ownership or investment interest in the pain management facility, or there is a change in the physician owner or physician designee who will practice on-site at least fifty (50) percent of the time the facility is open to patients, the facility shall file an amended registration with the board identifying these physicians and providing the information required by subsection (1) of this section about the new or different physicians, within fourteen (14) calendar days of that change.

(5) Failure to file the required registration or to pay the annual fee on or before September 1 of each year shall constitute a violation of KRS 311.595(12) and shall serve as a basis for discipline by the board against the license of any physician who has an ownership or investment interest in the facility that failed to file the required registration.

(6) If a new pain management facility operating as the private office or clinic of a physician comes into existence after September 1 of a calendar year but before September 1 of the following calendar year, that new pain management facility shall register with the board within fourteen (14) calendar days of its legal formation, and shall meet each of the registration requirements of this section.

Section 4.[5.] Identification and Qualifications of Prescribers Employed by the Facility; Notification of Changes. (1) As part of its initial or annual registration, the facility shall identify each practitioner, who is employed by the facility in any capacity, who will be prescribing or dispensing controlled substances to patients of the facility.

(2) Each licensed physician who will prescribe or dispense controlled substances to patients of the facility as part of the employment arrangement 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 the employment agreement with the facility. This continuing medical education requirement shall satisfy the requirement of 201 KAR 9:310.

(3) A licensed physician shall not prescribe or dispense controlled substances to patients of the facility if the physician has:

(a) Had an application for a license or certificate to prescribe, dispense, or administer controlled substances denied in any jurisdiction or by any governmental agency;

(b) Had a Drug Enforcement Administration permit to prescribe, dispense, or administer controlled substances revoked;

(c) Had the professional ability or authority to prescribe or dispense controlled substances revoked, restricted, or limited in any manner by a licensing authority of any state, except as provided by subsection (4) of this section; or

(d) Been convicted of or entered a plea of guilt, nolo contendere, or Alford plea, regardless of adjudication, to any felony or misdemeanor relating to controlled substances, in any state or federal court.

(4) The prohibition established in subsection (3)(c) of this section shall not apply if:

(a) 1. The conduct requiring the revocation, restriction, or limitation was directly related to the physician's impairment as a result of controlled substance abuse or dependence;

2.[(b)] The order imposing the revocation, restriction, or limitation is no longer in effect;

3.[(c)] The physician has achieved a level of recovery which provides the licensing authority sufficient assurance that the physician will not likely engage in similar conduct while practicing at the pain management facility; and~~and~~

4.[(d)] The board or its panel has specifically approved the physician to practice in that specific pain management facility; or~~and~~

(b) [(e)] The physician has entered into an agreed order with terms and conditions requiring only remedial education and monitoring.

(5) The facility shall notify the board in writing within fourteen (14) days of each change in physician staffing of the facility.

Section 5.[6.] On-site Supervision. (1) If the physician owner or qualified designee is not present in each practice location of a pain management facility for at least fifty (50) percent of the time that patients are present at the practice location for any given calendar week as required by KRS 218A.175(3), the facility shall immediately notify the board of that fact in writing and include the reasons.

(2) Any violation of KRS 218A.175(3) or this section shall constitute a violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(3)~~311.595(3)~~ and (4) by the physician owner and, if applicable, the qualified designee who was responsible for being present at the practice location during that period.

Section 6.[7.] Record-Keeping; Inspection. (1) Each pain management facility shall document on a weekly basis that a physician owner or an owner's physician designee who is employed by and under the direct supervision of the owner was physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients were present in the facility during that week. This documentation shall include:

(a) The name, practice address, and phone number of the physician owner or physician designee who fulfilled this oversight function for that specific week;

(b) The practice address of each practice location owned and operated by that pain management facility;

(c) The days and hours each practice location of the pain management facility was open to patients during that specific week; and

(d) The days and hours the physician owner or physician designee was present in each practice location for the pain management facility for that specific week.

(2) Each pain management facility shall maintain appropriate records of the patients receiving treatment at that facility so that the board may determine the identity and number of patients treated during any given time period.

(3) The pain management facility shall maintain the weekly reports required by subsection (1) of this section and any daily sign-in sheets maintained by the practice on site in a readily accessible location for a minimum period of six (6) years.

(4) Upon request by an employee or agent of the board, the pain management facility shall permit the board employee or agent to inspect and copy the weekly reports and daily sign-in sheets maintained on site.

(5) For the purpose of enforcing the provisions of this administrative regulation, an agent of the board shall have the power and authority to:

(a) Enter upon professional premises during periods when those premises are otherwise open to patients or the public;

(b) Obtain evidence, including psychiatric or nonpsychiatric patient records, by consent or pursuant to a subpoena or search warrant;

(c) Interview all persons including owners, employees, or patients; and

(d) Require the production of books, papers, documents, or other documentary evidence either by consent or pursuant to a subpoena or search warrant.

Section 7.[8.] Proof of Operation of a Pain Management Facility. (1) The board may establish sufficient proof that a clinic, practice, or facility is a pain management facility subject to the provisions of this administrative regulation by establishing that:

(a) The facility has filed a registration with the board as a pain management facility; or

(b) 1. For any selected thirty (30) day period, the majority of

patients receiving medical treatment from the clinic, practice, or facility received controlled substances or a prescription for controlled substances during that period; and

2. One (1) of the following additional conditions was present during that thirty (30) day period as required by KRS 218A.175(1)(a):

a. A primary component of the practice was the treatment of pain; or

b. The facility advertised in any medium for any type of pain management services.

(2) The board may establish sufficient proof that the majority of patients treated in the facility for any specified thirty (30) day period received controlled substances or a prescription for controlled substances on their visit by comparing the names on the sign-in sheet to the KASPER report for that thirty (30) day period.

Section 8.[9-] Violations; Enforcement; Emergency Action. (1) Any violation of the requirements of this administrative regulation shall constitute a violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(4) and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3) given the circumstances.

(2) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky while practicing at a pain management facility, a licensee shall practice in a lawful pain management facility.

(3) A pain management facility shall be considered an unlawful pain management facility if it:

(a) Permits an unqualified person to gain or maintain an ownership or investment interest in the pain management facility; or

(b) Fails to ensure that a qualified physician owner or physician designee is physically present practicing medicine in the facility for at least fifty (50) percent of the time that patients are present in the facility.

(4) Prescribing or dispensing controlled substances within the Commonwealth of Kentucky while employed by or practicing in an unlawful pain management facility within the Commonwealth of Kentucky shall constitute a violation of KRS 311.595(9) and (12) which constitutes an immediate danger to the public health, safety, or welfare of the public, for the purposes of KRS 311.592 and 13B.125.

(5) If the board receives proof that a licensed physician is prescribing or dispensing a controlled substance while employed by or practicing in an unlawful pain management facility within the Commonwealth of Kentucky, the appropriate inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing a controlled substance within the Commonwealth of Kentucky until the licensee has provided sufficient proof that the licensee is no longer employed by or practicing in an unlawful pain management facility.

(6) An emergency order restricting a licensee from prescribing or dispensing a controlled substance within the Commonwealth of Kentucky issued pursuant to subsection (5) of this section shall remain valid and in effect until the board has received sufficient proof that the licensee is no longer employed by or practicing in an unlawful pain management facility. Upon receipt of that proof, the panel or its chair shall immediately issue an order terminating the emergency order issued pursuant to subsection (5) of this section.

(7) If a licensee who is affected by an emergency order issued pursuant to subsection (5) of this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order if presented with substantial evidence that the licensee was prescribing or dispensing controlled substances within an unlawful pain management facility.

(8) If a licensee prescribes or dispenses a controlled substance within the Commonwealth of Kentucky during any period when the licensee is employed by or practicing in an unlawful facility, each instance of prescribing or dispensing shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b), and shall serve as the basis for disciplinary sanctions pursuant to KRS 311.595.

Section 9.[40-] Periodic KASPER Reviews. (1) The board shall have the authority pursuant to KRS 218A.202 and 218A.240 to obtain KASPER reports and analyses for each practitioner practicing in a pain management facility.

(2) At least once each year, the board shall obtain a KASPER review and analysis for each physician who has or maintains an ownership or investment interest in, or is employed by, or practices in, a pain management facility to determine whether improper, inappropriate, or illegal prescribing is occurring. If the board determines that there is evidence to indicate that improper, inappropriate, or illegal prescribing is occurring, it shall initiate an investigation of that physician and notify the appropriate agencies of its investigation.

PRESTON P. NUNNELLEY, M.D., President

APPROVED BY AGENCY: March 29, 2016

FILED WITH LRC: March 30, 2016 at 11 a.m.

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**GENERAL GOVERNMENT CABINET
Board of Barbering
(As Amended at ARRS, July 14, 2016)**

201 KAR 14:015. Retaking of examination.

RELATES TO: KRS 317.440, 317.450, 317.570

STATUTORY AUTHORITY: KRS 317.440(1)(f)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(f)(e) requires the Board of Barbering to promulgate administrative regulations pertaining to exam requirements. This administrative regulation establishes the requirements for an examinee who fails one (1) or more portions of the probationary examination and wishes to retake the exam.

Section 1. Probationary License Examination Requirements.

(1) An applicant shall pass each portion of the probationary examination with a score of at least seventy-five (75) percent.

(2)(a) Except as provided by paragraphs (b) and (c) of this subsection, an applicant who does not successfully complete one (1) portion of the probationary exam may reapply to sit for the failed portion only.

(b) A passing score on one (1) portion of the probationary exam shall only be used for a period of one (1) year to exempt the applicant from retaking that portion of the examination.

(c)1. If an applicant has failed one (1) or more portions of the probationary examination two (2) consecutive times, the applicant shall be required to:

a. Return to a barber school licensed by the board for eighty (80) additional hours of training; and

b. Retake the entire examination.

2. Each unsuccessful attempt to pass the examination thereafter shall require the applicant to complete the conditions delineated in subparagraph 1. of this paragraph.

Section 2. An examination fee shall be required for each examination, in accordance with 201 KAR 14:180.

Section 3. **Teacher[Instructor]** License Examination Requirements. (1) An applicant who has failed one (1) or more portions of the **teacher[instructor]** exam may reapply to sit for:

(a) The entire exam; or

(b) The failed portion or portions only.

(2) A passing score on one (1) or more portions of the **teacher[instructor]** exam shall only be used for a period of one (1) year to exempt the applicant from retaking that portion or portions of the examination.

SONJA MINCH, Administrator

APPROVED BY AGENCY: May 13, 2016

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FILED WITH LRC: May 13, 2016 at noon
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**GENERAL GOVERNMENT CABINET
Board of Barbering
(As Amended at ARRS, July 14, 2016)**

201 KAR 14:030. Five (5) year expiration of license.

RELATES TO: KRS 317.410, 317.450
STATUTORY AUTHORITY: KRS 317.440, 317.450
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.450
requires the Board of Barbering to license barbers, ~~and~~ authorizes
the board to renew a license that has not been expired more than
five (5) years, and requires an applicant failing to renew a
license within five (5) years of its expiration to comply with the
requirements for relicensure established by the board. This
administrative regulation establishes the relicensing requirements
for a barber whose license has been expired over five (5) years.

Section 1. If a license has been expired for more than five (5)
years, an applicant for relicensure shall meet the requirements
established in this section.

(1) A barber shall pass both the practical and written
examination.

(2) To regain a probationary license, a probationary barber
shall:

(a) Complete 150 additional hours in training in a barber school
licensed by the board ~~(an accredited school of barbering)~~; and

(b) Pass the practical and written examinations.

(3) A teacher shall pass both practical and written
examinations, in accordance with 201 KAR 14:115.

SONJA MINCH, Administrator
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**GENERAL GOVERNMENT CABINET
Board of Barbering
(As Amended at ARRS, July 14, 2016)**

**201 KAR 14:045. Notification and inspection of new shop
locations.**

RELATES TO: KRS 317.440
STATUTORY AUTHORITY: KRS 317.440(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
317.440(1)(a) and (b) require ~~authorizes~~ the board to
promulgate ~~an~~ administrative regulations ~~regulation~~ regarding
the location and housing of a barber shop and the quantity and
quality of equipment, supplies, materials, records, and
furnishings required in a barber shop ~~for barber school~~. This
administrative regulation establishes the requirement of an
inspection and sets up the time for notification for new barber
shops and licensed barber shops moving to a new location.

Section 1. A new barber shop shall request an inspection by
the board ~~All new barber shops and all barber shops moving to
new locations shall notify the board~~ at least five (5) days before
opening for business, ~~of the new location and the date on which
the shop is to be open for business~~.

Section 2. A licensed barber shop moving to a new location
shall notify the board of its new location at least five (5) days
before opening for business.

Section 3. A new barber shop or a licensed barber shop
moving to a new location shall not be open for business until
inspected and approved by the board in accordance with 201
KAR 14:040.

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**GENERAL GOVERNMENT CABINET
Board of Barbering
(As Amended at ARRS, July 14, 2016)**

201 KAR 14:090. School curriculum.

RELATES TO: KRS 317.410, 317.440(1)(e), 317.540
STATUTORY AUTHORITY: KRS 317.440(1)(e), 317.540(4),
~~(5)(2), (3)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS
317.440(1)(e) requires the Board of Barbering to promulgate an
administrative regulation governing the hours and courses of
instruction at barber schools. KRS 317.540 requires the board to
promulgate an administrative regulation prescribing the courses
and requirements for a barber school. This administrative
regulation establishes requirements for the course of study at
barber schools.

Section 1. A student shall receive at least 1,500 hours in
practice work and lectures based on the following courses of study:

(1) Instruments - thirty (30) hours:

- (a) Razors;
 - (b) Shears;
 - (c) Clippers;
 - (d) Hones and strops; and
 - (e) Combs, brushes, hair dryers, and curling irons;
- (2) Shaving instructions – 100 hours:
- (a) Purpose of lather;
 - (b) Application of lather properly to the face;
 - (c) Sterilization of razor before shaving;
 - (d) Stretching the skin while shaving;
 - (e) Proper method for wiping the razor;
 - (f) Shaving a patron once over;
 - (g) Shaving a patron second time over;
 - (h) Method of removing soap and cleaning face with hot towels

after shaving;

- (i) Application of various after shave creams and lotions;
- (j) Trimming a mustache; and
- (k) Demonstrations and lectures on the various positions for

holding a razor to shave a face while standing on one (1) side of
the barber chair.

1. Each stroke shall be thoroughly explained.

2. The ~~teacher~~ instructor shall ensure that the student:

a. Uses professional technique while performing the shaving
strokes;

b. Understands the necessity of:

- (i) Personal hygiene;
 - (ii) Using clean linens; and
 - (iii) Sterilizing each instrument used on a patron; and
- c. Is advised to pay attention to a patron's comfort while in the
chair.

3. The different textures of beards and the directions of the
grain shall be explained;

(3) Haircutting for men, women, and children – 935 hours:

- (a) Application of hair cloth, towel, and neck strip;
- (b) Combing hair before cutting;
- (c) Method of tapering hair;
- (d) Method of thinning hair;
- (e) Method of finger work;
- (f) Method of cutting hair on top of head;

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- (g) Method of cutting hair with a razor;
- (h) Using a neck duster or tissue;
- (i) Method of shaving sides and neck after removing hair cloth;
- (j) Method of combing, drying, and dressing the hair; and
- (k) The methods of haircutting and hair styling;
- (4) Shampooing – forty (40) hours:
 - (a) Purpose of and giving a proper shampoo;
 - (b) Preparing customer for shampoo;
 - (c) Different materials to be used; and
 - (d) Difference in various kinds of shampoo;
- (5) Permanent waving – forty (40) hours:
 - (a) Explanation of chemical and physical actions in permanent waving;
 - (b) Necessity of scalp and hair analysis;
 - (c) Basic requirements, blocking sections, curling rods, and processing time; and
 - (d) Safety and protection for patrons;
- (6) Hair coloring – forty (40) hours:
 - (a) Safety measures;
 - (b) Chemicals involved; and
 - (c) Application;
- (7) Hair straightening and relaxing – forty (40) hours:
 - (a) Patron protection;
 - (b) Hair and scalp analysis; and
 - (c) Methods of application;
- (8) Massaging – thirty-five (35) hours:
 - (a) Theory and different types of massaging;
 - (b) Application and demonstration of various creams and lotions in facial;
 - (c) Effect of light therapy on tissues;
 - (d) Results produced by massage on the skin, muscles, cells, glands, and circulation;
 - (e) Proper recommendation of massage; and
 - (f) All modern, electrical equipment used in barber shops with demonstrations;
- (9) Scalp and skin diseases – twenty (20) hours:
 - (a) Various kinds of scalp treatment;
 - (b) Properly advising a patron to consult a physician;
 - (c) The danger of giving a scalp treatment to a scalp afflicted with an unknown disease;
 - (d) Explanation of causes and treatment of dandruff;
 - (e) Giving causes of dry and oily scalps and treatment;
 - (f) Explanation of various forms of alopecia and treatment;
 - (g) Explanation of causes of seborrhea, acne, psoriasis, impetigo, and eczema in their various forms; and
 - (h) Explanation of advisability of cooperating with physician in treating scalp in barber shop;
- (10) Physiology and anatomy of the head, face, and neck – 100 hours:
 - (a) Giving descriptions of skin, hair, glands, and their various functions;
 - (b) Shedding and regrowth of hair;
 - (c) Sweat glands and their functions;
 - (d) Hair follicle, hair bulb, and papilla;
 - (e) Sympathetic and cerebrospinal nervous system;
 - (f) Blood supply to the face and scalp;
 - (g) Preservation and beautification of the hair and skin;
 - (h) Microscopic studies of the hair; and
 - (i) Benefits derived from relaxation from fatigue while in barber chair;
- (11) Sterilization and sanitation – forty (40) hours:
 - (a) Definition of sterilization, disinfectants, antiseptics, and their uses;
 - (b) Chemicals to be used in sterilization;
 - (c) Methods of sterilization;
 - (d) Difference between contagion and infection;
 - (e) Taking precautions to prevent infection; and
 - (f) Importance of sterilization of all instruments used in the barber shop;
- (12) Hygiene – ten (10) hours:
 - (a) Theory and importance of personal hygiene; and
 - (b) Hygiene as it applies to the practice of barbering;
- (13) Bacteriology – twenty (20) hours:

- (a) Discovery of existence of bacteria;
 - (b) Production, growth, and destruction of bacteria;
 - (c) Necessity of elementary knowledge of bacteria;
 - (d) Possibility of barber shop infection;
 - (e) Various agents that may carry bacteria in barber shop service;
 - (f) Difference in bacteria that are helpful and needed and bacteria that are harmful; and
 - (g) Advice concerning absolute cleanliness and sanitation in all practices of barbering because of harmful bacteria;
- (14) Electricity – ten (10) hours: Explanation of various electrical equipment and appliances that can be used in barber science treatments;
- (15) Pharmacology – twenty (20) hours: Explanation of the value of medicinal and nonmedicinal ingredients found in barber shop preparations, hair dyes, face lotions, shampoos, permanent, tints, bleaches, and specially prepared face and scalp remedies designated for local action;
- (16) Psychology – ten (10) hours:
 - (a) Necessity of organization;
 - (b) High ideals in the barber business; and
 - (c) Emphasis on development of personality and skill to inspire confidence in the public; and
- (17) History, professional ethics, and other information – ten (10) hours:
 - (a) History of the barber profession;
 - (b) Importance of barbering and its relation to civilization; and
 - (c) Business management, bookkeeping, shop management, and advertising.

Section 2. (1) A student shall complete the course of study required by Section 1 of this administrative regulation as required by KRS 317.540~~(3)~~~~(4)~~.

- (2) Each student shall receive at least one (1) hour:
 - (a) A week devoted to the teaching and explanation of KRS Chapter 317 and 201 KAR Chapter 14: and
 - (b) Of combined lecture and demonstration each day.

Section 3. (1) A microscope shall be part of the school's equipment to enable a student to study the structure of the hair and scalp.

(2) There shall be a reference library including a medical dictionary, books on anatomy and physiology and other books dealing with the functions of the human body which are applicable to the proper practice of the barber profession.

Section 4. A teacher *licensed for less than twelve (12) months who has not completed 600 hours of instructional experience obtained while under the supervision of a board-licensed teacher with a minimum of three (3) years of experience and in a barber school licensed by the board[assistant]* shall not be counted as a teacher for purposes of compliance with the ratio requirement of KRS 317.540(5).

SONJA MINCH, Administrator
APPROVED BY AGENCY: May 13, 2016
FILED WITH LRC: May 13, 2016 at noon
CONTACT PERSON: Sonja Minch, Administrator, Kentucky Board of Barbering, 312 Whittington Parkway Suite 110, Louisville, Kentucky 40222, phone (502) 429-7148, fax (502) 429-4149.

**GENERAL GOVERNMENT CABINET
Board of Barbering
(As Amended at ARRS, July 14, 2016)**

201 KAR 14:110. School equipment; plant layout.

RELATES TO: KRS 317.410, 317.440
STATUTORY AUTHORITY: KRS 317.430, 317.440
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(b) *requires/authorizes* the board to promulgate an administrative regulation regarding the quantity and quality of

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equipment, supplies, materials, records, and furnishings required in barber shops or schools. This administrative regulation establishes the barber school equipment and plant layout requirements.

Section 1. Each barber school shall send the board a certificate from the zoning commission and a certificate from a licensed electrician or electrical firm showing the electrical equipment to be properly installed, properly grounded, and in safe operating condition.

Section 2. Barber schools shall be completely equipped with standard tonics, dyes, tints, bleaches, shampoos, cosmetics, permanents, etc., all electrical devices and other equipment for the proper instruction of students, as well as with equipment and supplies for sanitation and hygiene.

Section 3. Each barber school/schools shall be located as entirely separate and without a connection to any beauty or barber shop or any other place of business.

Section 4. A barber school shall not be approved by this board having a space less than six (6) feet square for each student enrolled therein.

Section 5. All accredited barber schools shall have a suitable and separate room to be used for demonstration and study. The room shall have necessary charts and equipment to carry out the curriculum, including. The following equipment is required for this room:

(1) Sufficient charts, blackboards, etc., to teach all subjects of barbering; and

(2) Sufficient classroom chairs with armrests, or desks, that will enable the student to take notes.

Section 6. Every barber school shall maintain a separate lavatory and toilet for male and female students.

Section 7. All barber schools shall comply with city and state building codes and zoning commission codes.

Section 8. Lockers, dressing rooms, and restrooms shall be provided.

Section 9. Booths and partitions in the work department shall be sufficiently low to permit the observation of students while they are working.

Section 10. A school of barbering shall not be approved by the board having less than the following equipment:

(1) Shampoo bowls with hot and cold running water to be located in the room where barbering is done;

(2) Dryers;

(3) Manicure tables;

(4) A liquid sterilizer is required on each manicure table;

(5) Hair cutting chair;

(6) Wall plates;

(7) Covered waste containers;

(8) Individual paper towels; and

(9) Containers for the use of students.

Section 11. (1) Each barbering school shall furnish a supply or dispensing room in which each student may obtain actual experience for a period of one (1) to three (3) weeks, as indicated by the course of instruction. The student will be directly responsible to the owner for any damage incurred due to the student's negligence or willful destruction while working in the supply or dispensing room.

(2) Supply or dispensing and sterilization room equipment required for a barbering school, including:

(a) Supply of clean linens, neck cloths, etc.;

(b) Lavatory for washing all combs, instruments, containers, etc.;

(c) Bottles and containers in use shall be distinctly and correctly labeled;

(d) Wet sterilizer;

(e) Dry sterilizer;

(f) Manicuring sterilizer;

(g) Soap dispenser;

(h) Covered waste container;

(i) Cabinet for supply of clean linens;

(j) Covered containers for soiled linens;

(k) Cabinets for accessories;

(l) Paper towel dispenser or clean towel cabinet for every two (2) stations individual paper towel container;

(m) Manicuring cups for preparation of solution from stock supplies; and

(n) Various solutions and preparations used.

Section 12. A barbering school licensed by the board prior to the effective date of this administrative regulation shall not be required to comply with the requirements of Sections 10(1) and 11(2)(l) of this administrative regulation.

SONJA MINCH, Administrator

APPROVED BY AGENCY: May 13, 2016

FILED WITH LRC: May 13, 2016 at noon

CONTACT PERSON: Sonja Minch, Administrator, Kentucky Board of Barbering, 312 Whittington Parkway Suite 110, Louisville, Kentucky 40222, phone (502) 429-7148, fax (502) 429-4149.

GENERAL GOVERNMENT CABINET Board of Barbering (As Amended at ARRS, July 14, 2016)

201 KAR 14:150. School records.

RELATES TO: KRS 317.410, 317.450, 317.540

STATUTORY AUTHORITY: KRS 317.430, 317.440(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(b) requires the Kentucky Board of Barbering to promulgate administrative regulations to govern quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools. This administrative regulation establishes requirements for school records.

Section 1. A monthly attendance record of the entire enrollment, including full-time and part-time students and teachers/instructors, shall be kept by the schools and received at the board office not later than the tenth calendar day of each month.

(1) A barber school shall be held fully responsible for the completeness and accuracy of the attendance record, which shall show the total hours obtained for the previous month and the total accumulated hours to date for all students and teachers/instructors.

(2) Only the hours recorded shall be submitted each month. The report shall not be amended without proof of error, and shall be available for inspection.

(3) A copy of the student's daily attendance record for the month of graduation through the date of a student's graduation shall be submitted with the student's certification of hours as part of the application for examination upon completion of the course.

Section 2. A copy of the monthly attendance record, as provided to the board office, shall be posted monthly on a bulletin board in the school so it is available at all times to the students, employees, board members, or agents of the board.

Section 3. (1) Barber schools shall be required to keep a record of a student's daily work, approved and signed by the teacher/instructor of each student's practical work, work performed on clinic patrons, and classroom work.

(2) This record shall be available for inspection and shall be included:

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- (a) With the student's certification of hours and application for examination, upon completion of the course; or
- (b) With the certification of hours:
 1. If a student withdraws or is dismissed from school; or
 2. Upon the closure of a school.

Section 4. (1) A detailed record shall be kept of all enrollments, withdrawals, dismissals, and graduations.

(2) Certification of hours completed, including a copy of the student's daily attendance record for the month of graduation through the date of a student's graduation, shall be forwarded with all records of a student's daily work, to the office of the board within ten (10) calendar days of a student's withdrawal, dismissal, graduation, or closure of the barber school. Completed course hours provided to the board office shall be accurate and shall be recorded in the student's file.

(3) Completed course hours submitted to the board shall be transferable to another barbering school for no more than five (5) years.

(4) Records filed with the board shall be maintained for five (5) years, then destroyed in accordance with the board's retention schedule on file with the State Archives and Records Commission.

Section 5. (1) All records shall be kept in a lockable file on the premises of the school and shall be available for inspection.

(2) The security of all records shall be the responsibility of the school.

(3) Records shall be locked if not in use or during nonbusiness hours.

Section 6. A school shall immediately produce a copy of any record maintained under this administrative regulation when requested by the board **during hours when the school is scheduled to be open and providing services. If the request is made during hours when the school is closed and not providing services, the school shall produce a copy of any record maintained under this administrative regulation within two (2) hours of the next normal day of business.**

SONJA MINCH, Administrator

APPROVED BY AGENCY: May 13, 2016

FILED WITH LRC: May 13, 2016 at noon

CONTACT PERSON: Sonja Minch, Administrator, Kentucky Board of Barbering, 312 Whittington Parkway Suite 110, Louisville, Kentucky 40222, phone (502) 429-7148, fax (502) 429-4149.

**GENERAL GOVERNMENT CABINET
Board of Barbering
(As Amended at ARRS, July 14, 2016)**

201 KAR 14:180. License fees, examination fees, renewal fees, and expiration fees.

RELATES TO: KRS 317.410(8), 317.450

STATUTORY AUTHORITY: KRS 317.440(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(2) requires the Board of Barbering to establish fees for licenses within the limits established by KRS 317.450. This administrative regulation establishes fees relating to barbering licenses.

Section 1. Initial licensing fees shall be as follows:

- (1) Probationary license: fifty (50) dollars;
 - (2) Barber license: fifty (50) dollars;
 - (3) Endorsement: \$250;
 - (4) Barber shop license: fifty (50) dollars;
 - (5) Barber school license: \$150;
 - (6) Teacher ~~for teacher assistant~~ of barbering license: \$100;
- and
- (7) Independent contract owner: fifty (50) dollars.

Section 2. Examination fees shall be as follows:

- (1) Probationary examination: \$150;
- (2) Barber examination: \$150; and
- (3) Teacher ~~for teacher assistant~~ of barbering examination: \$150.

Section 3. Renewal fees shall be as follows:

- (1) Probationary licensee renewal: fifty (50) dollars;
- (2) Barber renewal: fifty (50) dollars;
- (3) Teacher ~~for teacher assistant~~ of barbering renewal: fifty (50) dollars;
- (4) Barber shop renewal: fifty (50) dollars;
- (5) Barber school renewal: \$150; and
- (6) Independent contract owner: fifty (50) dollars.

Section 4. (1) The late fee for renewal of a license that has been expired for more than one (1) day ~~thirty-one (31) days~~ and not more than five (5) years from the expiration date of the last license issued by the board shall be as follows:

- (a) Probationary licensee late fee: twenty-five (25) dollars;
- (b) Barber late fee: twenty-five (25) dollars;
- (c) Teacher ~~for teacher assistant~~ of barbering late fee: twenty-five (25) dollars;
- (d) Barber shop late fee: twenty-five (25) dollars;
- (e) Barber school late fee: twenty-five (25) dollars; and
- (f) Independent contract owner: twenty-five (25) dollars.

(2) The total cost of renewal of a license governed by subsection (1) of this section shall include the renewal fee and the:

- (a) Late fee established by subsection (1) of this section; and
- (b) Lapse fee defined by KRS 317.410(8).

Section 5. Miscellaneous fees shall be as follows:

- (1) Duplicate license: ten (10) dollars;
- (2) Certification: fifty (50) dollars; and
- (3) Demonstration: \$100.

Section 6. All fees received by the Kentucky Board of Barbering shall be non-refundable.

Section 7. Certification and demonstration fees shall be applicable when a certification is issued to an event promoter for a period not to exceed seventy-two (72) hours for the purpose of promotional events such as trade shows, product demonstrations, equipment showcases, and educational seminars and training.

SONJA MINCH, Administrator

APPROVED BY AGENCY: May 13, 2016

FILED WITH LRC: May 13, 2016 at noon

CONTACT PERSON: Sonja Minch, Administrator, Kentucky Board of Barbering, 312 Whittington Parkway Suite 110, Louisville, Kentucky 40222, phone (502) 429-7148, fax (502) 429-4149.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Respiratory Care
(As Amended at ARRS, July 14, 2016)**

201 KAR 29:015. Fees.

RELATES TO: KRS 164.772, 314A.110, 314A.112, 314A.215, 314A.220

STATUTORY AUTHORITY: KRS 314A.205, 314A.220, 325.230(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314A.205(3) requires the board to promulgate administrative regulations to carry out the provisions of KRS Chapter 314A. KRS 314A.205(6) and 314A.220(2) require ~~325.230(2) requires~~ the board to establish appropriate and reasonable fees for mandatory certification and to periodically review and modify those fees. This administrative regulation establishes all fees charged by the board.

Section 1. Application and Certification Fees Schedule. [The

~~following fees shall be paid in connection with all types of respiratory care applications:] (1) The application and certification fee for mandatory certification shall be \$150[fifty (50) dollars].~~

~~(2) The application and certification fee for temporary mandatory certification shall be \$102[fifty (50) dollars].~~

~~(3) The application and certification fee for limited mandatory certification shall be sixty (60)[ten (10)] dollars.~~

~~Section 2. [Certification Fees. The following fees shall be paid in connection with all types of respiratory care credentials and in addition to the application fees listed in Section 1 of this administrative regulation.~~

~~(1) The mandatory certification fee shall be seventy-five (75) dollars.~~

~~(2) The temporary mandatory certification fee shall be thirty-five (35) dollars.~~

~~(3) The limited mandatory certification fee shall be forty (40) dollars.~~

~~Section 3.] Renewal Fees and Penalties. A[No] person holding a mandatory certificate[certification] shall not practice in this state after January 30 of the year in which the[his] certificate is to be renewed unless the[his] certification has been renewed as established[provided] by KRS 314A.220 and 201 KAR Chapter 29[law] and payment of the established renewal[prescribed] fee has been made.~~

~~(1) All mandatory certificates not renewed by January 30 shall be deemed expired[and no person holding an expired certificate shall engage in the practice of respiratory care].~~

~~(2) A person holding an expired mandatory certificate shall not engage in the practice of respiratory care.~~

~~(3)[(4)] The[following] fees established in this subsection[and penalties] shall be paid in connection with mandatory certification renewals.[and penalties:]~~

~~(a) The renewal fee for mandatory certification shall be ninety (90)[seventy-five (75)] dollars.~~

~~(b) The reinstatement fee for mandatory certification after January 30 shall be \$180[\$150].~~

~~(c) The renewal fee for inactive mandatory certification shall be thirty (30)[twenty-five (25)] dollars.~~

~~(4)[(2)] Temporary mandatory certificates[certification] and limited mandatory certificates shall not be renewed[certification are not subject to renewal].~~

~~Section 3. Reinstatement and Reactivation. (1) A certificate holder wishing to reactivate an inactive certificate shall submit:~~

~~(a) A completed Application for Reactivation; and~~

~~(b) The ninety (90) dollar reactivation fee.~~

~~(2) A certificate holder wishing to reinstate an expired certificate shall submit:~~

~~(a) A completed Application for Reinstatement; and~~

~~(b) The \$180 reinstatement fee.~~

~~Section 4. All fees shall be[are] nonrefundable.~~

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

~~(a) "Application for Reactivation", February 2016; and~~

~~(b) "Application for Reinstatement", February 2016.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Respiratory Care, Southcreek Park, 2365 Harrodsburg Road, B350, Lexington, Kentucky 40504-3335, Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.~~

TAMARA G. McDANIEL, Vice chair

For JEFF SMITHERN, RRT, Chair

APPROVED BY AGENCY: February 11, 2016

FILED WITH LRC: March 9, 2016 at 11 a.m.

CONTACT PERSON: Peggy Lacy Moore, Executive Director, Kentucky Board of Respiratory Care, Southcreek Park, 2365 Harrodsburg Road, B350, Lexington, Kentucky 40504-3335, phone (859) 246-2747, fax (859) 246-2747, email

peggy.l.moore@ky.gov.

**GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(As Amended at ARRS, July 14, 2016)**

201 KAR 46:020. Fees.

RELATES TO: KRS 311B.050, 311B.100(2), 311B.110, 311B.120, 311B.130, 311B.140, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.010, 311B.050, 311B.120,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.010 and 311B.050 require the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to regulate medical imaging, radiation therapy, and related occupations. KRS 311B.120 requires the board to promulgate administrative regulations to establish fees and penalties. This administrative regulation establishes fees for the licensure of an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, and a limited x-ray machine operator.

Section 1. Initial Application and License Fee. A non-refundable initial application and license fee shall be \$100.

Section 2. Renewal License Fee. A non-refundable renewal fee shall be fifty (50) dollars per year.

Section 3. Temporary Application and License Fee. A non-refundable fee for a temporary license shall be \$100.

Section 4. Provisional Training License Fee. A non-refundable fee for a provisional training license for a radiation therapist and a nuclear medicine technologist shall be fifty (50) dollars per twenty-four (24) month training period.

Section 5. Temporary Limited X-ray Machine Operator Application and License Fee. A non-refundable, non-transferrable fee for a license shall be \$100.

Section 6. Duplicate License Fee. A non-refundable fee for a duplicate license shall be twenty (20) dollars.

Section 7. Reinstatement Fee. A reinstatement fee shall be \$100.

Section 8. Name Change Fee. A non-refundable fee for a new printed license with a name change shall be twenty (20) dollars.

Section 9. Limited X-ray Machine Operator Examination Fee. A non-refundable fee for the limited x-ray machine operator examination shall be \$150.

Section 10. Home Study Course Fee. A non-refundable administrative fee for the independent study course for a limited x-ray machine operator shall be \$500.

Section 11. Insufficient Funds Fee. A fee for returned check or denied online banking (ACH) payment shall be fifty (50) dollars.

Section 12. Written Verification of Qualifications Fee. The fee for completion of written verification documents shall be twenty-five (25) dollars per document.

Section 13. Continuing Education Approval Fee. (1) Individual continuing education program fee shall be ten (10) dollars.
(2) Annual sponsoring institution fee shall be \$100.

Section 14. Late Fee. (1) An individual who fails to renew a license by the expiration date shall be assessed a late fee according to the following schedule based upon the expiration

date:

- (a) One (1) to five (5) days late – no penalty;
 - (b) Six (6) to thirty (30) days late – twenty (20) dollars per calendar day; and
 - (c) More than thirty (30) days late – \$750 flat fee.
- (2) The late fee, if applicable, shall be in addition to the renewal fee required by Section 2 of this administrative regulation[201 KAR 46:040, Section 6, and 201 KAR 46:081, Section 12], and the reinstatement fee required by Section 7 of this administrative regulation[201 KAR 46:040, Section 7, and 201 KAR 46:081, Section 13].

SHERYL L. ABERCROMBIE, Chair
 APPROVED BY AGENCY: May 12, 2016
 FILED WITH LRC: May 12, 2016 at 4 p.m.
 CONTACT PERSON: Elizabeth Morgan, Executive Director,
 Board of Medical Imaging and Radiation Therapy, 42 Fountain
 Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502)
 782-6495.

GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(As Amended at ARRS, July 14, 2016)

201 KAR 46:070. Violations and enforcement.

RELATES TO: KRS 311B.100, 311B.120, 311B.150,
 311B.160, 311B.170, 311B.180, 311B.190
 STATUTORY AUTHORITY: KRS 311B.050, 311B.120,
 311B.180, 311B.190
 NECESSITY, FUNCTION, AND CONFORMITY: KRS
 311B.050 requires the Board of Medical Imaging and Radiation
 Therapy to promulgate administrative regulations to administer and
 enforce KRS Chapter 311B. KRS 311B.120 and 311B.190 require
 the board to promulgate administrative regulations to establish
 appropriate fees and penalties for violations. KRS 311B.180
 requires the board to assess penalties against an individual or
 licensee who performs diagnostic or therapeutic procedures
 without a valid license. This administrative regulation establishes
 uniform enforcement procedures regarding the licensure of an
 advanced imaging professional, a medical imaging technologist, a
 radiographer, a radiation therapist, a nuclear medicine
 technologist, or a limited x-ray machine operator and penalties for
 violation of licensure requirements.

Section 1. Denial, Revocation, and Suspension of Licenses. (1)
 The board may deny, revoke, or suspend the license of a licensee
 in accordance with KRS 311B.160.

(2) A licensee shall comply with an order of the board.

(3) An order of the board in subsection (2) of this section shall
 include items such as discovery orders, requests for information,
 subpoenas, requests for attendance before the board, and
 responses to complaints.

Section 2. Hearings. (1) The board shall notify the licensee in
 accordance with KRS 311B.170(1) and (2).

(2) A licensee to whom a notice or order is directed shall
 comply with KRS 311B.170(3) to avoid license revocation.

(3) The board shall issue the licensee a notice of proposed
 action in accordance with 201 KAR 46:090.

(4) A licensee may request a conference and appeal the
 board's action in accordance with KRS 311B.170(5) and 201 KAR
 46:090.

Section 3. Penalties. (1) The board shall assess civil penalties
 in accordance with KRS 311B.180 and 311B.190 against an
 individual[or licensee] who performs diagnostic or therapeutic
 procedures without valid licensure.

(2) An individual who performs a diagnostic or therapeutic
 procedure without valid licensure shall be assessed a civil
 penalty of fifty (50) dollars per day that the procedure occurs[Civil
 penalties shall be assessed against individuals who perform

diagnostic or therapeutic procedures without valid licensure as
 follows:

(a) Failure to apply for initial licensure by an individual who is
 fully qualified for licensure at the time the violation is discovered,
 or failure to apply for renewal by an individual who would be eligible
 for renewal of a license, but who would not currently qualify due to
 insufficient continuing education at the time the violation is
 discovered shall be assessed a civil penalty of twenty-five (25)
 dollars per day until the application has been approved.

(b) Failure of a licensee to renew the license by the expiration
 date shall be assessed a late fee according to the following
 schedule based upon the expiration date:

- 1. One (1) to five (5) days late – no penalty;
- 2. Six (6) to fifteen (15) days late – Ten (10) dollars per
 calendar day; or
- 3. Sixteen (16) to thirty (30) days late – Twenty (20) dollars per
 calendar day.

(c) A licensee who has not renewed after thirty (30) days shall:

- 1. Pay a civil penalty of \$750;
- 2. Submit an initial application for license, as incorporated by
 reference in 201 KAR 46:040; and
- 3. Pay the new application fee, as established in 201 KAR
 46:020.

(d) Performance of a diagnostic or therapeutic procedure
 requiring a license by an individual who is not qualified for
 licensure at the time the violation is discovered shall be assessed a
 civil penalty of \$100 per day until the application has been
 approved].

(3) Civil penalties double the amount assessed against an[the
 licensee or] individual shall be assessed against the employer of
 the individual without a valid license pursuant to KRS
 311B.180[and subsection (3) of this section].

(4) Any person assessed a civil penalty may request a hearing
 as specified in Section 2 of this administrative regulation and 201
 KAR 46:090.

SHERYL L. ABERCROMBIE, Chair
 APPROVED BY AGENCY: May 12, 2016
 FILED WITH LRC: May 12, 2016 at 4 p.m.
 CONTACT PERSON: Elizabeth Morgan, Executive Director,
 Board of Medical Imaging and Radiation Therapy, 42 Fountain
 Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502)
 782-6495.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, July 14, 2016)

**301 KAR 2:176. Deer control tags, deer destruction
 permits, and landowner designees.**

RELATES TO: KRS 150.010, 150.175, 150.360, 150.390,
 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.105,
 150.170(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS
 150.025(1) authorizes the department to promulgate administrative
 regulations to establish open seasons for the taking of wildlife, to
 regulate bag limits and methods of take, and to make these
 requirements apply to a limited area. KRS 150.105 authorizes the
 commissioner with the approval of the commission to destroy or
 bring under control wildlife causing damage. KRS 150.170(7)
 authorizes landowners, their spouses or dependent children, or a
 designee to destroy wildlife causing damage. It also authorizes the
 department to promulgate administrative regulations that establish
 procedures for the designee appointment process. This
 administrative regulation establishes the requirements for the
 issuance of deer control tags and deer destruction permits and
 establishes the requirements for the landowner designee
 appointment process.

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Section 1. Definitions. (1) ~~["Damage" means:~~

~~(a) The existence of a browse line caused by deer; or~~

~~(b) Damage to more than thirty-five (35) percent of native plant species preferred by deer.~~

~~(2)] "Deer control tag" means a tag issued by the department that authorizes a hunter to take antlerless deer during an open deer season pursuant to 301 KAR 2:172.~~

~~(2)](3)] "Deer destruction permit" means written authorization from the department to take deer outside the hunting season framework established in 301 KAR 2:172.~~

~~(3)](4)] "Deer food plot" means a crop or cultivated plants grown to attract and feed deer.~~

~~(4)](5)] "Department representative" means a department employee who is qualified and authorized by the commissioner to assess deer damage.~~

~~(5)](6)] "Designee" means a person who has been designated by a landowner to remove wildlife causing damage on the landowner's property.~~

~~(6)](7)] "Landowner" means the person who has title to a particular property.~~

Section 2. Qualifying for Deer Control Tags. (1) A landowner with fewer than 1,000 contiguous acres shall qualify for deer control tags if:

(a) Deer hunting occurred on the property during the previous deer season;

(b) Standard deterrent measures recommended by a department representative have proven ineffective or are impractical; and

(c) A department representative certifies deer damage to crops, gardens, property, or wildlife habitat.

(2) A landowner with 1,000 contiguous acres or more shall qualify for deer control tags if:

(a) Deer hunting occurred on the property during the previous deer season;

(b) Deer seasons and bag limits as established in 301 KAR 2:172 are determined by a department representative to be inadequate to control deer populations on the property; and

(c) The landowner agrees to:

1. Follow the deer management practices recommended by the department; and

2. Supply the department with weight, age, and condition data of deer taken from the property.

(3) A department representative shall make an on-site inspection of each property for which a request for deer control tags has been made, unless the property:

(a) Has been previously inspected by the department and the landowner affirms that deer damage still exists; or

(b) Is immediately adjacent to property assessed by a department representative as having severe deer damage.

(4) A landowner whose property is immediately adjacent to property assessed by a department representative as having severe deer damage shall be issued deer control tags upon request of the landowner.

(5) The department shall not issue deer control tags to a landowner whose only damage is to a deer food plot.

Section 3. Applying for Deer Control Tags. (1) A landowner shall request deer control tags by contacting the department through:

(a) A conservation officer; or

(b) The private lands biologist for the county in which the property is located.

(2) If required by Section 2 of this administrative regulation, a department representative shall visit the property and assess the nature and extent of deer damage.

(3) A request for an assessment shall be made on or before September 30 to be eligible for current year deer control tags.

(4) A request for an assessment made after September 30 shall be considered for the following year.

Section 4. Number of Tags Issued. (1) The department shall determine the number of deer control tags to be issued for each

property based on the recommendation of the department representative.

(2) Except as established in Section 2(2) or (4) of this administrative regulation, the department shall not issue a deer control tag if:

(a) The county deer season is adequate to achieve the desired reduction in deer numbers; or

(b) Crop or environmental damage is not present.

Section 5. Transfer of Deer Control Tags. (1) Deer control tags shall be issued in the landowner's name.

(2) A landowner:

(a) May transfer a deer control tag to another person;

(b) Shall not issue more than five (5) deer control tags to an individual; and

(c) Shall require hunters to sign a deer control tag at the time of transfer.

Section 6. Use of Deer Control Tags. (1) A deer control tag shall not be valid except on the property for which it was issued.

(2) A deer control tag shall expire after the license year for which it was issued.

(3) A person who uses a deer control tag:

(a) Shall have in possession:

1. A valid deer control tag; and

2. A valid hunting license and current deer permit, unless exempt from license or permit requirements pursuant to KRS 150.170;

(b) May use deer control tags during archery, crossbow, modern gun, or muzzle-loader seasons to take antlerless deer;

(c) Shall not take more than five (5) deer per license year with deer control tags; and

(d) Shall abide by the provisions of 301 KAR 2:172, except that:

1. Antlered deer shall not be taken; and

2. The deer control tag shall remain attached to the carcass until final processing or disposal.

(4) Deer taken with a deer control tag shall not count toward the annual limit as established in 301 KAR 2:172.

Section 7. Deer Destruction Permits. (1) The department may issue a deer destruction permit:

(a) To a person authorized by the commissioner to remove deer that are or may become a public safety or environmental threat or that have entered a permitted captive cervid facility;

(b) To a landowner or the designee:

1. Who continues to experience damage after being issued deer control tags; or

2. Whose property cannot be hunted legally and deer are posing a public safety or environmental threat; or

(c) To a captive cervid facility permit holder or applicant:

1. Whose fence meets the fencing and holding requirements in 301 KAR 2:083; and

2. Who has attempted to remove wild deer using nonlethal methods or statewide deer seasons as established in 301 KAR 2:172.

(2) A deer destruction permit shall specify:

(a) The number and sex of deer to be destroyed;

(b) The method of destruction;

(c) The name of the person who will destroy the deer; and

(d) The dates during which the destruction will take place.

(3) A deer destruction permit shall not be issued without the recommendation of a department representative and the approval of the commissioner.

(4) A person who uses a deer destruction permit shall:

(a) Attach to each carcass a disposal permit provided by the department ~~[to each carcass];~~

(b) Not remove the disposal permit until the carcass is processed or disposed of; and

(c) If an antlered deer was taken, relinquish the antlers to the department.

(5) A deer destruction permit shall not be used except as specified on the permit.

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(6) A person who receives a deer destruction permit shall:

(a) Complete a Wildlife Destruction Permit Reporting Form issued by the department; and

(b) Submit the completed form to the department at # 1 Sportsman's Lane, Frankfort, Kentucky 40601, ATTN: Wildlife Destruction Permit Report, within fourteen (14) days after the expiration date designated on the destruction permit.

Section 8. Designee Procedures and Requirements. (1) A landowner may appoint a designee to kill wildlife causing damage on the landowner's land.

(2) The landowner and designee shall complete and submit to the department a Wildlife Damage Designee Form.

(3) The department shall have thirty (30) days upon receipt of the Wildlife Damage Designee Form to approve or deny a designee.

Section 9. Denial or Revocation or Deer Control Tags or Destruction Permits and Appeal Procedures. (1) The department shall revoke a deer control tag or destruction permit or deny a future tag or permit to a person who fails to comply with the requirements of this administrative regulation.

(2) An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Wildlife Damage Designee Form", 2015 edition; and

(b) "Wildlife Destruction Permit Reporting Form", 2016 edition[; is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern time.

KAREN WALDROP, Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: May 9, 2016

FILED WITH LRC: May 11, 2016 at 2 p.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, July 14, 2016)

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 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 of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60

(4) "Waterfowl" is defined by KRS 150.010(40).

Section 2. (1) Except as established in 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season Dates. (1) The duck, coot, and merganser[; The] season shall:

(a) Begin on Thanksgiving Day for four (4) consecutive days; and

(b) Be for fifty-six (56) consecutive days ending on the last Sunday in January of the following year.

(2) Canada goose.

(a) In the Eastern, Pennyrile, and Western Goose Zones, the season shall be from[begin on] Thanksgiving Day through February 15[and continue until January 31].

(b) In the Northeast Goose Zone, the season shall be from[begin on] the third Saturday in December through[and continue until] January 31.

(3) The white-fronted goose and brant[; The] season shall be from[begin on] Thanksgiving Day through February 15[and continue until January 31].

(4) The light goose[; The] season shall be from[begin on] Thanksgiving Day through February 15[and continue until January 31].

(5) The Light Goose Conservation Order season shall be from February 16 through March 31. [(a) In the Western Duck Zone, the season shall be from February 1 through March 31, except:

1. The season shall be closed during the first full weekend in February; and

2. Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.

(b) In the Eastern Duck Zone, the season shall be from February 1 through March 31.]

(6) A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. Ballard Zone. (1) In the Ballard Zone that is established in 301 KAR 2:224,;

~~(4)~~ a person hunting waterfowl shall:

(a) Hunt from a blind unless hunting in flooded, standing timber;

(b) Not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line; and

(c) Not possess more than one (1) shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks. The daily limit shall be six (6), which shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards;

(c) Three (3) wood ducks;

(d) One (1) black duck;

(e) Two (2) redheads;

(f) Two (2) pintails;

(g) Three (3) scaup;

(h) One (1) mottled duck; or

(i) Two (2) canvasback.

(2) Coot. The daily limit shall be fifteen (15).

(3) Merganser. The daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark goose. The daily limit shall be five (5), which shall not include more than:

(a) Three (3) Canada geese;

(b) Two (2) white-fronted geese; or

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(c) One (1) brant.
(5) Light goose. The daily limit shall be twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.

(6) The possession limit shall be triple the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) Sunset, except as established in 301 KAR 2:222; or

(2) One-half (1/2) hour after sunset if hunting light goose during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) The light goose season shall be ~~from Thanksgiving Day~~[November 5] through ~~February 15~~[January 31].

(2) ~~The Light Goose Conservation Order season shall be from February 16 through March 31.~~

~~[(a) In the Western Duck Zone, the season shall be from February 1 through March 31, except:~~

~~1. The falconry season shall be closed during the first full weekend in February; and~~

~~2. Youth waterfowl hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226.~~

~~(b) In the remainder of the state, the season shall be from February 1 through March 31.]~~

(3) The season for all other waterfowl shall be from ~~Thanksgiving Day~~[November 5] through ~~February 15~~[January 31].

(4) The daily limit shall be three (3) waterfowl, except that there shall not be a limit on light goose during the Light Goose Conservation Order season.

(5) The possession limit shall be nine (9) waterfowl, except that there shall not be a possession limit on light goose during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light goose during the Light Goose Conservation Order season shall first obtain a free permit by completing the online Snow Goose Conservation Order Permit process on the department's Web site at fw.ky.gov.

(2) A person hunting light goose during the Light Goose Conservation Order season shall submit a Snow Goose Conservation Order Permit Survey to the department by April 10.

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

(a) "Snow Goose Conservation Order Permit", January 2014; and

(b) "Snow Goose Conservation Order Permit Survey", January 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: May 3, 2016

FILED WITH LRC: May 11, 2016 at 2 p.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, July 14, 2016)

301 KAR 2:222. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(40), 150.305(1), 150.330,

150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 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 of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Blind" means a:

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind or hunt site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(8) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. 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 for waterfowl hunting; or

(c) Shot larger than size "T".

Section 3. (1) Except as established in this section or in Section 4 of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl shall not:

1. Establish or hunt from a permanent waterfowl blind; **or**

2. Hunt within 200 yards of:

a. Another occupied hunt site;

b. Another legal waterfowl hunting party; or

c. An area closed to waterfowl hunting;

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) In order to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas, a person:

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(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky waterfowl permit; and

3. A federal duck stamp.

(4) The holder of a hunt site permit shall:

(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access;

or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and

2. The daily bag limit for Canada goose is greater than or equal to two (2); and

(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site.

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be the ~~first~~^{second} Wednesday in December through the last Sunday in January;

(b) Youth waterfowl season shall be the first full weekend in February;

(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day; and

(d) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 5 of this administrative regulation;

2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and

3. Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from the ~~first~~^{second} Wednesday in December through the last Sunday in January; and

3. Check out the same day by:

a. Visiting the designated Check station prior to 8 a.m.; or
b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting;

(c) A department blind or hunt site shall be assigned through a daily drawing through the last Sunday in January;

(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing;

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season;

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat; and

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt site [~~in December and January~~] during the regular waterfowl season.

(7) On the Peal unit of Boatwright WMA:

(a) More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

(b) More than four (4) parties shall not hunt at the same time on Fish Lake;

(c) More than three (3) parties shall not hunt at the same time on First Lake or Second Lake; and

(d) A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during the regular waterfowl season [~~December and January~~].

(8) On the Swan Lake Unit of Boatwright WMA:

(a) A person shall not hunt waterfowl from Thanksgiving Day through the ~~first~~^{second} Tuesday in December;

(b) The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

(c) Blind restrictions shall not apply to the Light Goose Conservation Order season.

(9) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site.

(b) Waterfowl refuge areas shall be:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile ~~51~~^{fifty-one (51)}, at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile ~~55.5~~^{fifty-five and five-tenths (55.5)} shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, which shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(10) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(11) Big Rivers WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(12) Cedar Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(13) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(14) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

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- (a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road, and Fishing Creek Road; and
- (b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.
- (15) Dix River WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
- (16) Doug Travis WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
 - (c) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.
 - (d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, Town Creek Moist Soil Unit, and Upper Goose Lake, all waterfowl hunting after November 1 **shall be:**
 - 1. ~~[Shall be]~~ From hunt sites assigned by a random pre-season drawing; and
 - 2. ~~[Shall be]~~ Within ten (10) yards of a hunt site, including periods of Mississippi River flooding.
- (17) Grayson Lake WMA. A person shall not hunt waterfowl:
 - (a) Within the no-wake zone at the dam site marina;
 - (b) From the shore of Camp Webb;
 - (c) On Deer Creek Fork; or
 - (d) Within three-quarters (3/4) of a mile from the dam.
- (18) Green River Lake WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
- (19) Kaler Bottoms WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
- (20) Kentucky River WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
- (21) Land Between the Lakes National Recreation Area.
 - (a) The following portions shall be closed to the public from November 1 through March 15:
 - 1. Long Creek Pond;
 - 2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and
 - 3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys. ~~[i]~~
 - (b) The following portions shall be closed to waterfowl hunting:
 - 1. The Environmental Education Center; and
 - 2. Energy Lake.
 - (c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:
 - 1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or
 - 2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.
 - (d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.
 - (e) A person shall not establish or use a permanent blind:
 - 1. On an inland area; or
 - 2. Along the Kentucky Lake shoreline of Land Between the Lakes.
 - (f) A person hunting waterfowl shall remove decoys and personal items daily.
- (22) Obion Creek WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
- (23) Ohio River Islands WMA.
 - (a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.
 - (b) Stewart Island shall be closed to public access from

- October 15 through March 15.
 - (c) Shooting hours shall be one-half (1/2) hours before sunrise until 2 p.m.
 - (d) A person shall not enter a hunting area prior to 4 a.m. daily.
- (24) Peabody WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
 - (c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:
 - 1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and
 - 2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.
- (25) Pioneer Weapons WMA. A person hunting waterfowl:
 - (a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and
 - (b) Shall not use a breech-loading firearm elsewhere on the area.
- (26) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.
- (27) Sloughs WMA.
 - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
 - (b) A person shall not enter a hunting area prior to 4 a.m. daily.
 - (c) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.
 - (d) On the Jenny Hole-Highlands Creek and Grassy Pond Powell's Lake units, a person hunting waterfowl shall:
 - 1. Hunt:
 - a. From a department blind;
 - b. Within twenty-five (25) yards of a hunt site; or
 - c. No closer than 200 yards of another hunting party; and
 - 2. Remove decoys and personal items from the area on a daily basis.
 - (e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:
 - 1. May hunt from a boat without regard to department blinds; and
 - 2. Shall not hunt closer than 200 yards from another boat.
- (f) If hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit:
 - 1. A person shall not hunt on a Tuesday or Wednesday;
 - 2. A person shall hunt from a blind assigned by the department through a drawing as established in Section 5 of this administrative regulation;
 - 3. ~~[2.]~~ A person may occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;
 - 4. ~~[3.]~~ A person shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:
 - a. The daily bag limit for ducks is greater than three (3); and
 - b. The daily bag limit for Canada goose is greater than or equal to two (2);
 - 5. ~~[4.]~~ If under eighteen (18) years of age, a person shall be accompanied by an adult; and
 - 6. ~~[5.]~~ The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.
- (g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except for:
 - 1. Waterfowl from November 1 through March 15; and
 - 2. The modern gun deer season.
- (h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.
- (i) A hunter drawn to hunt Sloughs WMA through a pre-season draw shall submit a completed Sloughs WMA Waterfowl Hunter Survey Report at the conclusion of the hunt or shall be ineligible to participate in the waterfowl blind or quota draw the following year.
- (28) South Shore WMA.
 - (a) The WMA shall be closed to hunting from November 15 through January 15, except for waterfowl and dove hunting.

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- (b) A hunter shall use a department blind.
- (c) A department blind shall be available daily on a first-come, first-served basis.

(29) Taylorsville Lake WMA.

- (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

- (b) A person shall not enter a hunting area prior to 4 a.m. daily.

(30) Yatesville Lake WMA. 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 from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(31) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

- (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

- (b) A person shall not enter a hunting area prior to 4 a.m. daily.

(32) J.C. Williams WMA.

- (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

- (b) A person shall not enter a hunting area prior to 4 a.m. daily.

Section 5. Ballard WMA and Sloughs WMA. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

- (a) Apply by:

1. Calling 1-877-598-2401 and completing the telephone application process; or

2. Completing the online Ballard or Sloughs Waterfowl Quota Hunt Form process on the department's Web site at fw.ky.gov;

- (b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

- (d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt may bring up to three (3) additional hunters.

(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of state parks at:

- (a) Barren River;
- (b) Grayson Lake;
- (c) Greenbo Lake;
- (d) Lake Barkley;
- (e) Lincoln Homestead;
- (f) Nolin Lake;
- (g) Paintsville Lake;
- (h) Pennyrite Lake;
- (i) Rough River Lake; and
- (j) Yatesville Lake.

(2) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days that the park office is not open.

(3) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-

mentor hunt.

(3) A youth or mobility-impaired person shall register in advance and carry a department provided postcard notification on the day of the hunt.

(4) A mobility-impaired person shall also submit a mobility-impaired access permit pursuant to 301 KAR 3:026.

(5) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(6) Each youth shall not be accompanied by more than one (1) adult.

(7) One (1) adult may accompany two (2) youths.

(8) A mobility-impaired hunter may be accompanied by no more than one (1) assistant who may also hunt.

(9) A person shall:

(a) Hunt from an established blind; and

(b) Not change blinds.

(10) A blind shall not be used by more than four (4) hunters.

(11) A person shall only discharge a firearm from a blind.

(12) A person shall not possess more than fifteen (15) shotshells.

(13) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(14) A person shall encase a firearm if traveling to and from a blind.

(15) A hunter shall:(a) Cease hunting by noon; and

(b) Exit the area by 1 p.m.

(16) All decoys and equipment shall be removed at the end of each day's hunt.

(17) A hunter shall report harvest by depositing a completed hunt permit at the designated location.

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

(a) "Sloughs WMA Waterfowl Hunter Survey Report", January 2014; and

(b) "Ballard or Sloughs Waterfowl Quota Hunt Form", January 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: May 3, 2016

FILED WITH LRC: May 11, 2016 at 2 p.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, July 14, 2016)**

301 KAR 5:040. Migratory Bird Harvest Information Program~~[Selling and purchasing migratory game bird and waterfowl permits].~~

RELATES TO: KRS 150.235, 150.603(1), (2)

STATUTORY AUTHORITY: KRS 150.195(1),~~[(4)(g);]~~ 50 C.F.R. 20.20

NECESSITY, FUNCTION, AND CONFORMITY:~~[KRS 150.603 requires waterfowl and migratory game bird hunters to possess the appropriate permits; 50 C.F.R. 20.20 requires that waterfowl and migratory game bird hunters participate in a national harvest survey; and] KRS 150.195(1)[and (4)(g)]~~ authorizes the department to promulgate administrative regulations that provide for the design, issuance, distribution, and other matters relating to all the application for and sale of licenses and permits. 50 C.F.R. 20.20 requires that waterfowl or migratory shore and upland game bird hunters participate in a national harvest survey. This administrative

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regulation establishes the ~~requirements~~~~procedures~~ for ~~hunters participating in~~~~gathering information for~~ the Migratory Bird Harvest Information Program.

Section 1. Definition. "The Migratory Bird Harvest Information Program" means an online survey that a person ~~completes~~~~shall complete~~ prior to legally hunting waterfowl or migratory shore and upland game birds.

Section 2. (1) Prior to hunting waterfowl or migratory shore and upland game birds, a person~~purchasing a waterfowl permit or a migratory game bird permit~~ shall~~(4)~~ obtain a~~Kentucky~~ Migratory Bird Harvest Information Program verification number by ~~completing~~~~hard copy form from the license agent:~~

- (a) Complete the form, using black ink; and
- (b) Return the form to the license agent;

(2) Complete the Migratory Bird Harvest Information Program Survey~~Kentucky migratory bird harvest information requested~~ on the department's web site at fw.ky.gov.

(2) A person shall possess the survey verification number established in subsection (1) of this section while hunting waterfowl or migratory shore and upland game birds~~Kentucky Department of Fish and Wildlife Resources Internet site when purchasing a waterfowl or migratory game bird permit; or~~

(3) Provide the Kentucky migratory bird harvest information requested by the licensing agent when purchasing a waterfowl or migratory game bird permit by telephone.

Section 2. A license agent shall:

(1) Not sell a waterfowl permit or a waterfowl or migratory game bird permit to a person who has not complied with the provisions of Section 1 of this administrative regulation;

(2) Return completed Migratory Bird Harvest Information Program forms to the department:

- (a) Weekly; and
- (b) In the envelopes provided.

Section 3. Incorporation by Reference. (1) The "~~Kentucky~~Migratory Bird Harvest Information Program Survey" form, 2016~~(4997)~~ edition~~, Department of Fish and Wildlife Resources~~, is incorporated by reference.

(2) This material~~(it)~~ may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane~~Game Farm Road~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN WALDROP, Deputy Commissioner

For GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: May 9, 2016

FILED WITH LRC: May 11, 2016 at 2 p.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (As Amended at ARRS, July 14, 2016)

401 KAR 31:040. Lists of hazardous wastes.

RELATES TO: KRS Subchapters 224.1~~[224.04]~~, 224.40, 224.43, 224.46, 224.50-130, 224.99, 40 C.F.R. 261 Subpart D
STATUTORY AUTHORITY: KRS 224.10-100, 224.46-510(3), 224.46-530, 224.50-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.46-510(3) requires the cabinet to identify the characteristics of and to list hazardous wastes. This administrative regulation establishes

the lists of hazardous wastes for Kentucky and is equivalent to federal standards established in 40 C.F.R. 261 Subpart D, except for the addition of Section 6~~7~~ of this administrative regulation, which contains nerve and blister agents as required by KRS 224.50-130. This administrative regulation is different from, but not more stringent than, the federal counterpart in that some internal cross-references within 40 C.F.R. are replaced with Kentucky-specific cross-reference citations to Title 401 KAR. If not specifically replaced in an administrative regulation, internal federal cross-references are as established in 40 C.F.R.

Section 1. General Information. (1) Except as provided in this section, general information shall be as established in 40 C.F.R. 261.30~~The subject matter shall be governed by 40 C.F.R. 261.30, effective July 1, 2005.~~

(2)~~(a)~~ The citation to Section 3010 of RCRA in 40 C.F.R. 261.30~~the federal regulation referenced in subsection (1) of this Section~~ shall be replaced with the requirement established in paragraph (b) of this subsection.

~~(b)1.~~ After promulgation of an administrative regulation identifying a substance by its characteristics or listing as hazardous waste subject to 401 KAR Chapters 31 through 44, any person generating or transporting a substance or owning or operating a facility for treatment, storage, disposal, or recycling of the substance shall register by submitting to the cabinet a Notification of Hazardous Waste Activity, DEP 7037, incorporated by reference in 401 KAR 32:010~~, Section 4.~~

2. The registration shall be filed within ninety (90) days after promulgation or revision of the administrative regulation unless another notification date is otherwise specified in the administrative regulation~~KRS 224.46-510~~.

(3) The citation to 40 C.F.R. 260.20 in 40 C.F.R. 261.30 shall be replaced with 401 KAR 31:035, Section 1.

(4) The citation to 40 C.F.R. 260.22 in 40 C.F.R. 261.30 shall be replaced with 401 KAR 31:035, Section 3.

(5) The citation to 40 C.F.R. 261.31 in 40 C.F.R. 261.30 shall be replaced with Section 2 of this administrative regulation.

(6) The citation to 40 C.F.R. 261.32 in 40 C.F.R. 261.30 shall be replaced with Section 3 of this administrative regulation.

(7) The citation to 40 C.F.R. 261.5 in 40 C.F.R. 261.30 shall be replaced with 401 KAR 31:010, Section 5.

(8) The citations to 40 C.F.R. parts 262 through 265, 267, 268, and 270 in 40 C.F.R. 261.30 shall be replaced with 401 KAR Chapters 32 through 35, 41, 37, and 38, respectively.

(9) The citation to 40 C.F.R. 261, Appendix VII in 40 C.F.R. 261.30 shall be replaced with 401 KAR 31:160.

Section 2. Hazardous Wastes from Nonspecific Sources. (1) Except as provided in this section, hazardous wastes from nonspecific sources shall be as established in 40 C.F.R. 261.31~~The subject matter shall be governed by 40 C.F.R. 261.31, effective July 1, 2005.~~

(2) The citation to 40 C.F.R. 260.20 in 40 C.F.R. 261.31 shall be replaced with 401 KAR 31:035, Section 1.

(3) The citation to 40 C.F.R. 260.22 in 40 C.F.R. 261.31 shall be replaced with 401 KAR 31:035, Section 3.

(4) The citation to 40 C.F.R. 261.31 and 40 C.F.R. 261.31(b)(2) in 40 C.F.R. 261.31 shall be replaced with this section.

(5) The citation to 40 C.F.R. 261.32 in 40 C.F.R. 261.31 shall be replaced with Section 3 of this administrative regulation.

(6) The citation to 40 C.F.R. 264.301 in 40 C.F.R. 261.31 shall be replaced with 401 KAR 34:230, Section 2.

(7) The citation to 40 C.F.R. 265.301 in 40 C.F.R. 261.31 shall be replaced with 401 KAR 35:230, Section 2.

(8) The citation to 40 C.F.R. 261.35 in 40 C.F.R. 261.31 shall be replaced with Section 5 of this administrative regulation.

(9) The citation to 40 C.F.R. 258.40 in 40 C.F.R. 261.31 shall be replaced with 401 KAR 48:070 and 48:080.

(10) The citation to 40 C.F.R. 261.4(a)(12)(i) in 40 C.F.R. 261.31 shall be replaced with 401 KAR 31:010, Section 4.

(11) The citation to 40 C.F.R. 261 Appendix IX in 40 C.F.R. 261.31 shall be replaced with 401 KAR 31:070.

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Section 3. Hazardous Waste from Specific Sources. (1) Except as provided in this section, hazardous waste from specific sources shall be as established in 40 C.F.R. 261.32 [The subject matter shall be governed by 40 C.F.R. 261.32, effective July 1, 2005].

(2) The citation to 40 C.F.R. 260.20 in 40 C.F.R. 261.32 shall be replaced with 401 KAR 31:035, Section 1.

(3) The citation to 40 C.F.R. 260.22 in 40 C.F.R. 261.32 shall be replaced with 401 KAR 31:035, Section 3.

(4) The citation to 40 C.F.R. 258.40 in 40 C.F.R. 261.32 shall be replaced with 401 KAR 48:070 and 48:080.

(5) The citation to 40 C.F.R. 264.301 in 40 C.F.R. 261.32 shall be replaced with 401 KAR 34:230, Section 2.

(6) The citation to 40 C.F.R. 265.301 in 40 C.F.R. 261.32 shall be replaced with 401 KAR 35:230, Section 2.

(7) The citation to 40 C.F.R. 261.21 through 261.24 in 40 C.F.R. 261.32 shall be replaced with 401 KAR 31:030, Sections 2 through 5, respectively.

(8) The citation to 40 C.F.R. 261.31 through 261.33 in 40 C.F.R. 261.32 shall be replaced with Sections 2 through 4 of this administrative regulation, respectively.

Section 4. Discarded Commercial Chemical Products, Off-specification Species, Container Residues, and Spill Residues Thereof. (1) Except as provided in this section, discarded commercial chemical products, off-specification species, container residues, and spill residues thereof shall be as established in 40 C.F.R. 261.33 [The subject matter shall be governed by 40 C.F.R. 261.33, effective July 1, 2005].

(2) The citation to 40 C.F.R. 261.2(a)(2)(i) in 40 C.F.R. 261.33 shall be replaced with 401 KAR 31:010, Section 2.

(3) The citation to 40 C.F.R. 261.7(b) in 40 C.F.R. 261.33 shall be replaced with 401 KAR 31:010, Section 7.

(4) The citation to 40 C.F.R. 261.5 and 40 C.F.R. 261.5(a), (e), and (g) in 40 C.F.R. 261.33 shall be replaced with 401 KAR 31:010, Section 5.

(5) The citation to 40 C.F.R. 261.31 and 261.32 in 40 C.F.R. 261.33 shall be replaced with Sections 2 and 3 of this administrative regulation, respectively.

(6) The citation to 40 C.F.R. 261, subpart C in 40 C.F.R. 261.33 shall be replaced with 401 KAR 31:030.

Section 5. Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement. (1) Except as provided in this section, deletion of certain hazardous waste codes following equipment cleaning and replacement shall be as established in 40 C.F.R. 261.35 [The subject matter shall be governed by 40 C.F.R. 261.35, effective July 1, 2005].

(2) The citation to 40 C.F.R. 261.35 in 40 C.F.R. 261.35 shall be replaced with this section.

Section 6. [Comparable Syngas Fuel Exclusion. (1) The subject matter shall be governed by 40 C.F.R. 261.38, effective July 1, 2005.

(2) The reference in 40 C.F.R. 261.38 to 40 C.F.R. 261.28(e)(10) is incorrect. The references shall be listed as 40 C.F.R. 261.38(e)(10).

Section 7. [Additional Requirement Concerning Nerve and Blistering Agents. The following substances in Table 1 are listed as hazardous wastes in the Commonwealth of Kentucky.

Table 1	
Ky. Hazardous Waste No.	Substance
N001	GB (isopropyl methyl phosphonofluoridate [phosphonofluoridate]) and related compounds (H)
N002	VX (0-ethyl-S-(2-diisopropylaminoethyl)-methyl phosphonothiolate) and related compounds (H)
N003	H (bis (2-chloroethyl) sulfide) and related compounds (H)

N101	Uncontaminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with GB munitions
N102	Uncontaminated M67 Rocket Motor Assembly, Propellant Component of the Rocket Motor, Shipping Firing Tubes, and End-Caps associated with VX munitions
N201	Metal Parts Treater Residue associated with GB munitions or related wastes
N202	Metal Parts Treater Residue associated with VX munitions or related wastes
N203	Static Detonation Chamber Residue and Ash associated with H munitions
N301	Agent Hydrolysate associated with GB munitions
N302	Agent Hydrolysate associated with VX munitions
N401	Energetic Hydrolysate associated with GB munitions
N402	Energetic Hydrolysate associated with VX munitions
N501	Aluminum Precipitate associated with treated GB wastes
N502	Aluminum Precipitate associated with treated VX wastes
N601	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated GB wastes
N602	Reverse Osmosis Reject or Supercritical Water Oxidation Effluent associated with treated VX wastes
N701	Lab Wastes associated with treated GB wastes
N702	Lab Wastes associated with treated VX wastes
N703	Lab Wastes associated with treated H wastes

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: April 19, 2016

FILED WITH LRC: April 26, 2016 at 9 a.m.

CONTACT PERSON: Louanna Aldridge, Division of Waste Management, 200 Fair Oaks, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Louanna.Aldridge@ky.gov.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, July 14, 2016)**

780 KAR 7:060. Equipment inventory and insurance.

RELATES TO: KRS 45.301(1)(f), 45.313, 56.070-56.100[56.185], 156.802(3), 156.852[151B.025(3), 151B.150]

STATUTORY AUTHORITY: KRS 156.070(4), (5), 156.802(3)[151B.025(3)]

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 156.070(4) requires the Kentucky Board of Education to promulgate administrative regulations for the efficient management, control, and operation of schools and programs under its jurisdiction. KRS 156.802(3) authorizes the Kentucky Department of Education to manage, control, and operate state vocational education and technology centers. KRS 156.070(5) requires the board to establish policy relating to**

~~equipment contracts. This administrative regulation establishes policy and operating procedures concerning the inventory and insurance of state-operated career and technical education equipment.[KRS 45.304(1)(f) requires the Finance and Administration Cabinet to supervise purchasing and storekeeping and control of property and stores. KRS 45.313 requires that each budget unit shall maintain a current inventory of equipment having an original cost of \$500 or more. This inventory shall be available for examination by the Finance and Administration Cabinet at all times. KRS 56.070-56.185 grants the Finance and Administration Cabinet the authority to determine state property to be insured under the state fire and tornado insurance fund. KRS 156.802][451B.025][requires the Associate Commissioner][Executive Director][of the Office of Career and Technical Education to administer the state-operated career and technical education program. This administrative regulation establishes policy and operating procedures relative to the inventory and insurance of state-operated career and technical education equipment.]~~

Section 1. **Definitions.** (1) **"Fund" means the State Fire and Tornado Insurance Fund.**

(2) **"Kentucky TECH schools" means the system of state-operated secondary career and technical education programs in the area technology centers.**

Section 2. (1) The Office of Administration and Support[Administrative Services] shall be responsible for the management and control of an inventory system for career and[veocational-] technical education programs.

(2) **Pursuant to KRS 45.313,** all equipment with a value of \$500[250] or more acquired in whole or in part with state funds shall be maintained on this inventory and identified in accordance with 200 KAR 5:021.

(3) The area technology centers shall be responsible for conducting an annual inventory of all property.

(4) All equipment acquired in whole or in part with federal funds shall be maintained on the current inventory.

Section 3.[2.] Except as provided in subsections (1), (2), and (3) of this section, all career and technical education equipment in the Kentucky TECH schools shall be covered by the State Fire and Tornado Insurance Fund regular policy underwritten by the Commonwealth of Kentucky.

(1) Equipment insured for full coverage under the state computer insurance policy shall not be covered under the **[State Fire and Tornado Insurance] fund.**

(2) Equipment normally utilized and stationed at remote locations shall be insured under the floater clause in the **[State Fire and Tornado Insurance] fund.**

(3) Equipment on loan from industry requiring insurance shall be insured under the Inland Marine policy underwritten by the Commonwealth of Kentucky.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D., Commissioner
ROGER L. MARCUM, Chairperson
APPROVED BY AGENCY: May 12, 2016
FILED WITH LRC: May 13, 2016 at 10 a.m.
CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, July 14, 2016)

803 KAR 2:307. Hazardous materials.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1910.101-1910.126

STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.101-1910.126 establishes federal requirements relating to hazardous materials. This administrative regulation establishes hazardous materials standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation and the requirements established in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.101-1910.126, revised July 1, 2015 [2012]; and

(2) The revisions to 29 C.F.R. **1910.106[1910.107]** as published in the March 1, 2016, **Federal Register**, Volume 81, Number 40[**Federal Register**][29 C.F.R. 1910.119 and 1910.120 as published in the February 8, 2013 **Federal Register**, Volume 78, Number 27].

Section 3. Automotive Service Station. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(3).

(2) Automotive service station, or service station, shall include that portion of property where flammable or combustible liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and shall include any facilities available for the sale and service of tires, batteries, or accessories, and for minor automotive maintenance work, and shall also include private stations not accessible or open to the public such as those used by commercial, industrial, or governmental establishments. This section shall not apply to agriculture.

As approved by the Kentucky Occupational Safety and Health Standards Board.

DERRICK RAMSEY, Chairman
APPROVED BY AGENCY: May 10, 2016
FILED WITH LRC: May 13, 2016 at 11 a.m.
CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, July 14, 2016)

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

RELATES TO: KRS Chapter 338
 STATUTORY AUTHORITY: KRS 338.051, 338.061
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) ~~requires and 338.061 require~~ the Kentucky Occupational Safety and Health Standards Board to ~~adopt and~~ promulgate occupational safety and health ~~rules,~~ administrative regulations. ~~This, and standards. The following~~ administrative regulation ~~establishes the~~ ~~contains those~~ standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. ~~The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.]~~

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

- (2) "C.F.R." means Code of Federal Regulations.
- (3) "Employee" is defined by KRS 338.015(2).
- (4) "Employer" is defined by KRS 338.015(1).
- (5) "Standard" is defined by KRS 338.015(3).

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration, except as modified by the definitions established in Section 1 of this administrative regulation:

- (1) 29 C.F.R. 1926.1- 6, revised July 1, 2015; and [2013;]
- (2) The amendments to 29 C.F.R. 1926.6 as published in the March 25, 2016 Federal Register, Volume 81, Number 58 [The revisions to 29 C.F.R. 1926.6 as published in the June 13, 2013 Federal Register, Volume 78, Number 114 and corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215; and
- (3) The revisions to 29 C.F.R. 1926.6 as published in the April 11, 2014 Federal Register, Volume 79, Number 70].

As approved by the Kentucky Occupational Safety and Health Standards Board.

DERRICK RAMSEY, Chairman
 APPROVED BY AGENCY: May 10, 2016
 FILED WITH LRC: May 13, 2016 at 11 a.m.
 CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Maternal and Child Health
(As Amended at ARRS, July 14, 2016)

902 KAR 4:120. Health Access Nurturing Development Services (HANDS) Program.

RELATES TO: KRS 13B.080-13B.160, 200.700, 211.090, 211.180, 211.689[194A.030(4), 211.690]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.690
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.690 authorizes the Cabinet for

Health and Family Services to implement a voluntary statewide home visitation program for the purpose of providing assistance to at-risk parents during the prenatal period until the child's third birthday. This administrative regulation establishes the eligibility criteria, services, provider qualifications, and hearing rights for participants of the Health Access Nurturing Development Services (HANDS) Program.

Section 1. Definitions. (1) "Department" means the Department for Public Health or its designated representative.

(2) "Family support worker" or "FSW" means a provider's employee or subcontractor who visits participants and performs services.

(3) "HANDS" means Health Access Nurturing Development Services, a voluntary statewide home visitation program[;] for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday as funding is available.

(4) "Participant" means an individual enrolled in the HANDS program and receiving HANDS services.

(5) [(2) "Authority" means the Early Childhood Development Authority as established in KRS 200.700. (3)] "Provider" means a local health department agency subscribing to staff and training requirements, program policies and procedures, [model] and reporting requirements of the HANDS Program and agreeing to participate as a HANDS provider.

[(4) "Program model" means a model of home visitation that meets the twelve (12) critical elements of home visitation.

(5) "Participant" means an individual who meets the criteria established in Section 2 of this administrative regulation.

(6) "Standardized assessment tool" means the program adopted tool to determine the level of need of the pregnant woman or parent.

(7) "Department" means the Department for Public Health or its designated representative.

(8) "Home visitor" or "family support worker" or "FSW" means a:

- (a) High school graduate or holder of a GED who:
 - 1. Is at least eighteen (18) years of age;
 - 2. Has received training in:
 - a. Ongoing assessment of family strengths and needs;
 - b. Service plan development;
 - c. Home visiting;
 - d. Coordination of services; and
 - e. Evaluation; and
 - 3. Is supervised by a public health nurse or licensed social worker;
- (b) Public health nurse who has a valid Kentucky Board of Nursing license as a registered nurse or advanced registered nurse practitioner; or
- (c) 1. Licensed social worker who meets the requirements for licensure by the State Board of Examiners of Social Work;
- 2. An individual with a masters degree in social work;
- 3. A social worker with a bachelor's degree in social work from an accredited institution;
- (d) A graduate of a four (4) year program in a social or behavioral science or a related field with one (1) year experience performing case management services, except that a master's degree in a human services field may be substituted for the one (1) year experience; or
- (e) An associate degree in an early childhood education field and home visitation model training.]

Section 2. Eligibility Criteria. (1) In order to receive a service established in Section 4 of this administrative regulation, an individual shall [be]:

(a) **Submit ACH-301, Consent for Services, to the local health department or their subcontractor, in accordance with KRS 211.690(4).**

- (b) **Be:**
 - 1. A pregnant woman who has not reached her 20th birthday [and who will be a first-time parent];
 - 2. [(b)] A pregnant woman who is at least twenty (20) years

old, will be a first-time parent] and a risk is deemed likely for the pregnancy or the infant;

3. Up to the third birthday, [(e)] an infant or toddler of an individual identified in subparagraph 1. or 2. [paragraph (a)–or (b)] of this subsection, whose family is determined to be at risk and is screened for eligibility within [the first twelve (12) weeks of life or no later than] ninety (90) days post-birth, [up to the] [his] [third birthday], of an individual identified in paragraph (a) or (b) of this subsection; or

4. [(d)] A firstborn up to twelve (12) weeks of age whose family is determined to be at risk; or

(e)] A [first-time] father or guardian of a child identified in subparagraph 3. [paragraph (c)] [or (d)] of this subsection.

(2) Participation in the HANDS Program shall be voluntary.

(3) Participation in the HANDS Program shall be prevented or terminated if one (1) of the following occurs:

- (a) Death of the fetus or infant;
- (b) The family elects to withdraw from the program;
- (c) The family moves out of state;
- (d) Contact with the family is lost;
- (e) The family repeatedly fails to participate in program activities; or

(f)] [Death of the infant; or

(g)] The goals established for the family are met.

(4) A screening shall include the following components:

(a) Using the ACH-300, Referral Record Screen, a provider shall determine eligibility of an applicant by:

1. Face-to-face interview; or

2. Evaluation of health records;

(b) If an individual's screening indicates eligibility for HANDS services, the individual shall be referred for an assessment; and

(c) If an individual's screening indicates ineligibility for HANDS services, the individual shall be provided with community resource and referral information.

(5) An assessment shall:

(a) Consist of the following components:

1. Using the ACH-302, Parent Survey Summary, and ACH-303, Parent Survey Score Sheet, a comprehensive needs assessment shall be performed by conducting a face-to-face interview with the child, mother, and family to include information regarding each parent's:

- a. Childhood experience;
- b. Lifestyle behaviors and mental health;
- c. Experience and expectations for parenting;
- d. Coping skills;
- e. Support system;
- f. Stress and anger management skills;
- g. Expectations of the infant's developmental milestones and behaviors;

h. Plans for the child's discipline;

i. Perception of the new infant; and

j. Bonding and attachment to the infant; and

2. Arrangement for delivery of needed services;

(b) Be conducted by:

1. A social worker;

2. A registered nurse;

3. A graduate of a four (4) year program in a social or behavioral science, education field, or a related field with one (1) year experience performing case management services, except that a master's degree in a human services field may be substituted for the one (1) year experience; or

4. A graduate with an associate degree in an early childhood education field and successful completion of the department's home visitation model training; and

(c) Result in:

1. Eligibility for HANDS services, in which the individual shall be referred for the development of a home visiting plan; or

2. Ineligibility for HANDS services, in which the individual shall be provided with community resource and referral information and general parenting information.

Section 3. Provider Qualifications. (1) A family support worker shall be a:

(a) High school graduate or holder of a GED who:

1. Is at least eighteen (18) years of age;

2. Has received department training in:

a. Ongoing assessment of family strengths and needs;

b. Service plan development;

c. Evidence-based home visiting model;

d. Coordination of services; and

e. Evaluation; and

3. Is supervised by a public health nurse or licensed social worker;

(b) Public health nurse who has a valid Kentucky Board of Nursing license as a registered nurse or advanced practice registered nurse;

(c) 1. Licensed social worker who meets the requirements for licensure by the State Board of Examiners of Social Work;

2. Graduate with a master's degree in social work from an accredited institution; or

3. Graduate with a bachelor's degree in social work from an accredited institution;

(d) Graduate of a four (4) year program in a social or behavioral science, education field, or a related field with one (1) year experience performing case management services, except that a master's degree in a human services field may be substituted for the one (1) year experience; or

(e) Graduate with an associate degree in an early childhood education field and successful completion of the department's home visitation model training [A HANDS service shall be provided by a local health department or a subcontractor].

(2) A local health department shall meet the requirements to provide HANDS services if:

(a) Its staff or subcontractor [contractor] receives the required training provided by the department to become a family support worker;

(b) It assures that appropriate staff meet the licensure requirements of the department pursuant to subsection (1)(b) or (c) of this section [1(8)(b) or (c) of this administrative regulation];

(c) It assures supervision by licensed personnel pursuant to subsection (1)(b) or (c) of this section [1(8)(b) and (c) of this administrative regulation];

(d) It reports program data into the online HANDS database no later than the first Sunday of the month following the date of service [on a schedule as directed by the department]; and

(e) It abides by [meets] the policies of the HANDS program [twelve (12) critical elements of home visitation programs].

Section 4. Services. [The HANDS Program shall consist of the following services:] (1) [Screening. A screening shall include the following components:

(a) Using the standardized screening tool, a provider shall determine eligibility of an applicant by:

1. Face-to-face interview; or

2. Evaluation of health records.

(b) If an individual's screening indicates eligibility for additional HANDS services, the individual shall be referred for an assessment to a social worker or a registered nurse, employed directly or contracted by the department; and

(c) If an individual's screening indicates ineligibility for additional HANDS services, the individual shall be provided with community resource and referral information;

(2) Assessment.

(a) An assessment shall consist of the following components:

1. A comprehensive needs assessment, obtained by conducting a face-to-face interview with the child, mother, and family, to include information regarding the parent's:

a. Childhood experience;

b. Lifestyle behaviors and mental health;

c. Experience and expectations for parenting;

d. Coping skills;

e. Support system;

f. Stress and anger management skills;

g. Expectations of the infant's developmental milestones and behaviors;

h. Plans for the child's discipline;

- i. Perception of the new infant; and
 - j. Bonding and attachment to the infant.
2. Arrangement for delivery of needed services, as determined by the assessment;
- (b) An assessment shall be conducted by:
 1. A social worker;
 2. A registered nurse;
 3. A graduate of a four (4) year program in a social or behavioral science or a related field with one (1) year experience performing case management services, except that a master's degree in a human services field may be substituted for the one (1) year experience; or
 4. An associate degree in an early childhood education field and home visitation model training.

(c) If an assessment of an individual results in a determination that the individual meets one (1) of the criteria in Section 2(3) of this administrative regulation, home visitation services established in subsection (3) of this section shall not be provided.

(3) Home visitation may take place in the client's home or another community site if justified in the record. A home visitation shall include the following:

- (a) Monitoring of the child's, mother's, and family's progress by:
 1. Making referrals to community resources;
 2. Tracking appointments to ensure they are being kept;
 3. Performing follow-up services as identified by the provider; and
 4. Performing periodic evaluations of the participant's changing needs;

(b) The preparation and maintenance of case records which shall be documented with contacts, services needed, reports, and progress;

(c) Consultations with the parent or primary caregiver on positive pregnancy outcomes, optimal child growth and development, health and safe homes, and family decision making and self-sufficiency; and

(d) Crisis assistance.

(2)(a)(4) Service frequency shall be provided in accordance with the level of need of the parent or family pursuant to ACH-306, Parent Completion LEVELS. ~~;~~ and.

(b)(5) The frequency of visitation shall be lessened as the family meets goals agreed to by the provider and the participant.

(3)(6) Between the second and third birthday, home visitation services shall be limited to a child whose family does not progress beyond Level I of ACH-306, Parent Completion LEVELS ~~[the assessment tool]~~.

Section 5. Appeal Rights. (1) A provider shall notify an individual who does not meet criteria for admission or continuation in the program or who has had a service discontinued, in writing, within ten (10) days of the denial or discontinuance.

(2) An individual wishing to appeal an adverse action by the agency shall notify the department ~~;~~ within thirty (30) days of the date of the notice identified in subsection (1) of this section that ~~[he requests]~~ a hearing is requested.

(3) Notice of an administrative hearing shall be provided in accordance with KRS 13B.050.

(4) The administrative hearing process shall be conducted in accordance with KRS 13B.080 through 13B.160.

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

(a) "ACH-300, Referral Record Screen", 5/2016 ~~[Twelve (12) Critical Elements of Home Visitation Programs]~~;

(b) "ACH-301, Consent for Services", 5/2016 ~~[Referral Record Screen Consent Form (ACH-301), 7/00 edition]~~;

(c) "ACH-302, Parent Survey Summary", 5/2016 ~~[HANDS Screening Tool, 5/1/00 edition]~~;

(d) "ACH-303, Parent Survey Score Sheet", 5/2016 ~~[HANDS Assessment Tool, 5/1/00 edition]~~; and

(e) "ACH-306, Parent Completion LEVELS", 5/2016 ~~[Levels form]~~; and

(f) Every Child Succeeds Screening and Assessment Tool,

3/8/00 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

KRAIG HUMBAUGH, MD, MPH, Senior Deputy Commissioner
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APPROVED BY AGENCY: May 4, 2016

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, July 14, 2016)

902 KAR 100:030. Quantities of radioactive material requiring labeling.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. Part 20

STATUTORY AUTHORITY: KRS 194.050(1), 211.090, 211.180(1), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844(1) ~~requires~~ authorizes the Cabinet for Health and Family Services ~~[Human Resources]~~ to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. This administrative regulation ~~establishes~~ adopts ~~[provides for]~~ quantity requirements for the labeling of radioactive material licensed under 902 KAR Chapter 100 ~~[This administrative regulation shall apply to persons licensed as authorized by 902 KAR 100:017, 902 KAR 100:022, 902 KAR 100:040, 902 KAR 100:041, 902 KAR 100:045, 902 KAR 100:050, 902 KAR 100:052, 902 KAR 100:058, 902 KAR 100:065, 902 KAR 100:073, 902 KAR 100:090, 902 KAR 100:100, 902 KAR 100:142, 902 KAR 100:165, and 902 KAR 100:170].~~

Section 1. Quantities ~~[Table]~~. 10 C.F.R. Part 20 Appendix C ~~[The following table]~~ provides the quantities of radioactive material requiring labeling as set forth in 902 KAR 100:019.:

Quantities of Radioactive Material Requiring Labeling			
Radionuclide	Quantity (µCi)*	Radionuclide (µCi)*	Quantity
Hydrogen-3	1,000	Chromium-48	1,000
Beryllium-7	1,000	Chromium-49	1,000
Beryllium-10	4	Chromium-51	1,000
Carbon-11	1,000	Manganese-51	1,000
Carbon-14	1,000	Manganese-52m	1,000
Fluorine-18	1,000	Manganese-52	100
Sodium-22	10	Manganese-53	1,000
Sodium-24	100	Manganese-54	100
Magnesium-28	100	Manganese-56	1,000
Aluminum-26	10	Iron-52	100
Silicon-31	1,000	Iron-55	100
Silicon-32	4	Iron-59	10
Phosphorus-32	10	Iron-60	4
Phosphorus-33	100	Cobalt-55	100
Sulfur-35	100	Cobalt-56	10
Chlorine-36	10	Cobalt-57	100
Chlorine-38	1,000	Cobalt-58m	1,000
Chlorine-39	1,000	Cobalt-58	100
Argon-39	1,000	Cobalt-60m	1,000
Argon-41	1,000	Cobalt-60	4

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Potassium-40	100	Cobalt-61	1,000
Potassium-42	1,000	Cobalt-62m	1,000
Potassium-43	1,000	Nickel-56	100
Potassium-44	1,000	Nickel-57	100
Potassium-45	1,000	Nickel-59	100
Calcium-41	100	Nickel-63	100
Calcium-45	100	Nickel-65	1,000
Calcium-47	100	Nickel-66	10
Scandium-43	1,000	Copper-60	1,000
Scandium-44m	100	Copper-61	1,000
Scandium-44	100	Copper-64	1,000
Scandium-46	10	Copper-67	1,000
Scandium-47	100	Zinc-62	100
Scandium-48	100	Zinc-63	1,000
Scandium-49	1,000	Zinc-65	10
Titanium-44	1	Zinc-69m	100
Titanium-45	1,000	Zinc-69	1,000
Vanadium-47	1,000	Zinc-71m	1,000
Vanadium-48	100	Zinc-72	100
Vanadium-49	1,000	Gallium-65	1,000
Gallium-66	100	Krypton-81	1,000
Gallium-67	1,000	Krypton-83m	1,000
Gallium-68	1,000	Krypton-85m	1,000
Gallium-70	1,000	Krypton-85	1,000
Gallium-72	100	Krypton-87	1,000
Gallium-73	1,000	Krypton-88	1,000
Germanium-66	1,000	Rubidium-79	1,000
Germanium-67	1,000	Rubidium-81m	1,000
Germanium-68	10	Rubidium-81	1,000
Germanium-69	1,000	Rubidium-82m	1,000
Germanium-71	1,000	Rubidium-83	100
Germanium-75	1,000	Rubidium-84	100
Germanium-77	1,000	Rubidium-86	100
Germanium-78	1,000	Rubidium-87	100
Arsenic-69	1,000	Rubidium-88	1,000
Arsenic-70	1,000	Rubidium-89	1,000
Arsenic-71	100	Strontium-80	100
Arsenic-72	100	Strontium-81	1,000
Arsenic-73	100	Strontium-83	100
Arsenic-74	100	Strontium-85m	1,000
Arsenic-76	100	Strontium-85	100
Arsenic-77	100	Strontium-87m	1,000
Arsenic-78	1,000	Strontium-89	10
Selenium-70	1,000	Strontium-90	0.1
Selenium-73m	1,000	Strontium-91	100
Selenium-73	100	Strontium-92	100
Selenium-75	100	Yttrium-86m	1,000
Selenium-79	100	Yttrium-86	100
Selenium-81m	1,000	Yttrium-87	100
Selenium-81	1,000	Yttrium-88	10
Selenium-83	1,000	Yttrium-90m	1,000
Bromine-74m	1,000	Yttrium-90	10
Bromine-74	1,000	Yttrium-91m	1,000
Bromine-75	1,000	Yttrium-91	10
Bromine-76	100	Yttrium-92	100
Bromine-77	1,000	Yttrium-93	100
Bromine-80	1,000	Yttrium-94	1,000
Bromine-80	1,000	Yttrium-95	1,000
Bromine-82	100	Zirconium-86	100
Bromine-83	1,000	Zirconium-88	10
Bromine-84	1,000	Zirconium-89	100
Krypton-74	1,000	Zirconium-93	1
Krypton-76	1,000	Zirconium-95	10
Krypton-77	1,000	Zirconium-97	100
Krypton-79	1,000	Niobium-88	1,000
Niobium-89	1,000	Palladium-101	1,000

Niobium-89m (66 min)	1,000	Palladium-103	100
		Palladium-107	10
Niobium-89 (122 min)	1,000	Palladium-109	100
		Silver-102	1,000
Niobium-90	100	Silver-103	1,000
Niobium-93m	10	Silver-104m	1,000
Niobium-94	1	Silver-104	1,000
Niobium-95m	100	Silver-105	100
Niobium-95	100	Silver-106m	100
Niobium-96	100	Silver-106	1,000
Niobium-97	1,000	Silver-108m	1
Niobium-98	1,000	Silver-110m	10
Molybdenum-90	100	Silver-111	100
Molybdenum-93m	100	Silver-112	100
Molybdenum-93	10	Silver-115	1,000
Molybdenum-99	100	Cadmium-104	1,000
Molybdenum-101	1,000	Cadmium-107	1,000
Technetium-93m	1,000	Cadmium-109	1
Technetium-93	1,000	Cadmium-113m	0.1
Technetium-94m	1,000	Cadmium-113	100
Technetium-94	1,000	Cadmium-115m	10
Technetium-96m	1,000	Cadmium-115	100
Technetium-96	100	Cadmium-117m	1,000
Technetium-97m	100	Cadmium-117	1,000
Technetium-97	1,000	Indium-109	1,000
Technetium-98	10	Indium-110	1,000
Technetium-99m	1,000	(69.1m)	
Technetium-99	100	Indium-110	1,000
Technetium-101	1,000	(4.9h)	
Technetium-104	1,000	Indium-111	100
Ruthenium-94	1,000	Indium-112	1,000
Ruthenium-97	1,000	Indium-113m	1,000
Ruthenium-103	100	Indium-114m	10
Ruthenium-105	1,000	Indium-115m	1,000
Ruthenium-106	1	Indium-115	100
Rhodium-99m	1,000	Indium-116m	1,000
Rhodium-99	100	Indium-117m	1,000
Rhodium-100	100	Indium-117	1,000
Rhodium-101m	1,000	Indium-119m	1,000
Rhodium-101	10	Tin-110	100
Rhodium-102m	10	Tin-111	1,000
Rhodium-102	10	Tin-113	100
Rhodium-103m	1,000	Tin-117m	100
Rhodium-105	100	Tin-119m	100
Rhodium-106m	1,000	Tin-121m	100
Rhodium-107	1,000	Tin-121	1,000
Palladium-100	100	-	
Tin-123m	1,000	Tellurium-133	1,000
Tin-123	10	Tellurium-134	1,000
Tin-125	10	Iodine-120m	1,000
Tin-126	10	Iodine-120	100
Tin-127	1,000	Iodine-121	1,000
Tin-128	1,000	Iodine-123	100
Antimony-115	1,000	Iodine-124	10
Antimony-116m	1,000	Iodine-125	1
Antimony-116	1,000	Iodine-126	1
Antimony-117	1,000	Iodine-128	1,000
Antimony-118m	1,000	Iodine-129	1
Antimony-119	1,000	Iodine-130	10
Antimony-120 (16m)	1,000	Iodine-131	1
		Iodine-132m	100
Antimony-120 (5.76d)	100	Iodine-132	100
		Iodine-133	10
Antimony-122	100	Iodine-134	1,000
Antimony-124m	1,000	Iodine-135	100
Antimony-124	10	Xenon-120	1,000

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Antimony-125	400	Xenon-121	1,000
Antimony-126m	1,000	Xenon-122	1,000
Antimony-126	400	Xenon-123	1,000
Antimony-127	400	Xenon-125	1,000
Antimony-128	1,000	Xenon-127	1,000
(10.4m)		Xenon-129m	1,000
Antimony-128	400	Xenon-131m	1,000
(9.01h)		Xenon-133m	1,000
Antimony-129	400	Xenon-133	1,000
Antimony-130	1,000	Xenon-135m	1,000
Antimony-131	1,000	Xenon-135	1,000
Tellurium-116	1,000	Xenon-138	1,000
Tellurium-121m	40	Cesium-125	1,000
Tellurium-121	400	Cesium-127	1,000
Tellurium-123m	40	Cesium-129	1,000
Tellurium-123	400	Cesium-130	1,000
Tellurium-125m	40	Cesium-131	1,000
Tellurium-127m	40	Cesium-132	400
Tellurium-127	1,000	Cesium-134m	1,000
Tellurium-129m	40	Cesium-134	40
Tellurium-129	1,000	Cesium-135m	1,000
Tellurium-131m	40	Cesium-135	400
Tellurium-131	400	Cesium-136	40
Tellurium-132	40	Cesium-137	40
Tellurium-133m	400	Cesium-138	1,000
Barium-126	1,000	Promethium-141	1,000
Barium-128	400	Promethium-143	400
Barium-131m	1,000	Promethium-144	40
Barium-134	400	Promethium-145	40
Barium-133m	400	Promethium-146	4
Barium-133	400	Promethium-147	40
Barium-135m	400	Promethium-148m	40
Barium-139	1,000	Promethium-148	40
Barium-140	400	Promethium-149	400
Barium-141	1,000	Promethium-150	1,000
Barium-142	1,000	Promethium-151	400
Lanthanum-131	1,000	Samarium-141m	1,000
Lanthanum-132	400	Samarium-141	1,000
Lanthanum-135	1,000	Samarium-142	1,000
Lanthanum-137	40	Samarium-145	400
Lanthanum-138	400	Samarium-146	4
Lanthanum-140	400	Samarium-147	400
Lanthanum-141	400	Samarium-151	40
Lanthanum-142	1,000	Samarium-153	400
Lanthanum-143	1,000	Samarium-155	1,000
Cerium-134	400	Samarium-156	1,000
Cerium-135	400	Europium-145	400
Cerium-137m	400	Europium-146	400
Cerium-137	1,000	Europium-147	400
Cerium-139	400	Europium-148	40
Cerium-141	400	Europium-149	400
Cerium-143	400	Europium-150	400
Cerium-144	4	(12.62h)	
Praseodymium-136	1,000	Europium-150	4
Praseodymium-137	1,000	(34.2y)	
Praseodymium-138m	1,000	Europium-152m	400
Praseodymium-139	1,000	Europium-152	4
Praseodymium-142m	1,000	Europium-154	4
Praseodymium-142	400	Europium-155	40
Praseodymium-143	400	Europium-156	400
Praseodymium-144	1,000	Europium-157	400
Praseodymium-145	400	Europium-158	1,000
Praseodymium-147	1,000	Gadolinium-145	1,000

Neodymium-136	1,000	Gadolinium-146	40
Neodymium-138	400	Gadolinium-147	400
Neodymium-139m	1,000	Gadolinium-148	0.001
Neodymium-139	1,000	Gadolinium-149	400
Neodymium-141	1,000	Gadolinium-151	40
Neodymium-147	400	Gadolinium-152	400
Neodymium-149	1,000	Gadolinium-153	40
Neodymium-151	1,000	Gadolinium-159	400
Terbium-147	1,000	Ytterbium-162	1,000
Terbium-149	400	Ytterbium-166	400
Terbium-150	1,000	Ytterbium-167	1,000
Terbium-151	400	Ytterbium-169	400
Terbium-153	1,000	Ytterbium-175	400
Terbium-154	400	Ytterbium-177	1,000
Terbium-155	1,000	Ytterbium-178	1,000
Terbium-156m	1,000	Lutetium-169	400
(5.0h)		Lutetium-170	400
Terbium-156m	1,000	Lutetium-171	400
(24.4h)		Lutetium-172	400
Terbium-156	400	Lutetium-173	40
Terbium-157	40	Lutetium-174m	40
Terbium-158	4	Lutetium-174	40
Terbium-160	40	Lutetium-176m	1,000
Terbium-161	400	Lutetium-176	400
Dysprosium-155	1,000	Lutetium-177m	40
Dysprosium-157	1,000	Lutetium-177	400
Dysprosium-159	400	Lutetium-179m	1,000
Dysprosium-165	1,000	Lutetium-178	1,000
Dysprosium-166	400	Lutetium-179	1,000
Holmium-155	1,000	Hafnium-170	400
Holmium-157	1,000	Hafnium-172	4
Holmium-159	1,000	Hafnium-173	1,000
Holmium-161	1,000	Hafnium-175	400
Holmium-162m	1,000	Hafnium-177m	1,000
Holmium-162	1,000	Hafnium-178m	0.1
Holmium-164m	1,000	Hafnium-179m	40
Holmium-164	1,000	Hafnium-180m	1,000
Holmium-166m	4	Hafnium-181	40
Holmium-166	400	Hafnium-182m	1,000
Holmium-167	1,000	Hafnium-182	0.1
Erbium-161	1,000	Hafnium-183	1,000
Erbium-165	1,000	Hafnium-184	400
Erbium-169	400	Tantalum-172	1,000
Erbium-171	400	Tantalum-173	1,000
Erbium-172	400	Tantalum-174	1,000
Thulium-162	1,000	Tantalum-175	1,000
Thulium-166	400	Tantalum-176	400
Thulium-167	400	Tantalum-177	1,000
Thulium-170	40	Tantalum-178	1,000
Thulium-171	40	Tantalum-179	400
Thulium-172	400	Tantalum-180m	1,000
Thulium-173	400	Tantalum-180	400
Thulium-175	1,000	Tantalum-182m	1,000
Tantalum-182	40	Iridium-188	400
Tantalum-183	400	Iridium-189	400
Tantalum-184	400	Iridium-190m	1,000
Tantalum-185	1,000	Iridium-190	400
Tantalum-186	1,000	Iridium-192m	40
Tungsten-176	1,000	(1.4m)	
Tungsten-177	1,000	Iridium-192	4
Tungsten-178	1,000	(73.8d)	
Tungsten-179	1,000	Iridium-194m	40
Tungsten-181	1,000	Iridium-194	400
Tungsten-185	400	Iridium-195m	1,000
Tungsten-187	400	Iridium-195	1,000
Tungsten-188	40	Platinum-186	1,000

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Rhenium-177	1,000	Platinum-188	100
Rhenium-178	1,000	Platinum-189	1,000
Rhenium-181	1,000	Platinum-191	100
Rhenium-182 (12.7h)	1,000	Platinum-193m	100
		Platinum-193	1,000
Rhenium-182 (64.0h)	100	Platinum-195m	100
		Platinum-197m	1,000
Rhenium-184m	10	Platinum-197	100
Rhenium-184	100	Platinum-199	1,000
Rhenium-186m	10	Platinum-200	100
Rhenium-186	100	Gold-193	1,000
Rhenium-187	1,000	Gold-194	100
Rhenium-188m	1,000	Gold-195	10
Rhenium-188	100	Gold-198m	100
Rhenium-189	100	Gold-198	100
Osmium-180	1,000	Gold-199	100
Osmium-181	1,000	Gold-200m	100
Osmium-182	100	Gold-200	1,000
Osmium-185	100	Gold-201	1,000
Osmium-189m	1,000	Mercury-193m	100
Osmium-191m	1,000	Mercury-193	1,000
Osmium-191	100	Mercury-194	1
Osmium-193	100	Mercury-195m	100
Osmium-194	1	Mercury-195	1,000
Iridium-182	1,000	Mercury-197m	100
Iridium-184	1,000	Mercury-197	1,000
Iridium-185	1,000	Mercury-199m	1,000
Iridium-186	100	Mercury-203	100
Iridium-187	1,000	-	
Thallium-194m	1,000	Francium-223	100
Thallium-194	1,000	Radium-223	0.1
Thallium-195	1,000	Radium-224	0.1
Thallium-197	1,000	Radium-225	0.1
Thallium-198m	1,000	Radium-226	0.1
Thallium-198	1,000	Radium-227	1,000
Thallium-199	1,000	Radium-228	0.1
Thallium-200	1,000	Actinium-224	1
Thallium-201	1,000	Actinium-225	0.01
Thallium-202	100	Actinium-226	0.1
Thallium-204	100	Actinium-227	0.001
Lead-195m	1,000	Actinium-228	1
Lead-198	1,000	Thorium-226	10
Lead-199	1,000	Thorium-227	0.01
Lead-200	100	Thorium-228	0.001
Lead-201	1,000	Thorium-229	0.001
Lead-202m	1,000	Thorium-230	0.001
Lead-202	10	Thorium-231	100
Lead-203	1,000	Thorium-232	100
Lead-205	100	Thorium-234	10
Lead-209	1,000	Thorium-natural	100
Lead-210	0.01	Protactinium-227	10
Lead-211	100	Protactinium-228	1
Lead-212	1	Protactinium-230	0.1
Lead-214	100	Protactinium-231	0.001
Bismuth-200	1,000	Protactinium-232	1
Bismuth-201	1,000	Protactinium-233	100
Bismuth-202	1,000	Protactinium-234	100
Bismuth-203	100	Uranium-230	0.01
Bismuth-205	100	Uranium-231	100

Bismuth-206	100	Uranium-232	0.001
Bismuth-207	10	Uranium-233	0.001
Bismuth-210m	0.1	Uranium-234	0.001
Bismuth-210	1	Uranium-235	0.001
Bismuth-212	10	Uranium-236	0.001
Bismuth-213	10	Uranium-237	100
Bismuth-214	100	Uranium-238	100
Polonium-203	1,000	Uranium-239	1,000
Polonium-205	1,000	Uranium-240	100
Polonium-207	1,000	Uranium-natural	100
Polonium-210	0.1	Neptunium-232	100
Astatine-207	100	Neptunium-233	1,000
Astatine-211	10	Neptunium-234	100
Radon-220	1	Neptunium-235	100
Radon-222	1	Neptunium-236 (1.15E+5y)	0.001
Francium-222	100	Curium-242	0.01
Neptunium-236 (22.5h)	1	Curium-243	0.001
		Curium-244	0.001
Neptunium-237	0.001	Curium-245	0.001
Neptunium-238	10	Curium-246	0.001
Neptunium-239	100	Curium-247	0.001
Neptunium-240	1,000	Curium-248	0.001
Plutonium-234	10	Curium-249	1,000
Plutonium-235	1,000	Berkelium-245	100
Plutonium-236	0.001	Berkelium-246	100
Plutonium-237	100	Berkelium-247	0.001
Plutonium-238	0.001	Berkelium-249	0.1
Plutonium-239	0.001	Berkelium-250	10
Plutonium-240	0.001	Californium-244	100
Plutonium-241	0.01	Californium-246	1
Plutonium-242	0.001	Californium-248	0.01
Plutonium-243	1,000	Californium-249	0.001
Plutonium-244	0.001	Californium-250	0.001
Plutonium-245	100	Californium-251	0.001
Americium-237	1,000	Californium-252	0.001
Americium-238	100	Californium-253	0.1
Americium-239	1,000	Californium-254	0.001
Americium-240	100	Einsteinium-250	100
Americium-241	0.001	Einsteinium-251	100
Americium-242m	0.001	Einsteinium-253	0.1
Americium-242	10	Einsteinium-254m	1
Americium-243	0.001	Einsteinium-254	0.01
Americium-244m	100	Fermium-252	1
Americium-244	10	Fermium-253	1
Americium-245	1,000	Fermium-254	10
Americium-246m	1,000	Fermium-255	1
Americium-246	1,000	Fermium-257	0.01
Curium-238	100	Mendelevium-257	10
Curium-240	0.1	Mendelevium-258	0.01
Curium-241	1		
Any alpha-emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	0.001	Any radionuclide other than alpha-emitting radionuclides not listed above, or mixtures of beta emitters of unknown composition	0.01

Section 2. Combination of Radionuclides. (1) If [NOTES: For purposes where] there is involved a combination of radionuclides in known amounts, the limit for the combination shall be derived by determining [as follows: (1) Determine,] for each radionuclide in

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the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific radionuclide when not in combination; and

(2) The sum of the ratios for all radionuclides in the combination shall not exceed one (1) — that is, or unity.

[The quantities listed above were derived by taking 1/10th of the most restrictive ALI listed in Table 1, Columns 1 and 2, of 902 KAR 100:019 Section 44, rounding to the nearest factor of 10, and constraining the values listed between 0.001 and 1,000 µCi (37 Bq and 37 MBq). Values of 100 µCi (3.7 MBq) have been assigned for radionuclides having a radioactive half-life in excess of 1.0E+09 years, except rhenium, 1,000 µCi (37 MBq), to take into account their low specific activity.

*To convert µCi to kBq, multiply the µCi value by 37.]

KRAIG HUMBAUGH, MD, MPH, Senior Deputy Commissioner
 VICKIE YATES BROWN GLISSON, Secretary
 APPROVED BY AGENCY: May 4, 2016
 FILED WITH LRC: May 10, 2016 at 3 p.m.
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, July 14, 2016)

902 KAR 100:080. Exempt quantities.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 30.71

STATUTORY AUTHORITY: KRS 194.050(1), 211.090, 211.180(1), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 211.844(1) requires** the Cabinet for Health and Family Services [Human Resources] ~~is required~~ [authorized] ~~by KRS 211.844(1)]~~ to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. This administrative regulation ~~establishes/adopts~~ [provides] a list of quantities of specific radionuclides ~~that~~ [which] are exempted from the requirements of 902 KAR Chapter 100 [these administrative regulations].

Section 1. Applicability. This administrative regulation exempts certain quantities of radionuclides from the requirements of **902 KAR Chapter 100** ~~the cabinet's radiation administrative regulations~~.

Section 2. Quantities [Table]. Except as provided in other applicable provisions of 902 KAR Chapter 100 [these administrative regulations], a person ~~shall be/is~~ exempt from the requirements established in 902 KAR Chapter 100 to the extent that the person receives, possesses, uses, transfers, owns, or acquires products or materials containing radioactive material in individual quantities not in excess of those listed in 10 C.F.R. 30.71 Schedule B. [the following table:

Radioactive Material	Micro-curies	Radioactive Material	Micro-curies
Antimony-122	100	Osmium-185	10
Antimony-124	10	Osmium-m	100
Antimony-125	10	Osmium-191	100
Arsenic-73	100	Osmium-193	100
Arsenic-74	10	Palladium-103	100
Arsenic-76	10	Palladium-109	100
Arsenic-77	100	Phosphorous-32	10
Barium-134	10	Platinum-191	100
Barium-133	10	Platinum-193m	100
Barium-140	10	Platinum-193	100

Bismuth-210	1	Platinum-197m	100
Bromine-82	10	Platinum-197	100
Cadmium-109	10	Polonium-210	0.1
Cadmium-115m	10	Potassium-42	10
Cadmium-115	100	Potassium-43	10
Calcium-45	10	Praseodymium-142	100
Calcium-47	10	Praseodymium-143	100
Carbon-14	100	Promethium-147	10
Cerium-141	100	Promethium-149	10
Cerium-143	100	Rhenium-186	100
Cerium-144	1	Rhenium-188	100
Cesium-129	100	Rhodium-103m	100
Cesium-131	1,000	Rhodium-105	100
Cesium-134m	100	Rubidium-81	10
Cesium-134	1	Rubidium-86	10
Cesium-135	10	Rubidium-87	10
Cesium-136	10	Ruthenium-97	100
Cesium-137	10	Ruthenium-103	10
Chlorine-36	10	Ruthenium-105	10
Chlorine-38	10	Ruthenium-106	1
Chromium-51	1,000	Samarium-151	10
Cobalt-57	100	Samarium-153	100
Cobalt-58m	10	Scandium-46	10
Cobalt-58	10	Scandium-47	100
Cobalt-60	1	Scandium-48	10
Copper-64	100	Selenium-75	10
Dysprosium-165	10	Silicon-31	100
Dysprosium-166	100	Silver-105	10
Erbium-169	100	Silver-110m	1
Erbium-171	100	Silver-111	100
Europium-152 (9.2h)	100	Sodium-22	10
Europium-152 (13-yr.)	1	Sodium-24	10
Europium-154	1	Strontium-85	10
Europium-155	10	Strontium-89	1
Europium-155	10	Strontium-90	0.1
Fluorine-18	1,000	Strontium-91	10
Gadolinium-153	10	Strontium-92	10
Gadolinium-159	100	Sulfur-35	100
Gallium-67	100	Tantalum-182	10
Gallium-72	10	Technetium-96	10
Germanium-68	10	Technetium-97m	100
Germanium-71	100	Technetium-97	100
Gold-195	10	Technetium-99m	100
Gold-198	100	Technetium-99	10
Gold-199	100	Tellurium-125m	10
Hafnium-181	10	Tellurium-127m	10
Holmium-166	100	Tellurium-127	100
Hydrogen-3	1,000	Tellurium-129m	10
Indium-111	100	Tellurium-129	100
Indium-113m	100	Tellurium-131m	10
Indium-114m	10	Tellurium-132	10
Indium-115m	100	Terbium-160	10
Indium-115	10	Thallium-200	100
Iodine-123	100	Thallium-201	100
Iodine-125	1	Thallium-202	100
Iodine-126	1	Thallium-204	10
Iodine-129	0.1	Thulium-170	10
Iodine-131	1	Thulium-171	10
Iodine-132	10	Tin-113	10
Iodine-133	1	Tin-125	10
Iodine-134	10	Tungsten-181	10
Iodine-135	10	Tungsten-185	10
Iridium-192	10	Tungsten-187	100
Iridium-194	100	Vandium-48	10
Iron-52	10	Xenon-131m	1,000
		Xenon-133	100

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Iron-55	100	Xenon-135	100
Iron-59	10	Ytterbium-175	100
Krypton-85	100	Yttrium-87	10
Krypton-87	10	Yttrium-88	10
Lanthanum-140	10	Yttrium-90	10
Lutetium-177	100	Yttrium-91	10
Manganese-52	10	Yttrium-92	100
Manganese-54	10	Yttrium-93	100
Manganese-56	10	Zinc-65	10
Mercury-197m	100	Zinc-69m	100
Mercury-197	100	Zinc-69	1,000
Mercury-203	10	Zirconium-93	10
Molybdenum-99	100	Zirconium-95	10
Neodymium-147	100	Zirconium-97	10
Neodymium-149	100	A _____ radioactive material not listed above other than alpha emitting radioactive material	0.1]
Nickel-59	100		
Nickel-63	10		
Nickel-65	100		
Niobium-93m	10		
Niobium-95	10		
Niobium-97	10		

KRAIG HUMBAUGH, MD, MPH, Senior Deputy Commissioner
 VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: April 29, 2016

FILED WITH LRC: May 10, 2016 at 3 p.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, July 14, 2016)

902 KAR 100:085. Exempt concentrations.

RELATES TO: KRS 211.842-211.852, 211.990(4), 10 C.F.R. 30.70

STATUTORY AUTHORITY: KRS[13B.170,] 194A.050(1), 211.090(3), 211.180(1), 211.844(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844(1) requires the Cabinet for Health and Family Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation[,] and to regulate the handling and disposal of radioactive waste. This administrative regulation establishes/adopts[establishes] a list of concentrations for specific radionuclides that[which] are exempted from the requirements of 902 KAR Chapter 100.

Section 1. Applicability. This administrative regulation exempts certain concentrations of radionuclides from the requirements of the cabinet's radiation administrative regulations.

Section 2. Concentrations.[Table. (1) In the following table values in Column I are for materials normally used as gases. Values in Column II are equivalent values for microcuries per gram if applicable to solids.

(2) Except as provided in other applicable provisions of 902 KAR Chapter 100, a person shall be/is] exempt from the requirements established in 902 KAR Chapter 100 if the person receives, possesses, uses, transfers, owns, or acquires products or materials containing radioactive material in concentrations not in excess of those listed in 10 C.F.R. 30.70 Schedule A.[the following table:

EXEMPT CONCENTRATIONS			
Element (atomic Number)	Isotopes	Column I Gas concentration uCi/ml	Column II Liquid and Solid concentration uCi/ml
Antimony (51)	Sb-122 Sb-124 Sb-125	-	3x10 ⁻⁴ 2x10 ⁻⁴ 1x10 ⁻³
Argon (18)	Ar-37 Ar-41	4x10 ⁻³ 4x10 ⁻⁷	-
Arsenic (33)	As-73 As-74 As-76 As-77	-	5x10 ⁻³ 5x10 ⁻⁴ 2x10 ⁻⁴ 8x10 ⁻⁴
Barium (56)	Ba-131 Ba-140	-	2x10 ⁻³ 3x10 ⁻⁴
Beryllium (4)	Be-7	-	2x10 ⁻²
Bismuth (83)	Bi-206	-	4x10 ⁻⁴
Bromine (35)	Br-82	4x10 ⁻⁷	3x10 ⁻³
Cadmium (48)	Cd-109 Cd-115m Cd-115	-	2x10 ⁻³ 3x10 ⁻⁴ 3x10 ⁻⁴
Calcium (20)	Ca-45 Ca-47	-	9x10 ⁻⁶ 5x10 ⁻⁴
Carbon (6)	C-14	4x10 ⁻⁶	8x10 ⁻³
Ceivium (58)	Ce-141 Ce-143 Ce-144	-	9x10 ⁻⁴ 4x10 ⁻⁴ 1x10 ⁻⁴
Cesium (55)	Cs-131 Cs-134m Cs-134	-	2x10 ⁻² 6x10 ⁻² 9x10 ⁻⁶
Chlorine (17)	Cl-38	9x10 ⁻⁷	4x10 ⁻³
Chromium (24)	Cr-51	-	2x10 ⁻²
Cobalt (27)	Co-57 Co-58 Co-60	-	5x10 ⁻³ 1x10 ⁻³ 5x10 ⁻⁴
Copper (29)	Cu-64	-	3x10 ⁻³
Dysprosium (66)	Dy-165 Dy-166	-	4x10 ⁻³ 4x10 ⁻⁴
Erbium (68)	Er-169 Er-171	-	9x10 ⁻⁴ 1x10 ⁻³
Europium (63)	Eu-152 (9.2 h) Eu-155	-	6x10 ⁻⁴ 2x10 ⁻³
Fluorine (9)	F-18	2x10 ⁻⁶	8x10 ⁻³
Gadolinium (64)	Gd-153 Gd-159	-	2x10 ⁻³ 8x10 ⁻⁴
Gallium (31)	Ga-72	-	4x10 ⁻⁴
Germanium (32)	Ge-71	-	2x10 ⁻²
Gold (79)	Au-196 Au-198 Au-199	-	2x10 ⁻³ 5x10 ⁻⁴ 2x10 ⁻²
Hafnium (72)	Hf-181	-	7x10 ⁻⁴
Hydrogen (1)	H-3	5x10 ⁻⁶	3x10 ⁻²
Indium (49)	In-113m In-114m	-	1x10 ⁻² 2x10 ⁻⁴
Iodine (53)	I-126 I-131 I-132 I-133 I-134	3x10 ⁻⁹ 3x10 ⁻⁹ 8x10 ⁻⁹ 1x10 ⁻⁹ 2x10 ⁻⁷	2x10 ⁻⁶ 2x10 ⁻⁶ 6x10 ⁻⁴ 7x10 ⁻⁵ 1x10 ⁻³
Iridium (77)	Ir-190 Ir-192 Ir-194	-	2x10 ⁻³ 4x10 ⁻³ 3x10 ⁻⁴
Iron (26)	Fe-55 Fe-59	-	8x10 ⁻³ 6x10 ⁻⁴

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Krypton (36)	Kr-85m Kr-85	1x10 ⁻⁶ 3x10 ⁻⁶	-
Lanthanum (57)	La-140	-	2x10 ⁻⁴
Lead (82)	Pb-203	-	4x10 ⁻³
Lutetium (71)	Lu-177	-	4x10 ⁻³
Manganese (25)	Mn-52 Mn-54 Mn-56	-	3x10 ⁻⁴ 1x10 ⁻³ 1x10 ⁻³
Mercury (80)	Hg-197m Hg-197 Hg-203	-	2x10 ⁻³ 3x10 ⁻³ 2x10 ⁻⁴
Molybdenum (42)	Mo-99	-	2x10 ⁻³
Neodymium (60)	Nd-147 Nd-149	-	6x10 ⁻⁴ 3x10 ⁻³
Nickel (28)	Ni-65	-	1x10 ⁻³
Niobium (Columbium) (41)	Nb-95 Nb-97	-	1x10 ⁻³ 9x10 ⁻³
Osmium (76)	Os-185 Os-191m Os-191 Os-193	-	7x10 ⁻⁴ 3x10 ⁻² 2x10 ⁻³ 6x10 ⁻⁴
Palladium (46)	Pd-103 Pd-109	-	3x10 ⁻³ 9x10 ⁻⁴
Phosphorus (15)	P-32	-	2x10 ⁻⁴
Platinum (78)	Pt-191 Pt-193m Pt-197m Pt-197	-	1x10 ⁻³ 1x10 ⁻² 1x10 ⁻² 1x10 ⁻³
Potassium (19)	K-42	-	3x10 ⁻³
Praseodymium (59)	Pr-142 Pr-143	-	3x10 ⁻⁴ 5x10 ⁻⁴
Promethium (61)	Pm-147 Pm-149	-	2x10 ⁻³ 4x10 ⁻⁴
Rhenium (75)	Re-183 Re-186 Re-188	-	6x10 ⁻³ 9x10 ⁻⁴ 6x10 ⁻⁴
Rhodium (45)	Rh-103m Rh-105	-	1x10 ⁻¹ 1x10 ⁻³
Rubidium (37)	Rb-86	-	7x10 ⁻⁴
Ruthenium (44)	Ru-97 Ru-103 Ru-105 Ru-106	-	4x10 ⁻³ 8x10 ⁻⁴ 1x10 ⁻³ 1x10 ⁻⁴
Samarium (62)	Sm-153	-	8x10 ⁻⁴
Scandium (21)	Sc-46 Sc-47 Sc-48	-	4x10 ⁻⁴ 9x10 ⁻⁴ 3x10 ⁻⁴
Selenium (34)	Se-75	-	3x10 ⁻³
Silicon (14)	Si-31	-	9x10 ⁻³
Silver (47)	Ag-105 Ag-110m Ag-111	-	1x10 ⁻³ 3x10 ⁻⁴ 4x10 ⁻⁴
Sodium (11)	Na-24	-	2x10 ⁻³
Strontium (38)	Sr-85 Sr-89 Sr-91 Sr-92	-	1x10 ⁻³ 1x10 ⁻⁴ 7x10 ⁻⁴ 7x10 ⁻⁴
Sulfur (16)	S-35	9x10 ⁻⁸	6x10 ⁻⁴
Tantalum (73)	Ta-182	-	4x10 ⁻⁴
Technetium (43)	Tc-96m Tc-96	-	1x10 ⁻¹ 1x10 ⁻³
Tellurium (52)	Te-125m Te-127m Te-127 Te-129m Te-131m Te-132	-	2x10 ⁻³ 6x10 ⁻⁴ 3x10 ⁻³ 3x10 ⁻⁴ 6x10 ⁻⁴ 3x10 ⁻⁴

Terbium (65)	Tb-160	-	4x10 ⁻⁴
Thallium (81)	Tl-200 Tl-201 Tl-202 Tl-204	-	4x10 ⁻³ 3x10 ⁻³ 1x10 ⁻³ 1x10 ⁻³
Thulium (69)	Tm-170 Tm-171	-	5x10 ⁻⁴ 5x10 ⁻³
Tin (50)	Sn-113 Sn-125	-	9x10 ⁻⁴ 2x10 ⁻⁴
Tungsten (Wolfram) (74)	W-181 W-187	-	4x10 ⁻³ 7x10 ⁻⁴
Vanadium (23)	V-48	-	3x10 ⁻⁴
Xenon (54)	Xe-131m Xe-133 Xe-135	4x10 ⁻⁶ 3x10 ⁻⁶ 1x10 ⁻⁶	-
Ytterbium (70)	Yb-175	-	1x10 ⁻³
Yttrium (39)	Y-90 Y-91m Y-91 Y-92 Y-93	-	2x10 ⁻⁴ 3x10 ⁻² 3x10 ⁻⁴ 6x10 ⁻⁴ 3x10 ⁻⁴
Zinc (30)	Zn-65 Zn-69m Zn-69	-	1x10 ⁻³ 7x10 ⁻⁴ 2x10 ⁻²
Zirconium (40)	Zr-95 Zr-97	-	6x10 ⁻⁴ 2x10 ⁻⁴
Beta or gamma emitting radioactive material not listed above with half-life less than 3 years	-	1x10 ⁻¹⁰	1x10 ⁻⁶

Section 3. The Combination of Radionuclides[2– Special Cases]. The following applies to the combination of nuclides:

(1) In expressing the concentrations in Section 2[4] of this administrative regulation, the activity stated is that of the parent nuclide and takes into account the daughters; and

(2) For purposes of 902 KAR 100:045, Section 3, if a combination of nuclides is involved, the limit for the combination shall be derived by determining, for each nuclide in the product, the ratio between the radioactivity concentration present in the product and the exempt radioactivity concentration established in Section 2[4] of this administrative regulation for the specific nuclide if not in combination. The sum of the ratios shall[may] not exceed one (1), or unity.

KRAIG HUMBAUGH, MD, MPH, Senior Deputy Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: May 4, 2016

FILED WITH LRC: May 10, 2016 at 3 p.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, July 14, 2016)

921 KAR 3:035. Certification process.

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5,
273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 42
U.S.C. 5122, 5179

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4
NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R.

271.4 requires the Cabinet for Health and Family Services to
administer a Supplemental Nutrition Assistance Program (SNAP)

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within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as specified in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) of this section, a household shall be certified for [at least]:

(a) Twelve (12) ~~[Six (6)]~~ months; or

(b) Twenty-four (24) ~~[Twelve (12)]~~ months if all members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and

2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for ~~a six (6) month or~~ twelve (12) or twenty-four (24) month certification as specified in subsection (2) of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household:

1. Shall complete an interim report using the FS-2, SNAP REVIEW, every six (6) months during the household's certification period unless all household members meet criteria specified in subparagraph 2 of this paragraph; or

2. In which all members are elderly or have a disability as defined in 921 KAR 3:010 and have no earned income, shall complete an interim report using the [Form] FS-2, [SNAP 6-Month Review,] during the 12th month of the household's certification period [if the household reports:

1. ~~A new household member who is non-elderly or non-disabled; or~~

2. ~~A gain of earned income].~~

(b) If a household fails to return a completed FS-2 or the required ~~[income]~~ verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;

(2) Notice of denial; or

(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise

eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures. (1) A household with a self-employed member shall have its case processed as established in this subsection.

(a) Income shall be annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or

2. Is received on a monthly basis which represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and

2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as established in this subsection.

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as established in this subsection.

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included if:

1. Assigning benefit levels;

2. Comparing monthly income with income eligibility standards; and

3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number, or ineligible alien status, shall be processed as established in this subsection.

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as described in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and

shelter expenses shall not be counted.

(e) The ineligible member shall not be included as specified in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as established in this subsection.

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as described in 7 C.F.R. 271.2, as established in this subsection.

(a) An eligible household shall include:

1.a. A narcotic addict; or

b. An alcoholic; and

2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's authorized representative.

(c) SNAP processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program shall be responsible for knowingly misrepresenting a household circumstance.

(7) The case processing procedures established in this subsection shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2.

(a) Application shall be made by a resident or through use of the group living arrangement's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or

2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as established in this subsection.

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or

2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as established in this subsection.

(a) An application may be filed at the:

1. Social Security Administration (SSA) Office; or

2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to

approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse which shall:

a. Include total monthly earned and unearned income; and

b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The SNAP gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as specified in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be prorated among each sponsored alien.

(c) A portion of income, as specified in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) **In accordance with 7 U.S.C. 2014(i)(2)(E), deeming requirements shall not apply to sponsored alien children under eighteen (18) years of age**~~Effective October 1, 2003, deeming requirements shall no longer apply to sponsored alien children under eighteen (18) years of age, in accordance with 7 U.S.C. 2014.~~

Section 6. Disaster Certification. The cabinet shall distribute emergency SNAP benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change which causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as specified in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

Section 8. Incorporation by Reference. (1) The "FS-2, SNAP[6-Month] REVIEW", **9/16[4/16][42/45]**, 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.

ADRIA JOHNSON, Commissioner
 VICKIE YATES BROWN GLISSON, Secretary
 APPROVED BY AGENCY: June 14, 2016
 FILED WITH LRC: June 15, 2016 at 11 a.m.
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, July 14, 2016)

**922 KAR 2:020. Child Care Assistance Program (CCAP)
 improper payments, claims, and penalties.**

RELATES TO: KRS[Chapter] 13B, 23A.010, 45.237-45.241, 194A.060, 45 C.F.R. 98.[45-C.F.R.] 205.50, 42 U.S.C. 601-619, 9857-9858g

STATUTORY AUTHORITY: KRS 45.237(4), 194A.050(1), 199.8994, 45 C.F.R. 98.60(i)

NECESSITY, FUNCTION, and CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.8994 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. 45 C.F.R. 98.60(i) and KRS 45.237(4) require the cabinet, as the lead agency for Kentucky, to recover child care payments that are the result of fraud or improper payment. This administrative regulation establishes procedures for improper payments, claims, and penalties used by the cabinet in the administration of the Child Care Assistance Program (CCAP).

Section 1. Definitions. (1) "Agency error" means an error on the part of the cabinet or its designee.

(2) "Cabinet" means the Cabinet for Health and Family Services or its designee.

(3) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of 922 KAR 2:160, with the financial resources to find and afford quality child care.

(4) "Child care provider" means the individual, business, or business proprietor who is receiving, or has received, payment for child care services under CCAP.

(5) "Claim" means an amount owed to the cabinet as a result of an overpayment of CCAP.

(6) "Claimant" means a current or former CCAP recipient or child care provider subject to a claim.

(7) "Compromise a claim" means accepting less than the full value of a claim.

(8) "Hearing officer" is defined by KRS 13B.010(7).

(9) "Improper payment" is defined by KRS 45.237(1) ~~(f)(e)~~ or 45 C.F.R. 98.100(d).

(10) "Inadvertent error claim" means an overpayment resulting from a misunderstanding or unintended error on the part of a recipient or a child care provider.

(11) "Intentional program violation" or "IPV" means a CCAP recipient or child care provider having intentionally:

- (a) Made a false or misleading statement; or
- (b) Misrepresented, concealed, or withheld facts.

(12) "Overpayment" means a CCAP payment which exceeded the amount a CCAP recipient or a child care provider was eligible to receive.

(13) "Recipient" means a family who has been found eligible for CCAP.

(14) "Terminate a claim" means ceasing all collection actions

on a claim.

(15) "Underpayment" means a payment which was less than the amount a recipient or a child care provider was eligible to receive.

Section 2. Responsibility for a Claim. (1) A parent of a recipient household or a child care provider shall be responsible for paying a claim which resulted from an:

(a) Overpayment due to an action or inaction on the part of the recipient or the child care provider, including failure to report a change in circumstance in accordance with 922 KAR 2:160, Section 11; or

(b) Agency error that provided the recipient or the child care provider with an overpayment.

(2) The cabinet shall make an exception to subsection 1(b) of this section if the recipient:

(a) Is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and

(b) Complied with the requirements of the recipient's:

- 1. Case plan developed in accordance with 922 KAR 1:430; or
- 2. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

Section 3. Claim Category. (1) A claim shall be classified in one (1) of the following three (3) categories:

- (a) A claim resulting from an IPV;
- (b) Inadvertent error claim; or
- (c) Agency error claim.

(2) The cabinet shall establish an IPV against a recipient or a child care provider if:

(a) A court of appropriate jurisdiction issues a conviction, or accepts an Alford or guilty plea, related to an IPV in CCAP against a parent of the recipient household or the child care provider;

(b) A parent of the recipient household or a child care provider completes, signs, and returns ~~the~~the:

- 1. DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing, 02/16; or
- 2. DCC-83, Deferred Adjudication Disqualification Consent Agreement, 02/16; or

~~1. a. Until February 29, 2016, the DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing, 11/09; or~~

~~b. Effective February 29, 2016, the DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing, 02/16; or~~

~~2. a. Until February 29, 2016, the DCC-83, Deferred Adjudication Disqualification Consent Agreement, 11/09; or~~

~~b. Effective February 29, 2016, the DCC-83, Deferred Adjudication Disqualification Consent Agreement, 02/16; or]~~

(c) A hearing officer or an agency head makes a determination finding an IPV as a result of an administrative disqualification hearing.

Section 4. Action on an Improper Payment. (1) The cabinet shall investigate each:

- (a) Instance of an improper payment; or
- (b) Allegation of an IPV related to a:
 - 1. Recipient; or
 - 2. Child care provider.

(2) The cabinet shall initiate action to correct an improper payment in a CCAP case.

(3) If an overpayment has occurred, the cabinet shall:

- (a) Determine the amount of overpayment in accordance with Section 5 of this administrative regulation; and
- (b) Categorize and establish a claim to recover the amount of the overpayment.

(4) If the cabinet has sufficient documentary evidence to confirm that a recipient or child care provider has committed an IPV, the cabinet shall:

- (a)1. Refer the case to the cabinet's Office of Inspector General (OIG) for investigation or referral for prosecution if warranted by the facts of the case;
- 2. Initiate an administrative disqualification hearing in

accordance with Section 9 of this administrative regulation; or

3. Accept a parent of a recipient household or a child care provider's waiver of an administrative disqualification hearing through the parent or child care provider's completing, signing, and returning a DCC-84 Supplement A as specified in Section 3(2)(b) of this administrative regulation; and

(b) Take an action necessary to establish a claim to collect any overpayment resulting from the suspected IPV.

Section 5. Calculating a Claim. (1) The cabinet shall calculate the amount of an overpayment for an:

(a) Agency error back to the month that the error first occurred, but not more than twelve (12) months prior to the date that the cabinet became aware of the overpayment;

(b) Inadvertent error back to the month that the misunderstanding or error first occurred, but not more than three (3) years prior to date that the cabinet became aware of the overpayment; and

(c) IPV back to the month of the fraudulent act first occurred, but not more than five (5) years prior to the date that the cabinet became aware of the overpayment.

(2) If an overpayment occurred as a result of a change during the period of CCAP eligibility, the first day of the claim shall begin thirty-one (31) days from the date of the change.

(3) If the overpayment occurred due to the failure of a parent of a recipient household to report information at application or recertification~~[re-determination]~~ for eligibility in accordance with 922 KAR 2:160, Section 2 or 8, the claim shall start the first day of the approval of the application or recertification~~[redetermination]~~.

(4)(a) The cabinet shall:

1. Calculate the amount of CCAP for each month that a recipient or a child care provider received the improper payment; and

2. Subtract the correct amount of CCAP from the CCAP actually received.

(b) The difference shall be the amount of the overpayment.

(5) If the overpayment exists for the entire period of CCAP eligibility, the cabinet shall calculate the full amount of benefits overpaid:

(a) On behalf of the recipient; or

(b) To the child care provider.

(6) If an overpayment and an underpayment exist for a recipient or a child care provider, the amounts of the overpayment and the underpayment shall be offset to determine the total amount of the claim.

(7) The amount of a claim may differ from a calculation obtained through the methods outlined in this section if a different claim amount is ordered by:

(a) An administrative hearing officer or agency head in accordance with:

1. Until April 1, ~~2017~~**2016**, 922 KAR 1:320; or

2. Effective April 1, ~~2017~~**2016**, 922 KAR 2:260; or

(b) A court of appropriate jurisdiction.

Section 6. General Claim Notices. (1) A KCD-2, General Claims Notice, 02/16~~[Until February 29, 2016, a KCD-2, General Claims Notice, 11/09]~~, shall serve many purposes in the administration of CCAP claims collections, including the use as:

(a) An appointment letter;

(b) A demand letter;

(c) A notification of benefit reduction;

(d) A past due notice;

(e) A repayment agreement;

(f) A claim adjustment notice;

(g) A claim termination notice;

(h) A payment receipt;

(i) Notice of a claim being paid in full; or

(j) Notice of a delinquent claim's referral for collection in accordance with Section 11(2) of this administrative regulation.

(2) [Effective February 29, 2016, a KCD-2, General Claims Notice, 02/16, shall serve the purposes specified in subsection (1)(a) through (1)(j) of this section.

(3) The language on the KCD-2 shall differ according to the

purpose of the notice as described in subsection (1)~~[or (2)]~~ of this section.

Section 7. Notification of a Claim. (1) The cabinet shall:

(a) Provide initial notice in accordance with Section 6 of this administrative regulation to a recipient or a child care provider suspected of having a claim;

(b) Provide notice of a suspected IPV, if applicable, with a:

1. ~~[Until February 29, 2016,~~

~~a. DCC-84, Notice of Suspected Intentional Program Violation, 11/09; and~~

~~b.]2-][DCC-84 Supplement A, 11/09; or][and]~~

~~[2. Effective February 29, 2016;~~

~~a.] DCC-84, Notice of Suspected Intentional Program Violation, 02/16;] and~~

~~2.]b.] DCC-84 Supplement A, 02/16; and]~~

(c) Offer the recipient or the child care provider an opportunity to meet with the cabinet to:

1. Discuss the potential claim;

2. Determine the category of the claim as specified in Section 3 of this administrative regulation; and

3. Sign the DCC-84 Supplement A, if an IPV is suspected.

(2) If a recipient or a child care provider requests to reschedule the meeting within ten (10) days of the date of the notice provided in accordance with subsection (1) of this section, the cabinet shall reschedule the meeting.

(3) The cabinet shall determine the claim's category in accordance with Section 3 of this administrative regulation and the amount of the claim based on the information available to the cabinet if the recipient or the child care provider:

(a) Fails to attend the meeting to discuss the claim; and

(b) Does not contact the cabinet to reschedule the meeting in accordance with subsection (2) of this section.

(4) If the cabinet determines the category and amount of a claim in accordance with subsections (1) through (3) of this section:

(a) Collection shall be initiated in accordance with Section 10 of this administrative regulation; and

(b) Subsequent notice pursuant to Section 6 of this administrative regulation shall be mailed to the recipient or the child care provider to give the claim:

1. Amount;

2. Time period;

3. Reason; and

4. Classification in accordance with Section 3 of this administrative regulation.

(5) A recipient or a child care provider shall return the notice made pursuant to subsection (4)(b) of this section within ten (10) days of receipt if the recipient or child care provider chooses to request an administrative hearing on the establishment of the claim in accordance with~~[Section 18 of]~~ this administrative regulation.

Section 8. Disqualification Period. (1) A recipient or a child care provider determined to have committed an IPV in accordance with Section 3(2) of this administrative regulation shall have a period of disqualification from CCAP pursuant to subsection (2) of this section.

(2)(a) A disqualification period from CCAP shall adhere to the following guidelines:

1. Twelve (12) months disqualification for a first occurrence of IPV;

2.]a. Until February 29, 2016, three (3) months disqualification for a first occurrence of IPV; or

b. Effective February 29, 2016, twelve (12) months disqualification for a first occurrence of IPV;

2. a. Until February 29, 2016, six (6) months disqualification for a second occurrence of IPV;

b. Effective February 29, 2016,] twenty-four (24) months disqualification for a second occurrence of IPV; and]

3. Permanent disqualification for a third occurrence of IPV.

(b) The cabinet shall make an exception to paragraph (a) of this subsection if:

1. The recipient is approved for CCAP in accordance with 922

KAR 2:160, Section 5 or 6; and

2. CCAP is necessary for the recipient to comply with the requirements of the recipient's:

- a. Case plan developed in accordance with 922 KAR 1:430; or
- b. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

(3) If a court of appropriate jurisdiction issues a disqualification period upon conviction of a charge, or acceptance of an Alford or guilty plea, related to the IPV, the cabinet:

- (a) May make exception to a disqualification period specified in subsection (2) of this section; and
- (b) Shall enforce the court-ordered disqualification period.

(4) Unless subsection (2)(b)(2)(b) of this section applies, the disqualification period shall continue uninterrupted until it is completed regardless of the eligibility of the recipient or the child care provider.

(5) Regardless of the disqualification period, the recipient or the child care provider shall continue to be responsible for the payment of a claim resulting from the IPV.

(6) Eligibility of a recipient or payment to a child care provider shall not be affected by a suspected IPV until a disqualification is established in accordance with subsection (1) of this section.

(7) If a court of appropriate jurisdiction fails to impose a disqualification period for an IPV, the cabinet shall impose a penalty in accordance with this section.

(8) The cabinet shall not separate the same act of IPV repeated over a period of time for the imposition of multiple, separate penalties.

Section 9. Administrative Disqualification Hearing. (1) The cabinet shall initiate an administrative disqualification hearing on the establishment of an IPV if the:

- (a) Facts of the IPV do not warrant civil or criminal prosecution through a court of appropriate jurisdiction;
- (b) Referral for prosecution is declined by prosecutorial authorities;
- (c) Referral for prosecution is withdrawn by the cabinet; or
- (d) Recipient or child care provider declines to sign the DCC-84 Supplement A.

(2) If the facts of the case arise out of the same or related circumstances, the cabinet shall not initiate an administrative disqualification hearing against a recipient or a child care provider:

- (a) Whose case is currently referred for prosecution; or
- (b) Subsequent to an action taken against the recipient or the child care provider by the prosecutor or a court of appropriate jurisdiction.

(3) Unless a different procedure is specified in this section, an administrative disqualification hearing shall:

(a) Be conducted in accordance with ~~922 KAR 1:320 and~~ KRS Chapter 13B ~~and~~:

1. Until April 1, ~~2017~~**2016**, 922 KAR 1:320; or
2. Effective April 1, ~~2017~~**2016**, 922 KAR 2:160; and

- (b) Include:
 1. The issuance of a recommended order;
 2. Procedures for written exceptions; and
 3. The issuance of a final order.

(4) The cabinet may initiate an administrative disqualification hearing regardless of the current eligibility of a recipient or the payment status of a child care provider.

(5)(a) In accordance with KRS 13B.050, an administrative disqualification hearing notice shall be sent by:

1. ~~[By]~~ Certified mail, return receipt requested, to the individual; or
2. 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~~
3. ~~With a return recipient requested].~~

(b) An administrative disqualification hearing notice shall provide information in accordance with KRS 13B.050.

(6) Timeframes for an administrative disqualification hearing shall be in accordance with KRS 13B.110 and 13B.120.

(7)(a) The cabinet shall combine a request for an administrative hearing in accordance with Section 16 of this

administrative regulation and an administrative disqualification hearing into a single hearing if the:

1. Factual issues arise out of the same or related circumstances; and

2. Recipient or the child care provider receives prior notice that the hearings are being combined.

(b) If the hearings are combined for the purpose of settling the amount of the claim concurrent with a determination of whether an IPV occurred, the recipient or the child care provider subject to the claim shall lose the right to a subsequent administrative hearing on the amount of the claim.

(8) During an administrative disqualification hearing, the hearing officer shall advise the recipient or child care provider accused of an IPV of the option to refuse to answer questions during the hearing.

~~(9)(a)[In accordance with KRS 13B.080(6),]~~ If a recipient or child care provider does not appear for the administrative disqualification hearing, the hearing officer shall ~~review the case file to determine if the hearing shall:~~

~~4.] proceed in accordance with KRS 13B.080(6)[without recipient or child care provider representation because the return receipt from the hearing notice verified the notice was received by the recipient or the child care provider; or~~

~~2. Not be conducted because the hearing notice or return receipt is annotated as unclaimed or undeliverable].~~

(b) The cabinet shall conduct a new administrative disqualification hearing if the:

1. Recipient or the child care provider was not represented at the hearing;
2. Recipient or the child care provider was determined to have committed an IPV; and
3. Hearing officer determined the household had good cause for not appearing, in accordance with:

- a. Until April 1, ~~2017~~**2016**, 922 KAR 1:320, Section 6(7); or
- b. Effective April 1, ~~2017~~**2016**, 922 KAR 2:260, Section 5(7); ~~for not appearing].~~

(10)(a) The determination of an IPV made through an administrative disqualification hearing shall not be reversed by a subsequent administrative hearing decision.

(b) A recipient or child care provider shall be entitled to seek relief through a court of appropriate jurisdiction in accordance with:

1. KRS 13B.140 to 13B.160; or
2. KRS 23A.010.

Section 10. Collection of a Claim. (1) The cabinet shall collect a claim from a claimant through:

- (a) Voluntary payment arrangement, negotiated either orally or in writing, which includes a payment schedule;
- (b) Court-ordered repayment;
- (c) State tax refund interception in accordance with KRS 45.238;
- (d) Lottery offsets;
- (e) Wage garnishment; or
- (f) Referral to a collection agency.

(2)(a) The cabinet shall accept a lump sum payment on a claim from a recipient or a child care provider.

(b) The lump sum payment may be a full or partial payment.

(3)(a) If a claimant who is a child care provider submits a completed DCC-97 Supplement A, Voluntary Payment Reduction, indicating the amount the provider wishes to have applied to the claim, the child care provider currently receiving CCAP payment may choose to have an amount withheld from the provider's CCAP payment to be applied towards a claim.

(b) The amount indicated on the DCC-97 shall not be less than ten (10) percent of the total CCAP payment.

(4) The cabinet shall refund to a claimant any amount the claimant pays in excess of the amount of the claim.

Section 11. Delinquent Claims. (1) In accordance with KRS 45.237(4), a claim shall be considered delinquent if:

(a) A claimant has not made a payment or entered into a satisfactory payment arrangement with cabinet sixty (60) calendar days from the date on the notice provided in accordance with

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Section 7(4)(b) of this administrative regulation; or

(b) Sixty (60) days have lapsed since the claimant has missed a scheduled payment pursuant to the payment arrangement with the cabinet.

(2) The cabinet shall pursue collection on a delinquent claim through a collection method specified in Section 10(1)(b) through (f) of this administrative regulation.

(3)(a) If the cabinet determines that a claimant who is a recipient is delinquent on a payment in accordance with subsection (1) of this section for ninety (90) days, the cabinet shall:

1. Terminate the recipient's CCAP; and
2. Not reapprove the recipient for CCAP until the recipient has paid ~~all [two (2) months of]~~ delinquent payments.

(b) The cabinet shall make an exception to paragraph (a) of this subsection if:

1. The recipient is approved for CCAP in accordance with 922 KAR 2:160, Section 5 or 6; and
2. CCAP is necessary for the recipient to comply with the requirements of the recipient's:
 - a. Case plan developed in accordance with 922 KAR 1:430; or
 - b. Kentucky Works Program self-sufficiency plan developed in accordance with 921 KAR 2:370.

(4) If the cabinet determines that a claimant who is a child care provider is delinquent on a payment in accordance with subsection (1) of this section for ninety (90) days, the cabinet shall:

(a) Disallow any CCAP payments to the child care provider; and

(b) Not approve the child care provider for further CCAP payments until the provider has paid ~~all [two (2) months of]~~ delinquent payments.

(5) The cabinet shall provide notice in accordance with Section 6 of this administrative regulation prior to an action specified in subsection (3) or (4) of this section.

(6) If the cabinet is unable to determine a claim's delinquency status because the claim collection is coordinated through the court system, the cabinet shall not subject a claim to the requirements for delinquent debts in accordance with this section.

(7) A claim shall not be considered delinquent if:

(a) Another claim for the same claimant is currently being paid through a repayment agreement or court order; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(8)(a) A claim awaiting an administrative hearing shall not be considered delinquent.

(b) If a hearing officer or agency head determines that a claim does exist as result of an administrative hearing, the cabinet shall:

1. Send subsequent notice of the claim in accordance with Section 6 of this administrative regulation; and
2. Base delinquency on the due date of the subsequent notice.

(c) If a hearing officer or agency head determines that a claim does not exist as a result of an administrative hearing, the cabinet shall terminate the claim in accordance with Section 12(2) of this administrative regulation.

Section 12. Compromising or Terminating a Claim. (1) Except for a claim that is established by a court of appropriate jurisdiction, the cabinet may compromise a claim or a portion of a claim if:

(a) A request for a compromise is received from the claimant; and

(b) The cabinet makes a determination that the claimant will be unable to pay the claim within five (5) years.

(2) The cabinet shall terminate a claim if the:

(a) Claim:

1. Is invalid, unless pursuing the overpayment as a different type of claim is appropriate;

2. Balance is twenty-five (25) dollars or less, and the claim has been delinquent for ninety (90) days or more, unless another claim is pending against the same claimant resulting in an aggregate claim total of greater than twenty-five (25) dollars; or

3. Has been delinquent for at least three (3) years;

(b) Claimant dies; or

(c) Cabinet is unable to locate the claimant.

(3) The cabinet shall provide notice in accordance with Section

6 of this administrative regulation if the cabinet:

(a) Compromises or terminates a claim; and

(b) Has a mailing address for the claimant.

Section 13. Underpayments and CCAP Restoration. (1) If an underpayment has occurred, the cabinet shall issue a payment to the child care provider that includes the difference between the amount that the child care provider:

(a) Was entitled to receive; and

(b) Actually received.

(2) CCAP shall be restored for no more than twelve (12) months to a recipient or a child care provider if benefits were lost:

(a) Due to an agency error; or

(b) By a disqualification period for an IPV that is subsequently reversed through an order of a court of appropriate jurisdiction.

Section 14. Disclosure of Information. The disclosure or the use of CCAP information shall be restricted in accordance with:

(1) KRS 194A.060; and

(2) 45 C.F.R. 205.50(a)(1)(i).

Section 15. Retention of Records. (1) Records for CCAP shall be retained in accordance with 45 C.F.R. 98.90(e).

(2) The cabinet shall retain:

(a) The official records of an administrative disqualification hearing until all appeals have been exhausted; and

(b) A CCAP record with an IPV disqualification indefinitely.

Section 16. A parent in the recipient household or a child care provider may request an appeal of the establishment of a claim in accordance with:

(1) Until April 1, 2017[2016], 922 KAR 1:320, Section 2(10); or

(2) Effective April 1, 2017[2016], 922 KAR 2:260, Section 2(4).

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

~~(a) ["DCC-83, Deferred Adjudication Disqualification Consent Agreement", [edition] 11/09;~~

~~(b) "DCC-83, Deferred Adjudication Disqualification Consent Agreement", 02/16;~~

~~(c) ["DCC-84, Notice of Suspected Intentional Program Violation", [edition] 11/09;~~

~~(d) "DCC-84, Notice of Suspected Intentional Program Violation", 02/16;~~

~~(e) ["DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing", edition 11/09;~~

~~(f) "DCC-84 Supplement A, Voluntary Waiver of Administrative Disqualification Hearing", 02/16;~~

~~(g) ["DCC-97 Supplement A, Voluntary Payment Reductions", [edition] 11/09; and]~~

~~(h) ["KCD-2, General Claims Notice", [edition] 11/09; and~~

~~(i) "KCD-2, General Claims Notice", 02/16.~~

(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 am through 4:30 p.m.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 14, 2016

FILED WITH LRC: June 15, 2016 at 11 a.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, July 14, 2016)

922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS 194A.060, 199.892, 199.894(1),(5), 199.896, 199.898(1), (2), 199.8982, 199.899, 199.8994, 214.036, 314.011(5), 337.275, 600.020(50)(49), 605.120(5), 620.020(10), 2014 Ky. Acts ch. 117, Part 1, G.9(3), **2016 Ky. Acts ch. 149, Part 1, G.9(7)**, 7 C.F.R. 1463, [2012,] 20 C.F.R. 652, 660-671, 45 C.F.R. 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141[14451], 1771-1793[-1775], 2000d, 3001, 4950-5085[5084], 8621, 9902(2), 9857-9858q[9858-9858g], 10602(c)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 9857-9858q[601-619], and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that affects eligibility or benefit amounts, **such as and includes**:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence;
- (k) Change in marital status; or
- (l) Beginning or ending receipt of unearned income.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child care and development fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or

temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home" is defined by KRS 199.894(5).

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) Physician's assistant;
- (c) Advanced practice registered nurse;
- (d) Qualified mental health professional as defined by KRS 600.020(50); or
- (e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(15) "Homeless" means an individual or a family lacking a fixed, regular, and adequate residence due to economic hardship.

(16) "In loco parentis" means a person acting in place of a parent, including:

- (a) A legal guardian;
- (b) An individual related by blood, marriage, or adoption to the child; or
- (c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(17)[(46)] "Infant" means a child who is less than one (1) year old.

(18)[(47)] "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(19)[(48)] "Parent" is defined by 45 C.F.R. 98.2.

(20)[(49)] "Part day" means child care that is provided for less than five (5) hours per day.

(21)[(29)] "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(22)[(24)] "Preventive services" is defined by KRS 620.020(10).

(23)[(22)] "Provider" means the entity providing child care services, **such as [including]**:

- (a) A member of a limited liability corporation (LLC);
- (b) The head of an organization;
- (c) An owner of a corporation;
- (d) A member of a partnership;
- (e) An owner of a business;
- (f) An individual provider; or
- (g) A stockholder of a stock-holding company.

(24)[(23)] "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(25)[(24)] "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(26)[(25)] "Related" means having one (1) of the following relationships:

- (a) Child;
- (b) Stepchild;
- (c) Grandchild;
- (d) Great-grandchild;
- (e) Niece;
- (f) Nephew;
- (g) Sibling;
- (h) Child in legal custody; or
- (i) Child living in loco parentis.

(27)[(26)] "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(28)[(27)] "School-age child" means a child who has reached the sixth birthday.

(29) "State median income" or "SMI" means the estimated median income of households in the state.

(30)[(28)] "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

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- (a) Defined by 7 U.S.C. 2012; and
- (b) Governed by 921 KAR Chapter 3.

~~(31)(29)~~ "Teenage parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED ~~parent who is nineteen (19) years of age or younger~~.

~~(32)(30)~~ "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

a. Until April 1, ~~2017~~2016, [4.] a signed DCC-90, Application for Subsidized Child Care Assistance, ~~11/09~~, or DCC-90.1, Intent to Apply for Child Care Assistance, ~~11/09~~, [is received at the cabinet or its designee office]; or

b. Effective April 1, ~~2017~~2016, a signed DCC-90, Subsidized Child Care Assistance Application Summary, ~~04/17~~04/16, or submission in accordance with 921 KAR 2:040, Section 1(6); or

2. The agency is contacted, if the person:

- a. Has a physical or mental disability; and
- b. Needs special accommodation due to the impairment.

(b) ~~An~~[If the applicant is physically unable to come to the office to apply, the] applicant may designate an authorized representative to make application.

(c) ~~An~~[The] applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:

- 1. Deaf; or
- 2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, and 7 of this administrative regulation.

(a) ~~An~~[The] applicant or recipient shall be the primary source of information and shall:

- 1. Furnish verification of:
 - a. Income;
 - b. Technical eligibility; and
 - c. Employment; and
- 2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall be approved for CCAP with an extended period to verify information not to exceed ninety (90) days in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) ~~Send a DCC-105, Child Care Assistance Program Notice of Action, to the applicant in accordance with Section 11(5) of this administrative regulation~~ To provide written notification of the decision within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send:

1. A DCC-105, Child Care Assistance Program Notice of Action, 11/09, to the applicant in accordance with Section 11(5)(a) of this administrative regulation; or

2. Effective April 1, ~~2017~~2016, notice to the applicant in accordance with Section 11(5)(b) of this administrative regulation.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

- (a) Assistance until approval of the application for benefits; or
- (b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

- 1. Resident of Kentucky; and
- 2. U.S. citizen or qualified alien;

(b) Is under age:

- 1. Thirteen (13); or
- 2. Nineteen (19) and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

- a. Licensed child-care center;
- b. Certified child-care home;
- c. Public school;
- d. Head Start; or
- e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or SNAP case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

~~(f) Effective August 15, 2015, a licensed child care center or certified family child care home that does not participate in the quality rating program governed by 922 KAR 2:170 or 922 KAR 2:210, unless an exception is granted pursuant to Section 12(8) of this administrative regulation;~~

~~(g)~~ A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care; or

~~(g)~~ ~~(h)~~ Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

(5) A child in foster care shall not be eligible for CCAP.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

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(2) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(3) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

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(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) ~~Until April 1, 2016, a recipient~~[An applicant][who:

~~1. Loses employment or training through no fault of the recipient~~[their own][up to four (4) weeks;

~~2. Is on maternity leave for up to six (6) weeks; or~~

~~3. Is on medical leave from employment due to a health condition verified by a health professional for up to six (6) weeks;~~

(e) ~~Effective April 1, 2016,]~~ A recipient who is less than ninety (90) days from:

~~1. The loss of employment, required number of employment hours, or training through no fault of the recipient and is actively searching for employment in accordance 42 U.S.C. 9858(c)(2)(N)(iii);~~

~~2. The start of maternity leave; or~~

~~3. The start of medical leave from employment due to a health condition verified by a health professional;~~

(e)(f) A relative caregiver pursuant to the conditions of a program established by KRS 605.120(5), who meets:

1. All requirements in this section; and

2. Income eligibility standards in Section 7; or

(f)(a) A teen parent attending high school or pursuing a general equivalency degree (GED).

(2) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 7(7)(d) of this administrative regulation by minimum wage established in accordance with KRS 337.275.

(3) ~~Until April 1, 2017~~[2016], an applicant eligible in accordance with this section shall sign and return the DCC-91, Client Rights and Responsibilities Sheet, and the DCC-94, Child Care Service Agreement and Certificate, 11/09.

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

~~(3)[A child who participates in the CCAP as a result of a child protective or preventive services authorization shall not be eligible for more than six (6) months without further authorization.~~

(4)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 10 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

(5) ~~Until April 1, 2017~~[2016], an applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 6. Kentucky Works Child Care Eligibility Determination.

(1) A child shall be eligible for CCAP if the child:

(a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370; and

(b) Meets the requirements listed in Section 3 of the administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self-sufficiency plan.

(3) ~~Until April 1, 2017~~[2016], an applicant eligible in accordance with this section shall sign and return the DCC-91.

Section 7. Income Eligibility. (1)[(a)] A child shall be eligible for the CCAP if the family's income is less than or equal to:

~~(a) 160 percent of the federal poverty level as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2018 at initial application; or~~

~~(b) 165 percent of the federal poverty level as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2018 at recertification or recalculation.~~

<u>Family Household Size</u>	<u>Initial Application Annual Income Limit</u>	<u>Initial Application Monthly Income Limit</u>	<u>Recertification or Recalculation Annual Income Limit</u>	<u>Recertification or Recalculation Monthly Income Limit</u>
2	\$22,068.00	\$1,839.00	\$24,276.00	\$2,023.00
3	\$27,804.00	\$2,317.00	\$30,588.00	\$2,549.00
4	\$33,528.00	\$2,794.00	\$36,888.00	\$3,074.00
5	\$39,264.00	\$3,272.00	\$43,188.00	\$3,599.00
6	\$44,988.00	\$3,749.00	\$49,500.00	\$4,125.00
7	\$50,724.00	\$4,227.00	\$55,800.00	\$4,650.00
8	\$56,448.00	\$4,704.00	\$62,100.00	\$5,175.00

~~(b) For a family with more than eight (8) people, the cabinet or its designee shall determine the household's maximum income for eligibility determination purposes by adding:~~

~~1. \$478.00 to the monthly income limit, or \$5,736.00 to the annual income limit, for each additional family member for initial application; and~~

~~2. \$525.00 to the monthly income limit, or \$6,300.00 to the annual income limit, for each additional family member for recertification or recalculation.~~[140 percent of the 2011 federal

poverty level at:

1. Initial application; or

2. Redetermination or eligibility recalculation in accordance with Section 8 of this administrative regulation.

(b) On or after July 1, 2015, a child shall be eligible for the CCAP if the family's income is less than or equal to:

1. 150 percent of the 2011 federal poverty level at initial application; or

2. 165 percent of the 2011 federal poverty level at redetermination or eligibility recalculation in accordance with

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Section 8 of this administrative regulation.

(2) A family that becomes ineligible for K-TAP shall remain eligible for CCAP for twelve (12) months from the date of the K-TAP discontinuance, if the family's income remains less than or equal to:

(a) 140 percent of the 2011 federal poverty level; or

(b) 165 percent of the 2011 federal poverty level on or after July 1, 2015[.].

(2)[(3)] Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(3)[(4)] A child that is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(4)[(5)] Excluded income shall be:

(a) K-TAP child only payments, including back payment;

(b) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(e) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP;

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(p) Funds distributed per capita or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to ~~5085~~[5084] if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

(v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w) The advance payment or refund of earned income tax credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141[Section 1860D-31(g)(6) of the Social Security Act, 42 U.S.C. 601-649];

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);[or]

(jj) Income or earnings from a program funded under the Work Investment Act (WIA) pursuant to 20 C.F.R. 652 and 660 to 671; or ~~(kk)~~[Effective April 1, 2016] Supplemental Security Income (SSI) for a child.

(5)[(6)] Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(6)[(7)] Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings[at any step in the calculation];

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by[=-a-] adding gross income from each pay period[;-b-] dividing by the total number of pay periods considered[;-] and[;-c-] converting the pay period figure to a monthly figure by multiplying a:

a. [(#)] Weekly amount by:

(i) 4.334; or

(ii) Effective April 1, 2017[2016], four and one-third (4 1/3);

b. Biweekly amount by:

(i) 2.167; or

(ii) Effective April 1, 2017[2016], two and one-sixth (2 1/6); or

c. [(##)] Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received a calendar month[two (2) calendar months] of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:
 (i) Hourly rate by the estimated number of hours to be worked in a pay period; or
 (ii) Daily rate by the estimated number of days to be worked in the pay period;~~and~~

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and

c. Rounding to the nearest dollar.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1.~~[Not rounding cents at any step in the calculation;~~

2.~~]~~ Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

2.~~[3.]~~ Averaging the amount of ~~unstable~~~~[nonstable]~~ unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1.~~[Cents shall not be rounded at any step in the calculation;~~

2.~~]~~ If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2.~~[3.]~~ If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3.~~[4.]~~ Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and

d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.

~~(e) If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated~~~~[Dividing the allowable expenses permitted by the Internal Revenue Service except for depreciation by:~~

~~(i) Twelve (12) if the enterprise has been in operation for at least a year; or~~

~~(ii) The number of months the business has been operating if the business has been in existence for less than a year; and~~

~~b. Subtracting the monthly expense from the monthly income].~~

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be ~~recertified~~~~[redetermined]~~ at least every~~[-(a)]~~ twelve (12) months~~[-or~~

~~(b) Six (6) months for a child eligible pursuant to requirements in Section 5 of this administrative regulation].~~

(2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(3) A nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

~~(4)[Effective April 1, 2016,] In accordance with 42 U.S.C. 9858c(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.~~

Section 9. Payment Rates and Policy. (1)~~(a)[Prior to February 1, 2016, to the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rates Chart, 10/14.~~

~~(b) Effective on or after February 1, 2016,] To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rates Chart, 02/16.~~

~~(b)(c)](a)] The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.~~

~~(c)(d)](b)] The maximum payment rates shall include the following categories:~~

1. Full day;
2. Part day;
3. Licensed;
4. Certified;
5. Registered;
6. Infant/Toddler;
7. Preschool child; and
8. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care;
4. Council on Accreditation; or
5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or
2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19), and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or

2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

- (a) Three (3) children receiving CCAP per day; or
- (b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and
2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 10. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(4) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table

:

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Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0
900	999	\$2	\$2	\$3	\$2	\$2	\$2	\$2
1,000	1,099	\$3	\$3	\$3	\$2	\$3	\$2	\$3
1,100	1,199	\$4	\$4	\$4	\$3	\$3	\$2	\$3
1,200	1,299	\$4	\$4	\$5	\$4	\$4	\$3	\$3
1,300	1,399	\$5	\$5	\$5	\$5	\$5	\$3	\$4
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$7
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$8
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$9
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$9
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$10
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$10
2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$10
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$11
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$11
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$13
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$14
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$15
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$17
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$19
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

~~[(4)(a) If a provider notifies the cabinet or its designee that a family has failed to comply with a required copayment for two (2) weeks, the cabinet or its designee shall request that the provider develop a payment plan with the family.~~

~~(b) If a provider notifies the cabinet or its designee that a family fails to enter into a payment plan within ten (10) days from a provider's notification that a payment plan is necessary, or a family fails to make two (2) payments in accordance with the payment plan, the cabinet shall:~~

- ~~1. Not pay a subsequent provider until the family demonstrates compliance with the payment plan; and~~
- ~~2. Terminate CCAP for the family.~~

~~(c) The cabinet or its designee may grant an exception to paragraph (b) of this subsection due to:~~

- ~~1. A disaster verified by utility provider, local, state, or federal government;~~
 - ~~2. The closure of a provider;~~
 - ~~3. Family circumstances, such as relocation, illness, or death;~~
- or
- ~~4. A risk to the health, welfare, or safety of the child or parent.]~~

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

- (a) Be offered choice of child care assistance subject to the

availability of state and federal funds; and

(b) Receive a child care certificate;

~~1. [.] The DCC-94, 11/09; or~~

~~2. Effective April 1, 2017[2016], the DCC-94, 04/17[04/16].~~

(3) An applicant approved in accordance with Section 4 of this administrative regulation shall sign and return:

~~(a) The DCC-91 and the DCC-94, 11/09; or~~

~~(b) Effective April 1, 2017[2016], the DCC-90, 04/17[04/16].~~

(4) ~~Until April 1, 2017[2016],~~ an applicant approved in accordance with Section 5 or 6 of this administrative regulation shall sign and return the DCC-91.

(5) Notification of action.

~~(a) Until April 1, 2017[2016], a DCC-105, Child Care Assistance Program Notice of Action, 11/09:~~

~~1. Shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:~~

~~a. [1.] Changes in:~~

- ~~(i) [a.] Copayment;~~
- ~~(ii) [b.] Certification period; or~~
- ~~(iii) [c.] Household size;~~

~~b. [2.] Approval of:~~

- ~~(i) [a.] Application; or~~
- ~~(ii) [b.] Continued eligibility; or~~
- ~~c. [3.] Adverse action, including:~~

- ~~(i) [a.] Denial of application;~~
- ~~(ii) [b.] Reduction of CCAP benefits; or~~
- ~~(iii) [c.] Termination of CCAP benefits; [.]~~

~~2. [(b) the DCC-105] Providing notice of an adverse action shall include:~~

~~a. [1.] Reason for the adverse action;~~

~~b. [2.] Citation from an applicable state administrative~~

regulation; and

~~c.[3-] Information regarding the:~~

~~(i)[a-] Informal dispute resolution process in accordance with Section 17 of this administrative regulation; and~~

~~(ii)[b-] Opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation; and~~

~~3.[- (e) the language on the DCC-105] Shall contain language that differs[differ] according to the purpose of the notice described in subparagraphs 1 through 2 of this paragraph[paragraphs (a) and (b) of this subsection].~~

~~(b) Effective April 1, 2017[2016]:~~

~~1. A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or disenrollment with a provider;~~

~~2. A DCC-94.1, CHILD CARE Approval Notice, shall provide notice of:~~

~~a. A change in the certification period of child;~~

~~b. Approval of an application; or~~

~~c. Continued eligibility;~~

~~3. A DCC-105, Child Care Denial/Discontinuance Notice, 04/17[04/16], shall provide notice of:~~

~~a. Denial of an application;~~

~~b. Discontinuance of a CCAP benefit;~~

~~c. Reason for adverse action;~~

~~d. Citation from an applicable state administrative regulation;~~

~~and~~

~~e. Information regarding the opportunity to request an administrative hearing in accordance with Section 17 of this administrative regulation; and~~

~~4. The language on the form shall differ according to the purpose of the notice described in subparagraphs 1 through 3 of this paragraph.~~

~~(6)[An applicant may change the applicant's provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:~~

~~(a) A disaster verified by utility provider, local, state, or federal government;~~

~~(b) Closure of a provider;~~

~~(c) Family circumstances, such as relocation, illness, or death;~~

~~(d) A risk to the health, welfare, or safety of the child or the applicant; or~~

~~(e) Failure of the provider to comply with Section 13(1) of this administrative regulation.~~

~~(7) A family that changes the child care provider more than three (3) times as described in subsection (6) of this section shall be discontinued from the CCAP and unable to participate until the end of the eligibility period in effect at the time of discontinuance.~~

~~(8) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.~~

~~(7)[(9)] Failure to report a change in a circumstance may result in a:~~

~~(a) Decrease or discontinuance of CCAP benefits based on the type of change; or~~

~~(b) Claim in accordance with 922 KAR 2:020.~~

~~(8)[(10)] An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:~~

~~(a) Discontinued from CCAP benefits; and~~

~~(b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.~~

~~(9)[(11)] An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 13(1)(c) of this administrative regulation.~~

Section 12. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94

pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child care center licensure;

(c) 922 KAR 2:100, Certification of family child care homes;

(d) 922 KAR 2:110, Child care facility provider requirements;

(e) 922 KAR 2:120, Child care facility health and safety standards;

~~(f) 922 KAR 2:170, STARS for KIDS NOW Program for Type I licensed child care centers, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation;~~

~~(g) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program; and~~

~~(g)[(h)] 922 KAR 2:190, Civil penalties; and~~

~~(i) 922 KAR 2:210, STARS for KIDS NOW Program for Type II licensed child care centers and certified family child care homes, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation.~~

~~(4)[Effective April 1, 2016,] The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180.~~

~~(5) If CCAP benefits are reduced or discontinued[terminated] due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.~~

~~(6)[(5)] If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.~~

~~(7)[(6)] The cabinet shall send a notice of adverse action ten (10) calendar days in advance of taking adverse action.~~

~~(8)[(7)] The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:~~

~~(a) Child protective or preventive services authorization;~~

~~(b) A child with a special need;~~

~~(c) K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;~~

~~(d) Teen parents attending high school or pursuing a general equivalency degree (GED);~~

~~(e) A K-TAP recipient attempting to transition off assistance through employment;~~

~~(f) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;~~

~~(g) A low income working parent; or~~

~~(h) A parent in education or training programs leading to self-sufficiency.~~

~~[(8)(a)] The cabinet shall grant an exception for a CCAP-eligible child's placement with a child care provider participating in the quality rating program governed by 922 KAR 2:170 and 922 KAR 2:210 if:~~

~~1. A violation of or conflict with 45 C.F.R. 98.30 would result, such as:~~

~~a. A geographic area in which an adequate supply of child care is lacking; or~~

~~b. A parent's scheduling, transportation, or other circumstance that prevents the use of a child care provider participating within the quality rating program;~~

~~c. A child is approved for CCAP in accordance with Section 5 or 6 of this administrative regulation;~~

~~d. A child has special needs; or~~

~~e. The provision of child care is available through a provider:~~

~~(i) Registered in accordance with 922 KAR 2:180;~~

~~(ii) Operated by the armed services located on an armed forces base; or~~

~~(iii) Regulated by another state;~~

~~2. A situation or circumstance, such as an emergency or~~

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disaster, necessitates the provision of emergency child care; or

~~3. Noncompliance or federal penalty under 421 U.S.C. 601-619 or 42 U.S.C. 9858-9858g would result.~~

~~(b) The DCC-400, Request for Exception from Placement with a STAR-Rated Child Care Provider:~~

~~1. Shall be used to request an exception in accordance with paragraph (a)1 of this subsection; and~~

~~2. May be used to request an exception in accordance with paragraphs (a)2 and (a)3 of this subsection.~~

~~(c) The cabinet shall respond to a completed and signed DCC-400 in accordance with Section 11(3) of this administrative regulation within ten (10) calendar days of its submission unless:~~

~~1. The cabinet experiences a circumstance that prolongs the review of the request; and~~

~~2. Notice of the extension is provided to the requesting parent.]~~

Section 13. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission[submit the DCC-94] to the cabinet or its designee, prior to receiving payment from the CCAP, the following form:

1. Until April 1, 2017[2016], the DCC-94, 11/09; or

2. Effective April 1, 2017[2016], the DCC-94, 04/17[04/16];

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c)1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 2:090, Child care center licensure;

3. 922 KAR 2:100, Certification of family child care homes;

4. 922 KAR 2:110, Child care facility provider requirements;

5. 922 KAR 2:120, Child care facility health and safety standards;

~~6. [922 KAR 2:170, STARS for KIDS NOW Program for type I licensed child care centers, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation;~~

~~7.] 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program; and~~

~~7.[8.] 922 KAR 2:190, Civil penalties;] and~~

~~9. 922 KAR 2:210, STARS for KIDS NOW Program for type II licensed child care centers and certified family child care homes, effective August 15, 2015, unless an exception is granted in accordance with Section 12(8) of this administrative regulation]; and~~

(e) Complete the cabinet approved training on billing and the DCC-94E]:

~~1.] prior to receiving an initial payment from CCAP [if the provider will begin participation in CCAP after October 15, 2014; or~~

~~2. By August 4, 2015, if the provider began participation in CCAP prior to October 15, 2014].~~

(2) A licensed or certified child care provider shall complete and submit the following form[DCC-94B, Licensed or Certified Provider Agreement Form,] prior to receiving payment from the CCAP:

(a) Until April 1, 2017[2016], the DCC-94B, Licensed or Certified Provider Agreement Form, 10/14; or

(b) Effective April 1, 2017[2016], the DCC-94B, 04/17[04/16].

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care

home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;

2. The work hours for each employee of each shift;

3. The management for each shift;

4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of 922 KAR 2:090, 2:110, and 2:120; and

2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected [an operating plan that demonstrates the health, safety, and welfare of a child in care in accordance with this administrative regulation and an administrative regulation listed in subsection (1)(d) of this section].

(5) [Effective April 1, 2016,] A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in new provider's operations in any capacity.

Section 14. Other Services. To the extent state funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

Section 15. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 2:020.

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;

2. An illness of the:

a. Child; or

b. Applicant; or

3. A Disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 10(4) of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or

financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

- a. Entry into the provider's premises during operating hours; or
- b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 13(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 13(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 12(8)(7) of this administrative regulation.

~~Section 17. [Informal Dispute Resolution and Appeals. (1) An applicant for CCAP or a parent of a child receiving CCAP:~~

~~(a) May seek an informal dispute resolution if the applicant or parent is dissatisfied with an action by the cabinet or its designee concerning a denial, reduction, or termination of CCAP benefits;~~

~~(b) Shall request an informal dispute resolution with the cabinet or its designee within ten (10) days of the:~~

~~1. Notice of denial for CCAP in accordance with Section 2(5) of this administrative regulation; or~~

~~2. Date of the adverse action for which notice is provided in accordance with Section 12(6) of this administrative regulation; and~~

~~(c) Who is dissatisfied with the decision of the informal dispute resolution, may submit an administrative hearing request:~~

~~1. In accordance with Section 18 of this administrative regulation; and~~

~~2. Within thirty (30) calendar days of the date of the decision made by the cabinet or its designee in accordance with subsection (3) of this section.~~

~~(2)(a) If the child's parent provides notice within ten (10) calendar days from the date of adverse action in accordance with 45 C.F.R. 205.10(a)(6), a child receiving CCAP may continue to receive CCAP during the informal dispute resolution or administrative hearing process pending the outcome of the informal dispute resolution or the administrative hearing.~~

~~(b) If an informal dispute resolution or administrative hearing process upholds the denial, reduction, or termination of CCAP, the child's parent who continued to receive CCAP benefits during the informal dispute resolution or administrative hearing process shall repay the CCAP back to the effective date of the denial, reduction, or termination.~~

~~(3) Upon receipt of a request for the informal dispute resolution, the cabinet or its designee shall:~~

~~(a) Review the request; and~~

~~(b) Render a written decision on the issue raised within ten (10) days, unless:~~

~~1. The commissioner or designee grants an extension to the timeframe specified in this paragraph due to extenuating circumstances that prolong the review of the request; and~~

~~2. Notice of the extension is provided to the applicant or parent who made the request for informal dispute resolution.~~

~~(4) An applicant for CCAP or a parent of a child receiving~~

~~CCAP may request an administrative hearing in accordance with Section 18 of this administrative regulation at any time during the informal dispute resolution process established in this section.~~

~~Section 18. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with:~~

~~(a) 922 KAR 1:320 until April 1, 2017; or~~

~~(b) 921 KAR 2:055 effective April 1, 2017.~~

~~(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:~~

~~(a) 1. Until April 1, 2017[2016], [(1)] 922 KAR 1:320; or~~

~~2. Effective April 1, 2017[2016], 922 KAR 2:260; or~~

~~(b) [(2)] 922 KAR 2:020.~~

~~Section 18. [49.] Records. Records of CCAP shall be maintained and disclosed in accordance with:~~

~~(1) KRS 194A.060;~~

~~(2) 45 C.F.R. 98.90(e); and~~

~~(3) 45 C.F.R. 205.50(a)(1)(i).~~

~~Section 19. [20.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "DCC-90, Application for Subsidized Child Care Assistance", 11/09;~~

~~(b) "DCC-90, Subsidized Child Care Assistance Application Summary", 04/17[04/16];~~

~~(c) "DCC-90.1, Intent to Apply for Child Care Assistance", 11/09;~~

~~(d) [(e)] "DCC-91, Client Rights and Responsibilities Sheet", 04/13;~~

~~(e) [(d)] "DCC-94, Child Care Service Agreement and Certificate", 11/09;~~

~~(f) "DCC-94, Child Care Service Agreement and Certificate", 04/17[04/16];~~

~~(g) "DCC-94.1, CHILD CARE Approval Notice", 04/17[04/16];~~

~~(h) [(e)] "DCC-94B, Licensed or Certified Provider Agreement Form", 10/14;~~

~~(i) "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17[04/16];~~

~~(j) "DCC-94C, Provider Notification Letter", 04/17[04/16];~~

~~(k) [(f)] "DCC-94E, Child Care Daily Attendance Record", 7/13;~~

~~(l) [(g)] "DCC-97, Provider Billing Form", 04/13;~~

~~(m) [(h)] "DCC-105, Child Care Assistance Program Notice of Action", 11/09;~~

~~(n) "DCC-105, Child Care Denial/Discontinuance Notice", 04/17[04/16]; and~~

~~(o) [(i)] "DCC-300, Kentucky Child Care Maximum Payment Rate/Rates Chart", 02/16[10/14]; and~~

~~(j) "DCC-400, Request for Exception from Placement with a STAR-Rated Child Care Provider", 10/14].~~

~~(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.~~

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 14, 2016

FILED WITH LRC: June 15, 2016 at 11 a.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Kentucky Board of Social Work
(Amended After Comments)

201 KAR 23:055. Inactive status of license.

RELATES TO: KRS 335.070(3)

STATUTORY AUTHORITY: KRS 335.070(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(3) authorizes the board to promulgate administrative regulations pursuant to KRS Chapter 13A to carry out the provisions of KRS 335.010 to 335.160 and KRS 335.990. This administrative regulation establishes the requirements for a licensee to request approval from the board to place his or her license on inactive (nonpractice) status. This administrative regulation establishes the requirements relating to inactive licenses, extension of inactive status, return to active status, and reinstatement.

Section 1. Request for Inactive Status. A licensee may request that his or her license be placed on inactive licensure status by submitting to the board:

(1) Written request for his or her license to be placed on inactive status, received by the board no sooner than ninety (90) days before the license expiration date;

(2) Payment of an inactive license status fee of fifty (50) dollars **made payable to the Kentucky State Treasurer**. The licensee shall be relieved of his or her obligation to pay the license renewal fee established in 201 KAR 23:020 for his or her license level; and

(3) A copy of certificates of attendance or completion to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

Section 2. Additional Extension of Inactive Status. A licensee whose license is on inactive status may request an additional extension of the inactive license status and shall submit to the board:

(1) Written request to continue the license on inactive status, received by the board no sooner than ninety (90) days before the license expiration date;

(2) Payment of **an inactive status fee off[a] fifty (50) dollars made payable to the Kentucky State Treasurer[dollar inactive status fee]**; and

(3) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

Section 3. License Expiration. If the licensee does not submit a request for extension of the inactive status or the licensee fails to renew his or her license before the license expiration date, the license shall expire.

Section 4. Return to Active License Status. At any time within the three (3) year period of being granted inactive licensure status, a licensee may request his or her license be returned to active status by submitting to the board:

(1) Written request to the board to return his or her license to active status;

(2) Payment of the current license renewal fee as set forth in 201 KAR 23:020; and

(3) A copy of continuing education certificates of completion or attendance, awarded to the licensee during the period of inactive status, to show proof of continuing education requirements for renewal as established in 201 KAR 23:075.

Section 5. Renewal of Expired License. Following expiration of a license under Section 3 of this administrative regulation, a licensee who desires to practice social work in Kentucky shall follow the requirements for reinstatement established in 201 KAR

23:050.

WILLIAM M. ADCOCK, Chair

APPROVED BY AGENCY: July 15, 2016

FILED WITH LRC: July 15, 2016 at 11 a.m.

CONTACT PERSON: Florence S. Huffman, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030, email florence.huffman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Florence S. Huffman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a new nonpractice level of license for licensees who do not want his or her license to expire, but who do not desire to practice social work in Kentucky, no longer need a license for their career, are employed in a position that does not require a license, or for those who have moved outside Kentucky. The licensee can request the change to inactive status, and as a result, pay a reduced fee and avoid expiration of the license and the time and cost of reinstatement. This administrative regulation establishes the requirements for licensees to request approval from the board to place their license on inactive (nonpractice) license status (at the time of the license renewal date); sets a fifty (50) dollar fee for the inactive status per renewal period; restates the continuing education requirements for renewal; and describes the procedures to extend the inactive status for subsequent renewal periods or to apply to return the license to active status.

(b) The necessity of this administrative regulation: This administrative is necessary to establish the requirements for a licensee to seek board approval to place his or her license on inactive status; establishes the standards for extension of the inactive status, for returning the license to active status, and for renewal and reinstatement, including continuing education requirements every renewal period. This administrative regulation also sets the inactive status fee in the amount of fifty (50) dollars.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(6) authorizes the board to renew licenses and require continuing education as a condition for license renewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs a licensee that he or she may request the board to approve changing the status of his or her social work license from active to inactive, restates the continuing education requirements for renewal during the period of inactive status, describes the conditions for renewal and reinstatement established by the board. In addition, this administrative regulation will inform the licensee of the reduced fee paid for the license on inactive status.

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

(a) How the amendment will change this existing administrative regulation: 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 5,000 licensed social workers and many of these licensees may desire to have an option to maintain their Kentucky social work license in an inactive status as opposed to allowing it to expire. The reinstatement process when a license has expired can be timely and costly due to the \$100 penalty fee that is due on

reinstatement.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes a new level of license for licensees who do not want his or her license to expire, but who do not desire to practice social work in Kentucky, no longer need a license for their career, are employed in a position that does not require a license, or for those who do not live in Kentucky. The licensee can request the change to inactive status, and as a result, pay a reduced fee and avoid expiration of the license and the time and cost of reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board has established a \$50 fee for inactive status license, which is reduced from the renewal fee for each level of license (\$200 renewal fee for licensed clinical social worker, \$125 for certified social worker, and \$75 for licensed social worker). It will cost less for a licensee to return his or her license to active status than if the license had expired.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A licensee will have the option to change his or her active social work license to inactive status when life circumstances make an active license to practice social work in Kentucky unnecessary.

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

(a) Initially: The board estimates that it will incur no additional costs to implement this administrative regulation.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by 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 wholly self-funded by various fees paid by the licensees, applicants and continuing education providers and sponsors.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, this administrative regulation directly establishes a decreased fee for inactive status of license at time of renewal.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out the provisions of KRS 335.010 to 335.160 and KRS 335.990.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues 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 estimates that its revenues may decrease slightly due to the lowered fee for the inactive status.

(a) How much 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 amount of inactive licensee fees that will be generated by this administrative regulation is not known at this time.

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

(c) How much will it cost to administer this program for the first year? The board estimates that no additional costs of any significance will be incurred by this amendment.

(d) How much will it cost to administer this program for subsequent years? The board estimates that no additional costs of any significance for subsequent years will be incurred by this amendment.

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

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

**GENERAL GOVERNMENT CABINET
Kentucky Board of Social Work
(Amended After Comments)**

201 KAR 23:075. Continuing education for renewal.

RELATES TO: KRS 335.130(4)

STATUTORY AUTHORITY: KRS 335.070(3), (6), 335.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation describes~~[delineates]~~ the requirements for continuing education for renewal and prescribes methods and standards for the board to approve~~[accreditation of]~~ continuing education courses.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means a social work course, at the graduate level:

(a) Designated by a social work title or content; or

(b) An academic course, at the graduate level, relevant to social work.

(2) "Approved" means recognized by the Kentucky Board of Social Work.

(3) "Continuing education hour" means fifty (50) clock minutes of participation in continuing education~~[educational]~~ programs.

(4) "Program" means an organized educational experience, which is:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or series.

(5) "Provider" means a person or an organization approved by the Kentucky Board of Social Work to provide a single continuing education program over the course of one (1) year.

(6) "Relevant" means having content applicable to the practice of social work.

(7) "Sponsor" means a person or an organization approved by the Kentucky Board of Social Work to provide more than one (1) continuing education program over the course of one (1)~~[a]~~ year.

(8) "Training program in suicide assessment, treatment, and management" means an approved empirically supported training program at least six (6) hours in length that contains suicide assessment including screening and referral, suicide treatment, and suicide management as required by KRS 210.366.

Section 2. Accrual and Computation of Continuing Education Hours for Renewal. (1) Each certified social worker and licensed clinical social worker shall complete a minimum of thirty (30) continuing education hours during the three (3) year period for renewal, which shall be completed in person before a live presenter or through home study, distance learning, online, or teleconference courses~~[A minimum of thirty (30) continuing education hours shall be accrued by each licensed clinical social worker and certified social worker holding licensure during the~~

three (3) year period for renewal].

(2) Each licensed social worker shall complete a minimum of fifteen (15) continuing education hours during the three (3) year period for renewal, which may be completed in person before a live presenter or through home study, distance learning, online, or teleconference courses[A minimum of fifteen (15) continuing education hours shall be accrued by each licensed social worker holding licensure during the three (3) year period for renewal].

(3) All continuing education hours shall be [in or] relevant to the licensee's level of licensure.

(4) Kentucky Code of Ethical Conduct. Each renewal period, all licensees shall complete a three (3) hour course on the Kentucky Code of Ethical Conduct established in 201 KAR 23:080, which shall be completed in person before a live presenter or through home study, distance learning, online, or teleconference courses[Three (3) of the continuing education hours during each renewal period shall be acquired in the area of the social work code of ethics as established in 201 KAR 23:080].

(5) Clinical Social Work Supervision. Each renewal period, licensed clinical social workers who are board approved supervisors pursuant to 201 KAR 23:070, Section 3(1)(c)2, shall complete a three (3) hour, board approved supervision course[every licensure renewal period] as part of their thirty (30) continuing education hours, which shall be taken in person before a live presenter.

(6) Suicide Assessment, Treatment, and Management. Every six (6) years, all licensees shall complete a minimum of six (6) hours of continuing education in a board approved course on suicide assessment, treatment, and management as required by KRS 210.366(2).

(a) The course shall be approved by the board, by an organization identified in Section 3(1) of this administrative regulation, or by one (1) of the following boards, and which meets the requirements of KRS 210.366:

1. Kentucky Board of Licensure of Marriage and Family Therapists;

2. Kentucky Board of Licensed Professional Counselors;

3. Kentucky Board of Licensure for Pastoral Counselors;

4. Kentucky Board of Alcohol and Drug Counselors;

5. Kentucky Board of Examiners of Psychology; or

6. Kentucky Board of Licensure for Occupational Therapy.

(b) Exemptions. A licensee shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management if he or she:

1. Teaches a graduate-level counseling course in suicide and crisis assessment, prevention, and management at least once per year during the six (6) year period; or

2. Teaches a six (6) hour continuing education course in suicide and crisis assessment, prevention and management at least once per year during the six (6) year period[Every third renewal period, two (2) of the continuing education hours shall be on HIV/AIDS courses approved by the Cabinet for Health and Family Services pursuant to KRS 214.610].

(7) Domestic Violence. During the three (3) year renewal period following initial licensure, all licensees shall complete three (3) hours of continuing education in domestic violence related training courses established in KRS 194A.540[Three (3) of the continuing education hours shall be completed in the area of domestic violence related training courses pursuant to KRS 194A.540 during the three (3) year cycle following initial licensure].

(8) Pediatric Abusive Head Trauma. At least one (1) time every six (6) years, all licensees shall complete one and one-half (1.5) hours of continuing education covering the recognition and prevention of pediatric abusive head trauma as defined in KRS 620.020[One and one-half (1.5) hours of continuing education shall be completed one (1) time every six (6) years in the area of the recognition and prevention of pediatric abusive head trauma pursuant to KRS 335.130(5)].

(9) Academic Credit Equivalency. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

Section 3. Methods of Acquiring Continuing Education Hours.

Continuing education hours for renewal[applicable to the renewal of the license] shall be directly related to the professional growth and development of the licensee. The hours may be earned by completing any of the following continuing education programs:

(1) Programs not requiring board review and approval. Except for courses on the Kentucky Code of Ethical Conduct under Section 2(4) of this administrative regulation, and courses on clinical social work supervision under 201 KAR 23:070, Section 3(1)(c)2, which require approval by the board[Except for courses on ethics which are provided to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2], an educational program from any of the following providers shall be deemed to be relevant to the practice of social work and shall be approved without further review by the board if it is:

(a) Sponsored or approved by:

1. The Association of Social Work Boards (ASWB);

2. The National Association of Social Workers (NASW) or any of its affiliated state chapters;

3. The National Association of Black Social Workers (NABSW) or any of its affiliated state chapters;

4. The North American Association of Christians in Social Work or any of its affiliated state chapters; or

5. Clinical Social Work Association or any of its affiliated state chapters[or

2. The Association of Social Work Boards];

(b) Sponsored by:

1. Clinical Social Work Association or any of its affiliated state chapters;

2. The American Psychological Association or any of its affiliated state chapters;

3. The American Counseling Association or any of its affiliated state chapters;

4. The National Board for Certified Counselors or any of its affiliated state chapters;

5. The American Psychiatric Association or any of its affiliated state chapters; or

6. A college, school, department, or program of social work in Kentucky, which is accredited by the Council on Social Work Education (CSWE); or

(c) An academic course offered by an accredited postsecondary institution directly related to social work, counseling, or psychology.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board and approved for continuing education credit if the board determines that it is relevant to the practice of social work [and determined if it is relevant and therefore subsequently approved by the board].

(a) Relevant programs, including home study, distance learning, online, or teleconference courses, and in-service training provided by other organizations, educational institutions, or other service providers approved by the board.

[1.] Board approval for home study, distance learning, online, and teleconference courses shall be obtained each year unless the continuing education program does not require board approval under subsection (1) of this section.

[2.] The combined total number of hours for home study, distance learning or teleconference courses shall not exceed one-half (1/2) of the individual's continuing education hours.

3. Courses on the board's code of ethics which are taken to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2, shall be attended in person before a live presenter, and shall not be taken through home study, distance learning or teleconference courses.

(b) Relevant programs or academic courses presented by the licensee. A licensee who presents [presenter of] relevant programs or academic courses shall earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course.

(c) Relevant articles. A licensee who is an author of a relevant

article, which is published in a professionally recognized or juried publication, shall earn full continuing education credit not to exceed one-half (1/2) of the continuing education requirements for renewal, if the article was published within one (1) year immediately preceding his or her renewal date. [Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted unless an article was published within the one (1) year period immediately preceding the renewal date. A licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal under the provisions of this subsection]. More than one (1) publication shall not be counted during each renewal period.

(d) The following continuing education courses shall be submitted to the board for approval and shall not be automatically preapproved under subsection (1) of this section:

1. Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; and
2. Clinical social work supervision for board-approved supervisors required by 201 KAR 23:070, Section 3(1)(c)2 [Courses on ethics required by Section 2(4) of this administrative regulation shall be submitted to the board for approval and shall not be automatically approved under Section 3(1) of this administrative regulation].

Section 4. Procedures for Approval and Renewal of Continuing Education Providers and Programs. (1) Provider approval. A provider seeking to obtain approval of a continuing education program shall apply to the board no less than thirty (30) days in advance of the commencement of the program, and provide the information required in subsection (2) of this section.

(2) The board shall approve a continuing education program if it determines that the program being presented:

- (a) Is relevant to the practice of social work;
- (b) Contributes to the professional competency of the licensee; and
- (c) Has competent instructors with appropriate academic training, professional license or certification, or professionally recognized experience.

(3) The board may approve a provider of a continuing education program for one (1) year if the provider:

(a) Files a completed Provider Application for Continuing Education Approval, which is received by the board thirty (30) days in advance of the commencement of the program, and includes:

1. A published program outline that includes an explanation of the program objectives;
2. The names and qualifications of the instructors presented in the form of resumes or curriculum vitas;
3. A copy of the evaluation sheet by which the licensee can assess and comment on the program;
4. A copy of the program agenda stating the number of continuing education credit hours, including all breaks;
5. The number of continuing education credit hours requested;
6. A copy of the official certificate of completion or attendance from the provider; and
7. A statement whether the provider is requesting approval to meet the requirements of the following courses: Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; or clinical social work supervision for board-approved supervisors required by 201 KAR 23:070, Section 3(1)(c)2; and

(b) Pays an application fee of \$100 made payable to the Kentucky State Treasurer for each one (1) day program of eight (8) hours or less.

(4) Providers of continuing education shall be responsible for providing documentation in the form of a certificate of attendance directly to the licensee, as established in Section 7(5) of this administrative regulation.

(5) Providers of continuing education programs requiring board approval shall not advertise that courses have been approved before written board approval has been received.

(6) Provider Renewal. An approved provider may submit a renewal request for a subsequent one (1) year period by notifying the board that the original information required in this section for each program remains current and by paying a fifty (50) dollar

renewal fee made payable to the Kentucky State Treasurer [A program, which is offered by a provider, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

- (a) A published course outline or similar description which includes an explanation of the course objectives;
- (b) Names and qualifications of the instructors presented in the form of curriculum vitas or resumes;
- (c) Copies of the evaluation sheet or instrument by which the attendees can comment on the program, and the program agenda indicating hours of education, including all breaks;
- (d) Number of continuing education hours requested and a statement whether the provider is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation;
- (e) Official certificate of completion or college transcript from the sponsoring agency or college; and
- (f) A completed Provider Application for Continuing Education Credit Approval form.

(2) The board may approve a specific continuing education program if the provider of the program:

- (a) Files a written request for approval;
- (b) Pays an application fee of \$100 for each one day program of eight (8) hours or less; and
- (c) Provides information about each continuing education program that it proposes to present which meets the requirements established in subsection (1) of this section.

(3) The approval of a program pursuant to this section shall permit the provider to offer the program for one (1) year.

(4) The provider shall submit a request for renewal and a fifty (50) dollar renewal fee for each subsequent request to offer the same approved program].

Section 5. Approval and Renewal of Continuing Education for Sponsor Programs. (1) Sponsor approval. A sponsor seeking to obtain board approval of continuing education programs shall apply to the board no less than thirty (30) days in advance of the commencement of the program, and provide the information required in Section 4(1) of this administrative regulation.

(2) The board shall approve a continuing education program if it [Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any sponsor seeking to obtain approval of a continuing education program prior to its offering shall:

- (a) 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(1) of this administrative regulation; and
- (b) Provide proof to the board that the sponsor seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in subsection (2) of this section; and
2. Does not exclude any licensee from its programs.

(2) A continuing education program shall be qualified for approval if the board] determines that the program being presented:

- (a) Is relevant to the practice of social work;
- (b) Contributes to the professional competency of the licensee; and
- (c) Has competent instructors with appropriate academic training, professional license or certification, or professionally recognized experience.

(3) The board may approve a sponsor of continuing education programs for one (1) year if the sponsor:

(a) Files a completed Sponsor Application for Continuing Education Approval form which is received by the board thirty (30) days in advance of the commencement of the program, and includes:

1. A published program outline that includes an explanation of the program objectives;
2. The names and qualifications of the instructors presented in the form of resumes or curriculum vitas;
3. A copy of the evaluation sheet by which the licensee can

assess and comment on the program:

4. A copy of the program agenda stating the number of continuing education credit hours, including all breaks;

5. The number of continuing education credit hours requested;

6. A copy of the official certificate of completion from the sponsor; and

7. A statement whether the sponsor is requesting approval to meet the requirements of the following courses: Kentucky Code of Ethical Conduct required by Section 2(4) of this administrative regulation; or clinical social work supervision for board-approved supervisors required by 201 KAR 23:070, Section 3(1)(c)2; and

(b) Pays an initial application fee of \$250 **made payable to the Kentucky State Treasurer.**

(4) ~~The sponsor shall specify whether it is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation.~~

(4)(a) ~~The board may approve an organization that is not listed in Section 3(4) of this administrative regulation as a sponsor of continuing education for a twelve (12) month period if the organization:~~

1. ~~Files a written request for approval by submitting the Sponsorship Application for Continuing Education Credit Approval form;~~

2. ~~Pays an initial application fee of \$250; and~~

3. ~~Proposes to sponsor continuing education programs that meet the requirements established in Section 3 of this administrative regulation.~~

(b) ~~The board shall periodically review the programs that a sponsor has provided to determine if the sponsor continues to meet the requirements of this administrative regulation.~~

(5) ~~(e) An approved sponsor shall submit an annual report to the board of the continuing education programs offered during that calendar year and shall include copies of attendance sheets and evaluations (or evaluation summaries) for each program.~~

(6) ~~Sponsors of continuing education shall be responsible for providing documentation in the form of a certificate of attendance directly to the licensee, as established in Section 7(5) of this administrative regulation.~~

(7) ~~Sponsors of continuing education programs requiring board approval shall not advertise that courses have been approved before written board approval has been received.~~

(8) **Sponsor Renewal.** ~~An approved sponsor may submit a renewal request for a subsequent one (1) year period by notifying the board that the original information required in this section for each program remains current and by paying \$150 renewal fee made payable to the Kentucky State Treasurer [(d) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a 150 renewal fee annually and notifying the board that the original information required in this section remains current].~~

Section 6. Individual Request for Board Review and Approval of Continuing Education Courses. (1) A licensee ~~(or a certificate holder) may request an individual review of a continuing education program that was otherwise not approved if it was completed during the three (3) year renewal [appropriate time] period if the individual licensee [has]:~~

(a) ~~Applies [Made a timely request by applying] for individual review by submitting the Individual Application for Continuing Education [Credit] Approval form; and~~

(b) ~~Pays [Paid] a fee of ten (10) dollars made payable to the Kentucky State Treasurer.~~

(2) ~~The board's review shall be based on the standards for continuing education established by this administrative regulation.~~

(3) ~~The board's approval [by the board] of a continuing education program under this section shall:~~

(a) ~~Qualify as if it has been obtained from an approved provider or sponsor; and~~

(b) ~~Be limited to the particular program [offering] upon which the request for individual review is based.~~

Section 7. Responsibilities and Reporting Requirements of Licensees. Each licensee shall be responsible for obtaining the

required continuing education hours for her or his renewal. The licensee shall identify his or her own continuing education needs, ~~seek [take the initiative in seeking] continuing professional education activities to meet those [these] needs, and develop [seek] ways to integrate new knowledge, skills, and attitudes. Each licensee [person holding licensure] shall:~~

(1) ~~Select approved programs by which to earn continuing education hours for renewal;~~

(2) ~~Submit to the board, if applicable, a request for continuing education programs requiring approval by the board as established in Section 4 of this administrative regulation;~~

(3) ~~Maintain her or his [the licensee's own] records of continuing education hours;~~

(4) ~~At the time of renewal, list the continuing education hours obtained during that licensure renewal period;~~

(5) ~~Furnish documentation of attendance [and participation in the appropriate number] of continuing education hours at the time of his or her renewal, as follows:~~

(a) ~~For a period of one (1) year from the date of renewal, each licensee shall maintain [Each person holding licensure shall maintain, for a period of one (1) year from the date of renewal, all] documentation verifying successful completion of continuing education hours;~~

(b) ~~In each calendar year, the board shall require up to fifteen (15) percent of all licensees [shall be required by the board] to furnish documentation of the completion of [the appropriate number of] continuing education hours for the current renewal period;~~

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

(d) ~~Documentation shall take the form of official documents including:~~

1. ~~Transcripts;~~

2. ~~Certificates of completion or attendance;~~

3. ~~Affidavits signed by instructors; or~~

4. ~~Receipts for fees paid to the provider or sponsor; and~~

(e) ~~Each licensee shall retain copies of his or her documentation for a period of one (1) year following the date of his or her last renewal.~~

Section 8. ~~Responsibilities and Reporting Requirements of Providers and Sponsors.~~

(1) ~~Providers of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 7(5) of this administrative regulation, directly to the licensee.~~

(2) ~~Sponsors of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.~~

Section 9. Board to Approve Continuing Education Hours; Appeal if Approval Denied. If an application for approval of continuing education hours is denied, in whole or part, a licensee, ~~(or a provider, or sponsor) may request [reconsideration by] the board to reconsider [of] its decision.~~ The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 9. [10.] Waiver or Extensions of Continuing Education. (1) ~~[The board may.] In individual cases involving medical disability, illness, or undue hardship as determined by the board, the board may grant waivers of the minimum continuing education requirements or extensions of time [within which] to fulfill the requirements for renewal or make the required reports of continuing education credits.~~

(2) ~~A licensee may submit a written request to the board for a waiver or extension of time involving medical disability, illness, or undue hardship. If the request is based on medical disability or illness, the licensee shall include a written statement [A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding licensure and shall be accompanied by a verifying document] signed by a~~

licensed physician.

(3) The board may grant waivers of the minimum continuing education requirements or extensions of time ~~within which~~ to fulfill the continuing education requirements for renewal ~~[may be granted by the board]~~ for a period of time not to exceed 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 may ~~[person holding licensure shall]~~ reapply for the waiver or extension.

Section 10,~~[44]~~ Continuing Education Requirements for Reinstatement~~[or Reactivation of Licensure]~~. (1) A certified social worker or a licensed clinical social worker who requests reinstatement of an expired license ~~[person requesting reinstatement or reactivation of licensure]~~ shall submit evidence of completing thirty (30) hours of continuing education within the three (3) year ~~[thirty-six (36) month]~~ period immediately preceding the date he or she submits ~~[on which]~~ the request for reinstatement~~[or reactivation is submitted]~~ to the board.

(2) A licensed social worker who requests reinstatement of an expired license shall submit evidence of completing fifteen (15) hours of continuing education within the three (3) year period immediately preceding the date he or she submits the request for reinstatement to the board ~~[The person may request, and the board, at its discretion, may reinstate the licensure, with the provision that the person shall receive thirty (30) hours of continuing education within six (6) months of the date on which the licensure is reinstated]~~.

(3) If the licensee requesting reinstatement cannot provide evidence of completion of the required hours of continuing education, the board may reinstate the license for six (6) months on the condition that the licensee obtain the required hours of continuing education for his or her level of licensure within six (6) months of the date the license is reinstated.

(4) The continuing education hours completed for reinstatement ~~[received in compliance with this section]~~ shall be in addition to the continuing education requirements for renewal established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

(5) Failure to obtain the required continuing education hours within the approved six (6) month period shall result in termination of the reinstated license.

Section 11,~~[42]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Provider/Sponsor ~~[Provider]~~ Application for Continuing Education ~~[Credit]~~ Approval", 06/2016 ~~[04/2016]~~ ~~[10/2010]~~; and

(b) "Sponsor ~~[Sponsorship]~~ ~~[Application for Continuing Education]~~ ~~[Credit]~~ ~~[Approval]~~", 03/2016 ~~[10/2010]~~; and

(c) "Individual Application for Continuing Education ~~[Credit]~~ Approval", 04/2016 ~~[10/2010]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of ~~[Licensure for]~~ Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM M. ADCOCK, Chair

APPROVED BY AGENCY: July 15, 2016

FILED WITH LRC: July 15, 2016 at 11 a.m.

CONTACT PERSON: Florence S. Huffman, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030, email florence.huffman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Florence S. Huffman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for continuing education for renewal as a method for ensuring the continued professional competence of licensed social workers and

compliance with Kentucky law. This administrative regulation specifies the number of hours to be obtained for each renewal period and defines courses in certain content areas required by the board and Kentucky law for initial licensure, renewal and reinstatement. It also prescribes methods and defined standards the board will use to assess and approve continuing education program content, including qualifications of instructors, submitted by course providers and sponsors.

(b) The necessity of this administrative regulation: This administrative is necessary to establish the continuing education requirements for continuing professional competence and as a condition of renewal and reinstatement, and to define standards for approval of courses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(6) authorizes the board to renew licenses and require continued education as a condition for license renewal, and to authorize organizations to provide or sponsor continuing education programs. KRS 210.366 authorizes the board to implement administrative regulation to require a minimum six (6) hour course on suicide prevention assessment, treatment, and management; and KRS 214.615 was repealed effective June 24, 2015 and the board has voted to remove the HIV/AIDS course requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs applicants and licensed social workers of the continuing education requirements for renewal and reinstatement established by the board. In addition, KRS 210.366 mandates a six (6) hour training program in suicide assessment, treatment and management for social workers among others. It also removes the HIV/AIDS course requirement on initial licensure (KRS 214.615 was repealed effective June 24, 2015).

(2) If 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 that the required social work ethics course for renewal may be taken online (and removes the mandate of in-person training); and permits licensees to take 100 percent of continuing education courses for renewal online, through home study, distance learning or other electronic media. The amendment also revises the requirements for sponsors and providers of continuing education programs.

(b) The necessity of the amendment to this administrative regulation: This administrative is necessary to allow licensees to take the social work ethics course online and remove the face-to-face, in-person requirement; to permit licensees to acquire 100 percent of continuing education courses online or through distance learning; to implement suicide prevention training as a requirement for renewal; to remove the requirement that licensees must complete an HIV/AIDS course; and to make other corrections.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.070(6) authorizes the board to renew licenses and require continued education as a condition for license renewal, and to authorize organizations to provide or sponsor continuing education programs; KRS 210.366 authorizes the board to implement administrative regulation to require a minimum six (6) hour course on suicide prevention assessment, treatment, and management; and KRS 214.615 was repealed effective June 24, 2015 and the board has voted to remove the HIV/AIDS course requirement for licensure.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation removes a potential barrier and permits licensees to comply with the board's requirements for continuing education for renewal through the growing advantages of technology and adult education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,000 licensed social workers.

(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 to permit the social work ethics course to be taken online or through distance learning will relieve licensees of attending the course in person – this will be particularly helpful for licensees who find it difficult to attend the in-person courses, and those who live outside Kentucky to comply with the renewal requirement without the necessity of physically traveling to Kentucky to take the: it alleviates the current requirement that only fifty percent of continuing education courses may be taken online or through home study.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board anticipates that the only cost will be the expense of the suicide prevention training course incurred by the licensee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By allowing 100 percent of continuing education courses to be taken online or through home study, licensees may elect online or distance learning courses to meet renewal requirements if they are ill, cancellations are caused by inclement weather or challenges due to the distances between rural settings. The amendment will also let licensees take advantage of growing technological opportunities for training. Also, by permitting the social work ethics course to be taken online, out-of-state licensees can comply with this requirement without having to go to the expense of traveling to Kentucky to take an in-person course.

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

(a) Initially: The board estimates that it will incur no additional costs to implement this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.

(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 wholly self-funded by fees paid by the licensees and applicants as well as continuing education providers and sponsors.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not directly establish or increase fees; individual licensees or their employers who pay for the cost of continuing education as an employment benefit may incur the cost of the suicide prevention training.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out the provisions of KRS 335.010 to 335.160 and KRS 335.990; KRS 210.366 adds continuing education requirement for suicide prevention training); and KRS 214.615, which required HIV/AIDs training before initial licensure, was repealed effective June 24, 2015.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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? The board estimates that no additional costs will be incurred by this amendment.

(d) How much will it cost to administer this program for subsequent years? The board estimates that no additional costs for subsequent years will be incurred by this amendment.

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

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

**GENERAL GOVERNMENT CABINET
Board of Licensure For Marriage and Family Therapists
(Amended After Comments)**

201 KAR 32:030. Fees.

RELATES TO: KRS 335.330, 335.340(1), (3)
STATUTORY AUTHORITY: KRS 335.320(4), 335.330, 335.340(1), (3), **335.348**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330 requires the board to promulgate an administrative regulation establishing the initial fee for licensure required to be paid by an applicant for licensure and requires an applicant to pass a written examination prescribed by the board. KRS 335.340(1) requires that all licenses issued under KRS 335.330 shall be renewed annually, and that the board promulgate an administrative regulation establishing the fee for licensure renewal. KRS 335.340(3) requires the board to promulgate an administrative regulation establishing the late renewal fee. This administrative regulation establishes fees for licensure as a marriage and family therapist or marriage and family therapist associate.

Section 1. Initial Application Fee. The initial application fee for licensure as a marriage and family therapist shall be:

- (1) Fifty (50) dollars;
- (2) Nonrefundable; and
- (3) Payable to the Kentucky State Treasurer.

Section 2. Initial Licensure Fee. The initial fee for licensure as a marriage and family therapist shall be:

- (1) \$175;
- (2) Nonrefundable; and
- (3) Payable to the Kentucky State Treasurer.

Section 3. Examination Fee. (1) An applicant shall pass the National Marital and Family Therapy Examination administered and verified by the Association of Marital and Family Therapy Regulatory Boards[Professional Examination Service].

(2) The applicant shall pay the required examination fee[directly to Professional Examination Service].

Section 4. Renewal Fee. (1) A licensed marriage and family therapist shall submit a completed Marriage and Family Therapist License Renewal Application to the board in accordance with KRS 335.340.

- (2) The fee for renewal of licensure as a marriage and family therapist shall be:
 - (a) \$150 annually;
 - (b) Nonrefundable; and

(c) Payable to the Kentucky State Treasurer.

Section 5. Late Renewal Fees. (1) A licensee who renews a license during the ninety (90) day grace period provided by KRS 335.340(3) shall pay a late renewal fee of seventy-five (75) dollars in addition to the payment of the renewal fee as established in Section 4 of this administrative regulation.

(2) The fee shall be:

- (a) Nonrefundable; and
- (b) Payable to the Kentucky State Treasurer.

Section 6. **Administrative Fine. A licensee who fails to meet the continuing education unit requirements as set forth in 201 KAR 32:060, by the renewal date, shall pay an additional administrative fine of seventy-five (75) dollars.**

Section 7. Reinstatement of Expired License. (1) An expired license shall be reinstated by:

- (a) Submitting a completed License Reinstatement Application;
- (b) Paying of the renewal fee as established in Section 4 of this administrative regulation for each year since the date of last active licensure;

(c) Paying of a reinstatement fee of \$100, which shall be:

- 1. Nonrefundable; and
- 2. Payable to the Kentucky State Treasurer; and

(d) Meeting all other requirements of this section of this administrative regulation.

(2) The applicant for reinstatement of an expired license shall submit proof of:

(a) Completion of fifteen (15) hours of continuing education for each year since the date of last active licensure;

(b) Completion of six (6) hours of training in the field of suicide assessment, treatment and management every six (6) years; and

(c) Completion of three (3) hours of training in the field of domestic violence.

Section ~~8.[7-]~~ Fees for ~~Providers[Sponsors]~~ of Continuing Education. (1) There shall be a nonrefundable fee of \$100 per day ~~[twenty-five (25) dollars]~~ for each live, online synchronous continuing education application for less than seven (7) hours[~~of one (1) to four (4) hours~~] submitted by a provider[~~sponsor~~].

(2) There shall be a nonrefundable fee of \$200 per day for each live, online synchronous continuing education application of seven (7) to ten (10)[~~five (5) to nine (9)~~] hours submitted by a provider[~~sponsor~~].

(3) There shall be a nonrefundable fee of \$250 per day for each live, online synchronous continuing education application of greater than ten (10)[~~plus~~] hours submitted by a provider.

(4) There shall be a nonrefundable fee of \$300 for each single day online asynchronous continuing education application with unlimited offerings between January 1 and December 31 ~~[For a sponsor submitting multiple applications in one (1) month, the fee shall not exceed \$250].~~

Section ~~9.[8.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "License as a Marriage and Family Therapist Application", July 2016;

(b) "License as a Marriage and Family Therapist Renewal Application", July 2016;

(c) "Application for License ~~Reactivation[Reinstatement]~~", July 2016;

(d) "Continuing Education Program Sponsor Approval Application", 2016; and

(e) "Continuing Education Program Approval Individual Application", 2016["Marriage and Family Therapist License Renewal Application", 2009;

(b) "License Reinstatement Application", 2009; and

(c) "Application for Continuing Education Program Approval", 2009].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Marriage and Family Therapists, 911 Leewood Drive,

Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY BADAMI, Chairperson

APPROVED BY AGENCY: 7/14/2016

FILED WITH LRC: July 15, 2016 at 11 a.m.

CONTACT PERSON: Nicole Sergent Biddle, Counsel for Kentucky Board of Licensure for Marriage and Family Therapists, C/O Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-5463, email Nicole.Biddle@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nicole S. Biddle

(1) Provide a brief summary of: This administrative regulation sets forth the

(a) What this administrative regulation does: This administrative regulation sets forth the fees for licensure, renewal, reinstatement, and sponsors of continuing education.

(b) The necessity of this administrative regulation: These changes are allowed under KRS 335.340(7) and 201 KAR 32:060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth the fees for Sponsors of Continuing Education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the fees for licensure, renewal, reinstatement and continuing education program sponsorship.

(2) If 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 sets forth the fees for sponsors of continuing education programs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because it clarifies the fees by length of program and number of days.

(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 clarity regarding the fees for continuing education sponsored program applications (number of programs, length of programs and days).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Board approved sponsors of continuing education total approximately fifty (50).

(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 fees per program application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The changes in costs will depend on the programs and the applications.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The sponsors will have their programs approved per the statutory and regulatory requirements.

(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: The fees are not increased, but changed by reclassifying the programs to provide clarity and simplicity for the Board.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does reclassify fees charged for sponsored continuing education programs.

(9) TIERING: Is tiering applied? Tiering is applied, because the sponsors will pay different fees pursuant to length of program. (1-4 hours/day, 5-9 hours/day, 10+ hours per day, online unlimited)

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Marriage and Family Therapists is housed for administrative purposes within the Public Protection Cabinet Office of Occupations and Professions.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.340(7) and 201 KAR 32:060.

(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. 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? Additional revenue is not anticipated.

(b) How 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

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)**

401 KAR 51:010. Attainment status designations.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 50, 51, 52, 53, 58, 75, 81, 318, 42 U.S.C. 7401-7671q[7626, 7407, 7501-7515, 7601]

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-110, 42 U.S.C. 7407[7401-7626]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the [Environmental and Public Protection] cabinet to promulgate [prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards.

Section 1. Definitions. (1) "Rest of state"[as used in Sections 4 through 7 of this administrative regulation] means the remainder of the state has been designated and identified on a county by county basis.

(2) "Road" means a Kentucky route, a county road, a lane, or a U.S. route, highway, or interstate.

~~(3) "Statewide"[as used in Section 8 of this administrative regulation] means the entire state has been designated on a county by county basis.~~

~~[(3) "Road" as used in Section 2(3) of this administrative regulation means a Kentucky route, a county road, a lane, or a U.S. route, highway, or interstate.]~~

Section 2. Attainment Status Designations. (1) The attainment status of areas of the Commonwealth of Kentucky with respect to the ambient air quality standards for carbon monoxide, lead, nitrogen oxides, ozone, particulate matter, and sulfur dioxide[~~carbon monoxide, ozone and nitrogen oxides~~] is listed in Sections 4 through 10[~~5 through 8~~] of this administrative regulation.[~~The attainment status of areas of the Commonwealth of Kentucky with respect to total suspended particulates is listed in Section 4 of this administrative regulation.~~]

(2) Within sixty (60) days of revision by the U.S. Environmental Protection Agency (U.S. EPA) of a national ambient air quality standard, the cabinet shall review applicable data and submit to the U.S. EPA a revision to the attainment - nonattainment list pursuant to 42 U.S.C. 7407(d)(1).

(3) A road, junction, or intersection of two (2) or more roads as used in Section 7 of this administrative regulation that defines a nonattainment boundary for an area which is a portion of a county designated as nonattainment for ozone for any classification except marginal shall include as nonattainment an area extending 750 feet from the center of the road, junction, or intersection.

Section 3. Attainment Timetable. Primary and secondary ambient air quality standards shall be attained as expeditiously as practicable.

Section 4. Attainment Status Designations for Carbon Monoxide (CO). The 1971 Standard is as follows:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 5. Attainment Status Designations for Lead (Pb). The 2008 Standard is as follows:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 6. Attainment Status Designations for Nitrogen Oxides (NO₂).

(1) 1971 Annual Standard:

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than Standards
Statewide		X

(2) 2010 One (1) Hour Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 7. Attainment Status Designations for Ozone (O₃). (1) The 1971 One (1) Hour Standard was revoked effective June 15, 2005, for all areas in the Commonwealth of Kentucky. The Cincinnati-Hamilton, Edmonson County, Huntington-Ashland, Lexington-Fayette, Louisville, Owensboro, and Paducah areas shall be considered maintenance areas for the one (1) hour national ambient air quality standards for the purposes of 40 C.F.R. Part 51, Subpart X.

(2) 1997 Eight (8) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Boone County	Attainment ⁽¹⁾
Boyd County	Attainment ⁽¹⁾
Bullitt County	Attainment ⁽¹⁾
Campbell County	Attainment ⁽¹⁾
Christian County	Attainment ⁽¹⁾
Jefferson County	Attainment ⁽¹⁾
Kenton County	Attainment ⁽¹⁾
Oldham County	Attainment ⁽¹⁾

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Rest of state	Unclassifiable/Attainment
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Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

(3) 2008 Eight (8) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Boone County (part) 2000 Census tracts: 701, 702, 703.01, 703.04, 703.05, 703.06, 703.07, 703.08, 703.09, 704.01, 704.02, 705.01, 705.02, 706.03	Attainment ⁽¹⁾
Campbell County (part) 2000 Census tracts: 501, 502, 503, 504, 505, 506, 511.01, 511.02, 512, 513, 519.01, 519.03, 519.04, 521, 522, 523.01, 523.02, 524, 525, 526, 528, 529, 530, 531	Attainment ⁽¹⁾
Kenton County (part) 2000 Census tracts: 603, 607, 609, 610, 611, 612, 613, 614, 616, 636.03, 636.04, 636.05, 636.06, 638, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655.01, 655.02, 656, 657, 658, 659, 668, 669, 670, 671	Attainment ⁽¹⁾
Rest of state	Unclassifiable/Attainment

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

Section 8. Attainment Status Designations for PM_{2.5}, (1) 1997 Annual Primary and Secondary Standard:

Designated Area	Designation Type	Classification
Boone County	Attainment ⁽¹⁾	
Boyd County	Attainment ⁽¹⁾	
Bullitt County	Nonattainment	Moderate
Campbell County	Attainment ⁽¹⁾	
Jefferson County	Nonattainment	Moderate
Kenton County	Attainment ⁽¹⁾	
Lawrence County (part) The area described by U.S. Census 2000 block group identifier 21-127-9901-6	Attainment ⁽¹⁾	
Rest of state	Unclassifiable/Attainment	

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

(2) 2012 Annual PM_{2.5} Primary Standard:

Designated Area	Designation Type
Bullitt County (part) 2010 Census tracts: 201.01, 201.02, 201.03, 202.01, 202.02, 203, 204, 205, 206.01, 206.02, 207.01, 207.02, 208, 211.01, and 211.02	Unclassifiable
Jefferson County	Unclassifiable
Rest of state	Unclassifiable/Attainment

(3) 1997 Twenty-four (24) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

(4) 2006 Twenty-four (24) Hour Primary and Secondary Standard:

Designated Area	Designation Type
Statewide	Unclassifiable/Attainment

Section 9. Attainment Status Designations for Sulfur Dioxide (SO₂), (1) 1971 Primary and Secondary Standard:

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Statewide				X

(2) 2010 Primary Standard:

Designated Area	Designation Type
Boyd County	Unclassifiable/Attainment
Campbell County (part) <u>That portion of Campbell County which lies south and west of the Ohio River described as follows: Beginning at geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude on the edge of the Ohio River running southwesterly to KY Hwy 1566; continuing running southwesterly along KY Hwy 1566 to KY Hwy 9 (AA Highway); running northwesterly along KY Hwy 9 (AA Highway) from Hwy 1566 to Interstate 275; running northeasterly along Interstate 275 to Hwy 2345 (John's Hill Rd.), Hwy 2345 to US-27, US-27 to I-275, I-275 to the Ohio River; running southeasterly along the Ohio River from Interstate 275 to geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude</u>	Attainment ⁽¹⁾
Daviess County	Unclassifiable/Attainment
Fayette County	Unclassifiable/Attainment
Greenup County	Unclassifiable/Attainment
Henderson County	Unclassifiable/Attainment

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<u>Jefferson County (part)</u> That portion of Jefferson County compassed by the polygon with the vertices using Universal Transverse Mercator (UTM) coordinates in UTM zone 16 with datum NAD83: Ethan Allen Way extended to the Ohio River at UTM Easting (m) 595738, UTM Northing 4214086 and Dixie Hwy (US60 and US31W) at UTM Easting (m) 597515, UTM Northing 4212946; along Dixie Hwy from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678; Near the adjacent property lines of Louisville Gas and Electric-Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Hwy at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014; Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086	<u>Nonattainment</u>
<u>Jessamine County</u>	<u>Unclassifiable/Attainment</u>
<u>Livingston County</u>	<u>Unclassifiable/Attainment</u>
<u>McCracken County</u>	<u>Unclassifiable/Attainment</u>
<u>Rest of state</u>	<u>Unclassifiable</u>

Footnote: ⁽¹⁾ Existing sources located in areas previously designated as nonattainment shall continue to comply with all applicable conditions pursuant to 401 KAR Chapters 59 and 61.

<u>Designated Area</u>	<u>Designation Type</u>
<u>Campbell County (part)</u> That portion of Campbell County which lies south and west of the Ohio River described as follows: Beginning at 38.9735 North Latitude, 84.3017 West Longitude on the edge of the Ohio River running southwesterly to KY Hwy 1566 to KY Hwy 9 (AA Highway); running northwesterly along KY Hwy 9 (AA Highway) from Hwy 1566 to Interstate 275; running northeasterly along Interstate 275 to Hwy 2345 (John's Hill Rd.), Hwy 2345 to US-27, US-27 to I-275, I-275 to the Ohio River; running southeasterly along the Ohio River from Interstate 275 to geographic coordinates 38.9735 North Latitude, 84.3017 West Longitude	<u>Attainment</u>

<u>Jefferson County (part)</u> That portion of Jefferson County compassed by the polygon with the vertices using Universal Transverse Mercator (UTM) coordinates in UTM zone 16 with datum NAD83: Ethan Allen Way extended to the Ohio River at UTM Easting (m) 59738, UTM Northing 4214086 and Dixie Hwy (US60 and US31W) at UTM Easting (m) 59751, UTM Northing 4212946; along Dixie Hwy from UTM Easting (m) 597515, UTM Northing 4212946 to UTM Easting (m) 595859, UTM Northing 4210678; Near the adjacent property lines of Louisville Gas and Electric-Mill Creek Electric Generating Station and Kosmos Cement where they join Dixie Hwy at UTM Easting (m) 595859, UTM Northing 4210678 and the Ohio River at UTM Easting (m) 595326, UTM Northing 4211014; Along the Ohio River from UTM Easting (m) 595326, UTM Northing 4211014 to UTM Easting (m) 595738, UTM Northing 4214086	<u>Nonattainment</u>
<u>Rest of state</u>	<u>Unclassifiable/Attainment</u>

Section 10. Attainment Status Designations for Total Suspended Particulates (TSP). The 1971 Standard is as follows:

<u>Designated Area</u>	<u>Does Not Meet Primary Standards</u>	<u>Does Not Meet Secondary Standard</u>	<u>Cannot Be Classified</u>	<u>Better Than National Standards</u>
<u>Bell County</u>				<u>X</u>
<u>Boyd County</u>			<u>X</u>	
<u>That portion of Bullitt County in Shepherdsville</u>				<u>X</u>
<u>That portion of Campbell County in Newport</u>				<u>X</u>
<u>That portion of Daviess County in Owensboro bordered by the Ohio River on the north, by Frederica Street projected to the river on the west, by Fourth Street and U.S. 60</u>			<u>X</u>	

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<u>on the south, and by the Beltline (KY 212) projected to the river on the east</u>				
<u>That portion of Henderson County in Henderson</u>			X	
<u>Jefferson County</u>			X	
<u>That portion of Lawrence County in Louisa</u>			X	
<u>McCracken County</u>				X
<u>That portion of Madison County in Richmond</u>			X	
<u>Marshall County</u>				X
<u>Muhlenberg County</u>				X
<u>That portion of Perry County in Hazard</u>			X	
<u>That portion of Pike County in Pikeville</u>			X	
<u>That portion of Whitley County in Corbin</u>				X
<u>Rest of state</u>				X

<u>and U.S. 60 on the south, and by the Beltline (KY 212) projected to the river on the east</u>				
<u>That portion of Henderson County in Henderson</u>			X	
<u>Jefferson County</u>			X	
<u>That portion of Lawrence County in Louisa</u>			X	
<u>McCracken County</u>			X	
<u>That portion of Madison County in Richmond</u>			X	
<u>Muhlenberg County</u>			X	
<u>That portion of Perry County in Hazard</u>			X	
<u>That portion of Pike County in Pikeville</u>			X	
<u>That portion of Whitley County in Corbin</u>			X	
<u>Rest of state</u>				X

[Attainment Status Designations for Total Suspended Particulates.

<u>[Designated Area</u>	<u>Does Not Meet Primary Standards</u>	<u>Does Not Meet Secondary Standards</u>	<u>Cannot Be Classified</u>	<u>Better Than National Standards</u>
<u>Bell County</u>			X	
<u>Boyd County</u>			X	
<u>That portion of Bullitt County in Shepherdsville</u>			X	
<u>That portion of Campbell County in Newport</u>			X	
<u>That portion of Daviess County in Owensboro bordered by the Ohio River on the north, by Frederica Street projected to the river on the west, by Fourth Street</u>			X	

<u>Designated Areas</u>	<u>Does Not Meet Primary Standard</u>	<u>Does Not Meet Secondary Standards</u>	<u>Better Than Standard</u>	<u>Cannot Be Classified</u>
<u>Bell Co.</u>			X	
<u>Boyd Co.</u>				X
<u>That portion of Bullitt County in Shepherdsville</u>			X	
<u>That portion of Campbell County in Newport</u>			X	
<u>That portion of Daviess County in Owensboro bordered by the Ohio River on the north, by Frederica Street projected to the river on the west, by Fourth Street and U.S. 60 on the south and by the Beltline (KY 212) projected to</u>				X

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Designated Areas	Does Not Meet Primary Standard	Does Not Meet Secondary Standards	Better Than Standard	Cannot Be Classified
the river on the east				
That portion of Henderson County in Henderson				X
Jefferson County				X
That portion of Lawrence County in Louisa				X
McCracken County			X	
Marshall County			X	
That portion of Madison County in Richmond				X
Muhlenberg County			X	
That portion of Perry County in Hazard				X
That portion of Pike County in Pikeville				X
That portion of Whitley County in Corbin			X	
Rest of State			X	

Section 5. Attainment Status Designations for Sulfur Dioxide.

Designated Areas	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Better Than Standards
That portion of Boyd County south of the Northern UTM line 4251 Km	X	X	
Muhlenberg County		X	
Rest of State			X

Section 6. Attainment Status Designations for Carbon Monoxide.

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified Or Better Than Standards
Jefferson Co.		X
Rest of State		X

Section 7. Attainment Status Designations for Ozone.

Designated Areas	Moderate	Marginal	Cannot be Classified or Better Than Standards
Boone County	X		
Boyd County			X
That portion of Bullitt County within the boundaries described as follows: Beginning at the intersection of KY 1020	X		

and the Jefferson Bullitt County line proceeding to the east along the county line to the intersection of county road 567 and the Jefferson Bullitt County line; proceeding south on county road 567 to the junction with KY 1116 (also known as Zoneton Road); proceeding to the south on KY 1116 to the junction with Hebron Lane; proceeding to the south on Hebron Lane to Cedar Creek; proceeding south on Cedar Creek to the confluence of Floyds Fork turning southeast along a creek that meets KY 44 at Stallings Cemetery; proceeding west along KY 44 to the eastern most point in the Shepherdsville city limits; proceeding south along the Shepherdsville city limits to the Salt River and west to a point across the river from Mooney Lane; proceeding south along Mooney Lane to the junction of KY 480; proceeding west on KY 480 to the junction with KY 2237; proceeding south on KY 2237 to the junction with KY 61 and proceeding north on KY 61 to the junction with KY 1494; proceeding south on KY 1494 to the junction with the perimeter of the Fort Knox military reservation; proceeding north along the military reservation perimeter to Castleman Branch Road; proceeding north on Castleman Branch Road to KY 44; proceeding a very short distance west on KY 44 to a junction with KY 2723; proceeding north on KY 2723 to the junction of Chillicoop Road; proceeding northeast on Chillicoop Road to the junction of KY 2678; proceeding north on KY 2673 to the junction of KY 1020; proceeding north on KY 1020 to the beginning.			
Caldwell County	-		X
Calloway County	-		X
Campbell County	X	-	-
Christian County	-		X
Fayette County	-		X
That portion of Greenup	-		X

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County within the boundaries described as follows: Beginning at a point where the Ohio River meets the Greenup-Boyd County Line; proceeding southwest along the Greenup-Boyd County Line to the junction of the East Fork of the Little Sandy River and the Greenup-Boyd County Line; proceeding north and west along the East Fork of the Little Sandy River to the confluence of the Little Sandy River; proceeding north along the Little Sandy River to the confluence of the Ohio River; proceeding east along the Ohio River to the beginning.				proceeding on to the east-southeast along the power line then south across Fort Pickens Road to a power substation on KY 146; proceeding along the power line south across KY 146 and the Seaboard System Railroad Track to adjoin the incorporated city limits of LaGrange; then proceeding east then south along the LaGrange city limits to a point abutting the north side of KY 712; proceeding east-southeast on KY 712 to the junction of Massie School Road and KY 712; proceeding to the south-southwest on Massie School Road to the intersection of Massie School Road and Zale Smith Road; proceeding northwest on Zale Smith Road to the junction of KY 53 and Zale Smith Road; proceeding on KY 53 to the north-northwest to the junction of new Moody Lane and KY 53; proceeding on new Moody Lane to the south-southwest until meeting the city limits of LaGrange; then briefly proceeding north following the LaGrange city limits to the intersection of the northbound lane of Interstate 71 and the LaGrange city limits; proceeding southwest on the northbound lane of Interstate 71 until intersecting with the North Fork of Currys Fork; proceeding south-southwest beyond the confluence of Currys Fork to the south-southwest beyond the confluence of Floyds Fork continuing on to the Oldham-Jefferson County Line; proceeding northwest along the Oldham-Jefferson County Line to the beginning.			
Jefferson County	X	-	-				
Kenton County	X	-	-				
That portion of Oldham County within the boundaries described as follows: Beginning at the intersection of the Oldham-Jefferson County line with the southbound lane of Interstate 71; proceeding to the northeast along the southbound lane of Interstate 71 to the intersection of KY 329 and the southbound lane of Interstate 71; proceeding to the northwest on KY 329 to the intersection of Zaring Road and KY 329; proceeding to the east-northeast on Zaring Road to the junction of Cedar Point Road and Zaring Road; proceeding to the north-northeast on Cedar Point Road to the junction of KY 393 and Cedar Point Road; proceeding to the south-southeast on KY 393 to the junction of the access road on the north side of Reformatory Lake and the Reformatory; proceeding to the east-northeast on the access road to the junction with Dawkins Lane and the access road; proceeding to follow an electric power line east-northeast across from the junction of County Road 746 and Dawkins Lane to the east-northeast across KY 53 on to the LaGrange Water Filtration Plant;	X	-	-				
Trigg County							X
Rest of State							X

Section 8. Attainment Status Designations for Nitrogen Oxides.

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than Standards

Statewide	X
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CHARLES G. SNAVELY, Secretary
 APPROVED BY AGENCY: July 11, 2016
 FILED WITH LRC: July 12, 2016 at 2 p.m.
 CONTACT PERSON: Cassandra Jobe, Policy Analyst,
 Division for Air Quality, 200 Fair Oaks Lane, 1st Floor, Frankfort,
 Kentucky 40601, phone (502) 564-3999, fax (502) 564-4666, email
 Cassandra.Jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of ambient air quality standards. Under the Clean Air Act (CAA), states have the primary responsibility for assuring air quality within the entire geographic area of the state by submitting an implementation plan to specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in a state.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to identify geographic areas pursuant to Section 107 of the CAA and designate whether the area is attaining ambient air quality standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Section 107 of the Clean Air Act provides states with the primary responsibility for assuring air quality within the entire geographic area of the state. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the ambient air quality standards for the purposes of planning and implementation of air pollution control strategies. Further, KRS 224.20-110 prohibits pollution of the air of the Commonwealth in contravention of the emission standards or the ambient air standards adopted by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The applicability of several regulations relates to the designation of an area as listed in this administrative regulation. The Kentucky state implementation plan (SIP) specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in the state depending on the designation of the area as prescribed in 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: This amendment makes corrections to the tables in Section 9(2) and Section 10 and adds footnotes to other tables for clarification purposes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to clarify attainment status designations and to correct the tables in Section 9(2) and Section 10 of this administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by correcting the tables in Section 9(2) and Section 10 and adding clarification language to tables with attainment status designations.

(d) How the amendment will assist in the effective administration of statutes: The applicability of several regulations relates to the designation of an area as listed in this administrative regulation. The Kentucky SIP specifies the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in a state depending on the designation of the area as prescribed in this 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 designates

all areas of the Commonwealth of Kentucky with regard to attainment of the NAAQS based on air quality data. The impact of this administrative regulation is indirect, as other regulations refer to the status designation. The number and types of affected facilities will vary depending on location of the facility and regulatory requirements based on the facility's operating parameters.

(4) Provide an assessment 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:

(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 will not have to take any action to directly comply with this administrative regulation. However, an entity may be required to meet more stringent requirements set forth in another administrative regulation due to the status designation 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 is no cost associated with this proposed amendment as it updates the status designations to be consistent with federal regulations. Entities will not have to take any action to directly comply with this administrative regulation. However, an entity may be required to meet standards set forth in another administrative regulation due to the status designation in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance and upon the designation of Attainment status, new sources will be subject to less stringent requirements than those in Nonattainment as a result of the air quality in that particular area, thus attracting new businesses and thereby encouraging economic development.

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

(a) Initially: The Division for Air Quality will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The Division for Air Quality will not incur any additional costs 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 Division for Air Quality's current operating budget will 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. No increase in fees or funding is necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied. An area's air quality designation status is determined by ambient air quality data. The regulation is tiered based upon the severity of the area's non-compliance and triggers more stringent control strategies for areas not meeting the ambient air quality standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division for Air Quality will continue to use the status designations in this regulation to determine applicability of other regulations. State and local governments that own or operate affected facilities may be subject to other regulatory requirements based on the location of the affected facility and the facility's operating parameters.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), KRS 224.20-110, 42 U.S.C. 7407, 40 C.F.R. 81.318

(3) Estimate the effect of this administrative regulation on the 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 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 proposed administrative regulation will not generate revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? The Division for Air Quality's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Division for Air Quality's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. U.S. EPA promulgated the federal regulations in 40 C.F.R. 81.318 pursuant to 42 U.S.C. 7407.

2. State compliance standards. This administrative regulation designates the status of a geographic area in the Commonwealth as related to ambient air quality standards.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7407 obligates each state with the primary responsibility for assuring air quality within the entire geographic area of the state. This administrative regulation designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of ambient air quality standards for the purposes of planning and implementation of air pollution control strategies.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. Stricter standards or requirements are not imposed. The amendment to this administrative regulation provides regulatory consistency with 40 C.F.R. 81.318.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards or requirements are not imposed.

PROPOSED AMENDMENTS

OFFICE OF KENTUCKY SECRETARY OF STATE
(Amendment)

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 State to promulgate an administrative regulation prescribing a standard form ~~that~~^{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).

(2) "Tax district" is defined by KRS 67.750(10).

Section 2. A 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 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", ~~June 2016~~^{July 2015}; and

(b) "General Instructions for Form OL-S for a Single Tax District", ~~June 2016~~^{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>.

JACOB M. EWING, Special Assistant for
MARGARET C. MCKAY, Executive Director
APPROVED BY AGENCY: July 13, 2016
FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24 2016, at 9:00 a.m., at the Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day, 11:59 p.m., on August 31, 2016. 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: Margaret C. McKay, 700 Capital Avenue, State Capitol, Suite 153, Frankfort, Kentucky 40601, phone (502) 782-7439, fax (502) 564-5687, email Megan.McKay@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Margaret C. McKay

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the standard form for occupational license tax returns as mandated by KRS 67.767.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 67.767(1) which requires the Secretary of State 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.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 67.767(1) mandates that the Office of Secretary of State 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. This administrative regulation prescribes the standard form for occupational license tax returns as mandated by KRS 67.767(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 67.767(1) by prescribing the mandated 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.

(2) If 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 not change the administrative regulation but will solely revise the instructions.

(b) The necessity of the amendment to this administrative regulation: This amendment will eliminate any confusion in completing Form OL-S.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute. (KRS 67.767(1))

(d) How the amendment will assist in the effective administration of the statutes: This amendment will eliminate any confusion in completing Form OL-S.

(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 countless entities, local government occupational license tax administrators, and certified public accountants that are located within the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities and individuals identified in question (3) will have to familiarize themselves with the form and the law regarding its usage pursuant KRS 67.767.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities identified in question (3) will incur no costs in order to use the form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By adopting this standardized form, entities identified in question (3) that conduct business in multiple tax jurisdictions will no longer have to file a multitude of jurisdiction specific occupational license tax return forms for net profits or gross receipts. The filing of occupational license tax returns will be greatly streamlined because these entities will simply fill out this single form and file it in any tax jurisdiction where they conduct business.

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding since there is no cost to implement this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact only the local government occupational license tax administrator and the office of Secretary of State since it has prescribed the form incorporated by reference in this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 67.767(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this administrative regulation for the first year.

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

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:

OFFICE OF THE ATTORNEY GENERAL
Office of Consumer Protection
(Amendment)

40 KAR 2:150. Cremation forms and inspections.

RELATES TO: KRS 367.93103, 367.93105, 367.93117, 367.97501, 367.97504, 367.97507, 367.97511, 367.97514, 367.97517, 367.97521, 367.97524, 367.97527[~~367.97504-367.97537~~]

STATUTORY AUTHORITY: KRS[~~15.180, 367.150(4), 367.97501, 367.97504, 367.97514, 367.97524, 367.97527,~~

367.97534

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.97534(5) authorizes the Attorney General to promulgate administrative regulations necessary to carry out the provisions of KRS 367.97501 to 367.97537. This administrative regulation establishes a cremation authorization form identified in KRS 367.97501(6), a crematory annual report form identified in KRS 367.97504(6), a preneed cremation authorization form identified in KRS 367.97501(15) prior to its amendment effective July 15, 2016, that may be completed and executed before July 15, 2016, a statement of training for crematory operators identified in KRS 367.97514(6), and a crematory authority license application form identified in KRS 367.97504(1). This administrative regulation also identifies[~~to identify~~] the records and information that shall[~~must~~] be retained by the crematory operator as identified in KRS 367.97504(5), and establishes[~~to establish the~~] guidelines for crematory inspections regarding[~~identified in~~] KRS 367.97504(1) and (5), 367.97511(4), 367.97514(5), and 367.97534.

Section 1. Cremation Authorization Form. The [“]Cremation Authorization[“], Form CR-1, required by KRS 367.97524, shall contain the following information:

(1) The name of the crematory authority;
(2) The address of the crematory authority, including the city, state, and zip code;

(3) The telephone number of the crematory authority;

(4) A statement informing the authorizing agent that it is the policy of the crematory authority that it will accept a decedent for cremation only after civil and medical authorities have issued all required permits, all necessary authorizations have been obtained and no objections have been raised, and all prerequisites by the state of death have taken place and any required forms or permits are attached;

(5) The name, address (including the city, state, and zip code), age, and gender of the decedent[~~deceased~~], and the place and date of death;

(6)[~~(5)~~] Whether or not the decedent's death was due to an infectious disease and, if so, an explanation;

(7) A statement that pacemakers, radioactive, silicon or other implants, mechanical devices or prosthesis may create a hazardous condition if placed in cremation chamber and subjected to heat, and that the authorizing agent instructs the crematory authority or funeral home to remove all devices that may become hazardous during the cremation process;

(8)[~~(6)~~] Whether the decedent's remains contain any devices, including mechanical, prosthetic, implants or materials, which may have been implanted in or attached to the decedent[~~a pacemaker, prosthesis, radioactive implant~~], or any other device that may become hazardous during the cremation process, and a description of the devices[~~could be explosive~~];

(9)[~~(7)~~] Whether the decedent had been treated with therapeutic radionuclides such as Strontium 89 or any other treatment that would result in residual radioactive material remaining as part of the decedent's remains and, if so, what the treatment was and when the last treatment was administered;

(10) A statement informing the authorizing agent of the following concerning identification of the decedent:

(a) Kentucky law requires the decedent's remains to be identified before cremation can take place; and

(b) The individual making the identification can be the authorizing agent, a family member, friend, coroner, or any other person who has personal knowledge of the decedent or the ability to make positive identification and who accepts any liability arising from the identification;

(11)[~~(8)~~] The name of the individual identifying the decedent's remains prior to cremation, the relationship of that individual to the decedent, and the signature of the individual identifying the body for cremation;

(12) Statements informing the authorizing agent of the following regarding cremation authorization:

(a) The person legally entitled to order the cremation of the decedent is the authorizing agent;

(b) The right to authorize the cremation of the decedent's body

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devolves according to the order of authority of classes of authorizing agents listed in subsection (13) of this section; and

(c) An authorizing agent in the order of authority classes described in subsection (13)(e) through (k) of this section shall provide their signature, printed name, address, city, state, zip code, and telephone number;

(13) The selection of the class of authorizing agents having the right to authorize the cremation of the decedent's body, in the following order of authority:

(a) The decedent through a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, and that the original Funeral Planning Declaration shall be attached;

(b) The person named as the designee or alternate designee in a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, and that the original Funeral Planning Declaration shall be attached;

(c) The person named in a United States Department of Defense form Record of Emergency Data (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the United States Armed Forces, and the original form shall be attached;

(d) The decedent through a Preneed Cremation Authorization, Form CR-3 completed and executed before July 15, 2016, and that the original Preneed Cremation Authorization, Form CR-3 shall be attached;

(e) The surviving spouse of the decedent;

(f) The surviving adult child or children of the decedent by selecting one (1) of the following, and the number of surviving adult children:

1. The sole surviving adult child of the decedent;

2. The majority of the surviving adult children of the decedent if there is more than one (1); or

3. Less than a majority of the surviving adult children, if at least one (1) attests that the child or children have used reasonable efforts to notify the other surviving adult children of their intentions and are not aware of any opposition to cremation of the decedent by more than half of the surviving adult children, by executing the attestation included in the Cremation Authorization, Form CR-1 or attaching a similar executed statement;

(g) The surviving parent or parents of the decedent by selecting one (1) of the following, and the number of surviving parents:

1. The sole surviving parent of the decedent;

2. The surviving parents of the decedent; or

3. If only one (1) of the parents is present, the present parent attests that the present parent has used reasonable efforts to notify the absent parent, by executing the attestation included in the Cremation Authorization, Form CR-1 or attaching a similar executed statement;

(h) The surviving adult grandchild or grandchildren of the decedent by selecting one (1) of the following, and the number of surviving adult grandchildren:

1. The sole surviving adult grandchild of the decedent;

2. The majority of the surviving adult grandchildren of the decedent if there is more than one (1); or

3. Less than a majority of the surviving adult grandchildren, if at least one (1) attests that the grandchild or grandchildren have used reasonable efforts to notify the other surviving adult grandchildren of their intentions and are not aware of any opposition to cremation of the decedent by more than half of the surviving adult grandchildren, by executing the attestation included in the Cremation Authorization, Form CR-1 or attaching a similar executed statement;

(i) The surviving adult sibling or siblings of the decedent by selecting one (1) of the following, and the number of surviving adult siblings:

1. The sole surviving adult sibling of the decedent;

2. The majority of the surviving adult siblings of the decedent if there is more than one (1); or

3. Less than a majority of the surviving adult siblings, if at least one (1) attests that the sibling or siblings have used reasonable efforts to notify the other surviving adult siblings of their intentions

and are not aware of any opposition to cremation of the decedent by more than half of the surviving adult siblings and this has been attested to in writing by executing the attestation included in the Cremation Authorization, Form CR-1 or attaching a similar executed statement;

(j) The surviving individual or individuals of the next degree of kinship under KRS 391.010 to inherit the estate of the decedent, by selecting one (1) of the following, and the relationship and number of surviving individuals of that relationship:

1. The sole individual in the next degree of kinship under KRS 391.010 to inherit the estate of the decedent;

2. The majority of the individuals who are of the next degree of kinship under KRS 391.010 to inherit the estate of the decedent if there is more than one (1); or

3. Less than a majority of the individuals who are of the next degree of kinship under KRS 391.010 to inherit the estate of the decedent, if at least one (1) attests that they used reasonable efforts to notify the other individuals who are of the same degree of kinship of their intentions and are not aware of any opposition to cremation of the decedent by more than half of the individuals who are of the same degree of kinship, by executing the attestation included in the Cremation Authorization, Form CR-1 or attaching a similar executed statement; and

(k) If none of the persons listed in paragraphs (a) through (j) of this subsection are available, a person willing to act and arrange for the final disposition of the decedent's remains, including a funeral home, that has a valid prepaid funeral plan that makes arrangements for the disposition of the decedent's remains, who attests that a good-faith effort has been made to contact any living individuals in an order of authority class described in paragraphs (a) to (j) of this subsection, by executing the attestation included in the Cremation Authorization, Form CR-1 or attaching a similar executed statement;

(14) Statements~~(9)~~ A statement~~]~~ informing the authorizing agent of the following regarding other rights and responsibilities concerning cremations:

(a) If the authorizing agent is in an order of authority class described in subsection (13)(e) through (k) of this section, the authorizing agent shall carefully read and understand the statements described in this subsection before signing the authorization;

(b) If the authorizing agent is in an order of authority class described in subsection(13)(e) through (k) of this section, the authorizing agent shall direct the crematory authority on the final disposition of the cremated remains;

~~(c)~~(f) The crematory authority shall not conduct any cremation nor accept a body for cremation unless it has a Cremation Authorization, Form CR-1, signed by the authorizing agent clearly stating the final disposition; ~~and~~

~~(d)~~(e) If the cremation is being performed pursuant to a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, or a Preneed Cremation Authorization, Form CR-3 that was completed and executed before July 15, 2016, the original form shall be attached to the Cremation Authorization, Form CR-1~~this form~~ in lieu of ~~the~~~~completing~~ statements in paragraphs (e) through (r) of this subsection~~on this form~~ concerning the authorization of the cremation;

~~(e)~~(10) A statement informing the authorizing agent that all cremations are performed individually and it is unlawful to cremate the remains of more than one (1) individual within the same cremation chamber at the same time;

~~(f)~~(11) A statement informing the authorizing agent of the following:

~~(a)~~ The consumer may choose cremation without choosing embalming services;

~~(g)~~(b) If the crematory authority does not have a refrigerated holding facility, it shall not accept human remains for anything other than immediate cremation;

~~(h)~~ The consumer is not required to purchase a casket for the purpose of cremation;

~~(i)~~(e) The crematory authority requires that the body of the decedent~~deceased~~ shall be delivered for cremation in a suitable, closed container ~~that~~~~which~~ shall be either a casket or an

alternative cremation container for cremation, but the crematory authority shall not require that the body be placed in a casket before cremation or that the body be cremated in a casket, nor shall a crematory authority refuse to accept human remains for cremation because they are not in a casket;

(j) The container in which the body is delivered to the crematory for cremation shall~~(d) If an alternative container is provided, it shall meet the following standards:~~

1. Be composed of readily-combustible materials suitable for cremation;
2. Be able to be closed to provide a complete covering for the human remains;
3. Be resistant to leakage or spillage; and
4. Be rigid enough to support the weight of the decedent~~[deceased];~~

~~(k)[(e)]~~ The crematory authority ~~may~~[is authorized to] inspect the casket or alternative container, including opening it if necessary, and~~[if there is leakage or damage,]~~ the crematory authority shall ~~not~~[refuse to] accept for holding a cremation container from which there is any evidence of leakage of the body fluids from the human remains in the container~~[the decedent for the purpose of cremation or refrigeration];~~

~~(l)[(f)]~~ The type of casket or cremation container selected for cremation;

~~(m)[(g)]~~ Due to the nature of the cremation process any personal possessions or valuable materials, such as dental gold or jewelry, as well as any body prostheses or dental bridgework, that are left with the decedent and not removed from the casket or alternative cremation container prior to cremation shall be destroyed or shall otherwise not be recoverable, unless authority to do so otherwise is specifically granted in writing;

~~(n)[(h)]~~ As the casket or alternative container will usually not be opened by the crematory authority to remove valuables, to allow for final viewing or for any other reason unless there is leakage or damage, the authorizing agent understands that arrangements shall be made to remove any possessions or valuables prior to the time the decedent is transported to the crematory authority;

~~(o)[(i)]~~ Cremated remains, to the extent possible, shall not be contaminated with foreign material;

~~(p)[(j)]~~ All noncombustible materials, such as dental bridgework, and materials from the casket or alternative cremation container, such as hinges, latches, and nails, shall be separated and removed, to the extent possible, by visible or magnetic selection and shall be disposed of by the crematory authority with similar materials from other cremations in a nonrecoverable manner, so that only human bone fragments and organic ash, including both human remains and container remains, remain, unless those objects are used for identification or as may be requested by the authorizing agent;

~~(q)[(k)]~~ As the cremated remains often contain recognizable bone fragments, unless otherwise specified, after bone fragments have been separated from the other material, they shall be mechanically processed or pulverized, which includes crushing or grinding into granulated particles of unidentifiable dimensions, virtually unrecognizable as human remains, prior to placement into the designated container; and

~~(r)[(l)]~~ While every effort shall be made to avoid commingling of cremated remains, inadvertent or incidental commingling of minute particles of cremated remains from the residue of previous cremations is a possibility, and the authorizing agent understands and accepts this fact;

~~(15)[(12)]~~ Instructions on disposition of the cremated remains, indicating whether the cremated remains will be:

- (a) Interred and, if so, where;
- (b) Scattered in a scattering area or garden and, if so, where;
- (c) In any manner~~[Scattered]~~ on private property with the permission of the owner and, if so, where;
- (d) Delivered either in person or by a method that has an internal tracking system that provides a receipt signed by the person accepting delivery~~[registered mail]~~ and, if so, to whom; or
- (e) Picked up at the crematory office and, if so, by whom;

~~(16)[(13)]~~ The date the body was received by the crematory authority, the cremation number, the date of cremation, the name

of the person performing the cremation, and the signature of the person performing the cremation, certifying that the cremation has been performed;

(17) A statement informing the authorizing agent of the following regarding execution of the Cremation Authorization, Form CR-1:

(a) Executing the Cremation Authorization, Form CR-1 as authorizing agent grants consent to the cremation of the decedent; and

(b) Executing the Cremation Authorization, Form CR-1 as authorizing agent warrants:

1. That all representations and statements contained on the Cremation Authorization, Form CR-1 are true and correct;

2. That the statements contained on the Cremation Authorization, Form CR-1 were made to induce the crematory authority to cremate the human remains of the decedent; and

3. That the person executing the Cremation Authorization, Form CR-1 has read and understands the provisions contained on the Cremation Authorization, Form CR-1;

~~(18)[(44)]~~ Signature of ~~each~~[the] authorizing agent granting consent to the cremation of the decedent;

~~(19)[(45)]~~ The name of ~~each~~[the] authorizing agent and the relationship of the authorizing agent to the ~~decedent~~[deceased];

~~(20)[(46)]~~ The address of the authorizing agent, including the city, state, and zip code;

~~(21)[(47)]~~ The telephone number of the authorizing agent;

~~(22)[(48)]~~ The name, address, city, state, zip code, telephone number, and signature of the funeral director or other individual as witness for the authorizing agent; and

~~(23)[(49)]~~ The date and location where the authorizing agent signed the Cremation Authorization, Form CR-1.

Section 2. Crematory Annual Report Form. The ^[2]Crematory Annual Report^[1], Form CR-2, required by KRS 367.97504(6), shall contain the following information:

- (1) The name of the crematory authority;
- (2) The address of the crematory authority, including the city, state, and zip code;
- (3) The number of retorts operated by the crematory authority;
- (4) The number of cremations performed by the crematory authority in each retort during the preceding calendar year;
- (5) The total number of cremations performed by the crematory authority during the preceding calendar year;
- (6) A numerical breakdown of the disposition of cremated remains in the preceding year, indicating the number:
 - (a) Scattered;
 - (b) Interred, either in a niche or in-ground burial;
 - (c) Returned to the family or funeral home; or
 - (d) With other means of disposition. The other means of disposition used shall be briefly described;
- (7) A list of the names and registration numbers of all crematory operators who worked for the crematory authority during the preceding year;
- (8) The signature of the individual completing the form and the date on which the form was completed; and
- (9) A statement requiring the remittance of a ten (10) dollar check or money order for the annual registration fee.

Section 3. Preneed Cremation Authorization Form. (1) The ^[2]Preneed Cremation Authorization^[1], Form CR-3, required by KRS 367.97527 before that statute was amended effective July 15, 2016, shall not be completed or executed on or after July 15, 2016.

(2) A Preneed Cremation Authorization, Form CR-3, completed and executed prior to July 15, 2016, shall contain the following information:

- ~~(a)[(1)]~~ The name of the crematory authority;
- ~~(b)[(2)]~~ The address, including the city, state, and zip code;
- ~~(c)[(3)]~~ The telephone number of the crematory authority;
- ~~(d)[(4)]~~ The name of the authorizing agent;
- ~~(e)[(5)]~~ The address of the authorizing agent, including the city, state, and zip code;
- ~~(f)[(6)]~~ The home telephone number of the authorizing agent;
- ~~(g)[(7)]~~ The age and gender of the authorizing agent;

~~(h)~~[(9)] Whether the decedent authorizing agent has any infectious or contagious disease and, if so, an explanation;

~~(i)~~[(9)] Whether the decedent authorizing agent's body contains a pacemaker, prosthesis, radioactive implant, or any other device that could be explosive;

~~(j)~~[(10)] Whether the decedent authorizing agent has been treated with therapeutic radionuclides such as Strontium 89 or any other treatment that would result in residual radioactive material remaining as part of the decedent authorizing agent's remains and, if so, what the treatment was and the last date it was administered;

~~(k)~~[(11)] A statement specifying that all cremations are performed individually and that it is unlawful to cremate the remains of more than one (1) individual within the same cremation chamber at the same time;

~~(l)~~[(12)] A statement informing the authorizing agent that the agent may choose cremation without choosing embalming services and that if the crematory chosen does not have a refrigerated holding facility it shall not accept human remains for anything other than immediate cremation;

~~(m)~~[(13)] A statement informing the authorizing agent of the following:

1.~~(a)~~ The agent is not required to purchase a casket for the purpose of cremation;

2.~~(b)~~ The crematory authority shall require the decedent authorizing agent to be delivered for cremation in a suitable container which shall be either a casket or an alternative cremation container; and

3.~~(c)~~ An alternative cremation container shall meet the following standards:

a.~~(1)~~ Be composed of readily-combustible materials suitable for cremation;

b.~~(2)~~ Be able to be closed to provide a complete covering for the human remains;

c.~~(3)~~ Be resistant to leakage or spillage; and

d.~~(4)~~ Be rigid enough to support the weight of the decedent~~[deceased]~~;

~~(n)~~[(14)] A statement informing the authorizing agent that the crematory ~~may~~~~[is authorized to]~~ inspect the casket or alternative container, including opening if necessary, and if there is leakage or damage, the crematory shall refuse to accept the decedent authorizing agent's remains for the purpose of cremation or refrigeration;

~~(o)~~[(15)] The type of casket or alternative container selected for cremation;

~~(p)~~[(16)] A statement informing the authorizing agent of the following:

1.~~(a)~~ Due to the nature of the cremation process any personal possessions or valuable materials, such as dental gold or jewelry, as well as any body prostheses or dental bridgework, that are left with the decedent authorizing agent and not removed from the casket or alternative container prior to cremation shall be destroyed or shall otherwise not be recoverable; and

2.~~(b)~~ The casket or alternative container will usually not be opened by the crematory authority to permit the removal of valuables, to allow for final viewing or for any other reason unless there is leakage or damage, so the authorizing agent shall make arrangements to have any possessions or valuables removed prior to the time the remains are transported to the crematory authority;

~~(q)~~[(17)] A statement informing the authorizing agent of the following:

1.~~(a)~~ To the extent possible, cremated remains shall not be contaminated with foreign material;

2.~~(b)~~ All noncombustible materials such as dental bridgework, and materials from the casket or alternative container, such as hinges, latches, and nails, shall be separated and removed, to the extent possible, by visible or magnetic selection and shall be disposed of by the crematory authority with similar materials from other cremations in a nonrecoverable manner, so that only human bone fragments and organic ash, including both human remains and container remains, remain;

3.~~(c)~~ As the cremated remains often contain recognizable bone fragments, unless otherwise specified, after the bone fragments have been separated from the other material, they shall

be mechanically processed or pulverized, which includes crushing or grinding into granulated particles of unidentifiable dimensions, virtually unrecognizable as human remains, prior to placement into the designated container; and

4.~~(d)~~ While every effort shall be made to avoid commingling of cremated remains, inadvertent or incidental commingling of minute particles of cremated remains from the residue of previous cremations is a possibility, and the authorizing agent understands and accepts this fact;

~~(r)~~[(18)] A statement informing the authorizing agent of the following:

1.~~(a)~~ The original copy of the Preneed Cremation Authorization, Form CR-3 shall be retained by the firm or person with which the arrangements are being made and a copy shall be provided to the authorizing agent; and

2.~~(b)~~ A person arranging his or her own cremation shall have the right to transfer or cancel this authorization at any time prior to death by notifying by certified mail, the firm or person with which the preneed authorization form is filed;

~~(s)~~[(19)] A statement informing the authorizing agent that if there are not different or inconsistent instructions provided to the crematory authority at the time of death, the crematory authority shall release or dispose of the cremated remains as indicated on this Preneed Cremation Authorization, Form CR-3;

~~(t)~~[(20)] A statement informing the authorizing agent of the following:

1.~~(a)~~ If there is a conflict between the authorizing agent's preneed authorization and the demands of the next class of authorizing agent, the crematory authority shall not accept for cremation the authorizing agent's remains without an order deciding the issues entered by the district court of the county of the decedent authorizing agent's residence or the county where the funeral home or the crematory authority is located;

2.~~(b)~~ The order may be issued by the court after a petition for a resolution has been initiated by any natural person in the next class of authorizing agent or the crematory authority; and

3.~~(c)~~ Unless extraordinary circumstances exist, the court shall give due deference to the desires of the decedent authorizing agent as expressed in the Preneed Cremation Authorization, Form CR-3;

~~(u)~~[(21)] Instructions on the disposition of the cremated remains, indicating whether the cremated remains will be:

1.~~(a)~~ Interred and, if so, where;

2.~~(b)~~ Scattered in a scattering area or garden and, if so, where;

3.~~(c)~~ Scattered on private property with the permission of the owner and, if so, where;

4.~~(d)~~ Delivered either in person or by registered mail and, if so, to whom; or

5.~~(e)~~ Picked up at the crematory office and, if so, by whom;

~~(v)~~[(22)] The printed name, signature, address (including city, state, and zip code) and home telephone of the authorizing agent, explicitly authorizing the crematory authority to cremate the human remains of the authorizing agent;

~~(w)~~[(23)] The date and location where the authorizing agent signed the Preneed Cremation Authorization, Form CR-3;

~~(x)~~[(24)] The signature of the funeral director or other individual as witness for the authorizing agent;

~~(y)~~[(25)] The name of the funeral director or other individual acting as witness for the authorizing agent;

~~(z)~~[(26)] The address of the funeral director or other individual acting as witness for the authorizing agent, including the city, state, and zip code; and

~~(aa)~~[(27)] The telephone number of the funeral director or other individual acting as witness for the authorizing agent.

Section 4. Statement of Supervision Form. The ["]Statement of Supervision for Registered Crematory Retort Operators["], Form CR-4, required by KRS 367.97514(6), shall contain the following information:

(1) The name of the crematory retort operator who was supervised;

(2) The name of the employer crematory authority;

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- (3) The name of the supervising crematory operator, verifying that the crematory retort operator completed forty-eight (48) hours of on the job training supervised by the crematory operator;
- (4) The date on which the form was signed;
- (5) The signature of the crematory retort operator;
- (6) The signature of the crematory operator who supervised the crematory retort operator; and
- (7) The registration number of the crematory operator.

Section 5. Crematory Authority License Application Form. The ~~["Crematory Authority License Application"], Form CR-5 required by KRS 367.97504(1),~~ shall contain the following information:

(1) A statement informing the applicant that a crematory authority license shall be obtained from the Attorney General at least thirty (30) days prior to the opening of the crematory authority to conduct cremations;

(2) A statement informing the applicant that a \$100 registration fee shall accompany the application, and that the application shall be signed by a person, officer, or agent with authority to do so, under oath, and the signature shall be notarized~~[completed by the president, owner, corporate officer or any other person with the authority to bind the applicant];~~

(3) The date of the application;

(4) The full legal name of the applicant~~[crematory owner's name];~~

(5) The crematory name, if different from the applicant~~[owner];~~

(6) The business telephone number;

(7) The physical address of the crematory, including the city, county, state, and zip code;

(8) Mailing address, including city, state, and zip code, of the crematory authority, if different from the physical address;

(9) The form of organization of the crematory, indicating whether it is a:

(a) Corporation, and if so indicate the state of incorporation;

(b) Limited liability company, and if so indicate the state of organization;

(c) Partnership, and if so indicate the state of formation;

(d)~~[(e)]~~ Individual; or

(e)~~[(d)]~~ Other, and if so, please explain and indicate the state of formation;

(10) Evidence of authority to transact business in the Commonwealth of Kentucky, including a copy of the applicant's certificate of authority to transact business in the Commonwealth of Kentucky issued by the Kentucky Secretary of State, or other evidence of authority to transact business in the Commonwealth of Kentucky and describing the other evidence;

(11) The name, position, home address, including the city, state, and zip code, driver's license number and state of issuance, and date of birth~~[Social Security number]~~ of every owner of the applicant, or if the applicant is a business entity, every member, officer, and director of the applicant~~[crematory];~~

(12)~~[(11)]~~ The name, address, including city, state, and zip code, and account number, if applicable, of one (1)~~[(3)]~~ financial reference~~[references]~~. Suitable financial references shall include financial institutions and industry suppliers. Personal references shall not be acceptable;

(13)~~[(12)]~~ The name and address, including city, state, and zip code, of the financial institution at which the applicant has its business bank account;

(14)~~[(13)]~~ The account number of the business bank account;

(15)~~[(14)]~~ Whether the applicant intends to solicit preneed funeral contracts. If yes, a completed~~[an]~~ application for a preneed burial sellers license, Form CPN-6, incorporated by reference in 40 KAR 2:155, shall be attached;

(16)~~[(15)]~~ A statement from the applicant's retort manufacturer, which shall include the following information:

(a) The date on which the manufacturer delivered the retort to the applicant;

(b) Whether the manufacturer installed the retort and, if so, when the installation occurred; and

(c) Whether the retort was tested upon installation and, if so, the results of those tests;

(17)~~[(16)]~~ A statement informing the applicant that by

submitting the application, the applicant represents, agrees to, and states under penalty of law~~[is agreeing to]~~ the following:

(a) That~~[the applicant is stating under penalty of law that]~~ the information provided is true and accurate to the best of the applicant's knowledge;

(b) That the applicant is required to notify the Attorney General immediately of any change in the information required by this section and that KRS 367.97504(2) governs when a new license application form is required to be filed;

(c) That the applicant is not insolvent, has not conducted business in a fraudulent manner, and is duly authorized to do business in the state;

(d) That the applicant is in a position to commence operating a crematory and that all relevant state and local permits required have been issued;~~[and]~~

(e) That no final judgment or conviction for any crime involving moral turpitude has been entered against the applicant;

(f) That the license may be denied pursuant to KRS 367.97504, and may be denied, suspended, or revoked pursuant to KRS 367.97534;

(g) That the applicant understands that, pursuant to KRS 367.97504(2), changes in the persons, firm, partnership, ownership, association, or corporate structure as originally named in the application render the license, if granted, void, and that the crematory authority shall file a new application before the changes shall be official~~[That the license, if granted, may be suspended or revoked pursuant to KRS 367.97534 if any of Kentucky's cremation statutes, KRS 367.97501 to 367.97537 or any implementing administrative regulations, this administrative regulation and 40 KAR 2:250, are violated];~~ and

(h)~~[(g)]~~ That the applicant is authorized to complete the application~~[this form]~~ on behalf of the applicant crematory; and

(18)~~[(17)]~~ A dated and notarized signature of the person making the application on behalf of the crematory, and that person's title or position held.

Section 6. Required Records of the Crematory Authority. The records maintained by the crematory authority required by KRS 367.97504(5) shall include the following:

(1) A copy of the completed Cremation Authorization, Form CR-1 and, if applicable, the Preneed Cremation Authorization, Form CR-3 completed and executed prior to July 15, 2016, or the Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, for all cremations occurring within the last ten (10) years;

(2) A copy of the identification required to be attached to the outside of the cremation container by KRS 367.97507(2) and 367.97514(2); and

(3) A copy of any stainless steel identification tag that~~[which]~~ is placed with the human remains prior to cremation, is subjected to the cremation process with the human remains, survives the cremation process, and is left with the cremated remains after the cremation process is complete.

Section 7. Inspection of Crematory Authorities. An inspection of the crematory authority and its records, as required by KRS 367.97504(5), shall include annual, unannounced inspections of all crematory authority facilities and records and~~[which]~~ may include:

(1) An inspection of the crematory authority to determine if it is in active operation or is in a position to commence operation;

(2) An inspection of the retort for proper operation;

(3) An inspection of the crematory authority facility to determine if it is secure from unauthorized access;

(4) An inspection of the crematory authority facility to determine if the crematory authority license is displayed in a conspicuous place;

(5) An inspection of the refrigerated holding facility used for holding human remains to determine if it is secure from unauthorized access and functioning properly; and

(6) An inspection of crematory records for all cremations occurring within ten (10) years of the date of the inspection, including all information required to be kept by KRS 367.97504(5) and this administrative regulation.

Section 8. Inspection Completion Certificate. Each crematory authority ~~that~~^{which} successfully passes an annual inspection shall receive an Inspection Completion Certificate, which shall contain the following:

- (1) The name of the crematory authority;
- (2) The address of the crematory authority, including city, state, and zip code;
- (3) A certified statement that an inspection has been performed by the Kentucky Attorney General's Office ~~and that the crematory authority was found to be in compliance with KRS 367.97501 to 367.97537, this administrative regulation and 40 KAR 2:250 on the date of the inspection~~;
- (4) The date on which the inspection was performed; and
- (5) The signature of an authorized representative of the Attorney General's Office.

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

- (a) "Cremation Authorization", Form CR-1, 07-16[14-02];
- (b) "Crematory Annual Report", Form CR-2, 11-02;
- (c) "Preneed Cremation Authorization", Form CR-3, 11-02;
- (d) "Statement of Supervision for Registered Crematory Retort Operators", Form CR-4, 11-02; and
- (e) "Crematory Authority License Application", Form CR-5, 07-16[14-02];

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection~~Division~~, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601[40602], Monday through Friday, 8:00[8] a.m. to 4:30 p.m.

ANDY BESHEAR, Attorney General

APPROVED BY AGENCY: July 15, 2016

FILED WITH LRC: July 15, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2016, at 10:00 a.m., Eastern Time, at Kentucky Attorney General's Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m., Eastern Time, on August 31, 2016. 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: Kevin R. Winstead, Assistant Attorney General, Kentucky Attorney General's Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601; phone (502) 696-5389, fax (502) 573-8317, email address kevin.winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a cremation authorization form identified in KRS 367.97501(6), a crematory annual report form identified in KRS 367.97504(6), a preneed cremation authorization form identified in KRS 367.97501(15) prior to its amendment effective July 15, 2016, that may be completed and executed before July 15, 2016, a statement of training for crematory operators identified in KRS 367.97514(6), and a crematory authority license application form identified in KRS 367.97504(1). This administrative regulation also identifies the

records and information that must be maintained by the crematory operator as identified in KRS 367.97504(5), and establishes guidelines for crematory inspections regarding KRS 367.97504(1) and (5), 367.97511(4), 367.97514(5), and 367.97534.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the efficient and uniform application of the requirements of the cremation and crematory authority statutes in KRS 367.97501 to .97537. Senate Bill 103 (2016 Ky. Acts ch. 59), effective July 15, 2016, makes changes to KRS 367.97501 to .97537, and enacts KRS 367.93101 to .93121 regarding funeral planning declarations that also affect cremations and crematory authorities, thereby affecting this administrative regulation and certain forms created by this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Senate Bill 103, effective July 15, 2016, amends the cremation and crematory authority statutes in KRS 367.97501 to .97537 by deleting the order of authority in the definition of "authorization agent", deleting the preneed cremation authorization form and replacing references to it with references to the new funeral planning declaration form that is the subject of a separate new administrative regulation. Senate Bill 103 also, among other things, allows individuals to declare their preferences regarding final disposition of their body and related arrangements by using a funeral planning declaration form prescribed by administrative regulation promulgated by the Attorney General, and establishes a new order of authority for the right to control the final disposition of a decedent's body. The amendments to the existing administrative regulation will make certain conforming and other changes to the cremation authorization form, and provide that the preneed cremation authorization form cannot be completed or executed on or after July 15, 2016. The amendments will also amend the record maintenance requirements regarding cremations to include the new funeral planning declaration form if that form is used to authorize a cremation. The crematory authority license application will also be amended to reduce required owner identification information and financial institution documentation, require additional documentation regarding owners that are business entities, and clarify other statements in the application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 367.97501 to .97537, as amended by Senate Bill 103 effective July 15, 2016, by amending the cremation authorization form to include changes to the order of authority for the right to control the final disposition, including cremation, of a decedent's body, and by providing that the preneed cremation authorization form, which was deleted by Senate Bill 103, cannot be completed or executed on or after July 15, 2016. The administrative regulation will also assist in the effective administration of the statutes by amending record maintenance requirements regarding cremations to include the new funeral planning declaration form if that form is used to authorize a cremation, and amending the crematory authority license application to reduce required owner identification information and financial institution documentation, require additional documentation regarding owners that are business entities, and clarify other statements in the application.

(2) If 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 to the existing administrative regulation will make certain changes to cremation forms to conform to statutes enacted or amended in Senate Bill 103. The cremation authorization form will be amended to reflect the new order of authority for the right to control the final disposition of a decedent's body (KRS 367.93117) and to revise or clarify other statements in the form concerning the parties' rights and responsibilities. The amendments will provide that the preneed cremation authorization form cannot be completed or executed on or after July 15, 2016. The amendments will also amend the record maintenance requirements regarding cremations to include the new funeral planning declaration form if that form is used to authorize a cremation. The crematory authority license application will also be

amended to reduce required owner identification information and financial institution documentation, require additional documentation regarding owners that are business entities, and clarify other statements in the application.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for the efficient and uniform application of the requirements of KRS 367.97501 to .97537, as amended by Senate Bill 103 effective July 15, 2016. Senate Bill 103, among other things, changes the order of authority for the right to control the final disposition, including cremation, of a decedent's body, deletes the preneed cremation authorization form, and allows individuals to declare their preferences regarding final disposition of their body and related arrangements by using a funeral planning declaration form prescribed by administrative regulation promulgated by the Attorney General. The amendment to this administrative regulation will make certain conforming and other changes to the cremation authorization form, and provide that the preneed cremation authorization form cannot be completed or executed on or after July 15, 2016. The amendments will also amend the record maintenance requirements regarding cremations to include the new funeral planning declaration form if that form is used to authorize a cremation. The crematory authority license application will also be amended to reduce required owner identification information and financial institution documentation, require additional documentation regarding owners that are business entities, and clarify other statements in the application.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes as follows: It amends the cremation authorization form, which is authorized by KRS 367.97501(6), to reflect the new order of authority for the right to control the final disposition of a decedent's body (KRS 367.93117) and to revise or clarify other statements in the form concerning the parties' rights and responsibilities. It provides that the preneed cremation authorization form cannot be completed or executed on or after July 15, 2016. Senate Bill 103, effective July 15, 2016, deletes the statute authorizing the preneed cremation authorization form, KRS 367.97501(15), and replaces references to it in KRS 367.97527 with references to the new funeral planning declaration form that is the subject of a separate new administrative regulation. It amends the record maintenance requirements regarding cremations to include the new funeral planning declaration form if it is used to authorize a cremation. KRS 367.97504(5) provides that a crematory authority shall maintain a record of each cremation including certain information and any other information the Attorney General may require by administrative regulation, and that the records shall be kept at the crematory for at least ten years for inspection by the Attorney General. It amends the crematory authority license application, which is authorized by KRS 367.97504(1), to reduce required owner identification information and financial institution documentation, require additional documentation regarding owners that are business entities, and clarify other statements in the application.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of KRS 367.97501 to .97537, as amended by Senate Bill 103 effective July 15, 2016, by making certain conforming and other changes to the cremation authorization form, and providing that the preneed cremation authorization form cannot be completed or executed on or after July 15, 2016. The amendments will also assist in the effective administration of the statutes by amending the record maintenance requirements regarding cremations to include new funeral planning declaration form if that form is used to authorize a cremation, and by amending the crematory authority license application to reduce required owner identification information and financial institution documentation, require additional documentation regarding owners that are business entities, and clarify other statements in the application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: This administrative regulation affects: Approximately 33 crematory authorities that are currently licensed with the Attorney General. An unknown number of persons or business entities desiring to operate a crematory authority, who shall obtain a crematory authority license from the Attorney General at least thirty days prior to opening for the purpose of conducting cremations. (KRS 367.97504(1).) Approximately 5 crematory authorities have obtained a license from the Attorney General within the past twelve months. An unknown number of persons who may decide to make arrangements for the final disposition of their body by cremation, who may be authorizing agents for a cremation, or who may be funeral establishments, cemetery companies, and others, who may be involved in a cremation or the disposition of cremated remains. There were approximately over 11,100 cremations by licensed crematory authorities in Kentucky in 2015, over 510 funeral homes licensed with the Kentucky Board of Embalmers and Funeral Directors, and over 270 cemetery companies registered with the Attorney General.

(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 identified in question (3) will have to take the following actions to comply with this amended administrative regulation: Use the amended cremation authorization form in relation to cremations in Kentucky. The preneed cremation authorization form shall not be completed or executed on or after July 15, 2016. Cremations on or after July 15, 2016, may be authorized by a preneed cremation authorization form completed and executed prior to July 15, 2016. Comply with the amended record maintenance requirements regarding cremations, which include the new funeral planning declaration form if it is used to authorize a cremation. Persons or business entities desiring to operate a crematory authority shall use the amended crematory authority license application to obtain a crematory authority license from the Attorney General.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): At ten cents per page, the cost to print the amended cremation authorization form is estimated to be \$0.50 per copy and the cost to print the amended cremation authority license application is estimated to be \$0.50 per copy. The estimated total printing cost is unknown because it depends on the number of copies printed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation, a person or business entity desiring to operate a crematory authority in Kentucky will be able to apply for a crematory authority license from the Attorney General, and a crematory authority will be able to conduct cremations and accept bodies for cremation.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund appropriations and agency receipts.

(7) Provide an assessment of whether an 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 expected at this time.

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

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation because the administrative regulation does not disproportionately impact certain classes of regulated entities and the requirements of the statutes apply uniformly to any

crematory authority or other related regulated entity operating in the Commonwealth of Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1). What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of the Attorney General 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 367.93103, 367.93105, 367.93117, 367.97501, 367.97504, 367.97507, 367.97511, 367.97514, 367.97517, 367.97521, 367.97524, 367.97527.

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(Amendment)**

102 KAR 1:165. Surviving children's benefits.

RELATES TO: KRS 161.520

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.520(8) requires the Board of Trustees of Teachers' Retirement System of the State of Kentucky (TRS) to promulgate administrative regulations for the administration of survivor's benefits for a deceased member's child. KRS 161.520(7) provides that the Board of Trustees of TRS may require application for survivor's benefits. KRS 161.520(3)(a) provides that survivor's benefits may be provided to a disabled, adult child. KRS 161.520(6) provides that survivor's[survivors] benefits for a dependent child may be extended to age twenty-three (23) if the child is a full-time student in a recognized educational program beyond the high school level. This administrative regulation defines[serves to define] "recognized educational program," and establishes[te set up] specific guidelines for administering survivor's benefits and this authorized extension of the benefit period.

Section 1. Definitions. (1) "Full-time student" means a student who is in full-time attendance in a recognized educational program and is carrying a subject load ~~that~~[which] is considered full time for day students under the standards and practices of the educational institution.

(2) "Recognized educational program" means an educational program beyond the high school level that has been approved by a state, or accredited by a state or nationally-recognized accrediting agency.

Section 2. (1) An application for survivor's benefits for a minor child shall be filed on the Application for Survivor Benefits form and shall include a photocopy of:

(a) The child's Social Security card; and

(b) The child's certified birth certificate.

(2) If the application is approved, the minor child's monthly payment shall continue until one (1) of the conditions for termination of benefits in KRS 161.520(6) is met.

Section 3. (1) If a child meets the requirements set forth in KRS 161.520(3)(a), an Application for Adult Disabled Child Benefit form may be filed and shall include:

(a) A photocopy of the child's Social Security card;

(b) A photocopy of the child's certified birth certificate;

(c) A copy of the most recent Federal Income Tax Return listing the child as a dependent;

(d) Report of Physician for Applicant/Disabled Child Benefit form; and

(e) Authorization for Direct Deposit of \$200 Adult Disabled Child Benefit form.

(2) If the application is approved, the adult child's monthly payment shall continue until one (1) of the conditions for termination of benefits in KRS 161.520(3)(a) is met.

Section 4. A minor child receiving payment of survivor's[survivors] benefits shall be paid in full for any month in which some payment is due. If the child is, or plans to be, a full-time student in a recognized educational program[beyond the high school level], he may apply for continuation or restoration of his monthly benefit. If the child's application is approved, his monthly payment shall continue until one (1) of the conditions for termination of benefits in KRS 161.520(6) is met[he attains age twenty-three (23) unless he marries or stops attending school on a full-time basis].

Section 5.~~[3.]~~ If the child is a full-time student in a recognized educational program ~~when~~[beyond the high school level at the time] he reaches age eighteen (18), he shall make application for continuation of his benefit at least thirty (30) days prior to his 18th birthday. A child who is accepted as a full-time student in a recognized educational program after he attains age eighteen (18) shall make application for restoration of his monthly benefit at least thirty (30) days prior to his registration as a student.

Section 6.~~[4.]~~ Benefit payments for a properly qualified student shall begin with the first month in which he is in full-time attendance at a recognized educational program[institution]. The student shall be eligible for a full monthly benefit for his first month of attendance.

Section 7.~~[5.]~~ Proof of full-time school attendance shall be required if a child has reached age eighteen (18) but not age twenty-three (23). If the child is eighteen (18) and in high school, within ten (10) days of receipt, the child shall complete and file the Student's Statement Regarding School Attendance form[supply the necessary information on form SUR-1 (Student's Statement Regarding School Attendance, Revised 12/2000)]. If the child is a student in a recognized educational program, the child shall provide proof of continuing full-time school attendance by completing and filing the Student's Information Update Form after he has attended his first day of class[on form SUR-2 (Student Information Update Form)]. The information supplied by the child[student] shall be corroborated by either a Verification of Full-Time High School Attendance form or a Verification of Full-Time College Attendance form completed and filed by the appropriate high school or recognized educational program[a written statement from the school involved].

Section 8.~~[6.]~~ Benefit payments may continue through the normal school vacation periods if the child was a full-time student immediately prior to the vacation period and he intends to continue full-time or actually does attend full-time after the end of the vacation period. Benefit payments shall not be made for more than

four (4) months of vacation time during a school year. Benefit payments shall not be made during the summer vacation periods or the following school semesters until the Student's Statement Regarding School Attendance form [application for benefits on a form prescribed by the Board of Trustees of the Teachers' Retirement System] is received by the retirement system.

Section 9. If TRS verifies that a child has received survivor's benefits for a period in which the child was either no longer dependent or not enrolled as a full-time student in a recognized educational program, TRS shall seek reimbursement of the benefits paid for that period.

Section 10.[7-] A child eighteen (18) and younger may be entitled to benefits retroactively to the date of the member's death. A full-time student in a recognized educational program [child] may be entitled to benefits retroactively for as many as six (6) months [before the month in which he files the application for benefits. A child shall be entitled to benefits] beginning with the first month in the six (6) month retroactive period in which he met all the requirements to be entitled to benefits except for the filing of an application.

Section 11.[8-] When a child attains age eighteen (18) and continues to be entitled to benefits as a full-time student, the person who has been receiving the benefit payments shall continue to receive the payments unless it is deemed advisable to make payment directly to the child or in some other manner.

Section 12.[9-] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Survivor Benefits" form (Form 15), 2016;
- (b) "Student's Statement Regarding School Attendance" form (SUR-1), 2016;
- (c) "Student Information Update Form" (SUR-2), 2016;
- (d) "Verification of Full-Time College Attendance" form (SUR-3), 2016;
- (e) "Verification of Full-Time High School Attendance" form (SUR-4), 2016;
- (f) "Application for Adult Disabled Child Benefit" form (Form 19), 2016;
- (g) "Report of Physician for Applicant/Disabled Child Benefit" form (Form 20), 2016; and
- (h) "Authorization for Direct Deposit of \$200 Adult Disabled Child Benefit" form, 2016 [SUR-1 (Student's Statement Regarding School Attendance, Revised 12/2000)]; and
- (b) SUR-2 (Student Information Update Form, 3/2003)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601-3800, Monday through Friday, 8 a.m. to 5[4:30] p.m.

ARTHUR GREEN, Chairperson

APPROVED BY AGENCY: June 20, 2016

FILED WITH LRC: July 15, 2016 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, 24 August 2016, at 9:00 a.m. at the Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, 17 August 2016, 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 this 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 through Wednesday, 31 August 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, or email at Beau.Barnes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements, procedures and forms for the approval and processing of surviving children's benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with KRS 161.520.

(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 setting forth the procedures for: (1) filing an application for survivor's benefits for a deceased member's minor child; and, (2) continuation of such benefits for a child between 18 and 23 who is a full-time student in a recognized educational program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by informing those individuals seeking survivor's benefits what is required to obtain approval, or continuation, of such benefits.

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

(a) How the amendment will change this existing administrative regulation: The amendments clarify the process for filing the forms and supporting documentation required to apply for survivor's benefits and for continuation of such benefits between the ages of 18 and 23. The amendments add regulatory guidelines for survivor's benefits for disabled adult children provided for under KRS 161.520(3)(a).

(b) The necessity of the amendment to this administrative regulation: To put those individuals seeking survivor's benefits on notice as to the process for applying for such benefits and the forms and supporting documentation required for processing the application.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments ensure that those individuals seeking survivor's benefits are on notice as to the process for applying for such benefits and the forms and supporting documentation required for processing the application.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to the administrative regulation will ensure necessary forms and information are provided to facilitate the processing of survivor's benefits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to the surviving children of a member who died (1) while in active, contributing status, or (2) following retirement for a disability during the five (5) year entitlement period.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The surviving children or their representative will have to provide the appropriate forms and supporting documentation to obtain, or continue, survivor's benefits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The children of the deceased member may incur

some cost in obtaining supporting documentation regarding the mental or physical condition which rendered them dependent upon the deceased member.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Surviving children may be able to obtain survivor's benefits.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and 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: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all survivors are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310 and 161.520.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 costs will be incurred.

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

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:

**FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(Amendment)**

102 KAR 1:290. Disability retirement application, review, and examinations.

RELATES TO: KRS 161.661(1), (10)

STATUTORY AUTHORITY: KRS 161.310, 161.661(1), 161.663 [(40)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Teachers' Retirement System of the State of Kentucky (TRS) to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.661(1) and

(14) provide that an application for disability retirement shall be timely submitted for review and disposition by the medical review committee. KRS 161.661(10) provides that members retired by reason of disability shall undergo periodic examinations at the discretion of the board of trustees to determine whether the disability retirement allowance shall be continued. KRS 161.663 provides that members with less than five (5) years of Kentucky service credit may file an application for disability retirement if the member meets the requirements set forth in KRS 161.663 and 161.661. This administrative regulation establishes[sets forth] guidelines for filing an application for disability retirement and the required periodic examinations.

Section 1. To qualify for disability retirement, a member shall meet the requirements set forth in KRS 161.661(1) and (9) or KRS 161.663. A member who requests an application shall be given a copy of:

(1) Disability Retirement Information You Should Know;

(2) Disability New Retiree Health Insurance Information for Plan Year 2016; and

(3) Wage Bracket Method Tables for Income Tax Withholding.

Section 2. Administrative Provisions. (1) An application for disability retirement shall be filed on the Application for Disability Retirement (application) and shall include:

(a) A photocopy of the member's certified birth certificate;

(b) A photocopy of the member's signed Social Security card;

(c) A voided or cancelled check from the institution where monthly disbursements shall be electronically transmitted;

(d) If applicable, a photocopy of the member's certified marriage certificate;

(e) A photocopy of the primary beneficiary's certified birth certificate; and

(f) A photocopy of the primary beneficiary's signed Social Security card.

(2) The Report of Physician and supporting documentation regarding the member's physical or mental condition shall be submitted with the application.

(3) TRS shall submit the application, Applicant Statement of Disability, Report of Physician, and supporting documentation to the medical review committee for evaluation and written disposition as required by KRS 161.661(14).

(4) If the application is approved, payment of disability benefits shall be effective on the applicable date set forth in KRS 161.661(11).

Section 3. A member's receipt of disability benefits shall be subject to the restrictions set forth in KRS 161.661(12).

Section 4. A member retired by reason of disability shall undergo examinations on an annual basis to determine whether the member's disability retirement allowance shall[should] be continued, except that, on the recommendation of the medical review committee, a member's examinations may be less frequent, but not less than once every five (5) years.

Section 5. If either of the conditions in KRS 161.661(16) is met, a member may seek reinstatement of disability benefits by filing an application as required in Section 2 of this administrative regulation. Application shall be made within the time frame set forth in KRS 161.661(16).

Section 6. Incorporation by reference. (1) The following material is incorporated by reference:

(a) "Application for Disability Retirement", July 2016;

(b) "Applicant Statement of Disability", D-1, July 2016;

(c) "Disability Retirement Information You Should Know", D-2, July 2016;

(d) "Report of Physician", D-3, July 2016;

(e) "Disability New Retiree Health Insurance Information for Plan Year 2016", July 2016; and

(f) "Wage Bracket Method Tables for Income Tax Withholding", 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

ARTHUR GREEN, Chairperson

APPROVED BY AGENCY: June 20, 2016

FILED WITH LRC: July 15, 2016 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, 24 August 2016, at 9:00 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, 17 August 2016, 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 this 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 through Wednesday, 31 August 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199 or email at Beau.Barnes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes procedures for filing an application for disability retirement and for periodic examinations.

(b) The necessity of this administrative regulation: Members who meet the conditions for disability retirement mandated by KRS 161.661(9) and 161.663 must also meet the criteria for filing an application to begin receiving a disability benefit. Members retired by reason of disability must undergo periodic examinations by their health care providers mandated by KRS 161.661(10).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The TRS Board of Trustees is mandated under KRS 161.661 to establish the process for filing an application for disability retirement and for undergoing periodic examinations by health care providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the detailed procedures for (1) filing an application for disability retirement as contemplated by KRS 161.661 and 161.663 and (2) undergoing periodic examinations by health care providers to continue receipt of disability benefits.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the documents and information that must be provided with an application for disability retirement, as well as an application for reinstatement of disability benefits.

(b) The necessity of the amendment to this administrative regulation: To clarify (1) the circumstances under which a member may apply for disability benefits and (2) what must be provided with the application for disability retirement benefits, as well as an application for reinstatement of disability benefits.

(c) How the amendment conforms to the content of the authorizing statutes: Clarifies (1) the circumstances under which a member may apply for disability benefits and (2) documentation required to be submitted with the disability retirement application.

(d) How the amendment will assist in the effective administration of the statutes: Provides a member seeking disability retirement with information regarding what conditions qualify for disability benefits and the documentation which must be submitted in support of the member's application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Active, contributing, members of TRS who are eligible for disability retirement.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Members applying for disability benefits must obtain information and records regarding their physical or mental condition from their health care provider for submission with the application for disability retirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Members of the retirement system may incur a co-pay cost to obtain opinions from health care providers or copying costs of their medical records.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be able to receive disability retirement benefits.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: The \$50 fee paid to physicians who serve on the medical review committee.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and 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: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members seeking disability retirement benefits are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310(1), 161.661, 161.663.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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. Administrative costs, via the fees paid to physicians who serve on the medical review committee, will depend upon the number of applications for disability benefits processed and cannot be quantified at this time.

(a) How much 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? Administrative costs will be dependent upon the number of applications processed and cannot be quantified at this time.

(d) How much will it cost to administer this program for subsequent years? Administrative costs incurred will be dependent upon the number of applications processed and cannot be quantified at this time.

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:

**FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(Amendment)**

102 KAR 1:320. Qualified domestic relations orders.

RELATES TO: KRS 161.220, 161.700, 161.716, 403.190, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS 161.310(1), 161.700(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the Board of Trustees of the [Kentucky] Teachers' Retirement System [TRS][KTRS] to promulgate administrative regulations for the administration of the funds of the retirement system. KRS 161.700(4) requires the Board of Trustees of [TRS][KTRS] to promulgate administrative regulations setting forth the requirements, procedures, and forms for the approval and processing of qualified domestic relations orders impacting the benefits of participants of the retirement system. This administrative regulation establishes these requirements.

Section 1. Definitions. (1) "Alternate payee" is defined by KRS 161.220(26).

(2) "Benefits" means a monthly service or disability retirement allowance or refund payable at the request of a participant covered by [TRS][KTRS] who terminates employment in a [TRS][KTRS] covered position prior to becoming eligible to receive a retirement allowance.

(3) "Member" is defined by KRS 161.220(4).

(4) "Participant" is defined by KRS 161.220(24).

(5) "Qualified domestic relations orders" or "QDRO" is defined by KRS 161.220(25).

Section 2. (1) A QDRO shall state the following:

(a) The member's name, [TRS][KTRS] member identification number, and last-known mailing address;

(b) The alternate payee's name and last known mailing address;

(c) Whether the order applies to:

1. An active account from which the member is not currently receiving a retirement allowance; or

2. A retired account from which the member is currently receiving a retirement allowance and the date on which the member retired the account;

(d) The date of marriage;

(e) The date of decree of dissolution of marriage;

(f) That the order is for the purpose of property division;

(g) Whether the alternate payee shall receive payments under Option A, Option B, or Option C;

(h) The amount of the participant's monthly retirement allowance or termination refund to be paid by [TRS][KTRS] to the alternate payee as either;

1. A fixed dollar amount; or

2. The percentage calculated under Section 7(1) or (2) of this administrative regulation;

(i) When payments shall begin;

(j) When payments shall cease;

(k) That the alternate payee shall be paid in the same form as the participant;

(l) If the alternate payee spouse shall share in the participant's cost of living adjustments if the QDRO awards a fixed dollar amount to the alternate payee;

(m) Who shall be responsible for payment of the [TRS][KTRS] processing fee; and

(n) All information required on the Qualified Domestic Relations Order to Divide [Kentucky] Teachers' Retirement System Benefits.

(2) A QDRO shall be:

(a) Approved by [TRS][KTRS] as to enforceability and compliance with the requirements of KRS 161.700 and this administrative regulation;

(b) Approved and submitted by the participant and alternate payee or their legal counsel;

(c) Signed by the judge of a court of competent jurisdiction;

(d) Filed with the clerk of the court; and

(e) Certified by the clerk of the court.

Section 3. Administrative Provisions. (1) Upon entry of a final divorce decree, the participant shall forward a copy of the decree to [TRS][KTRS] and:

(a) If the participant is a retired member, request:

1. A Change of Option Following Termination of Marriage form, if the participant wants to change his or her retirement option, which shall be done within sixty (60) days of the final divorce decree;

2. A Change of Retirement Beneficiary form, if the participant had chosen retirement Option I or Option II and does not want to change his or her retirement option, but wants to name a new beneficiary;

3. A Designation of Beneficiary for [TRS][KTRS] Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate; or

4. A W-4P Withholding Certificate for Pension or Annuity Payments or W-4P, if the participant wants to change the amount of federal tax withheld from his or her retirement benefit; or

(b) If the participant is an active member, he or she shall request:

1. A Designation of Beneficiary for [TRS][KTRS] Retirement Account Balance form, if the participant wants to designate a beneficiary other than his or her estate; or

2. A Designation of Beneficiary for [TRS][KTRS] Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate.

(2) Thirty (30) days prior to filing the QDRO with [TRS][KTRS], the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee, or third party, including the party's legal counsel, shall provide a completed [TRS][KTRS] Authorization for Release of Information form with the request.

(3) For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, [TRS][KTRS] may, for the current fiscal year, provide the unaudited salary information electronically submitted to [TRS][KTRS] by the participant's employer upon receipt of the written request and release.

(4) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, [TRS][KTRS] shall not project future earnings or future service. [TRS][KTRS] shall provide:

(a) The participant's total accrued service credit, including service credit purchased during the marriage, and the member account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and for which an employer annual report has been received by [TRS][KTRS] and for which the member has not received a refund; and

(b) An estimate of the monthly retirement allowance the participant would receive if the participant retired without a statutory reduction of the basic retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of dissolution of marriage or receipt of the request for information.

(5) If the participant has retired, [TRS][KTRS] shall provide the

amount of the participant's monthly retirement allowance, the participant's accumulated account balance at retirement, the total retirement allowance received to date, and the participant's total accrued service credit, including any service credit purchased during the marriage. The parties, their legal counsel, or the court may use the information to decide what portion of the participant's account is marital. TRS[KTRS] shall not decide whether, or if, any portion of the participant's account is marital and potentially subject to division.

(6) The participant, alternate payee, or legal counsel shall submit a Qualified Domestic Relations Order to Divide[Kentucky] Teachers' Retirement System Benefits form to TRS[KTRS] for review forty-five (45) days prior to filing the QDRO with the court. If more than one (1) of the participant's accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each TRS[KTRS] account.

(7) TRS[KTRS] shall not review the QDRO unless it is accompanied by the following:

(a) The TRS[KTRS] Administrative Regulatory Compliance form, or the draft QDRO, which has been approved by the:

1. Participant or legal counsel; and
2. Alternate payee or legal counsel;

(b) A \$300[fifty (50) dollar] nonrefundable processing fee, by certified check or on the attorney's trust account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;

(c) The TRS[KTRS] Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;

(d) Copies of the participant's and alternate payee's signed Social Security cards;

(e) TRS[KTRS] Authorization for Direct Deposit form; and

(f) Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including TRS[KTRS] Military Service Certification and Affidavit form, with a copy of the discharge papers.

(8) Within twenty (20) days of receipt of the QDRO, TRS[KTRS] shall notify the participant and alternate payee in writing whether the QDRO meets TRS[KTRS] requirements. If the QDRO meets TRS[KTRS] requirements, TRS[KTRS] shall approve the QDRO and circulate an original, signed QDRO for signature by the participant and alternate payee for submission to the court. If the participant or alternate payee is represented by legal counsel, the approved QDRO shall instead be provided to their legal counsel for signature by counsel and submission to the court. TRS[KTRS] shall forward a W-4P Withholding Certificate for Pension or Annuity Payments form to the alternate payee.

(9) If the QDRO does not meet TRS[KTRS] requirements, TRS[KTRS] shall notify the participant and alternate payee in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel. The amended QDRO shall be submitted to TRS[KTRS] for review and approval prior to filing with the court.

(10) TRS[KTRS] shall reject any QDRO entered by a court that[which] has not been reviewed or approved by TRS[KTRS] prior to its submission to the court. TRS[KTRS] shall notify the participant, the alternate payee, or their legal counsel, and the court in writing, identifying those provisions that[which] are not in compliance and the amendments needed to bring the QDRO into compliance before it shall be accepted by TRS[KTRS].

(11) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to TRS[KTRS] with a \$150[twenty-five (25) dollar] nonrefundable processing fee for review and approval.

(12) Following approval by the court, the participant, alternate payee, or legal counsel shall file a certified copy of the QDRO with TRS[KTRS].

(a) The QDRO shall not become effective until the certified copy is received by TRS[KTRS].

(b) Upon receipt of the certified copy, TRS[KTRS] shall

designate the participant's account for implementation of the QDRO.

(c) While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established.

(d) If the participant is a retired member, payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by TRS[KTRS], if the alternate payee has supplied a correctly executed W-4P form. If the alternate payee either fails to return the W-4P or does not correctly execute the form, TRS[KTRS] shall apply the IRS default option of married with three (3) exemptions, which results in no withholding of federal tax. If the alternate payee chooses a different option and then provides a correctly executed W-4P, future payments shall be adjusted.

(e) If the participant is an active member, payments to the alternate payee shall commence in the calendar month in which the participant begins to receive a monthly annuity, if the alternate payee has provided his or her current address, a correctly executed W-4P and banking information as required by subsection (15) of this section. If the alternate payee either fails to return the W-4P or does not correctly execute the form, TRS[KTRS] shall proceed in the same manner as described in paragraph (d) of this subsection.

(f) If the participant is an active member who withdraws from service prior to eligibility for retirement and requests a refund of his or her accumulated account balance, 102 KAR 1:060 sets forth the requirements for processing payment of the refund to the participant and the alternate payee.

(13) If TRS[KTRS] is enforcing a QDRO that[which] is subsequently amended or terminated by the court, then either the participant, alternate payee, or legal counsel shall submit a certified copy of the amended QDRO or order of termination to TRS[KTRS] for processing.

(14) The participant, alternate payee, or legal counsel shall not submit a QDRO that is not final and under consideration by an appellate court.

(15) The alternate payee shall be responsible for notifying TRS[KTRS] of any change in name, mailing address, or banking information.

(a) TRS[KTRS] shall provide a Name or Change of Address form or Authorization for Direct Deposit form upon request.

(b) TRS[KTRS] shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when an annuity benefit subject to the QDRO becomes payable.

(c) Other than sending a notice as established in paragraph (b) of this subsection, TRS[KTRS] shall have no duty or responsibility to search for, or locate, the alternate payee.

(d) If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify TRS[KTRS] of an address change or if the bank notifies TRS[KTRS] that the alternate payee's account has been closed, within sixty (60) days of the return of the notification to the alternate payee or receipt of notification from the bank, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address or bank account information is provided by the alternate payee.

(e) TRS[KTRS] shall have no liability to the alternate payee with respect to amounts paid to the participant.

(16) The participant shall be responsible for notifying TRS[KTRS] in writing of an event that[which] causes benefit payments to the alternate payee spouse, child, or other dependent[.] to cease.

(a) The participant shall provide TRS[KTRS] with a certified copy of the alternate payee's death certificate or marriage certificate. TRS[KTRS] shall suspend payments due the alternate payee provided that submission of proof of the death or marriage of the alternate payee, if marriage terminates payments under the terms of the QDRO, is received by the beginning of the month following[KTRS's] receipt of the participant's written notification.

(b) The alternate payee shall also be responsible for notifying TRS[KTRS] in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the

alternate payee's right to receive any payments.

(c) TRS[KTRS] shall not be responsible for payments made to the alternate payee until it is given timely written notice and documentation of any event terminating those payments.

Section 4. A QDRO may apply to a participant's:

- (1) Retirement allowance;
- (2) Disability retirement allowance; or
- (3) Termination refund.

Section 5. A QDRO shall not apply to a participant's:

- (1) Survivor annuity that becomes payable after the member's death;
- (2) Survivor benefits that become payable after an active contributing member's death;
- (3) Accounts that are not vested at the time of the dissolution of marriage;
- (4) Life insurance benefit;
- (5) Refund as a result of an error;
- (6) Refund of an active or retired account in response to a member's death;
- (7) Health insurance; and
- (8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires, or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and payment. (1)(a) If the participant has retired, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable TRS[KTRS] service earned during the marriage, including service credit purchased during the marriage; and

2. The denominator of which shall be the participant's total full and fractional years of TRS[KTRS] service credit through the date of retirement.

(b) The resulting fraction shall be converted to a percentage that[which] shall be divided by two (2).

(c) Option C may be utilized if the duration of the retired participant and the alternate payee's marriage was less than the participant's total full and fractional years of TRS[KTRS] service at the date of retirement. The parties or their legal counsel shall report the marital years in Option C of the QDRO.

(2)(a) For an active account, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable TRS[KTRS] service earned during the marriage, including service credit purchased during the marriage, as reported by the parties or their legal counsel in Option C of the QDRO; and

2. The denominator of which shall be the participant's total full and fractional years of TRS[KTRS] service credit as determined by TRS[KTRS] at the time that the participant retires either by service retirement or disability retirement or requests a refund of his or her account balance.

(b) The resulting fraction shall be converted to a percentage that[which] shall be divided by two (2).

(3) If the participant is or will be receiving a disability retirement

allowance, the participant's total annuity benefit for purposes of this administrative regulation shall be calculated under the service retirement formula established under KRS 161.661(5), even if the entitlement period described under KRS 161.661(3) and (4) has not expired.

(4) If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's disability retirement allowance that[which] is subsequently discontinued, the alternate payee shall not receive a benefit. Further, if a participant remains disabled at the end of his or her entitlement period, pursuant to KRS 161.661(5), the disability benefits shall be recalculated that[which] may result in a lower monthly payment to both the participant and the alternate payee.

(5) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, the participant's total annuity benefit shall be calculated without inclusion of the discounts required under KRS 161.620(1)(b) and (d).

(a) If at retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, TRS[KTRS] shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts.

(b) TRS[KTRS] shall increase the amount paid to the alternate payee in amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

(6) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, and the participant at issuance of the QDRO is not eligible for calculation of his total annuity benefit based on his three (3) highest salaries as provided under KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(7) The participant may select any retirement option.

Section 8. Any person who attempts to make TRS[KTRS] a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to TRS[KTRS] for its costs and legal fees.

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

(a) "TRS[KTRS] Authorization for Release of Information", July 2016[15 January 2013];

(b) "Qualified Domestic Relations Order to Divide [Kentucky] Teachers' Retirement System Benefits", July 2016[14 March 2014];

(c) "TRS[KTRS] Administrative Regulatory Compliance", July 2016[14 July 2010];

(d) "TRS[KTRS] Confidential Information", July 2016[14 January 2013];

(e) "TRS[KTRS] Authorization for Direct Deposit", July 2016[14 July 2010];

(f) "TRS[KTRS] Military Service Certification and Affidavit", July 2016[14 July 2010];

(g) "TRS[KTRS] Name or Change of Address", July 2016[14 July 2010];

(h) "Change of Option Following Termination of Marriage", July 2016[15 February 2002];

(i) "Change of Retirement Beneficiary", July 2016[February 2002];

(j) "Designation of Beneficiary for TRS[KTRS] Life Insurance Benefit", July 2016[15 January 2013];

(k) "Designation of Beneficiary for TRS[KTRS] Retirement Account Balance", July 2016[15 January 2013]; and

(l) "W-4P", 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at [Kentucky] Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

(3) W-4P may also be obtained at www.irs.gov/pub/irs-

pdf/w4p.pdf.

ARTHUR GREEN, Chairperson

APPROVED BY AGENCY: June 20, 2016

FILED WITH LRC: July 15, 2016 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, 24 August 2016, at 9:00 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, 17 August 2016, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 until the end of the calendar day on Wednesday, 31 August 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199 or email at Beau.Barnes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements, procedures and forms for the approval and processing of qualified domestic relations orders ("QDRO") by Teachers' Retirement System ("TRS").

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with the amendments to KRS 161.700.

(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 (1) setting forth the procedures and timelines to be followed in filing a QDRO with KTRS, (2) setting the filing fees, (3) providing the formula for calculating the amount to be paid to the alternate payee, and (4) incorporating the forms required by KTRS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by informing KTRS participants, their alternate payees, legal counsel and the courts what is required to expedite approval and implementation of a QDRO.

(2) If 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: (1) change the reference to the entity's name to "Teachers' Retirement System" to more closely reflect the name utilized by the legislature in KRS 161.230; (2) amend the processing fees for submitting a draft QDRO or amended QDRO; and (3) amend the QDRO form and requisite forms to more closely reflect the entity's statutory name with a corresponding adjustment to the acronym change.

(b) The necessity of the amendment to this administrative regulation: To more closely reflect the entity's statutory name and place members and their legal counsel on notice as to the processing fee for submitting a draft QDRO or amended QDRO.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to the administrative regulation, the QDRO form and the requisite forms more closely reflect the entity's name under the authorizing statutes and provide for the appropriate processing fee to be paid.

(d) How the amendment will assist in the effective

administration of the statutes: The amendments to the administrative regulation will more closely reflect the statutory name of the entity and payment of processing fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to participants and alternate payees of participants of TRS who are subject to a qualified domestic relations order.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The participants, legal counsel and/or alternate payees will have to pay the amended processing fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a \$300.00 initial processing fee and a \$150.00 processing fee for amended QDROs to be paid by the participant, the alternate payee or shared by both parties as ordered by the court.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Alternate payees will be permitted to access participants' retirement benefits which were previously exempt from distribution during dissolution of marriage.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: Continuing costs will be determined by the number of QDROs filed with TRS and cannot be quantified at this point.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of TRS incurred in processing QDROs will be paid via the processing fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation establishes the fees to be assessed for processing QDROs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation increases the initial processing fee to \$300.00 and the processing fee for amended QDROs to \$150.00.

(9) TIERING: Is tiering applied? Tiering is not applied, as all participants and alternate payees of participants are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.700, KRS 161.310, KRS 161.480, 161.655.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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? Future revenue generated by this regulation will be dependent upon the number of QDROs filed with TRS and cannot be quantified at this time.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Future revenue generated by this regulation will be dependent upon the number of QDROs filed with TRS and cannot

be quantified at this time.

(c) How much will it cost to administer this program for the first year? The cost in terms of staff time for processing the QDROs has increased since the entity began accepting QDROs as the number of QDROs has increased.

(d) How much will it cost to administer this program for subsequent years? Future cost in terms of staff time for processing QDROs is dependent upon the number of orders received and cannot be quantified at this time.

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:

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

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

RELATES TO: KRS ~~131.131~~, 136.320, 136.330, 136.340, 136.350, 136.370, 136.390, 141.020, 141.040, 141.0401, 141.050, 141.432, 141.433, 141.434, 304.3-270, 26 U.S.C. 45D

STATUTORY AUTHORITY: KRS 141.433(7)

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

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

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

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

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

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

(6) "Certification form" means Form 8874(K)-A, Notice of Kentucky New Markets Development Program Tax Credit and Certification, that is published by the department and filed by a CDE certifying to the department receipt of a cash investment.

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

~~(8)~~(7) "Department" means the Kentucky Department of Revenue.

~~(9)~~(8) "Department's approval" means certified by the department as provided by KRS 141.433(3).

~~(10)~~(9) "Identification number" means the:

(a) Social Security Number for an individual;

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

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

~~(11)~~(10) "Long-term debt security" is defined by KRS 141.432(3).

~~(12)~~ "Notice of recapture" means Form 8874(K)-B, Notice of Kentucky New Markets Development Program Tax Credit Recapture, that is published by the department and sent to the CDE and each taxpayer from whom a credit is to be recaptured as a final order of recapture.

~~(13)~~(11) "Performance fee" is defined by KRS 141.433(8).

~~(14)~~(12) "Qualified active low-income community business" is defined by KRS 141.432(5).

~~(15)~~(13) "Qualified community development entity" is defined by KRS 141.432(6).

~~(16)~~(14) "Qualified equity investment" is defined by KRS 141.432(7).

~~(17)~~(15) "Qualified low-income community investment" is defined by KRS 141.432(8).

~~(18)~~(16) "Tax credit" is defined by KRS 141.432(9).

~~(19)~~(17) "Taxpayer" is defined by KRS 141.432(10).

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

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

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

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

(c) 1. The department shall:

a. Accept an application on or after July 15, ~~2016~~[2014], if the application is received via hand-delivery, mail, express mail, or courier; and

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

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

3. An application received prior to July 15, ~~2016~~[2014], shall be recorded as received on July 15, ~~2016~~[2014].

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

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

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

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

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

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

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

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

(8) A statement that the entity has received a new markets tax credit allocation from the CDFI Fund that~~which~~ includes the Commonwealth of Kentucky within the service area as set forth in

the allocation, and the date of the allocation agreement. A copy of the new markets tax credit allocation agreement shall be attached to the application;

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

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

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

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

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

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

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

(14) The application fee; and

(15) The refundable performance fee.

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

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

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

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

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

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

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

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

(b) The identification number of the taxpayer;

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

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

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

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

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

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

event; or

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

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

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

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

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

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

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

(b) The identification number of the taxpayer;

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

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

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

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

(7) An explanation of the recapture;

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

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

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

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

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

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

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

3. Schedule K-1, Form 765-GP (Revenue Form 42A765-GP(K-1)).

(2) Form 8874(K)-B.

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

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

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

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

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

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

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

(c) Revenue Form 41A720-S82, Notice of Kentucky New Markets Development Program Tax Credit Recapture, May 2014;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of

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Revenue, 501 High Street, Frankfort, Kentucky 40601, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]

DANIEL BORK, Commissioner

APPROVED BY AGENCY: July 13, 2016

FILED WITH LRC: July 13, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016 from 10 a.m. to 12 p.m., in Room 383, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of the day on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Finance and Administration Cabinet, Department of Revenue, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-6785, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes guidelines and the filing requirements of a qualified community development entity for new markets development program applications received on or after July 15, 2016.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary in order to allow application process for community development entities seeking approval for qualified equity investments under the new markets development program tax credit for applications received on or after July 15, 2016.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.433(7) authorizes the Department of Revenue to promulgate administrative regulations in accordance with KRS Chapter 13A to provide rules to implement the provisions of KRS 141.432 to 141.434, and to administer the allocation of tax credits issued for qualified equity investments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation prescribes for applications received on or after July 15, 2016, procedures to be followed by a qualified community development entity in order to certify a qualified equity investment and report a recapture of new markets development program tax credits.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes guidelines and the filing requirements of a qualified community development entity for applications received on or after July 15, 2016.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the filing requirements of a qualified community development entity for applications received on or after July 15, 2016.

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

(d) How the amendment will assist in the effective

administration of the statutes: For applications received on or after July 15, 2016, this amendment will provide qualified community development entities procedures to be used in order to certify a qualified equity investment, allocate the tax credits to persons or entities making the qualified equity investment, and recapture tax credits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All qualified community development entities applying for new markets development program tax credits on or after July 15, 2016 will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: For applications received on or after July 15, 2016, qualified community development entities will use the guidelines contained in this administrative regulation when applying for and administering the new markets development program tax credits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will not increase the cost of qualified community development entities to apply for the new markets development program tax credit as provided by KRS 141.432 to KRS 141.434.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The guidance and clarification contained in this amended administrative regulation should simplify the application process for qualified community development entities seeking approval for new markets development program tax credits provided by KRS 141.432 to KRS 141.434.

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

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

(b) On a continuing basis: The department will not incur additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds will be provided by the department.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 applies to all qualified community development entities applying for new markets development program tax credits on or after July 15, 2016.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Barbering
(Amendment)**

201 KAR 14:125. ~~Teacher[Teachers' and instructors'] requirements.~~

RELATES TO: KRS 317.440, 317.450

STATUTORY AUTHORITY: KRS 317.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(c) requires the board to promulgate an administrative regulation regarding the qualifications of teachers of barbering. This administrative regulation establishes rules for school faculty and establishes conditions for unlicensed ~~teachers[instructors]~~.

Section 1. (1) A teacher shall achieve a passing score on the written teacher's examination required by the board.

(2) Within a minimum of twelve (12) months of obtaining licensure as a teacher, and not before completing 600 hours of instructional experience in a barber school licensed by the board under the supervision of a board-licensed teacher with a minimum of three (3) years of experience, a teacher shall:

(a) Meet the requirements in KRS 317.450(4);

(b) Achieve a passing score on the oral teacher's examination required by the board; and

(c) Achieve a passing score on the practical teacher's examination required by the board.

(3) A passing score shall be a minimum score of eighty (80) percent on the examination required under this section.

(4) A teacher may request a one (1) time extension of the requirements of subsection (2) of this section. The extension may be granted by the board to the next scheduled oral and practical teacher's examination date. An extension of time request shall be filed, in writing, with the board prior to the expiration of the first twelve (12) months of initial licensure as a teacher.

(5) A license shall terminate if the teacher fails to achieve a passing score on the oral teacher's examination and practical teacher's examination within twelve (12) months from date of issuance of licensure or upon the expiration of the extension of time to satisfy subsection (2) of this section[All teachers and instructors in a school must hold both a barber and barber instructor license issued by the board].

Section 2. (1) A teacher[An instructor] shall be in the study and classroom of a school during all class and study hours and will be required to supervise all practice student work.

(2) A student shall be under the face-to-face, direct supervision of a teacher while providing services to a client.

Section 3. A licensed barber shall not[No licensed barber shall] render services in a school, and a teacher[instructors] shall render

services only incident to and for the purpose of instruction.

Section 4. A teacher[Every instructor] in an accredited school shall devote his or her entire time during school or class hours to that of instructing the students and shall not apply his or her time to that of private or public practice for compensation during school hours or permit students to instruct or teach other students in the absence of a teacher.

Section 5. A properly qualified, licensed barber[barbers] may demonstrate to the students new processes, new preparations, and new appliances in the presence of a licensed teacher[registered teachers]. A school[Schools] shall not permit more than four (4) such demonstrations in any calendar year.

Section 6. All services rendered in a school on patrons must be done by students only. A teacher[Instructors] shall be allowed to teach and aid the students in performing the various services. A teacher may[Instructors are permitted to] finish up the patrons after the students have completed their work.

Section 7. A teacher[Instructors] in attendance shall[must at all times] wear a clean, washable outer garment such as a coat or smock.

Section 8. A school[Schools] shall require a teacher[instructors] to wear an insignia or badge indicating that he or she is a teacher[an instructor].

Section 9. A teacher who has not completed 600 hours of instructional experience in a barber school licensed by the board under the supervision of a board-licensed teacher with a minimum of three (3) years of experience shall document the hours of instructional experience. The documentation shall include the specific dates, times during the day, and the subject matter being instructed. The instructional experience documentation shall be signed by the teacher obtaining the instructional experience, the owner of the barber school where the instructional experience was obtained, and the board-licensed teacher with a minimum of three (3) years of experience. This documentation shall be filed with the board prior to taking the examinations required under Section 1(2) of this administrative regulation.

Section 10. The teacher obtaining the 600 hours of instructional experience and the board-licensed teacher with a minimum of three (3) years of experience shall notify the board, in writing, of the mentoring and the notification to the board shall be signed by both teachers. The notification shall be submitted prior to the beginning of the 600 hours of instructional experience.

Section 11. A teacher with a minimum of three (3) years of experience shall not mentor more than two (2) teachers who have not satisfied Section 1(2) of this administrative regulation.

Section 12. A teacher who is licensed by the board prior to the effective date of this administrative regulation is exempted from the requirements of Section 1 of this administrative regulation.

Section 13. A teacher in a school shall hold both a barber and barber teacher's license issued by the board.

SONJA MINCH, Administrator

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 24, 2016, at 10:30 a.m. at 312 Whittington Parkway Suite 110 Louisville, Kentucky 40222. 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 end of the day on August 31, 2016. 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: Sonja Minch, Administrator, Kentucky Board of Barbering, 312 Whittington Parkway Suite 110, Louisville, Kentucky 40222, (502) 429-7148 fax (502) 429-4149, email sonja.minch@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sonja Minch

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the requirements and qualifications for being a teacher of barbering.

(b) The necessity of this administrative regulation: The regulation is necessary to insure that teachers at a barbering school have the appropriate experience and skill to teach barbering to a student.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.440(1)(c) authorizes the board to promulgate an administrative regulation regarding the qualifications of teachers of barbering.

(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 and the qualifications of being a teacher of barbering.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes the qualifications to become a teacher who can be completely independent.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide practical skills before an individual becomes a teacher of barbering.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to promulgate administrative regulations governing new shop as established by KRS 317.440.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will assist in defining the expectations of the board and the qualifications of being a teacher of barbering.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 60 licensed teachers of barbering and any applicant to be a teacher or teaching assistant of barbering.

(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 must satisfy the examination and supervision requirements prior to obtaining a license to be a teacher of barbering or teacher's assistant of barbering.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$0

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Upon demonstrating their qualifications, an applicant will be issued a license.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

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

There will be no cost to implement this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.440.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? \$0

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? \$0

(c) How much will it cost to administer this program for the first year? \$0

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred to administer the administrative regulation amendment 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: 201 KAR 14:125 will not create any new revenues for either the agency or State Government.

GENERAL GOVERNMENT CABINET Board of Physical Therapy (Amendment)

201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 12.355, 327.010(1), (2), 327.070

STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: 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 continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means a credit earned based on sixty (60) minutes of participation in a physical therapy-related activity.

(2) "Continued competency" means a planned learning experience relating to the scope of "physical therapy" practice as defined by KRS 327.010(1) if the subject is intervention, examination, research, documentation, education, or management of a health care delivery system.

(3) "Jurisprudence Examination" means an open book tutorial provided by the board on KRS Chapter 327 and 201 KAR Chapter

22.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph.

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium.

2. At least eighteen (18) hours shall be earned from Category 1 as established in subsection (2) of this section.

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over ten (10) hours shall not be awarded.

(b) For a physical therapist assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as established in subparagraphs 1. through 3. of this paragraph.

1. Two (2) hours shall be awarded for the successful completion of the Jurisprudence Examination per biennium.

2. At least ten (10) hours shall be earned from Category 1 as established in subsection (2) of this section.

3. Hours may be earned from Category 2. If hours are earned from Category 2, hours shall be as established in subsection (3) of this section. Hours earned from Category 2 over eight (8) hours shall not be awarded.

(c) A participant shall not be awarded contact hours for a course that is repeated more than once in the same biennium.

(2) Category 1 continued competency shall be:

(a) Completion of courses, seminars, workshops, symposia, or home study courses consisting of at least three (3) contact hours that have been approved by the board, the board's designee, Federation of State Boards of Physical Therapy (FSBPT), the American Physical Therapy Association (APTA) or its components, or another physical therapy licensing agency;

(b) Completion of courses, seminars, workshops, symposia, or home study courses consisting of less than three (3) contact hours that have been produced and developed by the American Physical Therapy Association (APTA) or its state chapters and sections;

(c) Completion or auditing of an accredited postsecondary educational institution credit course meeting continued competency as defined by Section 1(2) of this administrative regulation.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(d) Presentation of a continued competency course, workshop, seminar, or symposium that has been approved by the board or its designee. Contact hours shall be awarded equal to contact hours awarded to a participant with a maximum of two (2) events of the same course per biennium;

(e) Authorship of a research article, manuscript, or scientific paper, published in the biennium and related to physical therapy. Fifteen (15) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(f) A presented scientific poster or scientific platform presentation related to physical therapy. Ten (10) contact hours shall be awarded per event with a maximum of two (2) events per biennium;

(g) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder. A maximum of twenty (20) contact hours per biennium shall be awarded;

(h) American Board of Physical Therapy Specialties (ABPTS) certification. Twenty-eight (28) contact hours shall be awarded per biennium;

(i) ABPTS recertification or other certifications and recertifications within the scope of physical therapy practice. A

maximum of twenty-eight (28) contact hours per biennium shall be awarded;

(j) Completion of a clinical residency program or clinical fellowship program. Not more than five (5) contact hours shall be awarded for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(k) Engaging in the practice of "physical therapy" as defined by KRS 327.010(1) at least 1,000 hours per biennium. Five (5) contact hours per biennium shall be awarded per biennium;

(l) Engaging in the instruction in a CAPTE-accredited physical therapy or physical therapist assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(m) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(n) Election or appointment to a position of the Kentucky Physical Therapy Association, APTA, or FSBPT as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; or

(o) Member of a committee or task force for one (1) of the organizations in paragraph (m) or (n) of this subsection. One (1) contact hour shall be awarded per biennium.

(3) Category 2 continued competency shall be:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel, or symposium. One (1) contact hour shall be awarded for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE-approved educational program or an APTA credentialed residency or fellowship program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy in-service or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Completion of other unapproved applicable courses. One (1) contact hour for each hour of credit shall be awarded up to a maximum of three (3) hours per course;

(f) Participation in community service related to health care. One (1) contact hour for each hour of participation shall be awarded up to a maximum of two (2) hours per biennium;

(g) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(h) Completion of cardiopulmonary resuscitation initial certification or re-certification. A maximum of two (2) contact hours shall be awarded per biennium; or

(i) Completion of a HIV/AIDS course. A maximum of two (2) contact hours shall be awarded per biennium.

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of at least three (3) years from the end of the biennium.

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities to the board.

(c) A licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities shall be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee shall be granted a temporary hardship extension for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form by April 30 of the odd-numbered year in the renewal cycle for which the extension is sought, including a plan describing how the required credits will be met; and

2. Submits documentation showing evidence of undue

hardship by reason of the licensee's:

- a. Age;
- b. Disability;
- c. Medical condition;
- d. Financial condition; or
- e. Other clearly mitigating circumstance.

(b) A licensee shall be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Exemption or Extension for Completion of Continued Competency Form, including a plan describing how the required credits will be met, by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;
2. Pays a fee of \$250;
3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and
4. Files proof of compliance with the continued competency requirements by the following July 1.

(c) A licensee on active military duty shall be granted an exemption from continued competency requirements as established in KRS 12.355.

Section 3. Incorporation by Reference. (1) "Exemption or Extension for Completion of Continued Competency Form", June 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

LOUIS D. KELLY, General Counsel

APPROVED BY AGENCY: July 13, 2016

FILED WITH LRC: July 14, 2016 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2016, at 4:00 p.m. (EST) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of the day, August 31, 2016. 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, email ScottD.Majors@ky.gov.

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 continued competency requirements and procedures.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.040(10).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes continued competency requirements and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes continued competency requirements and procedures.

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

(a) How the amendment will change this existing administrative regulation: The amendment creates a deadline of April 30 of the

odd-numbered year in the renewal cycle for credential holders to apply for a hardship extension for completion of continued competency requirements.

(b) The necessity of the amendment to this administrative regulation: To more timely and efficiently administer the continued competency requirements for physical therapists and physical therapist assistants.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides more efficient administration of continued competency requirements in furtherance of KRS 327.040(10).

(d) How the amendment will assist in the effective administration of the statutes: By creating a firm deadline for hardship extensions for continued competency requirements.

(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 have to file any extension for continued competency requirements on or before April 30 of the odd-numbered year in the renewal cycle.

(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 know whether or not they qualify for a hardship extension in a more timely manner.

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

(a) Initially: No cost to the board.

(b) On a continuing basis: 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: 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 establishes any fees or directly or indirectly increases 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? Licensed physical therapists and certified physical therapist assistants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 12.355, 327.010(1), (2), 327.070.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)

201 KAR 27:005. Definitions for 201 KAR Chapter 27.

RELATES TO: KRS 229.011, 229.021, 229.031, 229.051, 229.071, 229.081, 229.091, 229.111, 229.131, 229.155, 229.171(1), 229.180(1), EO 2016-270

STATUTORY AUTHORITY: KRS 229.171(1), 229.180(1) NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth[Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held or given within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229]. This administrative regulation establishes the definitions used in 201 KAR Chapter 27[this chapter].

Section 1. Definitions. (1) ["Authority" is defined in KRS 229.011(2)].

(2) "Battle royal" means more than two (2) contestants in a boxing, kickboxing, mixed martial arts, or elimination event competing in a "last man standing wins" format[during a contest].

(2) [(3)] "Bout" means a single competition[contest] or exhibition of unarmed combat[in boxing, kickboxing, mixed martial arts, and elimination events] pitting two (2) opponents against one another in which the contestants strive earnestly and in good faith to win, are judged, and a winner declared.

(3) "Boxing" is defined by KRS 229.011(3).

(4) "Card" means a series of bouts, matches, or[contests and] exhibitions scheduled or occurring as part of a single program[te which a single ticket authorizes admittance, and which is under the jurisdiction of the authority].

(5) "Commission" means the body formerly known as the "Authority", defined by KRS 229.011(2) and created by EO 2016-270["Chairperson" means the chairperson of the authority, appointed pursuant to KRS 229.154].

(6) ["Contest" means an engagement in which the contestants strive earnestly in good faith to win, and in which the contestants are judged, and a winner declared.

(7) "Contestant" means any person engaging in a show of unarmed combat[participating in boxing, wrestling, mixed martial arts, elimination event, or kick boxing, shows] coming under the commission's jurisdiction[of the authority].

(7) [(8)] "Elimination event" means a boxing show in which[where] the winner of each bout continues to box against additional opponents in a tournament format until an overall winner is determined.

(8) "Exhibition" is defined by KRS 229.011(4).

(9) "Healthcare professional" means any person licensed in Kentucky as a physician, chiropractor, podiatrist, nurse practitioner, physician's assistant, registered nurse, physical therapist, paramedic, emergency medical technician, or athletic trainer.

(10) "Inspector" means any person assigned by the executive director of the commission or the executive director's designee to

supervise shows coming under the commission's jurisdiction[(9) "Executive director" means the officer appointed by the governor to oversee the operations of the authority.

(10) ["Inspector" means an authority employee assigned to inspect professional shows coming under the jurisdiction of the authority].

(11) "Judge" means an official, other than a referee, licensed and approved by the commission[authority] to score bouts[contests] and have a vote in determining the winner of any bout[contest].

(12) "Kickboxing" is defined by KRS 229.011(5)[means a boxing show where the participants are allowed to throw kicking or foot blows at the opponent in addition to regular punching with the hands].

(13) "Manager":

(a) Means a person who:

1. Undertakes to represent the interest of another person, in procuring, arranging, or conducting a professional bout or exhibition in which the person is to participate as a contestant;

2. Directs or controls the professional unarmed combat activities of a contestant;

3. Receives or is entitled to receive ten (10) percent or more of the gross purse or gross income of any professional contestant for services relating to participation of the contestant in a professional bout or exhibition; or

4. Receives compensation for service as an agent or representative of a bout; and

(b) Does not mean an attorney licensed to practice in this state if his or her participation in these activities is restricted solely to legal representation of the interests of a contestant as his or her client.

(14) "Match" means a single event[contest] or exhibition in wrestling pitting two (2) or more opponents against one another.

(15) "Medical advisory panel" means the Kentucky Boxing and Wrestling Medical Advisory Panel created by EO 2016-270.

(16) "Mixed martial arts" is defined by KRS 229.011(6).

(17) [(14)] "Mixed martial arts" means any form of unarmed combat, including elements of boxing, kickboxing, wrestling, and other martial arts, not otherwise defined or individually regulated under 201 KAR Chapter 27, and in which participants are compensated.

(15) "Official" means any announcer, judge, physician, referee, or timekeeper.

(16) ["Professional" is defined by KRS 229.011(8) [(5)].

(18) [(17)] "Promoter" means any individual, corporation, association, partnership, or club that[who] has been issued a license to promote or[and] conduct professional boxing, wrestling, mixed martial arts, elimination event, or kickboxing shows within the[this] commonwealth and who is responsible for er—who eversees] the arranging, organizing, matchmaking, and booking of a show.

(19) "Ring official" means any person who performs an official function during a bout, match, or exhibition, including an announcer, judge, physician, referee, or timekeeper.

(20) [(18)] "Second" means any person aiding, assisting, or advising a contestant during a show.

(21) "Serious physical injury" means physical injury that creates a substantial risk of death or causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(22) "Show" is defined by KRS 229.011(9).

(23) "Technical knockout" means the ending of a bout by the referee or physician on the grounds of one (1) contestant's inability to continue, the opponent being declared the winner.

(24) [(19)] "Show" means any organized grouping of boxing, kickboxing, mixed martial arts, wrestling, or elimination event contests or exhibitions coming under the jurisdiction of the Kentucky Boxing and Wrestling Authority.

(20) "Sparring" means practice boxing, in which a boxer receives, lands or attempts to land blows from or on another person as part of a practice or training exercise.

(24) "Trainer" means any person who participates in the guidance and instruction[training] of any contestant so as to make

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that individual proficient or qualified to engage in unarmed combat, if provided that the training occurs within this commonwealth.

(25) "Unarmed combat" means engaging in boxing, kickboxing, wrestling, mixed martial arts, or an elimination event.

(26){(22)} "Wrestling event staff" means anyone other than a wrestler or referee permitted to be inside the six (6) foot barrier around the ring during a wrestling event.

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email: Barry.Dunn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms in 201 KAR Chapter 27.

(b) The necessity of this administrative regulation: This regulation is necessary to increase understanding of 201 KAR Chapter 27 while limiting the repetitive use of definitions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment includes definitions to conform to those in KRS 229.011 and throughout the Kentucky Boxing and Wrestling Commission's ("KBWC") regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines terms used in the KBWC's regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment tightens the definition of certain currently defined terms, defines additional terms, and repeals obsolete terms.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to provide to licensees a clear understanding of the requirements of 201 KAR Chapter 27.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 229.180 authorizes the KBWC to adopt and promulgate, amend, or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions provided in this chapter.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is necessary to provide to licensees a clear understanding of the requirements of 201 KAR Chapter 27.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the Kentucky Boxing and Wrestling Commission, participants in unarmed

combat, and other licensees such as promoters, physicians, judges, officials, and anyone else licensed or seeking licensure with the Kentucky Boxing and Wrestling Commission. The Commission licenses around 1,250 people a year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action will need to be taken to comply with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment benefits all entities by making 201 KAR Chapter 27 easier to understand.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

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

(7) Provide an assessment of whether an 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 required.

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

(9) TIERING: Is tiering applied? No. Definitions apply the same way 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 Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is KRS 229.171 and 229.180.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 amendment will have no effect on expenditures and revenues 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? This amendment will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This amendment has no effect on the cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment has no effect on the cost 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: None

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)**

201 KAR 27:007. Powers and duties of inspector~~[duties delegated to an executive director, inspector, or employee of the authority].~~

RELATES TO: KRS 229.011, 229.021, 229.041, 229.051, 229.061, 229.155~~[229.164], 229.171, 229.190, 229.200, 229.991~~

STATUTORY AUTHORITY: KRS 229.171, 229.180~~(4)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth~~[gives the authority the sole direction, management, control and jurisdiction over all professional boxing, sparring, and wrestling shows to be held or conducted in the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. In order to appropriately manage and control these activities, at the site of the show, it is necessary for the authority to delegate the powers granted pursuant to KRS Chapter 229 to the executive director, an inspector, or an employee of the authority]. This administrative regulation establishes the duties of an inspector~~~~[provides for the delegation of these powers].~~

Section 1. The executive director or the executive director's designee shall assign an inspector~~[himself, an inspector, or an employee of the authority] to monitor each boxing, elimination event, mixed martial arts, and kickboxing~~~~[kick boxing] show~~~~[taking place within the Commonwealth. He may assign himself, an inspector, or an employee of the authority to monitor wrestling shows on a periodic basis].~~

(2) The executive director or the executive director's designee may assign an inspector to monitor a wrestling show based on:

(a) The availability of an inspector;

(b) The need to conduct periodic inspections; and

(c) Knowledge or information that a violation or potential violation may occur.

Section 2. Inspector's Duties. (1) Except as otherwise established in 201 KAR Chapter 27, the inspector shall exercise immediate and full supervision, control, and regulation of any show on behalf of the commission and shall be responsible directly to the commission.

(2) The inspector's powers shall include authority:

(a) Over each contestant, licensed or unlicensed, on the premises before, during, and after a show relating to the show;

(b) To conduct hearings and issue decisions or rulings on questions, disputes, protests, complaints, or objections relating to the show;

(c) To enforce the provisions of KRS Chapter 229 and 201 KAR Chapter 27;

(d) To issue discipline as established in KRS Chapter 229 and 201 KAR Chapter 27;

(e) To eject or exclude from the premises or any part thereof, any person whom the inspector reasonably believes is intoxicated or under the influence of a legal or illegal drug and who may create a hazard to others or interfere with the show;

(f) To investigate possible violations of KRS Chapter 229 or 201 KAR Chapter 27;

(g) To examine the books and records of any person who conducts a show or exhibition;

(h) To issue a license required by 201 KAR 27:008; and

(i) To approve the form and sufficiency of any bond filed in accordance with KRS 229.051~~[The person assigned by the executive director to monitor the show shall exercise immediate and full supervision, control, and administrative regulation of the show on behalf of the authority and shall be responsible directly to~~

~~the authority. The powers of the person assigned to monitor the show shall include authority:~~

~~(1) Over each contestant and show, licensed or unlicensed, on the premises before, during, and after a show as to all matters relating to the show;~~

~~(2) To determine any question, dispute, protest, complaint or objection concerning the show and to enforce the provisions of KRS Chapter 229 and 201 KAR Chapter 27;~~

~~(3) To suspend the license of a contestant or other licensee, or eject or exclude from the premises or any part thereof, licensed or unlicensed persons upon reasonable belief that the contestant or person is intoxicated or under the influence of a legal or illegal drug that might create a hazard to others or hamper the contestant's or person's ability to participate in the show, or that a violation of KRS Chapter 229 or the administrative regulations promulgated in 201 KAR Chapter 27 has occurred;~~

~~(4) To interpret and enforce KRS Chapter 229 and the administrative regulations promulgated in 201 KAR Chapter 27, and determine all questions relating to the show under the jurisdiction of the authority;~~

~~(5) To issue decisions or rulings on issues or questions relating to the show subject to the powers granted to the authority, including the power to issue a violation or stop an entire show, or any part of a show;~~

~~(6) To request and receive assistance from the executive director, an inspector, an employee of the authority, an official, a licensee, or any local or state law enforcement personnel in the investigation of possible statutory or regulatory infractions; and~~

~~(7) To conduct hearings on all questions, disputes, protests, complaints, or objections arising from the show].~~

Section 3. Appeal. Any decision made pursuant to this administrative regulation may be appealed to the full authority in the manner prescribed in KRS 229.190~~[229.190].~~

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the powers and duties of inspectors of the Kentucky Boxing and Wrestling Commission ("KBWC").

(b) The necessity of this administrative regulation: This regulation is necessary to more fully define the duties and authority of the KBWC's inspectors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the KBWC the authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend, or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions as provided in KRS Chapter 229.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation makes clear the responsibility, authority and qualifications of an inspector at a show or exhibition, which are necessary to enforce KRS Chapter 229 and 201 KAR Chapter 27.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies and more fully states the responsibility and authority delegated by the KBWC to its inspectors.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary to ensure the prompt and proper administration of KRS Chapter 229 and 201 KAR Chapter 27 during shows and exhibitions and to define the duties and authority of KBWC inspectors.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the Commission authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the Commission to adopt and promulgate, amend or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions provided in KRS Chapter 229.

(d) How the amendment will assist in the effective administrative of the statutes: Inspectors are responsible for enforcing statutory and regulatory requirements at all events, and this amendment will clarify their duties and qualifications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the KBWC, participants in unarmed combat, and other licensees such as promoters, physicians, judges, officials, and anyone else licensed or seeking licensure by the KWBC. The Commission currently employs two part-time inspectors. Around 1,250 licenses are granted in a given year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will not have to take any additional steps to comply with this amendment because KWBC inspectors currently exercise the duties set forth in this amendment, which is intended to clarify their duties and authority.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Inspectors are paid hourly. No additional cost will be associated with compliance of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KWBC intends that this amendment will provide clarity to licensees relating to the qualifications, duties and authorities of the KWBC's inspectors.

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

(a) Initially: No Cost

(b) On a continuing basis: No Cost

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: There is no additional net cost associated with the implementation and enforcement of this amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because inspectors are required enforce regulations in a consistent fair manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is KRS 229.171 and 229.180.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 KWBC anticipates no net change in the cost to administer this amendment in the first full year it is in effect.

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

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

(c) How much will it cost to administer this program for the first year? The KWBC does not anticipate any net change in the cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer this program in subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(Amendment)**

201 KAR 27:008. License requirements and fees[and applications for boxing, kickboxing, mixed martial arts event, and elimination event officials].

RELATES TO: KRS 229.021, 229.051, 229.071[229.971(3)], 229.081, 229.091, 229.171, Chapter 311, 15 U.S.C 6305[(4)]

STATUTORY AUTHORITY: KRS 229.021, 229.071, 229.081, 229.091, 229.171, 229.180, 15 U.S.C. 6305[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the Commonwealth. KRS 229.021, 229.071, and 229.081 require that a person shall not engage in certain activities regulated by the commission without a license. KRS 229.071(4), 229.081, and 229.091 authorize the commission the power to establish license fees [gives the authority the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling shows to be held or conducted in the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. KRS 229.081 requires certain participants in professional shows to be licensed in accordance with eligibility requirements established by administrative regulation. KRS 229.071(2) authorizes the authority to grant annual

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licenses to applicants for participation in professional shows if the authority judges that the financial responsibility, experience, character, and general fitness of the applicant are such that participation by the applicant is in the public interest. KRS 229.071(3) grants the authority the power to establish annual license fees for licensed individuals. KRS 229.091(1) requires[states] that every licensee is subject to administrative regulations promulgated by the commission[authority]. 15 U.S.C. 6305 requires the commission to issue an identification card to each professional boxer who is a resident of the commonwealth. This administrative regulation establishes license requirements and fees for persons who conduct activities regulated by the commission[certain participants in professional shows in the Commonwealth].

Section 1. General Provisions. (1) A person shall not participate in a boxing, kickboxing, professional mixed martial arts, amateur mixed martial arts, wrestling, or an elimination event show or exhibition unless the person is licensed by the commission.

(2) Each license shall be separate. A person shall not use a license in one (1) capacity or sport to serve in a different capacity or sport except that a person licensed as a manager may act as a second.

(3) The burden of proof shall be on the applicant to establish that the applicant is qualified to receive the license.

(4)(a) A promoter license shall be valid for one (1) year from the date of issuance.

(b) All other licenses shall be valid from January 1 through December 31.

(5) Information provided on or with a license application shall be complete and correct. Any false statement of a material matter shall be grounds for:

(a) Denial of a license; or

(b) If the license has been issued, suspension, probation, or revocation of the license.

(6) Each licensee shall be subject to the conditions and agreements established in the application.

(7) The commission may require an applicant to appear before the commission to answer questions or provide documents in conjunction with an application for a license if:

(a) The person has not been licensed by the commission within the previous five (5) years;

(b) The person has a history of violations in any jurisdiction;

(c) The applicant has not fully completed the required application; or

(d) The applicant's written submissions have not met the applicant's burden of proof to prove his or her qualifications for a license.

(8) A licensee shall be governed by KRS Chapter 229 and 201 KAR Chapter 27 and shall be subject to any event-related orders given by the commission and an inspector.

Section 2. Licenses, Applications, and Fees. (1) The applicant shall complete the appropriate application as established in the table in subsection (2) of this section. The application shall be signed by the applicant under penalty of perjury.

(2) The following applications and non-refundable annual fees shall be required before any person may be licensed:

(a) Boxing and kickboxing licenses:

Boxing and Kickboxing License Type	License Application Required	License Fee
Boxer	Contestant Application	\$30
Kickboxer	Contestant Application	\$30
Manager	Non-Contestant Application	\$25
Trainer	Non-Contestant Application	\$25
Second	Non-Contestant Application	\$25
Referee	Non-Contestant Application	\$25
Judge	Non-Contestant Application	\$25

Timekeeper	Non-Contestant Application	\$25
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(b) Mixed martial arts licenses:

Mixed Martial Arts License Type	License Application Required	License Fee
Professional mixed martial artist	Contestant Application	\$30
Amateur mixed martial artist	Contestant Application	\$30
Manager	Non-Contestant Application	\$25
Trainer	Non-Contestant Application	\$25
Second	Non-Contestant Application	\$25
Referee	Non-Contestant Application	\$25
Judge	Non-Contestant Application	\$25
Timekeeper	Non-Contestant Application	\$25

(c) Wrestling licenses:

Wrestling License Type	License Application Required	License Fee
Wrestler	Contestant Application	\$30
Referee	Non-Contestant Application	\$25
Wrestling event staff	Non-Contestant Application	\$25

(d) Elimination event license:

Elimination Event License Type	License Application Required	License Fee
Elimination Event Contestant	Contestant Application	\$10

(e) Promoter license:

Promoter License Type	License Application Required	License Fee
Promoter	Promoter Application	\$300

(f) Medical Provider licenses:

Medical Provider License Type	License Application Required	License Fee
Physician	Medical Provider Application	\$30
Healthcare Professional	Medical Provider Application	\$25

Section 3. Health Physical Requirements. (1) The following applicants for licensure shall submit the form Physical Report to demonstrate the results of a physical that was completed by a physician not more than ninety (90) days before the licensing application is submitted:

(a) Boxer;

(b) Kickboxer;

(c) Professional mixed martial artist;

(d) Amateur mixed martial artist;

(e) Boxing and kickboxing referee; and

(f) Mixed martial arts referee.

(2) An applicant for licensure as a wrestler or wrestling referee shall submit the form Physical Report to demonstrate the results of a physical that was completed by a physician not more than (90) days before the licensing application is submitted if the applicant:

(a) Has not held a wrestler license in the past two (2) years;

(b) Is forty-five (45) years of age or older; or

(c) Has had an in-patient surgical procedure or overnight hospital stay in the past one (1) year.

Section 4. Determination of Ability to Obtain a License as a Contestant. (1) An applicant for a license as a boxer, kickboxer, or professional mixed martial artist shall demonstrate that:

(a) The applicant has the ability to be competitive in the sport; and

(b) The applicant has the ability to compete without the risk of

serious physical injury.

(2) An applicant for a license as a wrestler or an amateur mixed martial artist shall demonstrate that the applicant has the ability to compete without the risk of serious physical injury.

(3)(a) Individual consideration from the medical advisory panel shall be required if an applicant for licensure as boxer, kickboxer, professional mixed martial artist, or amateur mixed martial artist:

1. Is thirty-five (35) or more years old;
2. Has accrued six (6) consecutive losses;
3. Has lost more than twenty-five (25) fights in his or her career;
4. Has fought in 350 or more career rounds;
5. Has lost more than five (5) bouts by knockout in his or her career; or

6. Has been inactive for more than thirty (30) months.

(b) The medical advisory panel may order further medical testing if the medical evidence before it is inconclusive or incomplete.

(c) The medical advisory panel shall report its recommendation to the commission within forty-five (45) days of being referred an application.

Section 5. Medical Provider License. (1) An applicant for a physician license shall be a physician licensed pursuant to KRS Chapter 311.

(2) A person licensed or seeking licensure as a physician or healthcare professional shall maintain an active license in his or her field of practice and certification to administer cardiopulmonary resuscitation.

Section 6. Change from Amateur Status to Professional Status.

(1) The commission shall consider the applicant's previous fighting experience in deciding whether or not to permit a person licensed as an amateur to become a professional. This consideration shall include the:

- (a) Number of bouts the applicant has competed in;
- (b) Number of rounds the applicant has competed in;
- (c) Date of the applicant's bouts;
- (d) Applicant's performance in previous bouts, including the applicant's win-loss record; and
- (e) Level of competition the applicant has competed against.

(2) A person shall not be licensed as a professional unless the person has fought in a minimum of three (3) bouts.

Section 7. Boxer's Federal Identification Card. (1) To obtain a boxer's federal identification card, an applicant shall complete and submit to the commission a Boxer's Federal Identification Card Application.

(2) The fee for a boxer's federal identification card shall be ten (10) dollars, which shall be submitted with the Boxer's Federal Identification Card Application.

(3) The boxer's federal identification card shall be valid for four (4) years from the date issued.

Section 8. Change of address. A licensee shall provide his or her new address to the commission within thirty (30) days of a change in address. A licensee who fails to comply with the provisions of this section is subject to disciplinary action.

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

- (a) "Contestant Application", 2016;
- (b) "Non-Contestant Application", 2016;
- (c) "Promoter Application", 2016;
- (d) "Medical Provider Application", 2016;
- (e) "Physical Report", 2016;
- (f) "Promoter Bond Form", 2016; and
- (g) "Boxer's Federal Identification Card Application", 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 911 Leawood Dr., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at

<http://kbwa.ky.gov/Pages/Appsforms.aspx> [The authority shall license any person who participates as an official in a professional match. A license shall expire on December 31 of the year in which it is issued.]

~~Section 2. (1) An applicant for a license as an official in a boxing, kickboxing, or elimination event show shall complete and submit to the authority the form "Application for License as a Boxing Official", (2/06).~~

~~(2) An applicant for a license as an official in a mixed martial arts show shall complete and submit to the authority the form "Application for License as a Mixed Martial Arts Official", (2/06).~~

~~Section 3. A license fee of twenty (20) dollars shall be required from any person applying for a license to act as an official in boxing, kickboxing, mixed martial arts, and elimination event shows in any of the following capacities:~~

- ~~(1) Judge;~~
- ~~(2) Manager;~~
- ~~(3) Physician;~~
- ~~(4) Referee;~~
- ~~(5) Timekeeper;~~
- ~~(6) Trainer; and~~
- ~~(7) Second.~~

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

- ~~(a) "Application for License as a Boxing Official", (5/06); and~~
- ~~(b) "Application for License as a Mixed Martial Arts Official", (5/06).~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m].~~

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes license requirements and fees of those seeking licensure and renewal of licensure with the Kentucky Boxing and Wrestling Commission ("KBWC").

(b) The necessity of this administrative regulation: This regulation is necessary to establish licensure requirements and fees.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the Commission authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the Commission to adopt and promulgate, amend or abrogate rules and regulations considered by it necessary or expedient for the performance of its functions provided in KRS Chapter 229. KRS 229.021 requires all participants to be licensed. KRS 229.071 sets the license requirements for shows and exhibitions. KRS 229.081 sets the eligibility requirements for licensees. KRS 229.091 subjects all licensees to the administrative regulations promulgated by the Commission.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation establishes fees that provide the funds to pay for the regulatory oversight provided by the KBWC in administering KRS Chapter 229 and 201 KAR Chapter 27. It also sets requirements that provide for the safety of participants.

(2) If 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 lists more clearly and adds standards to consider when determining whether to grant or deny a license for each and every licensee. This amendment also raises certain fees for licensure. Information concerning all licenses can now be found in this regulation. New forms were incorporated to simplify the process for both the applicant and the Commission. An example of this change is that additional boxing and wrestling contestants will be required to submit an annual physical for licensure, thus improving safety.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to keep the KBWC self-sustaining and to continue to ensure proper regulatory oversight is given to the industry, especially the health and safety of contestants. It is also necessary to provide a better understanding of licensure requirements. Prior to this amendment a lot was left to the discretion of the inspectors.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with KRS 229.171, which grants the Commission authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the Commission to adopt and promulgate, amend or abrogate rules and regulations considered by it necessary or expedient for the performance of its functions provided in KRS 229. KRS 229.021 requires all participants to be licensed. KRS 229.071 sets the license requirements for shows and exhibitions. KRS 229.081 sets the eligibility requirements for licensees. KRS 229.091 subjects all licensees to the administrative regulations promulgated by the Commission.

(d) How the amendment will assist in the effective administrative of the statutes: This amendment slightly raises fees (mostly by five to ten dollars) that provide for payment of employees administering KRS Chapter 229 and 201 KAR Chapter 27. It also strengthens requirements that provide for safety of participants intended in KRS Chapter 229.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the KBWC, boxing, kickboxing, professional mixed martial arts, amateur mixed martial arts, wrestling, and elimination event contestants, non-contestants, managers of contestants, and promoters. The Commission grants around 1,250 licenses in a year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All individuals and entities who compete or provide services in the unarmed combat field must be licensed. The persons involved in this field must comply, as they have for decades, with the licensure and fee requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): The following is a list of the additional cost to each entity in compliance with this regulation.

Boxer/kickboxer: \$30 (an increase of \$10)
 Wrestler: \$30 (an increase of \$10)
 Amateur Mixed Martial Artist: \$30 (an increase of \$5)
 Professional Mixed Martial Artist: \$30 (an increase of \$10)
 Elimination Event Contestant: \$10 (an increase of \$5)
 Manager: \$25 (an increase of \$5)
 Trainer: \$25 (an increase of \$5)
 Second: \$25 (an increase of \$5)
 Referee: \$25 (an increase of \$5)
 Judge: \$25 (an increase of \$5)
 Timekeeper: \$25 (an increase of \$5)
 Physician: \$30 (an increase of \$10)
 Healthcare Professional: \$25 (new classification)
 Wrestling Event Staff: \$25 (an increase of \$5)

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The commission will be able to remain self-sustaining. The board will be able to meet more and do more to better unarmed combat in the Commonwealth benefiting all entities.

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

(a) Initially: No Cost.
 (b) On a continuing basis: No Cost.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? There is no additional net cost associated with the implementation and enforcement of this amendment.

(7) Provide an assessment of whether an 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 are required for the implementation of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment increases fees.

(9) TIERING: Is tiering applied? Tiering is not applied because all licensing requirements are for the health and safety of the licensees and fees are consistent between the license types.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 15 U.S.C. 6304; 6305(a), (b)

2. State compliance standards. Those wishing to participate in boxing must submit an application to obtain a boxing identification card that is valid for four years. The boxer must also submit an application for licensure and a physical from a physician who certifies that the boxer is physically fit to compete. Moreover, no boxing match may occur unless a physician is continuously ringside and an ambulance and resuscitation equipment is on-site. Boxers must also be provided with health insurance.

3. Minimum or uniform standards contained in the federal mandate. 15 U.S.C. 6304 requires that every boxer undergo a physical examination and be certified by a physician to be physically fit to compete safely in a match. The law also requires an ambulance or resuscitation equipment to be onsite at all boxing matches and for a physician to be present at ringside. Finally, health insurance is required for each boxer.

15 U.S.C. 6305 requires a boxer to register with the boxing commission in the boxer's state of residence. That state must issue a federal boxing identification card to the boxer.

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

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation KRS 229.021, 229.071, 229.081, 229.091, 229.171, 229.180, 15 U.S.C. 6305

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 amendment will generate around \$10,000 in additional revenue in the first full year of implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate around \$10,000 in additional revenue in the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will generate around \$10,000 in additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The KWBC does not anticipate any net change in the cost to administer this program in the first year. The KBWC plans to utilize the additional funds to remain self-sustaining. Moreover, the funds will be used for programs to improve the health and safety of fighters. For example, the KBWC is in the planning stages of a fighter health summit and is studying whether to require tests to establish neurological baselines that may be used if a fighter is suspected of having suffered a head injury.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer this program in the first year. The KBWC plans to utilize the additional funds to remain self-sustaining. Moreover, the funds will be used for programs to improve the health and safety of fighters. For example, the KBWC is in the planning stages of a fighter health summit and is studying whether to require tests to establish neurological baselines that may be used if a fighter is suspected of having suffered a head injury.

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

Revenues (+/-): + \$10,000
Expenditures (+/-): 0
Other Explanation: None.

**PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(Amendment)**

201 KAR 27:011. General requirements for boxing and kickboxing shows.

RELATES TO: KRS 229.021, 229.031, 229.071, 229.081, 229.091, 229.101, 229.131, 229.155, 229.171, 15 U.S.C. 6304, 6305(a), (b)

STATUTORY AUTHORITY: KRS 229.021, 229.071, 229.091(1), 229.171(4), 229.180(4), 15 U.S.C. 6304

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth [the Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held, or given within the Commonwealth. KRS

~~229.180(1) authorizes the authority to promulgate administrative regulations necessary or expedient for the performance of its regulatory function. KRS 229.021 and 229.071(2) and (3) authorize the authority to grant annual licenses to applicants for participation in professional matches if the authority determines that the financial responsibility, experience, character, and general fitness of the applicant indicate that participation by the applicant is in the public interest. KRS 229.091(1) provides that every licensee shall be subject to administrative regulations promulgated by the authority. 15 U.S.C. 6304 requires a promoter to provide medical insurance for injuries sustained in a match]. This administrative regulation establishes the [general] requirements for boxing and kickboxing shows, and for participants in boxing and kickboxing shows.~~

Section 1. Show Date. (1) A promoter shall request a show date by completing and submitting to the commission the Show Notice Form.

(2) The Show Notice Form shall be submitted for approval no less than thirty (30) calendar days before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Approval is effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at <http://ins.kbwa.ky.gov/ecal.asp>; or

(b) Providing written notice that the event is approved.

(4) An advertisement shall not include the name or image of any contestant who does not hold a valid license issued by the commission.

Section 2. Program and Changes. (1) If a contestant is unable to participate in a show for which the contestant has a contract, the contestant shall immediately notify the promoter and the commission. Repeated and unexcused absences of cancellation may result in discipline.

(2) The proposed card for a show shall be filed with the commission at least five (5) business days prior to the show date. Notice of a change in a program or substitution in a show shall be immediately filed with the commission.

(3) If the commission determines that a proposed bout may not be reasonably competitive, the bout may be denied. The commission's determination shall be based upon the contestants' previous fighting experience, including:

(a) The number of bouts the contestants have competed in;

(b) The number of rounds the contestants have competed in;

(c) The date of the contestants' bouts;

(d) The contestants' performance in previous bouts, including the applicant's win-loss record;

(e) The level of competition the contestants have faced; and

(f) The contestants' medical histories.

Section 3. Compensation. (1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, ring officials shall be paid one-half (1/2) the compensation agreed upon prior to the bout.

(2) Before the commencement of a show or exhibition, the promoter shall tender to the inspector a certified check or money order made payable to each ring official. The schedule of compensation for a ring official is at least as follows:

(a) Judge: seventy-five (75) dollars each;

(b) Timekeeper: seventy-five (75) dollars;

(c) Physician: \$350;

(d) Referee: \$100 each; and

(e) Bout assistant: seventy-five (75) dollars each.

(3) Each contestant's compensation agreement shall be in writing and submitted to the commission for approval not less than two (2) calendar days prior to the date of the proposed show.

Section 4. Pre-Fight. (1) A contestant shall weigh in stripped at a time set by the commission, which shall not be more than thirty-six (36) hours before the first scheduled bout of the show. A contestant shall produce one (1) form of picture identification at the weigh-in. The inspector and the promoter or a representative of the

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promoter conducting the show shall be in attendance to record the official weights.

(2) A contestant shall check in with the commission at least one (1) hour prior to the event start time. A contestant shall produce one (1) form of picture identification at check-in.

(3) A contestant shall attend a pre-fight meeting as directed by the commission.

(4) A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector. The promoter shall supply a separate locker room for males and females.

(5) A contestant shall submit an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results to the commission at least twenty-four (24) hours prior to the event.

(a) The results of these tests shall be no more than 180 days old.

(b) A person with a positive test result shall not compete.

(6) A contestant shall undergo a pre-fight physical conducted by a physician. Prior to undergoing the physical, a contestant shall submit a completed Pre-Fight Medical Questionnaire under penalty of perjury.

(7) A contestant shall report to and be under the general supervision of the inspector in attendance at the show and shall be subject to orders given by the inspector.

Section 5. The Ring. (1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the commission. Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission without inspector approval.

(2) An event held outdoors if the heat index is at or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entire ring.

(3) A ring shall have a canvas mat or similar material, unless the event is held outdoors in which case only canvas shall be used. A bout may be held in a mixed martial arts cage if the bout is in conjunction with a mixed martial arts event.

(4) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring. A partition, barricade, or some type of divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) Along the sides of the entry lane for contestants to enter the ring.

(5) The ring specifications shall be as follows:

(a) A bout shall be held in a four (4) sided roped ring with the following specifications:

1. The floor of the ring inside the ropes shall not be less than sixteen (16) feet square;

2. The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;

3. The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and

4. The ring shall have steps to enter the ring on two (2) sides.

(b) The ring shall be formed of ropes with the following specifications:

1. There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

a. Twenty-four (24) inches;

b. Thirty-six (36) inches; and

c. Forty-eight (48) inches.

2. A fourth rope may be used if the inspector finds that it will not pose a health or safety concern.

3. The ropes shall be at least one (1) inch in diameter.

4. The ropes shall be wrapped in a clean, soft material and drawn taut.

5. The ropes shall be held in place with two (2) vertical straps on each of the four (4) sides of the ring.

6. The ropes shall be supported by ring posts that shall be:

a. Made of metal or other strong material;

b. Not less than three (3) inches in diameter; and

c. At least eighteen (18) inches from the ropes.

(c) The ring floor shall be padded or cushioned with a clean, soft material that:

1. Is at least one (1) inch thick and uses slow recovery foam matting;

2. Extends over the edge of the platform;

3. Is covered with a single canvas stretched tightly; and

4. Is, at the commencement of the event, clean, sanitary, dry, and free from:

a. Grit;

b. Dirt;

c. Resin; and

d. Any other foreign object or substance.

(d) A ring rope shall be attached to a ring post by turnbuckles padded with a soft vertical pad at least six (6) inches in width.

Section 6. Equipment. (1) A bell or horn shall be used by the timekeeper to indicate the time.

(2) In addition to the ring and ring equipment, the promoter shall supply:

(a) A public address system in good working order;

(b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the ring and the ring floor;

(c) Items for each contestant's corner, to include:

1. A stool or chair;

2. A clean bucket;

3. Towels; and

4. Rubber gloves;

(d) A complete set of numbered round-cards, if needed;

(e) Gloves for each boxer or kickboxer; and

(f) A scale used for weigh-in, which shall be approved in advance by the inspector.

Section 7. Contestant Equipment and Attire. (1) A contestant shall be clean and neatly attired in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) A contestant shall not use a belt that contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

(3) A contestant shall wear shoes during a bout. The shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.

(4) A contestant shall wear a properly fitted:

(a) Groin protector; and

(b) Double-arch mouthpiece.

(5) A contestant shall have long hair secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.

(6) A contestant shall use a minimum of cosmetics.

(7) Boxing gloves shall meet the requirements established in this subsection.

(a) Contestants shall wear boxing gloves that shall be of the same weight for each contestant and:

1. Dry, clean, and sanitary;

2. Furnished by the promoter;

3. Of equal weight, not to exceed twelve (12) ounces;

4. A minimum of eight (8) ounces for a contestant weighing no more than 154 pounds;

5. A minimum of ten (10) ounces for a contestant weighing over 154 pounds; and

6. Thumbless or thumb-attached.

(b) Gloves shall be new for main events and for bouts and exhibitions scheduled for ten (10) or more rounds.

(c) Gloves shall be approved by the commission prior to a bout.

(d) Gloves for all main events shall be dry and free from defects and shall be put on in the ring or locker room while supervised by the inspector.

(e) Breaking, roughing, or twisting of gloves shall not be permitted.

(f) The laces on gloves shall be tied on the back of the wrist and taped.

(g) Kickboxing contestants shall wear padded kickboxing boots. The padding shall be sufficient to protect the kickboxer and

his or her competitor.

(8) Bandages shall meet the requirements established in this subsection.

(a) For boxing and kickboxing, only soft cotton or linen bandages shall be used for the protection of the boxer or kickboxer's hands.

(b) Bandages shall not be more than two (2) inches in width and twelve (12) yards in length for each hand.

(c) If adhesive tape is used:

1. Medical adhesive tape not more than one (1) inch in width shall be used to hold bandages in place.

2. Adhesive tape shall not be lapped more than one-eighth (1/8) of one (1) inch.

3. Adhesive tape not to exceed one (1) layer shall be crossed over the back of the hand for its protection.

4. Three (3) strips of adhesive tape, lapping not to exceed one-eighth (1/8) of one (1) inch, may be used for protection of the knuckles.

(d) Hand wraps shall be applied in the dressing room in the presence of an inspector or ring official. The inspector or ring official shall sign the hand wrap and the tape around the strings of the gloves.

Section 8. Weight Classes. (1) The class weights permitted in boxing and kickboxing bouts shall be as follows:

CLASS	WEIGHT
Flyweight	Up to 112 lbs.
Bantamweight	Up to 118 lbs.
Jr. Featherweight	Up to 122 lbs.
Featherweight	Up to 126 lbs.
Jr. Lightweight	Up to 130 lbs.
Lightweight	Up to 135 lbs.
Jr. Welterweight	Up to 140 lbs.
Welterweight	Up to 147 lbs.
Jr. Middleweight	Up to 154 lbs.
Middleweight	Up to 160 lbs.
Light Heavyweight	Up to 175 lbs.
Cruiserweight	Up to 195 lbs.
Heavyweight	Over 195 lbs.

(2) After the weigh-in, a contestant shall not change weight in excess of eight (8) percent prior to the bout.

(3) After the weigh-in, a contestant shall not re-hydrate by the use of intravenous fluids unless approved by the inspector. A contestant may be subject to a random urine specific gravity test to determine compliance with this subsection.

Section 9. Fight Length. (1) Bouts and rounds shall:

(a) Be three (3) minutes in duration; and

(b) Have a one (1) minute rest period between rounds.

(2) A bout shall consist of no less than four (4) and no more than twelve (12) rounds. A championship bout shall be twelve (12) rounds in length.

(3) A contestant who has not fought within the last twelve (12) months shall not be scheduled to box or kickbox more than ten (10) rounds without commission approval.

Section 10. Judging and Scoring. (1) Scoring shall be as follows:

(a) Each round shall be accounted for on the scorecard, using the ten (10) point system. Scoring shall be expressed in ratio of merit and demerit.

(b) Score cards shall be:

1. Signed;

2. Handed to the referee in the ring; and

3. Filed by the referee with the inspector.

(c) The decision shall then be announced from the ring.

(2) Decisions shall be rendered as follows:

(a) If a bout lasts the scheduled limit, the winner of the bout shall be decided by:

1. A majority vote of the judges if three (3) judges are employed to judge the bout; or

2. A majority vote of the judges and the referee if two (2) judges are employed to judge the bout.

(b) Decisions shall be based primarily on boxing or kickboxing effectiveness, with points awarded for display of the following attributes, and points deducted for an opposite showing:

1. Clean, forceful hitting;

2. Aggressiveness;

3. Defensive work; and

4. Ring generalship.

(c) The requirements governing knockdowns shall be as follows:

1. If a contestant is knocked to the floor by the contestant's opponent, or falls from weakness or other causes, the contestant's opponent shall:

a. Immediately retire to the farthest neutral corner of the ring; and

b. Remain there until the referee completes the count or signals a resumption of action.

2. The timekeeper shall commence counting off the seconds and indicating the count with a motion of the arm while the contestant is down.

3. The referee shall pick up the count from the timekeeper.

4. If a contestant fails to rise to his or her feet before the count of ten (10), the referee shall declare him the loser by waving both arms to indicate a knockout.

5. If a contestant who is down rises to his or her feet during the count, the referee may step between the contestants long enough to assure that the contestant just arisen is in condition to continue the bout.

6. If a contestant who is down arises before the count of ten (10) is reached, and again goes down from weakness or the effects of a previous blow without being struck again, the referee shall resume the count where he or she left off.

7. A standing eight (8) count shall be used by the referee.

8. If a contestant is knocked down three (3) times during a round, the bout shall be stopped. The contestant scoring the knockdowns shall be the winner by a technical knockout.

9. If a round ends before a contestant who was knocked down rises, the count shall continue, and if the contestant fails to arise before the count of ten (10), the referee shall declare the contestant knocked out.

(3) A contestant shall be considered down if:

(a) Any part of the contestant's body other than his or her feet is on the ring floor;

(b) The contestant is hanging helplessly over the ropes and in the judgment of the referee, is unable to stand; or

(c) The contestant is rising from the down position.

(4) Failure to Resume a Bout.

(a) If a contestant fails to resume the bout for any reason after a rest period, or leaves the ring during the rest period and fails to be in the ring when the bell rings to begin the next round, the referee shall count the contestant out the same as if the contestant were down in that round.

(b) If a contestant who has been knocked out of or has fallen out of the ring during a bout fails to return immediately to the ring and be on his or her feet before the expiration of ten (10) seconds, the referee shall count him out as if he were down.

Section 11. Fouls. (1) The following shall be considered fouls:

(a) Hitting below the belt;

(b) Hitting an opponent who is down or who is getting up after having been down;

(c) Holding an opponent and deliberately maintaining a clinch;

(d) Holding an opponent with one (1) hand and hitting with the other;

(e) Butting with the head or shoulder or using the knee;

(f) Hitting with the inside, or butt, of the hand, the wrist, or the elbow, and all backhand blows except for those backhand blows allowable in kickboxing;

(g) Hitting, or flicking, with the glove open or thumbing;

(h) Wrestling, or roughing, against the ropes;

(i) Purposely going down without having been hit;

(j) Deliberately striking at the part of an opponent's body over

the kidneys:

(k) Using a pivot blow or rabbit punch;

(l) Biting of the opponent;

(m) Using abusive or profane language;

(n) Failing to obey the referee;

(o) Engaging in any unsportsmanlike trick or action that causes injury to another person; or

(p) Hitting after the bell has sounded the end of the round.

(2)(a) A contestant who commits a foul may be disqualified and the decision awarded to the opponent by the referee.

(b) The referee shall immediately disqualify a contestant who commits a deliberate and willful foul that prevents the opponent from continuing in the bout.

(c) The referee may take one (1) or more points away from a contestant who commits an accidental foul.

(3) A contestant committing a foul may be issued a violation by an inspector.

(4)(a) If a bout is temporarily stopped by the referee due to fouling, the referee, with the aid of the physician, if necessary, shall decide if the contestant who has been fouled is in physical condition to continue the bout.

(b) If in the referee's opinion the contestant's chances have not been seriously jeopardized as a result of the foul, the referee shall order the bout resumed after a reasonable time set by the referee, but not exceeding five (5) minutes.

(5)(a) If a contestant is unable to continue as the result of an accidental foul and the bout is in one (1) of the first three (3) rounds, the bout shall be declared a technical draw.

(b) If an accidental foul occurs after the third round, or if an injury sustained from an accidental foul in the first three (3) rounds causes the bout to be subsequently stopped, the bout shall be scored on the basis of the judges' scorecards.

(6) If a bout is ended by reason of fouling or failure to give an honest demonstration of skill, as determined by an inspector or referee, the compensation of the offending contestant shall be withheld by the promoter and disposed of as ordered by the commission.

Section 12. Prohibitions. (1) The following shall be prohibited:

(a) Battle royal type events; and

(b) Use of excessive grease or other substance that may handicap an opponent.

(2) A contestant shall not engage in boxing or sparring with a member of the opposite sex.

Section 13. Non-Contestant Participants. (1) A promoter shall provide a minimum of two (2) security guards on the premises for each show.

(2) All ring officials shall be selected, licensed, and assigned to each show by the commission. For each show, a minimum of the following shall be required:

(a) Three (3) judges;

(b) One (1) timekeeper;

(c) One (1) physician. However, two (2) physicians shall be assigned to a bout designated a championship bout by a national sanctioning body recognized by the commission; and

(d) One (1) referee, unless the card has more than thirty (30) rounds, in which case a minimum of two (2) referees shall be required.

Section 14. Judges. (1) A judge shall arrive at least one (1) hour prior to the start of a show.

(2) At the beginning of a bout, the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants.

(3) At the conclusion of the bout, the judges shall render their decision based on the requirements of Section 10 of this administrative regulation.

(4) Upon request of the referee, the judges shall assist in determining:

(a) Whether or not a foul has been committed;

(b) Whether or not each contestant is competing in earnest; and

(c) Whether or not there is collusion affecting the result of the bout.

Section 15. Timekeeper. (1) The timekeeper shall be seated outside the ring near the bell and shall take the cue to commence or take time out from the referee.

(2) The timekeeper shall be provided with a whistle and a stop watch approved by the commission.

(3) Ten (10) seconds before the start of each round, the timekeeper shall give notice by sounding the whistle.

(4) The timekeeper shall indicate the starting and ending of each round by striking the bell with a metal hammer.

(5) If a bout terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the bout.

(6) Ten (10) seconds prior to the end of each round, the timekeeper shall give warning by striking a gavel three (3) times.

Section 16. Physicians and Healthcare Requirements. (1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

(2) The physician shall have general supervision over the physical condition of each contestant at all times while on the premises of a show or exhibition.

(3) The physician's pre-bout duties are as follows:

(a) A physician shall make a thorough physical examination of each contestant within eight (8) hours prior to a bout.

1. The physician's examination shall include a review of the Pre-Fight Medical Questionnaire of each contestant.

2. The physician shall deliver to the inspector the form Pre-Fight Examination that documents the results of the examination prior to the contestant entering the ring.

(b) The physician shall ensure that all equipment required by subsection (5) of this section is present before the start of the first bout or exhibition.

(c) The physician shall prohibit a contestant from competing if the physician reasonably believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.

(4) The physician's duties during the bout or exhibition are as follows:

(a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.

(b) The physician shall observe the physical condition of each contestant during a bout.

(c) The physician shall administer medical aid if needed or requested.

(d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.

(5) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:

(a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;

(b) Spine board;

(c) Cervical collar;

(d) Oxygen apparatus or equipment; and

(e) First aid kit.

(6) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(7) The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver to the inspector the form Post-Fight Examination that documents the results of the examination.

Section 17. Announcers. (1) The announcer shall have general supervision over all announcements made to spectators. The

announcer shall announce the name of contestants, their weight, decisions at the end of each bout, and any other matters as are necessary. No person other than the official announcer shall make an announcement, unless deemed necessary by an inspector:

(2) If a bout is stopped before its scheduled termination, the announcer shall immediately confer with the referee and judges and then shall immediately announce the decision.

(3) The announcer shall not enter the ring during the actual progress of a bout.

Section 18. Referees. (1) The referee shall be the chief official of the show, be present in the ring at all times, and have general supervision over each contestant, manager, and second during the entire event.

(2) The referee shall have the authority to disqualify a contestant who commits a foul and award the decision to the opponent. The referee shall immediately disqualify a contestant who commits an intentional or deliberate foul that causes serious physical injury to an opponent.

(3) The referee's duties and responsibilities shall be as follows:

(a) The referee shall, before starting a bout, ascertain from each contestant the name of the contestant's chief second. The referee shall hold the chief second responsible for the conduct of the chief second's assistants during the progress of the bout.

(b) The referee shall call the contestants together in the ring immediately preceding a bout for final instructions. During the instructional meeting, each contestant shall be accompanied in the ring by the contestant's chief second only.

(c) The referee shall inspect the person, attire, and equipment of each contestant and make certain that no foreign substances that are prohibited by KRS Chapter 229 or 201 KAR Chapter 27 have been applied on a contestant's body or equipment or used by a contestant.

(d) The referee shall stop a bout at any time if the referee has reasonable grounds to believe either contestant:

1. Is unable to protect himself from possible injury;
2. Is not competing in earnest; or
3. Is colluding with another person to affect the results of the bout.

(e) The referee may take one (1) or more points away from a contestant who commits an accidental foul, and the referee may permit a rest period not exceeding five (5) minutes for the contestant who was fouled.

(f) The referee shall not touch a contestant during the bout except upon failure of a contestant to obey the referee's orders or to protect a contestant.

(g) The referee shall decide all questions arising during a bout that are not otherwise specifically covered by KRS Chapter 229 or 201 KAR Chapter 27.

Section 19. Trainers and Seconds. (1) A trainer or second shall be equipped with a first aid kit and the necessary supplies for proper medical attendance upon the contestant.

(2) There shall be no more than three (3) persons total serving as a trainer or second in any bout and only two (2) shall be allowed in the ring at the same time.

(3) A trainer and a second shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round and shall remove all equipment from the ring. Equipment shall not be placed on the ring floor until after the bell has sounded at the end of the round or period.

(4) A trainer and a second shall wear surgical gloves at all times while carrying out their duties.

Section 20. Medical Prohibitions. (1) A contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete in unarmed combat again if, after subjecting the boxer or kickboxer to a thorough examination by a physician licensed by the commission, the medical advisory panel determines the action is necessary to protect the health and welfare of the contestant.

(2) A contestant who has suffered five (5) consecutive defeats by knockout or medical stoppage shall not be allowed to compete

in unarmed combat until the contestant has been evaluated and subsequently cleared for further competition by the medical advisory panel.

(3) A contestant who has been knocked out shall be prohibited from all competition for a minimum of sixty (60) days.

(4) Any contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days if the contestant's health or safety would be jeopardized without the prohibition.

(5) A contestant shall serve a mandatory seven (7) day rest period from competition after competing in an event. Day one (1) of the rest period shall commence on the first day following the bout in which the contestant competed.

(6)(a) A female boxer or kickboxer shall submit proof that she is not pregnant prior to her bout. The proof may be either:

1. An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the bout that shows she is not pregnant; or

2. From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.

(b) A female boxer or kickboxer shall be prohibited from competing if:

1. She is pregnant; or
2. She fails to comply with this section.

Section 21. Insurance. (1) A promoter shall provide insurance for a contestant for any injuries sustained in the boxing or kickboxing show.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.

(4) The deductible expense under the policy for a contestant shall not exceed \$1,000.

Section 22. Other Provisions. (1) A promoter shall maintain an account with the recognized national database as identified by the commission and submit contestant's names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

(2) All shows shall be video recorded and retained by the promoter for at least for one (1) year. Upon request of the commission, the promoter shall provide the video recording of a show to the commission.

(3) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located.

(4) Alcohol shall be prohibited inside the six-foot area alongside the ring.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Show Notice Form", 2016;
- (b) "Pre-Fight Medical Questionnaire", 2016;
- (c) "Pre-Fight Examination", 2016; and
- (d) "Post-Fight Examination", 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 911 Leewood Dr., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at <http://kbwa.ky.gov/Pages/Appsforms.aspx>(4) The authority shall license all persons approved to participate as contestants in a boxing or kickboxing show.

(2) A participant shall apply for a license at the show site after a preflight physical.

(3) An application shall only be mailed to the authority if the applicant is over thirty-nine (39) years old and a comprehensive physical is required pursuant to Section 34 of this administrative regulation. An application shall be submitted on-site at the event after the preflight physical if the applicant is thirty-nine (39) years or less.

(4) A license shall expire on December 31 of the year in which it is issued.

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~~Section 2. (1)(a) An applicant for a boxing license shall complete and submit to the authority the form Application for License as a Boxer.~~

~~(b) A copy of the applicant's picture identification or birth certificate shall be submitted with the application.~~

~~(2) The license fee for each participant shall be as follows:~~

~~(a) For boxers and kickboxers: twenty (20) dollars~~

~~(b) For a boxer's federal identification card, pursuant to 15 U.S.C. 6305(a) and (b): ten (10) dollars. This identification is valid for two (2) years from the date issued. To obtain a boxer's federal identification card, an applicant shall complete and submit to the authority the form Boxer's Federal Identification Card Application.~~

~~Section 3. (1) A promoter of a boxing or kickboxing show shall request a show date by completing and submitting to the authority the form Boxing Show Notice Form.~~

~~(2) The form shall be submitted to the authority for approval no less than thirty (30) calendar days before the requested show date.~~

~~(3) There shall not be advertising of the event prior to the approval.~~

~~(4) Upon approval by the authority, all advertisements shall include the promoter's license number.~~

~~Section 4. Before the commencement of the main event of a boxing or kickboxing show or exhibition, a promoter of a show or exhibition shall tender to the inspector or an employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials established in Section 5 of this administrative regulation.~~

~~Section 5. The schedule for compensation to be paid prior to the commencement of the main event to officials participating in a boxing or kickboxing show shall be as follows:~~

~~(1) Judges for boxing or kickboxing shows: seventy-five (75) dollars each.~~

~~(2) Timekeeper for boxing or kickboxing shows: seventy-five (75) dollars.~~

~~(3) Physician for boxing and kickboxing show:~~

~~(a) \$300: up to ten (10) schedule bouts;~~

~~(b) \$350: eleven (11) to fifteen (15) scheduled bouts; or~~

~~(c) \$400: over fifteen (15) scheduled bouts.~~

~~(4) Referees for boxing and kickboxing shows: \$100 each.~~

~~Section 6. If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the authority, officials shall be paid one-half (1/2) the compensation required by Section 5 of this administrative regulation.~~

~~Section 7. (1) The proposed card for a show shall be filed with the authority at least five (5) business days prior to the date of the show. Notice of a change in a program or substitution in a show shall be immediately filed with the authority.~~

~~(2) If the authority determines, based on a contestant's fight history, that a proposed bout may not be reasonably competitive, the bout shall be denied.~~

~~Section 8. Each contestant's compensation agreement shall be in writing and submitted to the authority for approval not less than five (5) calendar days prior to the date of the proposed show.~~

~~Section 9. (1) Before the commencement of a show, all changes or substitutions in the card shall be:~~

~~(a) Announced from the ring; and~~

~~(b) Posted in a conspicuous place at the ticket office.~~

~~(2) In the event of a change in the card, a purchaser of a ticket shall be entitled, upon request, to a refund of the purchase price of the tickets, provided the request is made before the commencement of the show.~~

~~Section 10. Within twenty-four (24) hours of the conclusion of a show, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the authority the form, Boxing Event Report.~~

~~Section 11. (1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the authority.~~

~~(a) Alcohol or smoking shall be prohibited in the areas under the control of the authority.~~

~~(b) Authority staff and licensees shall be the only people allowed inside the areas under the control of the authority.~~

~~(2) An event held outdoors while the temperature is or exceeds a heat index of 100 degrees Fahrenheit shall be conducted under a roof.~~

~~(3) A ring shall have a canvas mat or similar material, unless the event is held outdoors in which case only canvas shall be used. A boxing match may be held in a Mixed Martial Arts cage if the match is in conjunction with a Mixed Martial Arts event.~~

~~Section 12. (1) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring.~~

~~(2) A partition, barricade, or some type of divider shall be placed:~~

~~(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and~~

~~(b) Along the sides of the entry lane for boxers and kickboxers to enter the ring and the spectator area.~~

~~Section 13. The ring specifications shall be as follows:~~

~~(1) A bout shall be held in a four (4) sided roped ring with the following specifications:~~

~~(a) The floor of the ring inside the ropes shall not be less than sixteen (16) feet square;~~

~~(b) The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;~~

~~(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and~~

~~(d) The ring shall have steps to enter the ring on two (2) sides.~~

~~(2) The ring shall be formed of ropes with the following specifications:~~

~~(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:~~

~~1. Twenty-four (24) inches;~~

~~2. Thirty-six (36) inches; and~~

~~3. Forty-eight (48) inches.~~

~~(b) A fourth rope may be used if it is approved by the inspector or employee of the authority prior to the commencement of the show.~~

~~(c) The ropes shall be at least one (1) inch in diameter.~~

~~(d) The ropes shall be wrapped in a clean, soft material and drawn taut.~~

~~(e) The ropes shall be held in place with two (2) vertical straps on each of the four (4) sides of the ring.~~

~~(3) The ropes shall be supported by ring posts that shall be:~~

~~(a) Made of metal or other strong material;~~

~~(b) Not less than three (3) inches in diameter; and~~

~~(c) At least eighteen (18) inches from the ropes.~~

~~(4) The ring floor shall be padded or cushioned with a clean, soft material that:~~

~~(a) Is at least one (1) inch in thickness using thick slow recovery foam matting;~~

~~(b) Extends over the edge of the platform; and~~

~~(c) 1. Is covered with a single canvas stretched tightly. If the event is held outdoors, only canvas shall be used; and~~

~~2. Is clean, sanitary, dry, and free from:~~

~~a. Grit;~~

~~b. Dirt;~~

~~c. Resin;~~

~~d. Blood; and~~

~~e. Any other foreign object or substance.~~

~~(5) A ring rope shall be attached to a ring post by turnbuckles padded with a soft vertical pad at least six (6) inches in width.~~

~~Section 14. A bell or horn shall be used by the timekeeper to indicate the time.~~

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Section 15. In addition to the ring and ring equipment, the promoter shall supply the items listed in this section, which shall be available for use as needed:

- (1) A public address system in good working order;
- (2) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the ring and the ring floor;
- (3) Items for each contestant's corner, to include:
 - (a) A stool or chair;
 - (b) A clean bucket;
 - (c) Towels; and
 - (d) Rubber gloves;
- (4) A complete set of numbered round cards, if needed;
- (5) A clean stretcher and a clean blanket, placed under or adjacent to the ring throughout each bout;
- (6) First aid oxygen apparatus or equipment; and
- (7) Gloves for each boxer or kickboxer.

Section 16. A scale used for any weigh-in shall be approved in advance by the inspector or employee of the authority.

Section 17. A promoter shall provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted and the locker rooms to ensure adequate protection against disorderly conduct. A disorderly act, assault, or breach of decorum on the part of a licensee at the premises shall be prohibited.

Section 18. (1) Emergency medical personnel and portable medical equipment shall be stationed at ringside during the event.

(2) There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on site for each contest.

(3) If the ambulance is required to leave the event, boxing and kickboxing shall not be allowed to continue until an ambulance is once again present and medical personnel are at ringside.

Section 19. (1) There shall be at least one (1) physician licensed by the authority at ringside before a bout is allowed to begin.

(2) The physician shall have at ringside medical supplies reasonably anticipated to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing contest.

Section 20. (1) A promoter shall provide health insurance for the boxer or kickboxer for any injuries sustained in the boxing event.

(2) The minimum amount of coverage per boxer or kickboxer shall be \$5,000 benefits.

(a) Payment of a deductible under the policy shall be the responsibility of the contestant not to exceed an expense of \$1,000.

(b) Deductible expenses above \$1,000 shall be the responsibility of the promoter.

(3) A certificate of insurance coverage shall be provided to the authority no less than two (2) business days before the event.

Section 21. All judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the authority. For each show, the authority shall assign:

- (1) Three (3) judges;
- (2) One (1) timekeeper;
- (3) One (1) physician. Two (2) physicians shall be assigned to a bout designated a championship bout by a national sanctioning body recognized by the authority; and
- (4) One (1) referee, unless the card has more than thirty (30) rounds, in which case a minimum of two (2) referees shall be required.

Section 22. Decisions shall be rendered as follows:

(1) If a contest lasts the scheduled limit, the winner of the contest shall be decided by:

- (a) A majority vote of the judges if three (3) judges are

employed to judge the contest; or

(b) A majority vote of the judges and the referee if two (2) judges are employed to judge the contest.

(2) Decisions shall be based primarily on boxing or kickboxing effectiveness, with points awarded for display of the following attributes, and points deducted for an opposite showing:

- (a) Clean, forceful hitting;
- (b) Aggressiveness;
- (c) Defensive work; and
- (d) Ring generalship.

Section 23. Scoring shall be as follows:

(1) Each round in boxing or kickboxing shall be accounted for on the scorecard, using the ten (10) point must system. Scoring shall be expressed in ratio of merit and demerit.

(2) Score cards shall be:

- (a) Signed;
 - (b) Handed to the referee in the ring; and
 - (c) Filed by the referee with the inspector or employee of the authority in attendance.
- (3) The decision shall then be announced from the ring.

Section 24. Bouts and rounds shall be as follows:

(1) Boxing or kickboxing rounds shall:

- (a) Be of either two (2) or three (3) minutes duration; and
- (b) Have not less than a one (1) minute rest period between rounds.

(2) A boxing or kickboxing bout shall consist of no less than four (4) and no more than twelve (12) rounds. A championship bout shall be twelve (12) rounds in length.

Section 25. Boxing gloves shall meet the requirements established in this section.

(1) For boxing, contestants shall wear boxing gloves that shall be of the same weight for each contestant and:

- (a) Dry, clean, and sanitary;
- (b) Furnished by the promoter;
- (c) Of equal weight, not to exceed twelve (12) ounces;
- (d) A minimum of eight (8) ounces for a contestant weighing no more than 154 pounds;
- (e) A minimum of ten (10) ounces for a contestant weighing over 154 pounds; and
- (f) Thumbless or thumb-attached.

(2) For kickboxing, contestants shall wear boxing gloves that shall be of the same weight for each contestant and:

- (a) Clean and sanitary;
- (b) Furnished by the promoter;
- (c) Of equal weight, not to exceed twelve (12) ounces;
- (d) A minimum of eight (8) ounce gloves shall be worn by a contestant weighing no more than 154 pounds; and
- (e) A minimum of ten (10) ounce gloves shall be worn by a contestant weighing over 154 pounds.

(3) Gloves shall be new for main events and for contests and exhibitions scheduled for ten (10) or more rounds.

(4) Gloves shall be thumbless or thumb-attached gloves approved by the authority pursuant to this section.

(5) Kickboxing contestants shall wear padded kickboxing boots. The padding shall be sufficient to protect the kickboxer and his competitor.

(6) Gloves for all main events shall be dry and free from defects and shall be put on in the ring or locker room and shall be supervised by KBWA staff.

(7) Breaking, roughing, or twisting of gloves shall not be permitted.

(8) The laces on gloves shall be tied on the back of the wrist and taped.

Section 26. Bandages shall meet the requirements established in this section.

(1) For boxing and kickboxing, only soft cotton or linen bandages shall be used for the protection of the boxer or kickboxer's hands.

(2) Bandages shall not be more than two (2) inches in width

and twelve (12) yards in length for each hand.

(3) Adhesive tape.

(a) If used, medical adhesive tape not more than one (1) inch in width shall be used to hold bandages in place.

(b) Adhesive tape shall not be lapped more than one eighth (1/8) of one (1) inch.

(c) Adhesive tape not to exceed one (1) layer shall be crossed over the back of the hand for its protection.

(d) Three (3) strips of adhesive tape, lapping not to exceed one eighth (1/8) of one (1) inch, may be used for protection of the knuckles.

(4) Hand wraps shall be applied in the dressing room in the presence of an inspector, official or employee of the authority. The inspector, official, or employee of the authority shall sign the hand wrap and the tape around the strings of the gloves.

Section 27. The requirements governing knockdowns shall be as follows:

(1) If a contestant is knocked to the floor by the contestant's opponent, or falls from weakness or other causes, the contestant's opponent shall:

(a) Immediately retire to the farthest neutral corner of the ring; and

(b) Remain there until the referee completes his count or signals a resumption of action.

(2) The timekeeper shall commence counting off the seconds and indicating the count with a motion of the arm while the contestant is down.

(3) The referee shall pick up the count from the timekeeper.

(4) If a contestant fails to rise to his feet before the count of ten (10), the referee shall declare him the loser by waving both arms to indicate a knockout.

(5) If a contestant who is down rises to his feet during the count, the referee may, if he deems it necessary, stop between the contestants long enough to assure that the contestant just arisen is in condition to continue the bout.

(6) If a contestant who is down arises before the count of ten (10) is reached, and again goes down from weakness or the effects of a previous blow without being struck again, the referee shall resume the count where he left off.

(7) A standing eight (8) count shall be used by the referee.

(8) If a contestant is knocked down three (3) times during a round, the contest shall be stopped. The contestant scoring the knockdowns shall be the winner by a technical knockout.

(9) If a round ends before a contestant who was knocked down rises, the count shall continue, and if the contestant fails to arise before the count of ten (10), the referee shall declare him knocked out.

Section 28. Failure to Resume a Bout. (1) If a contestant fails to resume the bout for any reason after a rest period, or leaves the ring during the rest period and fails to be in the ring when the bell rings to begin the next round, the referee shall count him out the same as if he were down in that round.

(2) If a contestant who has been knocked out of or has fallen out of the ring during a bout fails to return immediately to the ring and be on his feet before the expiration of ten (10) seconds, the referee shall count him out as if he were down.

Section 29. A contestant shall be considered "down" if:

(1) Any part of his body other than his feet is on the ring floor;

(2) He is hanging helplessly over the ropes and in the judgment of the referee, he is unable to stand; or

(3) He is rising from the "down" position.

Section 30. (1) The following shall be considered fouls:

(a) Hitting below the belt;

(b) Hitting an opponent who is down or who is getting up after having been down;

(c) Holding an opponent and deliberately maintaining a clinch;

(d) Holding an opponent with one (1) hand and hitting with the other;

(e) Butting with head or shoulder or using the knee;

(f) Hitting with the inside, or butt, of the hand, the wrist, or the elbow, and all backhand blows except for those backhand blows allowable in kickboxing;

(g) Hitting, or flicking, with the glove open or thumbing;

(h) Wrestling, or roughing, against the ropes;

(i) Purposely going down without having been hit;

(j) Deliberately striking at the part of opponent's body over the kidneys;

(k) Use of the pivot blow, or rabbit punch;

(l) Biting of the opponent;

(m) Use of abusive or profane language; or

(n) Failure to obey the referee.

(2)(a) A contestant who commits a foul may be disqualified and the decision awarded to his opponent by the referee.

(b) The referee shall immediately disqualify a contestant who commits a deliberate and willful foul that incapacitates his opponent.

(c) The referee may take one (1) or more points away from a contestant who commits an accidental foul.

(3) A contestant committing a foul may be issued a violation by the inspector or employee of the authority.

(4)(a) If a bout is temporarily stopped by the referee due to accidental fouling, the referee, with the aid of the physician, if necessary, shall decide if the contestant who has been fouled is in physical condition to continue the bout.

(b) If in the referee's opinion the contestant's chances have not been seriously jeopardized as a result of the foul, he shall order the bout resumed after a reasonable time, the time to be set by the referee, but not exceeding five (5) minutes.

(5)(a) If a contestant is unable to continue as the result of an accidental foul and the bout is in one (1) of the first three (3) rounds, the bout shall be declared a technical draw.

(b) If an accidental foul occurs after the third round, or if an injury sustained from an accidental foul in the first three (3) rounds causes the contest to be subsequently stopped, the contest shall be scored on the basis of the judges' scorecards.

Section 31. The following shall be prohibited:

(1) "Battle royal"; and

(2) Use of excessive grease or other substance that may handicap an opponent.

Section 32. (1) A boxer or kickboxer who has been repeatedly knocked out and severely beaten shall be retired and not permitted to box again if, after subjecting him to a thorough examination by a physician licensed by the authority, the action is necessary to protect the health and welfare of the boxer.

(2) A boxer or kickboxer who has suffered six (6) consecutive defeats by knockout shall not be allowed to box again until he has been investigated by the authority and examined by a physician licensed by the authority.

(3) A boxer or kickboxer whose license is under suspension in another jurisdiction may be allowed to participate in boxing or kickboxing only after review and approval of the case by the inspector or employee of the authority.

(4) A boxer or kickboxer who has been knocked out shall be prohibited from all physical contact for sixty (60) days.

(5) Any boxer or kickboxer who has suffered a technical knockout shall be prohibited from competition for up to thirty (30) days. In determining how many days to prohibit the contestant from competition, the inspector shall consider the nature and severity of the injuries that resulted in the TKO.

(6) A boxer or kickboxer shall receive a mandatory seven (7) day rest period from competition after competing in an event. Day one (1) of the rest period shall commence on the first day following the event.

Section 33. A boxer or kickboxer shall not engage in boxing or sparring with a member of the opposite sex.

Section 34. (1) Unless special permission otherwise is granted by the authority, a boxer or kickboxer:

(a) Under nineteen (19) years of age is permitted to box or

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kickbox no more than six (6) rounds;

(b) Nineteen (19) years of age is permitted to box or kickbox no more than eight (8) rounds; and

(c) Twenty (20) years of age is permitted to box or kickbox no more than ten (10) rounds.

(2) A contestant who has not fought within the last twelve (12) months shall not be scheduled to box or kickbox more than ten (10) rounds.

(3) A person over the age of thirty-nine (39) shall not box or kickbox without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled board meeting.

Section 35. A contestant shall submit HIV Antibody and Hepatitis B Antigen and Hepatitis C Antibody test results at or before prefight physical. The results of these tests shall be no more than 180 days old. A person with positive test results shall not compete.

Section 36. A contestant shall report to and be under the general supervision of the inspector or employee of the authority in attendance at the show and shall be subject to orders given by the inspector or employee of the authority.

Section 37. (1) A contestant shall produce one (1) form of picture identification.

(2) A contestant shall not assume or use the name of another and shall not change his ring name nor be announced by name other than that which appears on his license except upon approval of the inspector or employee of the authority.

(3) A contestant shall attend a pre-fight meeting as directed by a representative of the authority.

(4) A contestant shall check in with the authority not less than one (1) hour prior to the event start time.

(5) A contestant shall remain in the locker room area until it is time to compete.

Section 38. A contestant shall be clean and neatly attired in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

Section 39. A contestant shall not use a belt that contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

Section 40. A contestant shall wear shoes during a bout, and the shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.

Section 41. A contestant shall wear a properly fitted:

- (1) Groin protector;
- (2) Kidney protector, if available; and
- (3) Mouthpiece.

Section 42. If a contest is ended by reason of fouling or failure to give an honest exhibition of skill, as determined by the inspector, referee, or an employee of the authority, the compensation of the offending contestant shall be withheld by the promoter and shall be disposed of as ordered by the authority.

Section 43. (1) The authority may request that a contestant submit to a drug screen for controlled substances at the contestant's expense. If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the authority shall suspend or revoke the license of the contestant, impose a fine upon the contestant, or both.

(2)(a) The administration of or use of any of the following is prohibited in any part of the body, either before or during a contest or exhibition:

- 1. Alcohol;
- 2. Stimulant; or
- 3. Drug or injection that has not been approved by the authority, including the drugs or injections listed in paragraph (b) of this subsection.

(b) The following types of drugs, injections, or stimulants shall be prohibited pursuant to paragraph (a) of this subsection:

- 1. Afrinol or another product pharmaceutically similar to Afrinol;
- 2. Co-Tylenol or another product pharmaceutically similar to Co-Tylenol;
- 3. A product containing an antihistamine and a decongestant;
- 4. A decongestant other than a decongestant listed in paragraph (c) of this subsection;
- 5. Over the counter drug for colds, coughs, or sinuses other than those drugs listed in paragraph (c) of this subsection. This paragraph includes Ephedrine, Phenylpropanolamine, Mahuang, and derivatives of Mahuang;
- 6. A drug identified on the most current edition of the Prohibited List published by the World Anti-Doping Agency. The most current edition of the Prohibited List may be obtained, free of charge, at the Internet address www.wada-ama.org.

(d) The following types of drugs or injections shall be approved by the authority:

- 1. Antacids, such as Maalox;
- 2. Antibiotics, antifungals, or antivirals that have been prescribed by a physician;
- 3. Antidiarrheals, such as Imodium, Kaopectate, or Pepto-Bismol;
- 4. Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1, or Teldrin;
- 5. Antinauseants, such as Dramamine or Tigan;
- 6. Antipyretics, such as Tylenol;
- 7. Antitussives, such as Robitussin, if the antitussive does not contain codeine;
- 8. Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet, or Zantac;
- 9. Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent), or Salbutamol (Albuterol, Proventil, or Ventolin);
- 10. Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide, or Vanceril;
- 11. Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox, or Vosol;
- 12. Hemorrhoid products, such as Anusol-HC, Preparation H, or Nupercainal;
- 13. Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane, or Milk of Magnesia;
- 14. Nasal products, such as AYR Saline, HuMist Saline, Ocean, or Salinex; and
- 15. The following decongestants:

- a. Afrin;
- b. Oxymetazoline HCL Nasal Spray; or
- c. Any other decongestant that is pharmaceutically similar to a decongestant listed in clauses a. or b.

(e) An unarmed combatant shall submit to a urinalysis or chemical test before or after a contest or exhibition if the authority or a representative of the authority so directs.

(f) A licensee who violates this section shall be subject to disciplinary action by the authority. In addition, if an unarmed combatant who won or drew a contest or exhibition is found to have violated this section, the authority may change the result of that contest or exhibition to a no decision.

Section 44. (1) The class weights permitted in boxing and kickboxing bouts shall be as follows:

CLASS	WEIGHT
Flyweight	Up to 112 lbs.
Bantamweight	Up to 118 lbs.
Jr. Featherweight	Up to 122 lbs.
Featherweight	Up to 126 lbs.
Jr. Lightweight	Up to 130 lbs.

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Lightweight	Up to 135 lbs.
Jr. Welterweight	Up to 140 lbs.
Welterweight	Up to 147 lbs.
Jr. Middleweight	Up to 154 lbs.
Middleweight	Up to 160 lbs.
Light Heavyweight	Up to 175 lbs.
Cruiserweight	Up to 195 lbs.
Heavyweight	Over 195 lbs.

(2) After the weigh-in of a contestant competing in a bout or exhibition:

(a) Change in weight in excess of three (3) pounds shall be prohibited for a contestant who weighed in at 145 pounds or less; and

(b) Change in weight in excess of four (4) pounds shall be prohibited for a contestant who weighed in at over 145 pounds.

Section 45. (1) A contestant in a show held under the jurisdiction of the authority shall weigh in stripped, at a time set by the authority.

(2) The inspector or an employee of the authority and a representative of the promoter conducting the show shall be in attendance to record the official weights.

(3) A contestant shall not fight more than one (1) class above his weight.

Section 46. On the day of the show, the official physician shall make a physical examination of each contestant.

Section 47. If a contestant is unable to participate in a show for which he has a contract, he shall immediately notify the promoter and the authority and file with the authority a physician's certificate verifying the injury or illness or other verified evidence indicating the reasons for his failure to participate.

Section 48. The promoter shall submit written notice to the nearest hospital with an on-call neurosurgeon that a boxing or kickboxing bout is being held. The notice shall include the date, time, and location of the event. A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 49. The following requirements shall apply to all bouts between female contestants:

(1) The maximum number of rounds shall be ten (10);

(2) The length of each round shall be two (2) minutes;

(3) The rest period between rounds shall be one (1) minute;

(4) A contestant shall not wear facial cosmetics during the bout;

(5) A contestant with long hair shall secure her hair with soft and nonabrasive material;

(6) Weight classes shall be those established in Section 44 of this administrative regulation;

(7) A contestant shall wear a properly-fitted:

(a) Breast protector;

(b) Groin protector;

(c) Kidney protector if available, and

(d) Mouthpiece;

(8) The gloves shall be properly fitted and the sizes shall be as follows:

(a) Of equal weight, not to exceed twelve (12) ounces;

(b) A minimum of eight (8) ounce gloves shall be worn by a contestant weighing no more than 154 pounds;

(c) A minimum of ten (10) ounce gloves shall be worn by a contestant weighing over 154 pounds; and

(9) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout.

(10) A promoter shall provide separate locker rooms for males and females.

Section 50. A promoter shall maintain an account with the recognized national database as identified by the authority and

submit contestants names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

Section 51. All shows shall be video recorded and retained by the promoter at least for one (1) year. Upon request of the authority, the promoter shall provide the video recording of a show to the authority.

Section 52. All non-sanctioned activities such as concerts, shall be completed prior to the scheduled start time of the event.

Section 53. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for License as a Boxer", 1/2012;

(b) "Boxer's Federal Identification Card Application", 1/2012;

(c) "Boxing Show Notice Form", 1/2012; and

(d) "Boxing Event Report", 1/2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m].

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation lists requirements and rules of boxing and kickboxing.

(b) The necessity of this administrative regulation: This regulation is necessary to clarify requirements for participants in boxing and kickboxing and to promote clean and safe participation in boxing and kickboxing events.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the Kentucky Boxing and Wrestling Commission ("KBWC") authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend, or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions as provided in KRS Chapter 229. In addition it conforms with the following statutes that set specific requirements KRS 229.021, 229.031, 229.071, 229.081, 229.091, 229.101, 229.111, 229.131, and 15 U.S.C. 6304.

(d) How this administrative regulation currently assists or will

assist in the effective administrative of the statutes: This amendment elaborates on statutory requirements to improve the understanding, health, and safety of all participants.

(2) If 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 restructures the regulation to list requirements in show order, group like sections together, and delete redundancies. It also adds the specific job requirements of non-contestants. Changes include all licensing being moved to the licensing regulation 201 KAR 27:008. Sections concerning equipment, attire, and prohibitions have been consolidated and are no longer scattered through the regulation. Specific changes include: Change of weight after a weigh-in is now measured in percentage and not pounds; the compensation agreement must be submitted to the commission two days in advance instead of five; all drug testing has been moved to a separate regulation; and all disciplinary action has been moved to a separate regulation to ensure sports are treated fairly and consistently.

(b) The necessity of the amendment to this administrative regulation: Prior to this amendment, the regulation was very, redundant, and hard to understand. This amendment is necessary to foster the growth and understanding of boxing and kickboxing throughout the Commonwealth. This amendment will allow all entities to understand their duties requirements concerning boxing and kickboxing.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 229.180 also authorizes the commission to adopt and promulgate, amend or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions provided in KRS Chapter 229.

(d) How the amendment will assist in the effective administrative of the statutes: To aid licensees in complying with its requirements, this amendment restructures the regulation to list requirements in show order, groups like sections together, and deletes redundancies. It also adds in the specific job requirements of non-contestants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the KBWC and boxing and kickboxing contestants, non-contestants, managers of contestants, and promoters. The commission licenses around 130 people associated with boxing and kickboxing in a given year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No significant action will need to be taken in order to comply with this amendment. This amendment will allow many entities to operate with fewer burdens and grasp a better understanding of what is required by regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will benefit these entities by providing a clearer understanding of what is required by regulation.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: This amendment has no cost. No funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding are necessary for the implementation of this amendment because it costs nothing.

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

(9) TIERING: Is tiering applied? Tiering is not applied because all contestants and non-contestants have the same requirements as others.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 15 U.S.C. 6304; 6305(a), (b)

2. State compliance standards. Those wishing to participate in boxing must submit an application to obtain a boxing identification card that is valid for four years. The boxer must also submit an application for licensure and a physical from a physician who certifies that the boxer is physically fit to compete. Moreover, no boxing match may occur unless a physician is continuously ringside and an ambulance and resuscitation equipment is on-site. Boxers must also be provided with health insurance.

3. Minimum or uniform standards contained in the federal mandate. 15 U.S.C. 6304 requires that every boxer undergo a physical examination and be certified by a physician to be physically fit to compete safely in a match. The law also requires an ambulance or resuscitation equipment to be onsite at all boxing matches and for a physician to be present at ringside. Finally, health insurance is required for each boxer.

15 U.S.C. 6305 requires a boxer to register with the boxing commission in the boxer's state of residence. That state must issue a federal boxing identification card to the boxer.

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

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is KRS 229.021, 229.031, 229.071, 229.081, 229.091, 229.101, 229.111, 229.131, 229.171, and 229.180.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 amendment will have no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will generate no revenue.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this amendment in the first year. The KWBC does not anticipate any net change in the cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this amendment in subsequent years. The KWBC does not anticipate any net change in the cost to administer this program in subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0
Other Explanation: None.

**PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(Amendment)**

201 KAR 27:012. General requirements for wrestling shows[show requirements].

RELATES TO: KRS 229.021, 229.031, 229.071[(4)], 229.081, 229.091, [229.101, 229.131,] 229.171[(4)], ~~229.180(1)~~

STATUTORY AUTHORITY: KRS 229.021, 229.031, 229.071, 229.081, 229.091[(4)], 229.171[(4)], 229.180[(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth[authority to promulgate administrative regulations, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held, or given within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary or expedient for the performance of its regulatory function. KRS 229.021 and 229.071(2) and (3) authorize the authority to grant annual licenses to applicants for participation in professional matches if the authority determines that the financial responsibility, experience, character, and general fitness of the applicant indicate that participation by the applicant is in the public interest. KRS 229.091(1) provides that every licensee shall be subject to the administrative regulations promulgated by the authority]. This administrative regulation establishes the requirements for wrestling shows and for participants in wrestling shows[matches].

Section 1. Show Date Request and Advertising. (1) A promoter shall request a show date by completing and submitting to the commission the Show Notice Form, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(a).

(2) The Show Notice Form shall be submitted to the commission for approval no less than ten (10) calendar days before the requested show date.

(3) A promoter shall not advertise the show until it has been approved by the commission. Approval is effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at <http://ins.kbwa.ky.gov/ecal.asp>; or

(b) Providing written notice that the event is approved.

(4) An advertisement shall not include the name or image of a contestant who does not hold a license.

Section 2. Cancellations. (1) A contestant who has committed to participate in a professional match and is unable to participate shall notify the promoter of the inability to participate as soon as possible.

(2) Absent good cause shown, failure to notify the promoter of an inability to participate in a wrestling match at least six (6) hours before the beginning of the match may constitute grounds for disciplinary action.

Section 3. Security Required. The promoter shall provide a minimum of two (2) security guards on the premises for each show.

Section 4. Locker Rooms. A person shall not be permitted in the locker room unless the person holds a license or has been granted permission by the promoter or inspector.

Section 5. Drug Testing. (1) The commission may request a licensee to submit to a drug test at the licensee's expense. The presence of controlled substances within a licensee for which the licensee does not have a prescription, or the refusal by the licensee to submit to the test, may result in disciplinary action pursuant to 201 KAR 27:105. For purposes of this section,

"controlled substance" is defined in KRS 218A.010(6).

(2) From arrival at the venue to the conclusion of the show or exhibition, a licensee shall not consume, possess, or participate under the influence of alcohol or another substance that may affect the licensee's ability to participate.

Section 6. Pregnancy. A female shall be prohibited from competing in a wrestling show if she is pregnant.

Section 7. Requirements for the Area Surrounding the Wrestling Ring. A border shall be placed at least six (6) feet from all sides of the ring. Spectator seating shall not be allowed between the border and ringside without prior inspector approval.

Section 8. Foreign Objects and Props. (1) A person shall not use a foreign object on another person during a match without the prior approval of the inspector. For purposes of this section, "foreign object" means an instrument, tool, implement, prop, or any article with sharp edges that would pose a high degree and risk of profuse bleeding or serious physical injury.

(2) A person shall not use or direct another person to use pyrotechnics, glass, or fire on himself, herself, or another person during a match.

Section 9. Blood and Simulated Blood. (1) The promoter shall notify the commission on the Show Notice Form required by Section 1 of this administrative regulation if a contestant plans to bleed during a show.

(2) The promoter shall arrange for a healthcare professional to be present at any show where bleeding by a wrestler is planned. The healthcare professional shall observe the show at all times during a match where bleeding by a wrestler is planned. The healthcare professional shall be equipped with a first aid kit.

(3) Prior to any show in which a wrestler plans to bleed or in which simulated blood will be used, the promoter or the promoter's designee shall inform the inspector and the healthcare professional of when in the match and how the bleeding or simulated bleeding will occur.

(4) Any wrestler who plans to bleed during a match shall submit to the commission an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results prior to the beginning of the show. The results of these tests shall be no more than 180 days old. A person with a positive test result for HIV, Hepatitis B, or Hepatitis C shall not be licensed and shall not compete.

(5) A wrestling match shall be stopped immediately if a wrestler bleeds who has not submitted to the commission an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results taken from within the last 180 days that shows that the wrestler is negative for HIV, Hepatitis B, and Hepatitis C.

(6) The commission shall be notified immediately if a contestant bleeds during a match in which notice of intended bleeding was not given in accordance with subsection (1) of this section. The video recording required by Section 10 of this administrative regulation shall be sent to the commission within five (5) business days. If the commission determines that the bleeding was not accidental, the contestant and promoter may be subject to disciplinary action.

Section 10. Video Recording. (1) The promoter shall ensure that a video recording of each show is made. A copy of the video recording shall be retained by the promoter for at least one (1) year.

(2) The promoter shall provide the video recording of a show to the commission upon request[The authority shall license each person approved to participate in wrestling. Each license shall expire on December 31 of the year in which it is issued.

Section 2. Application. (1) An applicant for a wrestling license shall complete and submit to the authority the form, Application for License as a Wrestler, along with a photo identification or birth certificate.

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(2) An applicant desiring to renew a wrestling license shall complete and submit to the authority the form, Application for Renewal of License as a Wrestler.

(3) An applicant for a wrestling event staff or referee license shall complete and submit to the authority the form, Application for License as a Wrestling Official, along with a photo identification or birth certificate. A copy of the applicant's picture ID or birth certificate shall be submitted with any new application.

Section 3. (1) The license fee for each participant shall be as follows:

- (a) Event staff: twenty (20) dollars;
- (b) Referee: twenty (20) dollars; and
- (c) Wrestler: twenty (20) dollars.

(2) A wrestler certificate may be purchased for an additional ten (10) dollars.

Section 4. Requirements for the Wrestling Ring and the Immediately Surrounding Area. (1) Each match shall be held in a four (4) sided roped ring with the following specifications:

(a) The minimum ring size shall be fourteen (14) feet by fourteen (14) feet;

(b) The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;

(c) The floor of the ring shall not be elevated more than six (6) feet above the arena floor; and

(d) It may have steps to enter the ring on two (2) sides.

(2) The ring shall be formed of ropes with the following specifications:

- (a) There shall be three (3) ropes extended in a triple line;
- (b) The ropes shall be at least one (1) inch in diameter; and
- (c) The ropes shall be clean, wrapped, and drawn taut.

(3) The ropes shall be supported by ring posts that shall be:

- (a) Made of metal or other strong material;
- (b) Not less than three (3) inches in diameter; and
- (c) At least eighteen (18) inches from the rope.

(4) The ring floor shall be padded or cushioned with a clean, soft material that:

- (a) Is at least one (1) inch in thickness;
- (b) Extends over the edge of the platform;

(c) Is covered with canvas or a synthetic material stretched tightly, unless the event is held outdoors, in which case only canvas shall be used; and

(d) Is clean, sanitary, and free from:

- 1. Grit;
- 2. Dirt;
- 3. Resin;
- 4. Blood; and

5. Any other foreign object or substance.

(5) The ring rope shall be attached to the ring posts by turnbuckles that shall be padded with a soft pad at least six (6) inches in width.

(6) The ring shall have an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all sides of the ring.

(7) A partition, barricade, or some type of divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) On both sides of the entry lane for wrestlers to enter the ring and the spectator area or, if an entry lane is not practical, all wrestlers shall be escorted to the ring by security.

Section 5. The promoter may request an alternate ring design consisting of more than four (4) equal sides if the square feet is not less than 196 square feet inside. This request shall be submitted in writing to the authority for approval no less than thirty (30) days before the show.

Section 6. (1) Before the beginning of a wrestling show, all changes or substitutions in the advertised program of wrestling shall be posted at the ticket window and at the entrance to the facility.

(2) Changes or substitutions shall also be announced in the ring before commencement of the first match along with the information that any ticket holder desiring a refund based on those announced changes or substitutions shall be entitled to receive a refund before commencement of the program.

(3) A ticket purchaser shall be entitled, upon request, to a refund of the purchase price of the ticket, if the request is made before the commencement of the first match.

Section 7. (1) A licensed wrestler who has made a commitment to participate in a professional match and is unable to participate, for any reason, shall notify the promoter of the inability to participate within at least six (6) hours of the scheduled start time.

(2) Failure to notify the promoter in accordance with subsection (1) of this section shall constitute grounds for possible disciplinary action by the authority.

Section 8. While participating in a professional match, a wrestler, referee, promoter, or wrestling event staff shall not:

(1) Use, or direct another person to use, an object or tactic to intentionally cut or cause bleeding to himself or another person. If a person accidentally bleeds while participating in an exhibition, show, or appearance, the individual bleeding shall cease participation in the match and may rejoin the match once the bleeding has stopped. The authority shall be notified within twenty-four (24) hours if bleeding occurs.

(2) Use pyrotechnics on himself or another person; or

(3) Use an object that is likely to cause a person to bleed.

(4) Use unreasonable physical or verbal threat of aggression directed toward a member of the audience.

Section 9. In the event that a scheduled show involves a match where blood capsules are to be used or wrestling is to take place in a substance, the promoter shall inform the authority no less than three (3) business days before the match.

Section 10. A violation of this or any other administrative regulation in 201 KAR Chapter 27 that results in injury to a contestant, participant, or member of the audience shall result in suspension, fine, revocation of a license or a combination of these penalties.

Section 11. All wrestling or entertainment shall take place either in the ring or within the partitioned-off portion of the gym or arena. Physical activity shall not be permitted between wrestlers, referee, or wrestling event staff in the audience or outside of the safety partition.

Section 12. Each promoter shall safeguard and provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted, including the locker room, to ensure that adequate protection against disorderly conduct has been provided. Any disorderly act, assault, or breach of decorum on the part of a licensee at the premises shall be prohibited.

Section 13. (1) The promoter shall submit a request for a show date no less than five (5) calendar days before the requested date for approval by the authority.

(2) The request shall be made by completing and submitting to the authority the form, Wrestling Show Notice Form.

(3) There shall be no advertising of the event prior to approval.

(4) Upon approval by the authority, all advertisements shall include the promoter's license number.

Section 14. Within twenty-four (24) hours of the conclusion of the wrestling show, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the authority the form, Wrestling Event Report.

Section 15. (1) The authority may request a contestant to submit to a drug test at the contestant's expense. The presence within a contestant of controlled substances, for which the contestant does not have a prescription, or refusal by the

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~~contestant to submit to the test, shall result in suspension, fine, revocation of a license, or a combination of these penalties.~~

~~(2) From arrival to the venue to the conclusion of the event, a contestant shall not consume, possess, or participate under the influence of alcohol or another substance that may affect the contestant's ability to participate.~~

~~Section 16. (1) An initial applicant shall provide the authority with a copy of a sports physical conducted by a physician licensed by a state medical board. This physical shall have been conducted no more than three (3) months prior to submission to the authority.~~

~~(2) A licensee over the age of forty-nine (49) shall submit a sports physical yearly upon renewal. This physical shall have been conducted no more than three (3) months prior to submission to the authority.~~

~~Section 17. (1) Each show shall be video recorded and retained by the promoter for at least one (1) year.~~

~~(2) Upon request of the authority, the promoter shall provide the video recording of a show to the authority.~~

~~Section 18. A promoter shall provide separate locker rooms for males and females.~~

~~Section 19. A female shall not wrestle if she is pregnant.~~

~~Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:~~

- ~~(a) "Application for License as a Wrestler", 1/2012;~~
- ~~(b) "Application for Renewal of License as a Wrestler", 1/2012;~~
- ~~(c) "Application for License as a Wrestling Official", 1/2012;~~
- ~~(d) "Wrestling Show Notice Form", 1/2012; and~~
- ~~(e) "Wrestling Event Report", 1/2012.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m].~~

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Kentucky Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets standards that govern wrestling.

(b) The necessity of this administrative regulation: This

regulation is necessary to more clearly set forth the requirements for wrestling shows.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the KBWC authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions provided in KRS Chapter 229.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation is necessary to meet the statutory requirement relating to the KBWC's regulation of wrestling shows.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to coordinate the contemporaneous revisions made to other regulations and to render the requirements of 201 KAR Chapter 27 as easy to read and understand as possible. This amendment deletes redundancies and repeals several unnecessary regulations that limit the growth of professional wrestling in Kentucky and impede on the product promoters are attempting to create. All licensing requirements have been moved to 201 KAR 27:008. The rule that stops a match when a contestant bleeds has been removed and replaced to require the promoter to notify the Commission if a contestant plans to bleed, to require a healthcare professional to be present, and to require the promoter to obtain a copy of the contestant's blood work. Most of the ring requirements have been removed and certain prop prohibitions have been repealed while others are increased.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to more clearly set forth the requirements for wrestling shows and to attract more wrestling events to Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions provided in KRS 229.

(d) How the amendment will assist in the effective administrative of the statutes: This amendment will aid in the effective the administration of the statute by clearly setting forth the requirements for wrestling shows, and thereby ease the burden of licensees attempting to comply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the Boxing and Wrestling Commission, those licensed as a wrestler and others participating in the execution of events such as promoters, judges, referees, doctors and all other parties referenced in 201 KAR Chapter 27. The Commission licenses around 850 people associated with wrestling in a given year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certain wrestlers will be required to submit the results of blood tests prior to competing.

(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 associated with the implementation in this amendment unless a wrestler intends to bleed during a show, in which case he or she will be required to pay for and obtain a drug test.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will benefit all entities involved. It is intended that the clarity brought by this amendment will attract world-class events to the Commonwealth and bolster economic opportunities for the entities identified through sales of tickets, merchandise, food, and hotel rooms.

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

- (a) Initially: No cost.
- (b) On a continuing basis: No cost.

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

(7) Provide an assessment of whether an 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 are necessary for the implementation of this amendment because it costs nothing.

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

(9) TIERING: Is tiering applied? Tiering is not applied because all wrestlers are treated 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 Kentucky Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.021, 229.031, 229.071, 229.081, 229.091, 229.171, and 229.180 provide the statutory authority for 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. This amendment will have no net impact on the expenditures and revenues of any state or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Although a specific dollar amount is indeterminable, it is reasonable to believe that this amendment will promote professional wrestling throughout the Commonwealth while attracting professional organizations to hold events, and create a positive economic impact.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Although a specific dollar amount is indeterminable, it is reasonable to believe that this amendment will promote professional wrestling throughout the Commonwealth while attracting professional organizations to hold events, and create a positive economic impact.

(c) How much will it cost to administer this program for the first year? The KWBC does not anticipate any net change in the cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer this program in subsequent years.

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

Revenues (+/-): 0
 Expenditures (+/-): 0
 Other Explanation: None.

PUBLIC PROTECTION CABINET
 Boxing and Wrestling Commission
 (Amendment)

201 KAR 27:016. General requirements for all mixed martial arts matches, shows, or exhibitions.

RELATES TO: KRS 229.021, 229.031, 229.071~~[(4)]~~, 229.081, 229.091, 229.101, 229.111, 229.131, 229.171, 229.180~~[(4)]~~

STATUTORY AUTHORITY: KRS 229.021, 229.031, 229.071, 229.081, 229.091~~[(4)]~~, 229.101, 229.111, 229.131~~[229.151(4)]~~, 229.171~~[(4)]~~, 229.180~~[(4)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth~~[(2)]~~ authorizes the Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held, or given with the Commonwealth. KRS 229.151(1) ~~grants the Kentucky Boxing and Wrestling Authority regulatory oversight over professional boxing, wrestling, and other professional full contact competitive bouts within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary or expedient for the performance of its regulatory function. KRS 229.021 and 229.071(2) and (3) authorize the authority to grant annual licenses to applicants for participation in professional matches if the authority determines that the financial responsibility, experience, character, and general fitness of the applicant indicate that participation by the applicant is in the public interest. KRS 229.091(1) provides that every licensee shall be subject to the administrative regulations promulgated by the authority.~~ This administrative regulation establishes the requirements for mixed martial arts shows and for participants in mixed martial arts shows~~[contests subject to state regulation].~~

Section 1. Show Date. (1) A promoter shall request a show date by completing and submitting to the commission the Show Notice Form, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(a).

(2) The Show Notice Form shall be submitted for approval no less than thirty (30) calendar days before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Approval is effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at <http://ins.kbwa.ky.gov/ecal.asp>; or

(b) Providing written notice that the event is approved.

(4) An advertisement shall not include the name or image of any contestant who does not hold a valid license issued by the commission.

Section 2. Program and Changes. (1) If a contestant is unable to participate in a show for which the contestant has a contract, the contestant shall immediately notify the promoter and the commission. The commission may request evidence to show the reasons for the failure to participate. Repeated and unexcused absences or cancelation may result in discipline.

(2) The proposed card for a show shall be filed with the commission at least five (5) business days prior to the show date. Notice of a change in a program or substitution in a show shall be immediately filed with the commission.

(3) If the commission determines that a proposed bout may not be reasonably competitive, the bout may be denied. The commission's determination shall be based upon the contestants' previous fighting experience, including:

(a) The number of bouts the contestants have competed in;

(b) The number of rounds the contestants have competed in;

(c) The date of the contestants' bouts;

(d) The contestants' performance in previous bouts, including the applicant's won-loss record;

(e) The level of competition the contestants have faced; and

(f) The contestants' medical histories.

Section 3. Compensation. (1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, ring officials shall be paid one-half (1/2) the compensation agreed upon prior to the bout.

(2) Before the commencement of a show or exhibition, the promoter shall tender to the inspector a certified check or money order made payable to each ring official. The schedule of compensation for a ring official is at least as follows:

(a) For a professional mixed martial arts show or a mixed professional and amateur mixed martial arts show:

1. Judge: \$150 each unless the show card has twelve (12) or fewer bouts, in which case each judge's pay shall be \$100;

2. Timekeeper: \$100 unless the show card has twelve (12) or fewer bouts, in which case the timekeeper's pay shall be seventy-five (75) dollars;

3. Physician: \$350;

4. Referee: \$150; and

5. Bout assistant: seventy-five (75) dollars; or

(b) For an amateur mixed martial arts show:

1. Judge: fifty (50) dollars;

2. Timekeeper: fifty (50) dollars;

3. Physician: \$350;

4. Referee: seventy-five (75) dollars; and

5. Bout assistant: seventy-five (75) dollars.

(3) Each contestant's compensation agreement shall be in writing and submitted to the commission for approval not less than two (2) calendar days prior to the date of the proposed show.

Section 4. Pre-Fight. (1) A contestant shall weigh in stripped at a time set by the commission, which shall not be more than thirty-six (36) hours before the first scheduled bout of the show. A contestant shall produce to the inspector one (1) form of picture identification at the weigh-in. The inspector and the promoter or a representative of the promoter conducting the show shall be in attendance to record the official weights.

(2) A contestant shall check in with the commission at least one (1) hour prior to the event start time. A contestant shall produce one (1) form of picture identification at check-in.

(3) A contestant shall attend a pre-fight meeting as directed by the commission.

(4) A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector. The promoter shall supply a separate locker room for males and females.

(5) A contestant shall submit an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results to the commission at least twenty-four (24) hours prior to the event.

(a) The results of these tests shall be no more than 180 days old.

(b) A person with a positive test result shall not compete.

(6) A contestant shall undergo a pre-fight physical conducted by a physician. Prior to undergoing the physical, a contestant shall submit a completed Pre-Fight Medical Questionnaire, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(b), under penalty of perjury.

(7) A contestant shall not assume or use the name of another and shall not change his or her ring name nor be announced by any name other than that which appears on his or her license except upon approval of the inspector.

(8) A contestant shall report to and be under the general supervision of the inspector in attendance at the show and shall be subject to orders given by the inspector.

Section 5. The Cage. (1) The area between the cage and the first row of spectators on all sides and the locker room shall be under the exclusive control of the commission.

(2) Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission.

(3) There shall be an area of at least six (6) feet between the edge of the cage floor and the first row of spectator seats on all sides of the cage. A partition, barricade, or similar divider shall be

placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the cage; and

(b) Along the sides of the entry lane for contestants to enter the cage and the spectator area.

(4) A bout or exhibition of mixed martial arts shall be held in a fenced area meeting the following requirements:

(a) The fenced area shall be circular or have equal sides and shall be no smaller than twenty (20) feet wide and no larger than thirty-two (32) feet wide.

(b) The floor of the fenced area shall be padded with closed-cell foam, with at least a one (1) inch layer of foam padding, with a top covering of a single canvas or a synthetic material stretched tightly and laced to the platform of the fenced area, unless the event is held outdoors, in which case only canvas shall be used.

(c) The platform of the fenced area shall not be more than six (6) feet above the floor of the building and shall have steps suitable for the use of the contestants.

(d) Fence posts shall be made of metal, shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.

(e) The fencing used to enclose the fenced area shall be made of a material that shall prevent a contestant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, and the fencing shall be coated with vinyl or a similar covering to minimize injuries to a contestant.

(f) Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed combatants.

(g) The fenced area shall have at least one (1) entrance.

(h) There shall not be a protrusion or obstruction on any part of the fence surrounding the area in which the contestants are to be competing.

(i) Any event held outdoors while the heat index is or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entire cage.

(j) A cage shall have a canvas mat or a synthetic material, unless the event is held outdoors, in which case only canvas shall be used.

Section 6. Equipment. (1) A bell or horn shall be used by the timekeeper to indicate the time.

(2) In addition to the cage and cage equipment, the promoter shall supply:

(a) A public address system in good working order;

(b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the cage and the cage floor;

(c) Items for each contestant's corner, to include:

1. A stool or chair;

2. A clean bucket;

3. Towels;

4. Rubber gloves; and

(d) A complete set of numbered round-cards, if needed.

(3) A scale used for any weigh-in shall be approved in advance by the inspector.

Section 7. Contestant Equipment and Attire. (1) A contestant shall be clean and neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) A contestant shall not use a belt that contains a metal substance during a bout. The belt shall not extend above the waistline of the contestant.

(3) A contestant shall not wear shoes or any padding on his or her feet during the bout.

(4) A contestant shall wear a properly fitted:

(a) Groin protector; and

(b) Double-arch mouthpiece.

(5) A contestant shall have long hair secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.

(6) A contestant shall use a minimum of cosmetics.

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Section 8. Weight Classes. (1) Except with the approval of the commission, the classes for contestants competing in bouts or exhibitions of mixed martial arts and the weights for each class are shown in the following schedule:

CLASS	WEIGHT
<u>Flyweight</u>	<u>Up to 125 lbs.</u>
<u>Bantamweight</u>	<u>Up to 135 lbs.</u>
<u>Featherweight</u>	<u>Up to 145 lbs.</u>
<u>Lightweight</u>	<u>Up to 155 lbs.</u>
<u>Welterweight</u>	<u>Up to 170 lbs.</u>
<u>Middleweight</u>	<u>Up to 185 lbs.</u>
<u>Light Heavyweight</u>	<u>Up to 205 lbs.</u>
<u>Heavyweight</u>	<u>Up to 265 lbs.</u>
<u>Super Heavyweight</u>	<u>Over 265 lbs.</u>

(2) After the weigh-in, a contestant shall not change weight in excess of eight (8) percent prior to the bout.

(3) After the weigh-in, a contestant shall not re-hydrate by the use of intravenous fluids unless approved by the inspector. A contestant may be subject to a random urine specific gravity test to determine compliance with this subsection.

Section 9. Fight Length. Unless the commission approves an exception:

(1) A non-championship bout or exhibition of mixed martial arts shall not exceed three (3) rounds in duration;

(2) A championship bout of mixed martial arts shall not exceed five (5) rounds in duration;

(3) The length of a round in a professional bout or exhibition of mixed martial arts shall be a maximum of five (5) minutes in duration, and a period of rest following a round shall be one (1) minute in duration; and

(4) The length of a round in an amateur bout or exhibition of mixed martial arts shall be a maximum of three (3) minutes in duration, and a rest period following a round shall be ninety (90) seconds in duration.

Section 10. Judging and Scoring. (1) Each judge of a bout or exhibition of mixed martial arts shall score the bout or exhibition and determine the winner through the use of the following system:

(a) The better contestant of a round shall receive ten (10) points, and the opponent shall receive proportionately less.

(b) If the round is even, each contestant shall receive ten (10) points.

(c) Fraction of points shall not be given.

(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.

(2) After the end of the bout or exhibition, the announcer shall pick up the scores of the judges from the commission's representative.

(3) The majority opinion shall be conclusive and, if there is no majority, the decision shall be a draw.

(4)(a) When the commission's representative has checked the scores, he shall inform the announcer of the decision.

(b) The announcer shall then inform the audience of the decision.

(5) Unjudged exhibitions shall be permitted with the prior approval of the commission.

(6) A bout of mixed martial arts may end in the following ways:

(a) Submission by:

1. Physical tap out; or

2. Verbal tap out;

(b) Technical knockout by the referee or physician stopping the bout;

(c) Decision via the scorecards, including:

1. Unanimous decision;

2. Split decision;

3. Majority decision; and

4. Draw, including:

a. Unanimous draw;

b. Majority draw; and

c. Split draw;

(d) Technical decision;

(e) Technical draw;

(f) Disqualification;

(g) Forfeit; or

(h) No contest.

Section 11. Fouls. (1) The following acts shall constitute fouls in mixed martial arts:

(a) Butting with the head;

(b) Eye gouging;

(c) Biting;

(d) Hair pulling;

(e) Fishhooking;

(f) Groin attacks;

(g) Putting a finger into any orifice or into any cut or laceration on an opponent;

(h) Small joint manipulation;

(i) Striking to the spine or the back of the head;

(j) Striking downward using the point of the elbow;

(k) Throat strikes including grabbing the trachea;

(l) Clawing, pinching, or twisting the flesh;

(m) Grabbing the clavicle;

(n) Kicking the head of a grounded opponent;

(o) Kneeing the head of a grounded opponent;

(p) Stomping the head of a grounded opponent;

(q) Kicking to the kidney with the heel;

(r) Spiking an opponent to the canvas on his or her head or neck;

(s) Throwing an opponent out of the fenced area;

(t) Holding the shorts of an opponent;

(u) Spitting at an opponent;

(v) Engaging in unsportsmanlike conduct that causes an injury to an opponent;

(w) Holding the fence;

(x) Using abusive language in the fenced area;

(y) Attacking an opponent on or during the break;

(z) Attacking an opponent who is under the care of the referee;

(aa) Attacking an opponent after the bell has sounded the end of the period of unarmed combat;

(bb) Intentionally disregarding the instructions of the referee;

(cc) Timidity, such as intentionally or consistently dropping the mouthpiece or faking an injury;

(dd) Interference by a contestant's corner staff; and

(ee) The throwing by a contestant's corner staff of objects into the cage during competition.

(2) If a contestant fouls his or her opponent during a bout or exhibition of mixed martial arts, the referee may penalize the contestant by deducting points from his or her score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his or her determination on the severity of the foul and its effect upon the opponent.

(3) If the referee determines that it is necessary to deduct a point or points because of a foul, he shall warn the offender of the penalty to be assessed.

(4) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(5) Any point or points to be deducted for any foul shall be deducted in the round in which the foul occurred and shall not be deducted from the score of any subsequent round.

(6)(a) If a bout or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine if the contestant who has been fouled is able to continue.

(b) If the contestant's chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the bout or exhibition continued after a recuperative interval of not more than five (5) minutes.

(c) Immediately after separating the contestants, the referee shall inform the commission's representative of his or her determination that the foul was or was not accidental.

(7) If the referee determines that a bout or exhibition of mixed martial arts shall not continue because of an injury suffered as the

result of an accidental foul, the bout or exhibition shall be declared a no bout if the foul occurs during:

(a) The first two (2) rounds of a bout or exhibition that is scheduled for three (3) rounds or less; or

(b) The first three (3) rounds of a bout or exhibition that is scheduled for more than three (3) rounds.

(8) If an accidental foul renders a contestant unable to continue the bout or exhibition, the outcome shall be determined by scoring the completed rounds, including the round in which the foul occurs, if the foul occurs after:

(a) The completed second round of a bout or exhibition that is scheduled for three (3) rounds or less; or

(b) The completed third round of a bout or exhibition that is scheduled for more than three (3) rounds, the outcome shall be determined by scoring the completed rounds.

(9) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the bout or exhibition stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during which the referee stops the bout or exhibition.

(10) A contestant committing a foul may be issued a violation by an inspector.

Section 12. Prohibitions. The following shall be prohibited:

(1) Battle royal type events; and

(2) Use of excessive grease or other substance that may handicap an opponent.

Section 13. Non-Contestant Participants. (1) A promoter shall provide a minimum of two (2) security guards on the premises for each show.

(2) Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the commission. The following shall be required:

(a) Three (3) judges;

(b) One (1) timekeeper;

(c) One (1) physician, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) physicians shall be required; and

(d) One (1) referee, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) referees shall be required.

Section 14. Judges. (1) A judge shall arrive at least one (1) hour prior to the start of a show.

(2) At the beginning of a bout, the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants.

(3) At the conclusion of the bout, the judges shall render their decision based on the requirements of Section 10 of this administrative regulation.

(4) Upon request of the referee, the judges shall assist in determining:

(a) Whether or not a foul has been committed;

(b) Whether or not each contestant is competing in earnest; and

(c) Whether or not there is collusion affecting the result of the bout.

Section 15. Timekeeper. (1) The timekeeper shall be seated outside the ring near the bell and shall take the cue to commence or take time out from the referee.

(2) The timekeeper shall be provided with a whistle and a stop watch approved by the commission.

(3) Ten (10) seconds before the start of each round, the timekeeper shall give notice by sounding the whistle.

(4) The timekeeper shall indicate the starting and ending of each round by sounding a horn or striking the bell with a metal hammer.

(5) If a bout terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the bout.

(6) Ten (10) seconds prior to the end of each round, the

timekeeper shall give warning by striking a gavel three (3) times.

Section 16. Physicians and Healthcare Requirements. (1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

(2) The physician shall have general supervision over the physical condition of each contestant at all times while on the premises of a show or exhibition.

(3) The physician's pre-bout duties are as follows:

(a) A physician shall make a thorough physical examination of each contestant within eight (8) hours prior to a bout.

1. The physician's examination shall include a review of the Pre-Fight Medical Questionnaire of each contestant.

2. The physician shall deliver to the inspector the form Pre-Fight Examination, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(c), that documents the results of the examination prior to the contestant entering the ring.

(b) The physician shall ensure that all equipment required by subsection (5) of this section is present before the start of the first bout or exhibition.

(c) The physician shall prohibit a contestant from competing if the physician reasonably believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.

(4) The physician's duties during the bout or exhibition are as follows:

(a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.

(b) The physician shall observe the physical condition of each contestant during a bout or match.

(c) The physician shall administer medical aid if needed or requested.

(d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.

(5) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a mixed martial arts show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:

(a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;

(b) Spine board;

(c) Cervical collar;

(d) Oxygen apparatus or equipment; and

(e) First aid kit.

(6) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(7) The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver the form Post-Bout Examination, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(d) that documents the results of the examination.

Section 17. Announcers. (1) The announcer shall have general supervision over all announcements made to spectators. The announcer shall announce the name of contestants, their weight, decisions at the end of each match or bout, and any other matters as are necessary. No person other than the official announcer shall make an announcement, unless deemed necessary by an inspector.

(2) If a match or bout is stopped before its scheduled termination, the announcer shall immediately confer with the referee and judges and then shall immediately announce the decision.

(3) The announcer shall not enter the ring during the actual progress of a match or bout.

Section 18. Referees. (1) The referee shall be the chief official of the show, be present in the ring at all times, and have general

supervision over each contestant, manager, and second during the entire event.

(2) The referee shall have the authority to disqualify a contestant who commits a foul and award the decision to the opponent. The referee shall immediately disqualify a contestant who commits an intentional or deliberate foul that causes serious physical injury to an opponent.

(3) The referee's duties and responsibilities shall be as follows:

(a) The referee shall, before starting a bout or match, ascertain from each contestant the name of the contestant's chief second. The referee shall hold the chief second responsible for the conduct of the chief second's assistants during the progress of the bout or match.

(b) The referee shall call the contestants together in the ring immediately preceding a bout or match for final instructions. During the instructional meeting, each contestant shall be accompanied in the ring by the contestant's chief second only.

(c) The referee shall inspect the person, attire, and equipment of each contestant and make certain that no foreign substances that are prohibited by KRS Chapter 229 or 201 KAR Chapter 27 have been applied on a contestant's body or equipment or used by a contestant.

(d) The referee shall stop a bout or match at any time if the referee has reasonable grounds to believe either contestant:

1. Is unable to protect himself or herself from possible injury;
2. Is not competing in earnest; or
3. Is colluding with another person to affect the results of the bout.

(e) The referee may take one (1) or more points away from a contestant who commits an accidental foul, and the referee may permit a rest period not exceeding five (5) minutes for the contestant who was fouled.

(f) The referee shall not touch a contestant during the bout or match except upon failure of a contestant to obey the referee's orders or to protect a contestant.

(g) The referee shall decide all questions arising during a bout or match that are not otherwise specifically covered by KRS Chapter 229 or 201 KAR Chapter 27.

Section 19. Trainers and Seconds. (1) A trainer or second shall be equipped with a first aid kit and the necessary supplies for proper medical attendance upon the contestant.

(2) There shall be no more than three (3) persons total serving as a trainer or second in any bout and only two (2) shall be allowed in the ring at the same time.

(3) A trainer and a second shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round and shall remove all equipment from the ring. Equipment shall not be placed on the ring floor until after the bell has sounded at the end of the round or period.

(4) A trainer and a second shall wear surgical gloves at all times while carrying out their duties.

Section 20. Medical Prohibitions. (1) A contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete again if, after subjecting the contestant to a thorough examination by a physician licensed by the commission, the medical advisory panel determines action is necessary to protect the health and welfare of the contestant.

(2) A contestant who has suffered five (5) consecutive defeats by knockout or medical stoppage shall not be allowed to compete again until the contestant has been evaluated and subsequently cleared for further competition by the medical advisory panel.

(3) A contestant who has been knocked out shall be prohibited from all competition for a minimum of sixty (60) days.

(4) Any contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days if the contestant's health or safety would be jeopardized without the prohibition.

(5) A contestant shall receive a mandatory seven (7) day rest period from competition after competing in an event. Day one (1) of the rest period shall commence on the first day following the bout in which the contestant competed.

(6)(a) A female mixed martial artist shall submit proof that she is not pregnant prior to her bout. The proof may be either:

1. An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the match that shows she is not pregnant; or

2. From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.

(b) A female mixed martial artist shall be prohibited from competing if:

1. She is pregnant; or
2. She fails to comply with this section.

Section 21. Insurance. (1) A promoter shall provide insurance for a contestant for any injuries sustained in the mixed martial arts event.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.

(4)(a) The deductible expense under the policy for a professional mixed martial artist shall not exceed \$1,000.

(b) The deductible expense for an amateur mixed martial artist shall not exceed \$500.

Section 22. Other Provisions. (1) A contestant shall not compete against a member of the opposite gender.

(2) Each show shall be video recorded and retained by the promoter for at least one (1) year. Upon request of the commission, the promoter shall provide the video recording of a show to the commission.

(3) A promoter shall maintain an account with the recognized national database as identified by the commission and shall submit contestants names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

(4) A mixed martial arts promoter, official, or contestant whose license is suspended or revoked due to disciplinary actions shall be prohibited from attending all mixed martial arts events sanctioned by the commission during the term of the suspension or revocation.

(5) A bout or exhibition of mixed martial arts shall be conducted pursuant to the official rules for the particular art unless the official rules conflict with KRS Chapter 229 or 201 KAR Chapter 27.

(a) If an official rule conflicts with KRS Chapter 229 or a requirement in 201 KAR Chapter 27, the statute or administrative regulation shall prevail.

(b) The sponsoring organization or promoter shall file a copy of the rules that shall apply at the show with the commission along with the thirty (30) day show notice required in Section 1 of this administrative regulation.

(6) A contestant shall report to and be under the general supervision of an inspector in attendance at the show and shall be subject to orders given by an inspector.

(7) No more than two (2) fifteen (15) minute intermissions shall be allowed at any show.

Section 23. Prohibitions and Restrictions. (1) The following shall be prohibited:

(a) Battle royal type events;

(b) Use of excessive grease or other substance that may handicap an opponent; and

(c) Elbow strikes to the head if the bout is an amateur bout.

(2) Knees to the head shall be permitted, but shall only be used and delivered from a standing position.

(3) A professional mixed martial arts contestant found to be competing during an amateur mixed martial arts show shall have his or her license suspended for a period of not less than one (1) year.

(4) A promoter who allows a professional to compete against an amateur shall have his or her license suspended for a period of not less than one (1) year.

(5) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located.

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~~(6) Alcohol shall be prohibited inside the six (6) foot area alongside the ring.~~(1) The authority shall license each person approved to participate as a professional contestant in a mixed martial arts contest.

~~(2) An applicant for a mixed martial arts license shall complete and submit to the authority the form, Application for License as a Professional Mixed Martial Arts Contestant.~~

~~(3) Applications shall not be mailed to the authority.~~

~~(4) The license fee for each participant shall be twenty (20) dollars.~~

~~(5) All licenses shall expire on December 31 of the year issued.~~

Section 2. The schedule for compensation to be paid prior to the commencement of the main event to officials participating in a professional mixed martial arts show shall be as follows:

(1) Judge for mixed martial arts: \$150. If there are twelve (12) or fewer bouts on a pro/am card, the judge's pay shall be \$100.

(2) Timekeeper for mixed martial arts: \$100. If there are twelve (12) or fewer bouts on a pro/am card, the timekeeper's pay shall be seventy-five (75) dollars.

(3) Physician for mixed martial arts:

(a) \$300: up to ten (10) scheduled bouts;

(b) \$350: eleven (11) to fifteen (15) scheduled bouts; or

(c) \$400: over fifteen (15) scheduled bouts.

(4) Referee for mixed martial arts: \$150.

Section 3. Before the commencement of the main event of a mixed martial arts show or exhibition, the promoter of the show or exhibition shall tender to the inspector or an employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials established in Section 2 of this administrative regulation.

Section 4. If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the authority, officials shall be paid one-half (1/2) the compensation required by Section 2 of this administrative regulation.

Section 5. The promoter shall submit a request for a show date on the MMA Show Notice Form no less than thirty (30) calendar days before the requested date for approval by the authority.

(1) There shall not be advertising of the event prior to this approval.

(2) Once the show date has been approved, all advertisements shall include the promoter's license number.

Section 6. The proposed program for a show shall be filed with the authority at least five (5) business days prior to the date of the show. Notice of a change in a program or a substitutions in a show shall be filed immediately with the authority.

Section 7. Each contestant compensation agreement shall be in writing and submitted to the authority for approval not less than five (5) calendar days prior to the date of the proposed show.

Section 8. A contest or exhibition of a mixed martial art shall be conducted pursuant to the official rules for the particular art unless the official rules conflict with KRS Chapter 229 or 201 KAR Chapter 27.

(1) If an official rule conflicts with KRS Chapter 229 or a requirement in 201 KAR Chapter 27, the statute or administrative regulation shall prevail.

(2) The sponsoring organization or promoter shall file a copy of the official rules with the authority along with the thirty (30) day show notice required in Section 5 of this administrative regulation.

Section 9. (1) Before the commencement of a show, all changes or substitutions shall be:

(a) Announced from the cage; and

(b) Posted in a conspicuous place at the ticket office.

(2) A purchaser of tickets shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is

made before the commencement of the show.

Section 10. (1) The area between the cage and the first row of spectators on all sides and the locker room shall be under the exclusive control of the authority.

(2) Alcohol or smoking shall not be allowed in the areas under the control of the authority.

(3) Authority staff and licensees shall be the only people allowed inside the areas under the control of the authority.

Section 11. (1) There shall be an area of at least six (6) feet between the edge of the cage floor and the first row of spectator seats on all sides of the cage.

(2) A partition, barricade, or similar divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the cage; and

(b) Along the sides of the entry lane for contestants to enter the cage and the spectator area.

Section 12. A contest or exhibition of mixed martial arts shall be held in a fenced area meeting the following requirements:

(1) The fenced area shall be circular or have equal sides and shall be no smaller than twenty (20) feet wide and no larger than thirty-two (32) feet wide.

(2) The floor of the fenced area shall be padded with closed-cell foam, with at least a one (1) inch layer of foam padding, with a top covering of a single canvas or a synthetic material stretched tightly and laced to the platform of the fenced area, unless the event is held outdoors, in which case only canvas shall be used.

(3) The platform of the fenced area shall not be more than six (6) feet above the floor of the building and shall have steps suitable for the use of the contestants.

(4) Fence posts shall be made of metal, shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.

(5) The fencing used to enclose the fenced area shall be made of a material that shall prevent a contestant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, and the fencing shall be coated with vinyl or a similar covering to minimize injuries to a contestant.

(6) Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed combatants.

(7) The fenced area shall have at least one (1) entrance.

(8) There shall not be a protrusion or obstruction on any part of the fence surrounding the area in which the contestants are to be competing.

(9) Any event held outdoors while the temperature is or exceeds a heat index of 100 degrees Fahrenheit shall be conducted under a roof.

(10) A cage shall have a canvas mat or a synthetic material, unless the event is held outdoors, in which case only canvas shall be used.

Section 13. A bell or horn shall be used by the timekeeper to indicate the time.

Section 14. In addition to the cage and cage equipment, the promoter shall supply the following items, which shall be available for use as needed:

(1) A public address system in good working order.

(2) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the cage and the cage floor.

(3) Items for each contestant's corner, to include:

(a) A stool or chair;

(b) A clean bucket;

(c) Towels; and

(d) Rubber gloves.

(4) A complete set of numbered round cards.

(5) A clean stretcher and a clean blanket, placed under or adjacent to the cage, throughout each program.

(6) First aid oxygen apparatus or equipment.

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Section 15. A scales used for weigh-in shall be approved in advance by the authority.

Section 16. A promoter shall provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted and the locker room or rooms to ensure that adequate protection against disorderly conduct has been provided. Any disorderly act, assault, or breach of decorum on the part of a licensee at the premises shall be prohibited.

Section 17. All emergency medical personnel and portable medical equipment shall be stationed at cageside during the event.

(1) There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on site for all contests.

(2) If the ambulance is required to leave the event, a contest shall not continue until an ambulance is once again present and medical personnel are at cageside.

Section 18. (1) There shall be at least one (1) physician licensed by the authority at cageside before a bout shall begin.

(2) The physician shall have at cageside medical supplies necessary to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in a mixed martial arts show.

Section 19. A promoter shall provide insurance for his contestant for any injuries sustained in the mixed martial arts event.

(1) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(2) A certificate of insurance coverage shall be provided to the authority no less than two (2) business days before the event.

(3)(a) Payment of a deductible under the policy shall be the responsibility of the contestant not to exceed an expense of \$1,000.

(b) A deductible expense above \$1,000 shall be the responsibility of the promoter.

Section 20. A promoter shall submit written notice to a local hospital with an on-call neurosurgeon that a mixed martial arts show is being held.

(1) This notice shall include the date, time, and location of the event.

(2) A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 21. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the authority. For each show, the authority shall assign:

(1) Three (3) judges;

(2) One (1) timekeeper;

(3) One (1) physician, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) physicians shall be required; and

(4) One (1) referee, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) referees shall be required.

Section 22. Unless the authority approves an exception:

(1) A nonchampionship contest or exhibition of mixed martial arts shall not exceed three (3) rounds in duration;

(2) A championship contest of mixed martial arts shall not exceed five (5) rounds in duration; and

(3) A period of unarmed combat in a contest or exhibition of mixed martial arts shall be a maximum of five (5) minutes in duration, and a period of rest following a period of unarmed combat in a contest or exhibition of mixed martial arts shall be one (1) minute in duration.

Section 23. Weight Classes of Contestants; Weight Loss after Weigh-in.

(1) Except with the approval of the authority, the classes for

contestants competing in contests or exhibitions of mixed martial arts and the weights for each class are shown in the following schedule:

CLASS	WEIGHT
Flyweight	Up to 125 lbs.
Bantamweight	Up to 135 lbs.
Featherweight	Up to 145 lbs.
Lightweight	Up to 155 lbs.
Welterweight	Up to 170 lbs.
Middleweight	Up to 185 lbs.
Light Heavyweight	Up to 205 lbs.
Heavyweight	Up to 265 lbs.
Super Heavyweight	Over 265 lbs.

(2) After the weigh-in of a contestant competing in a contest or exhibition of mixed martial arts:

(a) Change in weight in excess of three (3) pounds shall not be permitted for a contestant who weighed in at 145 pounds or less;

(b) Change in weight in excess of four (4) pounds shall not be permitted for a contestant who weighed in at over 145 pounds; and

(3) A change in weight above that established in paragraphs (a) and (b) of this subsection shall not occur later than two (2) hours after the initial weigh-in.

Section 24. The following shall be prohibited:

(1) "Battle royal"; and

(2) Use of excessive grease or another substance that may handicap an opponent.

Section 25. Contestants Repeatedly Knocked Out or Otherwise Defeated. (1) A mixed martial arts contestant who has been repeatedly knocked out or severely beaten shall be retired and not permitted to compete again if, after a thorough examination by a physician, the authority decides the action is necessary in order to protect the health and welfare of the contestant.

(2) A mixed martial arts contestant who has suffered six (6) consecutive defeats by knockout shall not be allowed to compete again until he has been investigated by the authority and examined by a physician.

(3) A mixed martial arts contestant whose license is under suspension in another jurisdiction shall not participate in a contest until review and approval by an inspector or employee of the authority.

(4) A mixed martial arts contestant who has been knocked out shall be prohibited from competition for sixty (60) days.

(5)(a) A mixed martial arts contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days.

(b) In determining how many days to prohibit the contestant from competition, the inspector shall consider the nature and severity of the injuries that resulted in the TKO.

Section 26. A person over the age of thirty-nine (39) shall not participate as a contestant in a mixed martial arts match without a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled board meeting

Section 27. A contestant shall report to and be under the general supervision of the inspector or employee of the authority in attendance at the show and shall be subject to orders given by the inspector or employee of the authority.

Section 28. A contestant shall produce one (1) form of picture identification. A contestant shall not assume or use the name of another, and shall not change his ring name nor be announced by a name other than that which appears on his license, except upon approval of the inspector or employee of the authority.

Section 29. A contestant shall submit HIV Antibody and Hepatitis B Antigen and Hepatitis C Antibody test results at or

before pre-fight physical.

(1) The results of these tests shall be no more than 180 days old.

(2) A person with positive test results shall not compete.

Section 30. A contestant shall not compete against a member of the opposite sex.

Section 31. (1) A contestant shall not use a belt that contains a metal substance during a bout.

(2) The belt shall not extend above the waistline of the contestant.

Section 32. Proper Attire for a Mixed Martial Arts Contestant. A mixed martial arts contestant shall:

(1) Be clean, neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors;

(2) Not wear shoes or any padding on his feet during the contest;

(3) Wear a groin protector;

(4) Wear a kidney protector if available; and

(5) Wear a mouthpiece.

Section 33. (1) The authority may request that a contestant submit to a drug screen for controlled substances at the contestant's expense.

(2) If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the authority shall:

(a) Suspend or revoke the license of the contestant;

(b) Impose a fine upon the contestant; or

(c) Impose both penalties established in paragraphs (a) and (b) of this subsection.

(3)(a) The administration of or use of any of the following shall be prohibited in any part of the body, before or during a contest or exhibition, to or by any unarmed combatant:

1. Alcohol;

2. Stimulant; or

3. Drug or injection that has not been approved by the authority.

(b) The following types of drugs, injections, or stimulants shall be prohibited before or during a contest or exhibition, to or by an unarmed combatant:

1. Afrinol or a product pharmaceutically similar to Afrinol;

2. Co-Tylenol or a product pharmaceutically similar to Co-Tylenol;

3. A product containing an antihistamine and a decongestant;

4. A decongestant other than a decongestant listed in paragraph (d) of this subsection;

5. An over-the-counter drug for colds, coughs, or sinuses other than those drugs listed in paragraph (d) of this subsection. This includes Ephedrine, Phenylpropranolamine, and Mahuang and derivatives of Mahuang; and

6. A drug identified on the most current edition of the Prohibited List published by the World Anti-Doping Agency. The most current edition of the Prohibited List may be obtained, free of charge, at the Internet address www.wada-ama.org;

(c) The following types of drugs or injections are not prohibited:

1. Aspirin and products containing aspirin; and

2. Nonsteroidal anti-inflammatories.

(d) The following types of drugs or injections are approved by the authority:

1. Antacids, such as Maalox;

2. Antibiotics, antifungals, or antivirals prescribed by a physician;

3. Antidiarrheals, such as Imodium, Kaopectate, or Pepto-Bismol;

4. Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1, or Teldrin;

5. Antinauseants, such as Dramamine or Tigan;

6. Antipyretics, such as Tylenol;

7. Antitussives, such as Robitussin, if the antitussive does not contain codeine;

8. Antilucer products, such as Carafate, Pepcid, Reglan, Tagamet, or Zantac;

9. Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent), or Salbutamol (Albuterol, Proventil, or Ventolin);

10. Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide, or Vanceril;

11. Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox, or Vosol;

12. Hemorrhoid products, such as Anusol-HC, Preparation H, or Nupercainal;

13. Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane, or Milk of Magnesia;

14. Nasal products, such as AYR Saline, HuMist Saline, Ocean, or Salinex;

15. The following decongestants:

a. Afrin;

b. Oxymetazoline HCL Nasal Spray; or

c. Another decongestant pharmaceutically similar to a decongestant listed in clauses a. or b. or this subparagraph.

(3) An unarmed combatant shall submit to a urinalysis or chemical test before or after a contest or exhibition if the authority or a representative of the authority directs him to do so.

(f) A licensee who violates a provision of this section shall be subject to disciplinary action by the authority. In addition to any other disciplinary action by the authority, if an unarmed combatant who won or drew a contest or exhibition is found to have violated the provisions of this section, the authority may, in its sole discretion, change the result of that contest or exhibition to a no decision.

Section 34. Method of Judging. (1) Each judge of a contest or exhibition of mixed martial arts shall score the contest or exhibition and determine the winner through the use of the following system:

(a) The better contestant of a round shall receive ten (10) points, and his opponent shall receive proportionately less.

(b) If the round is even, each contestant shall receive ten (10) points.

(c) No fraction of points shall be given.

(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.

(2) After the end of the contest or exhibition, the announcer shall pick up the scores of the judges from the authority's desk.

(3) The majority opinion shall be conclusive and, if there is no majority, the decision shall be a draw.

(4)(a) When the authority's representative has checked the scores, he shall inform the announcer of the decision.

(b) The announcer shall then inform the audience of the decision over the speaker system.

(5) Unjudged exhibitions shall be permitted with the prior approval of the authority.

Section 35. The following acts shall constitute fouls in mixed martial arts:

(1) Butting with the head;

(2) Eye gouging;

(3) Biting;

(4) Hair pulling;

(5) Fishhooking;

(6) Groin attacks;

(7) Putting a finger into any orifice or into any cut or laceration on an opponent;

(8) Small joint manipulation;

(9) Striking to the spine or the back of the head;

(10) Striking downward using the point of the elbow;

(11) Throat strikes including grabbing the trachea;

(12) Clawing, pinching, or twisting the flesh;

(13) Grabbing the clavicle;

(14) Kicking the head of a grounded opponent;

(15) Kneeing the head of a grounded opponent;

(16) Stomping the head of a grounded opponent;

- (17) Kicking to the kidney with the heel;
- (18) Spiking an opponent to the canvas on his head or neck;
- (19) Throwing an opponent out of the fenced area;
- (20) Holding the shorts of an opponent;
- (21) Spitting at an opponent;
- (22) Engaging in unsportsmanlike conduct that causes an injury to an opponent;
- (23) Holding the fence;
- (24) Using abusive language in the fenced area;
- (25) Attacking an opponent on or during the break;
- (26) Attacking an opponent who is under the care of the referee;
- (27) Attacking an opponent after the bell has sounded the end of the period of unarmed combat;
- (28) Intentionally disregarding the instructions of the referee;
- (29) Timidity, such as intentionally or consistently dropping the mouthpiece or faking an injury;
- (30) Interference by the corner; and
- (31) The throwing by a contestant's corner staff of objects into the cage during competition.

Section 36. (1) If a contestant fouls his opponent during a contest or exhibition of mixed martial arts, the referee may penalize him by deducting points from his score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his determination on the severity of the foul and its effect upon the opponent.

(2) If the referee determines that it is necessary to deduct a point or points because of a foul, he shall warn the offender of the penalty to be assessed.

(3) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(4) Any point or points to be deducted for any foul shall be deducted in the round in which the foul occurred and shall not be deducted from the score of any subsequent round.

Section 37. (1)(a) If a contest or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine if the contestant who has been fouled is able to continue or not.

(b) If the contestant's chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the contest or exhibition continued after a recuperative interval of not more than five (5) minutes.

(c) Immediately after separating the contestants, the referee shall inform the authority's representative of his determination that the foul was or was not accidental.

(2) If the referee determines that a contest or exhibition of mixed martial arts shall not continue because of an injury suffered as the result of an accidental foul, the contest or exhibition shall be declared a no contest if the foul occurs during:

(a) The first two (2) rounds of a contest or exhibition that is scheduled for three (3) rounds or less; or

(b) The first three (3) rounds of a contest or exhibition that is scheduled for more than three (3) rounds.

(3) If an accidental foul renders a contestant unable to continue the contest or exhibition, the outcome shall be determined by scoring the completed rounds, including the round in which the foul occurs, if the foul occurs after:

(a) The completed second round of a contest or exhibition that is scheduled for three (3) rounds or less; or

(b) The completed third round of a contest or exhibition that is scheduled for more than three (3) rounds, the outcome shall be determined by scoring the completed rounds.

(4) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the contest or exhibition stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibition.

(5) A contestant committing a foul may be issued a violation by

the inspector or employee of the authority.

Section 38. A contest of mixed martial arts may end in the following ways:

- (1) Submission by:
 - (a) Physical tap out; or
 - (b) Verbal tap out;
- (2) Technical knockout by the referee or physician stopping the contest;
- (3) Decision via the scorecards, including:
 - (a) Unanimous decision;
 - (b) Split decision;
 - (c) Majority decision; and
 - (d) Draw, including:
 - 1. Unanimous draw;
 - 2. Majority draw; and
 - 3. Split draw;
 - (4) Technical decision;
 - (5) Technical draw;
 - (6) Disqualification;
 - (7) Forfeit; or
 - (8) No contest.

Section 39. Within twenty-four (24) hours of the conclusion of a show, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the authority the form MMA Event Report.

Section 40. The following requirements apply to all bouts between female contestants:

(1) A contestant shall not wear facial cosmetics during the bout;

(2) A contestant with long hair shall secure her hair with soft and nonabrasive material;

(3) Weight classes shall be those established in section 23 of this administrative regulation;

(4) A contestant shall wear a properly-fitted:

(a) Groin protector; and

(b) Mouthpiece;

(5) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout;

(6) A promoter shall provide a separate locker room for female contestants; and

(7) A physician examining a female contestant shall be accompanied by a female authority representative when in the female locker room.

Section 41. (1) Each contestant shall attend a pre-fight meeting as directed by a representative of the authority.

(2) Each contestant and official shall check in with a representative of the authority no less than one (1) hour prior to the starting time of the event.

(3) Each contestant shall stay in the locker room area until it is time for them to compete.

Section 42. (1) Each show shall be video recorded and retained by the promoter for at least one (1) year.

(2) Upon request of the authority, the promoter shall provide the visual recording of a show to the authority.

Section 43. A promoter shall maintain an account with the recognized national database as identified by the authority, and submit contestants' names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

Section 44. All nonsanctioned activities, such as concerts, shall be completed prior to the scheduled start time of the event.

Section 45. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for License as a Mixed Martial Arts Contestant", 3/12;

(b) "MMA Show Notice Form", 10/11; and

(c) "MMA Event Report", 10/11.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 500 Mero Street, Capitol Plaza Tower, Room 509, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm].

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Kentucky Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the rules and requirements that govern mixed martial arts ("MMA").

(b) The necessity of this administrative regulation: This regulation is necessary to set forth the rules governing MMA events in one regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.171 which grants the KBWC authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions provided in KRS 229. In addition it conforms with KRS 229.021, 229.031, 229.071, 229.081, 229.091, 229.101, 229.111, and 229.131.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: Consistent with the statutory requirement, the primary intent of this amendment is to ensure the safety of those licensed by the commission and provide consistency in the regulation of MMA matches, shows, and exhibitions.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides easier-to-understand guidance for the requirements of mixed martial arts shows and exhibitions. The changes delete redundancies and make unarmed combat practices more consistent. This amendment incorporates sections from 201 KAR 27:100, governing amateur mixed martial arts, which are being contemporaneously repealed. Changes include all licensing being moved to the licensing regulation, 201 KAR 27:008. Sections concerning equipment, attire, prohibitions, and similar rules have been consolidated and are no longer scattered throughout the regulation. Specific changes also include

that change of weight after a weigh-in is now measured in percentage and not pounds; the compensation agreement must be submitted to the commission two days in advance instead of five; and drug testing has been moved to a separate regulation and all discipline action has been moved to a separate regulation to ensure sports are treated fairly and consistently.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to foster the continued growth of MMA throughout the Commonwealth by clearly setting forth the rules governing the subject MMA events.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 229.180 also authorizes the commission to adopt and promulgate, amend or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions provided in KRS 229.

(d) How the amendment will assist in the effective administrative of the statutes: This amendment elaborates on statutory requirements to clearly set forth the rules governing MMA events, and improve the understanding, health, and safety of all entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the KBWC, mixed martial arts and amateur mixed martial arts contestants, and their managers and promoters. The commission licenses around 300 people associated with mixed martial arts in a given year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No significant action will need to be taken in order to comply with this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will benefit these entities by more clearly setting forth the rules governing MMA matches, shows, and exhibitions.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

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

(7) Provide an assessment of whether an 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 for the implementation of this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied in this regulation because mixed martial arts is scored and governed by the same rules.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.021, 229.031, 229.071, 229.081, 229.091, 229.101, 229.111, 229.131, 229.171, and 229.180 provide the statutory authority for 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. This amendment will have no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will generate no revenue.

(c) How much will it cost to administer this program for the first year? The KWBC does not anticipate any net change in the cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer this program in subsequent years.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A.

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)**

201 KAR 27:017. Requirements for elimination events.

RELATES TO: KRS 229.021, 229.071(1), 229.081, 229.091, 229.101, 229.131, 229.171, 229.180, 15 U.S.C. 6304

STATUTORY AUTHORITY: KRS 229.151(1), 229.171(1), 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth [Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all boxing, kickboxing, mixed martial arts, sparring, and wrestling shows or exhibitions to be conducted, held, or given within the Commonwealth. KRS 229.151(1) authorizes the Kentucky Boxing and Wrestling Authority to provide regulatory oversight over boxing, wrestling, and other full contact competitive bouts within the Commonwealth. KRS 229.180 authorizes the authority to promulgate regulations necessary or expedient for the performance of its regulatory function]. This administrative regulation establishes the rules of conduct governing elimination events.

Section 1. Show Date. (1) A promoter shall request a show date by completing and submitting to the commission the Show Notice Form, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(a).

(2) The Show Notice Form shall be submitted for approval no less than thirty (30) calendar days before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Commission approval shall be effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at <http://ins.kbwa.ky.gov/ecal.asp>; or

(b) Providing written notice that the event is approved.

Section 2. Compensation. (1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, officials shall be paid one-half (1/2) the compensation agreed upon prior to the show or exhibition.

(2) Before the commencement of the main event of an exhibition, a promoter of a show or exhibition shall tender to an inspector a certified check or money order made payable to each

official who will officiate the show or exhibition. The schedule of compensation to be paid by the promoter to an official officiating an elimination event show shall be as follows:

(a) For a judge:

1. \$150 per day for shows of fifty (50) or fewer contestants; or

2. \$175 per day for shows of over fifty (50) contestants;

(b) For a timekeeper:

1. \$150 per day for shows of fifty (50) or fewer contestants; or

2. \$175 per day for shows of over fifty (50) contestants;

(c) For a physician: \$300 plus five (5) dollars per contestant; and

(d) For a referee:

1. \$150 dollars per day for shows of fifty (50) or fewer contestants; or

2. \$175 dollars per day for shows of over fifty (50) contestants.

Section 3. Pre-Bout. (1) A contestant shall report to, and be under the general supervision of, an inspector in attendance at the show and shall be subject to any orders given by the inspector.

(2) A contestant shall produce one (1) form of picture identification to the inspector.

Section 4. The Ring. (1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the commission.

(a) Alcohol shall be prohibited in the areas under the control of the commission.

(b) Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission without inspector approval.

(2) An event held outdoors while the heat index is or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entirety of the ring.

(3) A ring shall have a canvas mat or similar material, unless the event is held outdoors, in which case only canvas shall be used.

(4) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring. A partition, barricade, or some type of divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) Along the sides of the entry lane for the contestants to enter the ring and the spectator area.

(5) The ring specifications shall be as follows:

(a) A bout shall be held in a four (4) sided roped ring with the following specifications:

1. The floor of the ring inside the ropes shall not be less than sixteen (16) feet square;

2. The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;

3. The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and

4. The ring shall have steps to enter the ring on two (2) sides.

(b) The ring shall be formed of ropes with the following specifications:

1. There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

a. Twenty-four (24) inches;

b. Thirty-six (36) inches; and

c. Forty-eight (48) inches.

2. A fourth rope may be used if the inspector finds that it will not pose a health or safety concern.

3. The ropes shall be at least one (1) inch in diameter.

4. The ropes shall be wrapped in a clean, soft material and drawn taut.

5. The ropes shall be held in place with two (2) vertical straps on each of the four (4) sides of the ring.

6. The ropes shall be supported by ring posts that shall be:

a. Made of metal or other strong material;

b. Not less than three (3) inches in diameter; and

c. At least eighteen (18) inches from the ropes.

(c) The ring floor shall be padded or cushioned with a clean,

soft material that:

1. Is at least one (1) inch thick and uses slow recovery foam matting;
2. Extends over the edge of the platform; and
3. a. Is covered with a single canvas stretched tightly. If the event is held outdoors, only canvas shall be used; and
b. Is clean, sanitary, dry, and free from:
 - (i) Grit;
 - (ii) Dirt;
 - (iii) Resin; and
 - (iv) Any other foreign object or substance at commencement of the event.
- (d) A ring rope shall be attached to a ring post by turnbuckles padded with a soft vertical pad at least six (6) inches in width.

Section 5. Equipment. (1) A bell or horn shall be used by the timekeeper to indicate the time.

- (2) In addition to the ring, the promoter shall supply:
 - (a) A public address system in good working order;
 - (b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the ring and the ring floor;
 - (c) Items for each contestant's corner, to include:
 1. A stool or chair;
 2. A clean bucket;
 3. Towels; and
 4. Rubber gloves;
 - (d) A complete set of numbered round-cards, if needed; and
 - (e) Gloves for each contestant.
- (3) A scale used for any weigh-in shall be approved in advance by an inspector.

Section 6. Contestant Equipment and Attire. (1) A contestant shall be clean and neatly attired in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

- (2) A contestant shall not use a belt that contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.
 - (3) A contestant shall wear shoes during a bout, and the shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.
 - (4) A contestant shall wear a properly fitted:
 - (a) Groin protector; and
 - (b) Double-arch mouthpiece.
 - (5) A contestant shall have long hair secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.
 - (6) A contestant shall use a minimum of cosmetics.
 - (7) A contestant shall wear boxing gloves that shall be:
 - (a) Dry, clean, and sanitary;
 - (b) Furnished by the promoter;
 - (c) Clearly labeled with the promoter's name;
 - (d) Of equal weight not less than sixteen (16) ounces each;
- and
- (e) Thumbless or thumb-attached.

Section 7. Pregnancy Test Required for Females. (1) A female contestant shall submit proof that she is not pregnant prior to her bout. The proof may be either:

- (a) An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the bout that shows she is not pregnant; or
 - (b) From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.
- (2) A female contestant shall be prohibited from competing if:
- (a) She is pregnant; or
 - (b) She fails to comply with this section.

Section 8. Weight Classes. An elimination event shall be divided into at least two (2) weight divisions. Open shows shall not be permitted.

Section 9. Bout Requirements. An elimination event shall:

- (1) Be no more than three (3) one (1) minute rounds in length;

- (2) Contain a rest period of one (1) minute between rounds; and
- (3) Be scored on the ten (10) point must system.

Section 10. Non-Contestant Participants. (1) A promoter shall provide a minimum of two (2) security guards for a show.

- (2) Judges, physicians, referees, and timekeepers shall be assigned to elimination events by the commission. The commission shall assign to each event:
 - (a) Three (3) judges;
 - (b) One (1) timekeeper;
 - (c) One (1) physician; and
 - (d) One (1) referee if fifty (50) or fewer contestants participate in the elimination event, or two (2) referees if more than fifty (50) contestants participate in the elimination event.

Section 11. Physicians and Healthcare Requirements. (1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

- (2) The physician shall have general supervision over the physical condition of each contestant at all times while on the premises of a show or exhibition.
- (3) The physician shall ensure that all equipment required by subsection (6) of this section is present before the start of the first bout or exhibition.
- (4) The physician shall prohibit a contestant from competing if the physician reasonably believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.
- (5) The physician's duties during the bout or exhibition are as follows:

- (a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.
- (b) The physician shall observe the physical condition of each contestant during a bout.
- (c) The physician shall administer medical aid if needed or requested.
- (d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.
- (6) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:
 - (a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;
 - (b) Spine board;
 - (c) Cervical collar;
 - (d) Oxygen apparatus or equipment; and
 - (e) First aid kit.

(7) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(8) If at any time a contestant begins to bleed so that blood may come into contact with the other contestant, the gloves of the other contestant, the ring, the officials, or the audience, the bout shall be terminated. The judges shall score the bout until the time the bout was halted and shall determine the winner. Either the referee or the ringside physician has the power to terminate the bout under this subsection.

Section 12. Insurance. (1) A promoter shall provide insurance for a contestant for any injuries sustained in the elimination event show.

- (2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.
- (3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.
- (4) The deductible expense under the policy for a contestant shall not exceed \$500.

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Section 13. Other Provisions. (1) The inspector shall make all bouts in an elimination event.

(2) A contestant shall not compete against a member of the opposite sex.

(3) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located. (1) In order to participate in an elimination event, a contestant shall be required to obtain a permit issued by the authority to participate in the event.

(2) A contestant shall complete and submit to the authority the form Application for an Elimination Event Contestant Permit.

(3) The contestant shall also pay a fee of five (5) dollars to participate in an elimination event show.

(4) The permit and the payment of the fee to participate in an elimination event shall allow participation in that event only.

Section 2. Before the commencement of the main event of an elimination event or exhibition, the promoter of the show or exhibition shall tender to the inspector or employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials established in Section 3 of this administrative regulation.

Section 3. The schedule of compensation to be paid by the promoter to an official officiating in the elimination event shall be as follows:

(1) For a judge: \$150 per day for shows of fifty (50) or fewer contestants or \$175 per day for shows of over fifty (50) contestants.

(2) For a timekeeper: \$150 per day for shows of fifty (50) or fewer contestants or \$175 per day for shows of over fifty (50) contestants.

(3) For a physician: \$300 plus five (5) dollars per contestant.

(4) For a referee: \$150 dollars per day for shows of fifty (50) or fewer contestants or \$175 dollars per day for shows of over fifty (50) contestants.

Section 4. If a show or exhibition is cancelled with less than twenty-four (24) hours notice to the authority, an official shall be paid one-half (1/2) of the compensation required by this administrative regulation.

Section 5. The promoter shall submit a request for a show date to the authority for approval no less than thirty (30) calendar days before the requested date. There shall not be advertising of the event prior to approval by the authority. Once the show date has been approved, all advertisements shall include the promoter's license number.

Section 6. (1) Before the commencement of a show, any change or substitution shall be:

(a) Announced from the ring; and

(b) Posted in a conspicuous place at the ticket office.

(2) A purchaser of a ticket shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is made before the commencement of the show.

Section 7. The row nearest the ring on all four (4) sides shall be under the exclusive control of the authority.

Section 8. (1) The ring shall have an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring.

(2) A partition, barricade, or some type of divider shall be placed between:

(a) The first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) The entry lane for boxers to enter the ring and the spectator area.

Section 9. The ring specifications shall meet the requirements established in this section.

(1) All bouts shall be held in a four (4) sided roped ring with the

following specifications:

(a) The ring shall be at least sixteen (16) feet by sixteen (16) feet inside the ropes;

(b) The floor of the ring shall extend beyond the ropes for a distance of at least one (1) foot;

(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and

(d) The ring shall have steps to enter the ring on two (2) sides.

(2) The ring shall be formed of ropes with the following specifications:

(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

1. Twenty-four (24) inches;

2. Thirty-six (36) inches; and

3. Forty-eight (48) inches;

(b) A fourth rope may be used. If used, the fourth rope shall be approved by the inspector or employee of the authority prior to the commencement of the show;

(c) The ropes shall be at least one (1) inch in diameter;

(d) The ropes shall be wrapped in a clean, soft material and drawn taut; and

(e) The ropes shall be held in place with vertical straps on each of the four (4) sides of the ring.

(3) The ropes shall be supported by ring posts that shall be:

(a) Made of metal or other strong material;

(b) Not less than three (3) inches in diameter; and

(c) At least eighteen (18) inches from the ropes.

(4) The ring floor shall be padded or cushioned with a clean, soft material that:

(a) Is at least one (1) inch in thickness using slow recovery foam matting;

(b) Extends over the edge of the platform; and

(c) Is covered with a single tightly stretched canvas or synthetic material. If the event is held outdoors, only canvas shall be used.

(5) The ring ropes shall be attached to the ring posts by turnbuckles padded with a soft vertical pad at least six (6) inches in width.

Section 10. A bell or horn shall be used by the timekeeper to indicate the time.

Section 11. In addition to the ring and ring equipment, the promoter shall supply the following items, which shall be available for use as needed:

(1) A public address system in good working order;

(2) Chairs for the judges and timekeepers, elevated sufficiently to provide an unobstructed view of the ring and the ring floor;

(3) Items for each contestant's corner including:

(a) A stool or chair;

(b) A clean bucket;

(c) Towels; and

(d) Rubber gloves;

(4) A clean stretcher and a clean blanket placed under or adjacent to the ring throughout each program; and

(5) First aid oxygen apparatus or equipment.

Section 12. (1) A contestant shall wear boxing gloves that shall be:

(a) Dry, clean, and sanitary;

(b) Furnished by the promoter;

(c) Clearly labeled with the promoter's name;

(d) Of equal weight;

(e) Of not less than sixteen (16) ounces each; and

(f) Thumbless or thumb-attached.

(2) Bandaging of the hands shall not be allowed.

(3) A contestant shall wear properly fitted headgear that shall be:

(a) Clean and sanitary;

(b) Furnished by the promoter; and

(c) Clearly labeled with the promoter's name.

(4) A contestant shall not substitute gloves or headgear.

(5) An elimination event shall be divided into at least two (2) weight divisions. Open shows shall not be permitted.

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(6)(a) An elimination event round shall:

1. Not exceed sixty (60) seconds duration; and
2. Have not less than a one (1) minute rest period between rounds.

(b) Elimination event bouts shall not exceed three (3) rounds.

(7) A person over the age of thirty-nine (39) shall not participate in an elimination event without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled bout.

Section 13. A contestant shall report to, and be under the general supervision of, the inspector or employee of the authority in attendance at the show and shall be subject to any orders given by the inspector or employee of the authority.

Section 14. The inspector or an employee of the authority shall make all bouts in an elimination event.

Section 15. (1) A contestant shall produce one (1) form of picture identification.

(2) A contestant shall not assume or use the name of another.

(3) A contestant shall not change his ring name nor be announced by any name other than that appearing on his license, except upon approval of the inspector or employee of the authority.

Section 16. A contestant shall not compete against a member of the opposite sex.

Section 17. A contestant shall:

- (1) Be clean and neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors;
- (2) Wear closed toe and heel shoes during the contest;
- (3) Wear a groin protector;
- (4) Wear a kidney protector if available; and
- (5) Wear a mouthpiece.

Section 18. In addition to other requirements in this administrative regulation, the following requirements apply to all bouts between female contestants:

- (1) A contestant shall not wear facial cosmetics during the bout;
- (2) A contestant with long hair shall secure her hair with soft and nonabrasive material; and
- (3) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout.

Section 19. Scales used for any weigh-in shall be approved in advance by the authority.

Section 20. (1) Each promoter shall provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted to ensure that adequate protection against disorderly conduct has been provided.

(2) Any disorderly act, assault, or breach of decorum on the part of a licensee at the premises shall be prohibited.

(3) A promoter shall provide security in the locker room area.

Section 21. (1) All emergency medical personnel and portable medical equipment shall be stationed at ringside during the event.

(2) Resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician shall be on-site at all contests.

(3) If the ambulance or emergency medical technician is required to leave the event boxing shall not be allowed to continue until an ambulance is on-site and the emergency medical technicians are once again at ringside.

Section 22. There shall be at least one (1) physician licensed by the authority at ringside before a bout shall be allowed to begin. The physician shall have at ringside any medical supplies

reasonably anticipated to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in an elimination event.

Section 23. (1) The promoter shall secure insurance for his contestants that provides medical coverage for injuries sustained in the boxing event.

(2) The minimum amount of coverage per contestant shall be \$5,000 health and \$5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the authority no less than two (2) business days before the event.

Section 24. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to elimination events by the authority. The authority shall assign to each event:

- (1) Three (3) judges;
- (2) One (1) timekeeper;
- (3) One (1) physician; and
- (4) One (1) referee if fifty (50) or fewer contestants participate in the elimination event, or two (2) referees if more than fifty (50) contestants participate in the elimination event.

Section 25. If at any time during or between rounds a contestant begins to bleed so that blood may come into contact with the other contestant, the gloves of the other contestant, the ring, the officials, or the audience, the bout shall be terminated. The judges shall score the bout until the time the bout was halted and shall determine the winner. Either the referee or the ringside physician has the power to terminate the bout under this section.

Section 26. (1) The authority may request a contestant to submit to a drug screen for illegal drugs at the contestant's expense. If the drug screen indicates the presence of illegal drugs in the contestant, or if the contestant refuses to submit to the test, the authority shall:

- (a) Suspend or revoke the license of the contestant;
- (b) Impose a fine upon the contestant; or
- (c) Impose both penalties established in paragraphs (a) and (b) of this subsection.

(2) From arrival to the venue to the conclusion of the event, a contestant shall not consume, possess, or participate under the influence of alcohol or any other substance that may affect the contestant's ability to participate.

Section 27. The promoter shall submit written notice to a local hospital with an on-call neurosurgeon that an elimination event is being held. This notice shall include the date, time and location of the event. A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 28. Any event held outdoors while the temperature is or exceeds a heat index of 100 degrees Fahrenheit shall be conducted under a roof.

Section 29. Incorporation by Reference. (1) "Application for an Elimination Event Contestant Permit", 3/12, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

CHAD E. MILLER, Chairman
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend

the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rules for the regulation for elimination events including the requirements for participants as well as rules and policies that promote clean and safe participation for all parties.

(b) The necessity of this administrative regulation: This regulation is necessary so that participants and regulators will abide by rules that result in fair, clean, and safe contest.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the KBWC authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions provided in KRS Chapter 229.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: To aid contestants in complying with its requirements, this amendment restructures the regulation to list requirements in show order, groups like sections together and deletes redundancies. It also adds in the specific job requirements of non-contestants.

(2) If 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 restructures the regulation to list requirements in show order, groups like sections together and deletes redundancies. It also adds in the specific job requirements of non-contestants. No large substantive changes were made to this regulation. It was changed to mirror the structure of 201 KAR 27:011 and 27:016.

(b) The necessity of the amendment to this administrative regulation: Prior to this amendment, the regulation was redundant and difficult to understand. This amendment is necessary to foster the growth and understanding of elimination events throughout the Commonwealth. This amendment will allow all entities to understand their duties requirements concerning elimination events.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 229.180 also authorizes the commission to adopt and promulgate, amend or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions provided in KRS Chapter 229.

(d) How the amendment will assist in the effective administrative of the statutes: The primary goal in the regulation of unarmed combat is safety. This amendment elaborates on statutory requirements to improve the understanding, health and safety of all entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the KBWC, elimination event contestants, non-contestants, and promoters. Elimination events see around 75 contestants in a given year.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No significant action will need to be taken in order to comply with this amendment. This amendment should allow entities to operate with fewer burdens and a better understanding of what is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will benefit these entities by providing a clearer understanding of what is required by regulation and providing a safer environment for fans and participants.

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

(a) Initially: No cost.

(b) On a continuing basis: No Cost.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: This amendment has no cost. No funding is required.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all elimination events are governed under the same rules.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Boxing and Wrestling Commission housed within the Kentucky Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is KRS 229.151, 229.171(1), and 229.180.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 amendment will have no fiscal impact.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will generate no revenue.

(c) How much will it cost to administer this program for the first year? The KWBC does not anticipate any net change in the cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer this program in subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)**

201 KAR 27:020. Tickets.

RELATES TO: KRS 229.031, 229.041, 229.171, 229.180[~~(4)~~]
STATUTORY AUTHORITY: KRS 229.031, 229.041, 229.171,
229.180[~~(4)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. KRS 229.031(1) imposes a tax of the greater of twenty-five (25) dollars or five (5) percent upon the gross receipts collected by a person conducting an event under the jurisdiction of the commission[authority]. KRS 229.041 permits the commission[authority] to inspect a person's books to ensure compliance with the tax.[KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229.] This administrative regulation sets forth rules and procedures governing the sale of tickets to events and shows in the commonwealth.

Section 1. General Requirements. (1) Any person admitted to a show or exhibition shall have a ticket except:

- (a) Commission staff, a commission member, or a member of the medical advisory panel on official business;
- (b) The promoter of the show and the promoter's employees;
- (c) An employee of the venue at which the show is being held if the employee is working the event;
- (d) A ring official who is working the show;
- (e) A member of the press covering the show;
- (f) A contestant who is competing in the show;
- (g) A second, trainer, or manager acting on behalf of a contestant who will be competing in the show; and
- (h) A police officer, firefighter, paramedic, or emergency medical technician while on duty.

(2) A schedule of ticket prices shall be posted conspicuously at the front of the ticket office where the show or exhibition is taking place. A ticket shall not be sold for a price greater than that charged at the place of admission or printed on the ticket.

Section 2. Complimentary Tickets. (1) Absent commission approval, the number of complimentary tickets shall not exceed four (4) percent of the total of paid admission tickets.

(2) The commission may require payment of the tax in KRS 229.031 on the number of complimentary tickets that exceed four (4) percent of the total of paid admission tickets. In determining whether or not the tax shall be paid, the commission shall consider the purpose for which all complimentary tickets were given away, including whether or not the tickets were given to or for a charitable organization, educational purpose, or military or public safety personnel.

Section 3. Changes to Program or Card. (1) Any change or substitution to the card shall be posted in a conspicuous place at the ticket office when the change is made.

(2) Any change to an advertised card shall be:

- (a) Posted at the ticket window and at the entrance to the facility immediately; and
- (b) Announced to the spectators at least (5) minutes before the first bout or match.

(3) The posting and the announcement of the change shall include a statement that a ticket purchaser may receive a refund of the ticket purchase price if the request is made before commencement of the first bout or match.

Section 4. Rain Check. Each purchaser of an admission ticket shall be given their choice of a refund or a voucher that shall be redeemed by the promoter on presentation by the purchaser if the show does not take place.

Section 5. Ticket Audit. (1) Pursuant to KRS 229.041, the commission may request an audit of the tickets used for a show or exhibition to validate the tax paid pursuant to KRS 229.031.

(2) The promoter shall retain the following for a period of one (1) year from the date of a show or exhibition unless otherwise ordered by the commission:

(a) All unsold tickets or a certified record from a vendor that states the number of unsold tickets; and

(b) A receipt, invoice, or other evidence that demonstrates in detail the number of tickets ordered for an event and a description of the tickets.

(3) The promoter shall be responsible for the cost of a ticket audit if the commission determines that the amount of the tax paid pursuant to KRS 229.031 is underpaid by five (5) percent or more.

Section 6. Event Report. (1) Within seventy-two (72) hours of the conclusion of a boxing, kickboxing, mixed martial arts, wrestling, or elimination event show, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the commission the form Event Report. The Event Report shall state:

(a) The event type, location, date, promoter's name, and promoter's license number;

(b) The total number of tickets sold and their price, listed by category;

(c) The total number of complimentary tickets given away;

(d) The name and license number of each contestant and bout assistant;

(e) The name and license number of each ring official; and

(f) Any injuries that occurred to any person at the show or exhibition.

(2) The Event Report shall be accompanied by a check or money order for the amount of the tax required by KRS 229.031(1).

(3) The Event Report shall be signed under penalty of perjury.

Section 7. Incorporation by Reference. (1) "Event Report", 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 911 Leewood Dr., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at <http://kbwa.ky.gov/Pages/Appsforms.aspx>[~~(4)~~]. Any person admitted to any show or exhibition, except for a member or employee of the authority, an employee of the licensed promoter, an official, a representative of the press, or a contestant, shall be required to have a ticket.

(2) Cash may not be accepted for admission by any representative of the promoter except the properly authorized ticket selling agent.

(3) Any official, employee, or member of the authority shall be admitted to any professional show or exhibition upon showing the appropriate identification card.

Section 2. Any order admission tickets purchased, printed, sold, given away or used by a club shall be submitted in writing to the authority, upon specific request of the authority.

Section 3. All orders for admission tickets shall:

(1) Designate a different color for each price class of admission ticket;

(2) Specify that admission tickets be numbered in consecutive order for each price class ticket; and

(3) Include a verified invoice delivered by the printer for each order of tickets printed and delivered to the promoter.

Section 4. (1) A complimentary admission ticket shall be readily distinguishable from a paid admission ticket.

(2) The authority may limit the number, or otherwise restrict the use of complimentary admission tickets and may require the payment of taxes on tickets.

(3) The authority shall be entitled, upon request, to receive twelve (12) complimentary admission tickets, clearly marked "Not For Sale", for admission to any professional boxing, kickboxing, mixed martial arts, elimination event or wrestling show or exhibition

~~conducted within this Commonwealth.~~

~~Section 5. A schedule of ticket prices shall be posted conspicuously at the front of the ticket office and a ticket shall not be sold for any price other than the price printed on the face of the ticket.~~

~~Section 6. The authority may request, pursuant to KRS 229.041, an audit of the tickets used for a show in order to validate the fees paid pursuant to KRS 229.031.~~

~~Section 7. Each purchaser of an admission ticket shall be given a stub which shall be redeemed by the promoter on presentation by the purchaser if the show does not take place as published and announced].~~

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets requirements for tickets and ticket reporting.

(b) The necessity of this administrative regulation: This regulation is necessary to provide standards for ticket sales and to ensure ticket sales are properly reported for taxing purposes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the Kentucky Boxing and Wrestling Commission ("KBWC") authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend, or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions as provided in KRS Chapter 229. KRS 229.031(1) imposes a tax of the greater of twenty-five (25) dollars or five (5) percent upon the gross receipts collected by a person conducting an event under the jurisdiction of the commission. KRS 229.041 permits the commission to inspect a person's books to ensure compliance with the tax.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation establishes a process to ensure taxes are paid in accordance with statute.

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

(a) How the amendment will change this existing administrative

regulation: This amendment clarifies reporting requirements and ticket selling practices. The amendment also adds certain requirements to the incorporated Event Report form.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to protect consumers and ensure promoters are paying taxes properly.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the KBWC authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend, or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions as provided in KRS Chapter 229. KRS 229.031(1) imposes a tax of the greater of twenty-five (25) dollars or five (5) percent upon the gross receipts collected by a person conducting an event under the jurisdiction of the commission. KRS 229.041 permits the commission to inspect a person's books to ensure compliance with the tax.

(d) How the amendment will assist in the effective administrative of the statutes: This amendment clarifies the ticket reporting and selling process to ensure taxes are paid in accordance with statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the Boxing and Wrestling Commission, promoters and consumers. The Commission grants around 1,250 licenses in a given year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Promoters will be required to report additional information to the commission on the Event Report, including any injuries that occurred at the event. Otherwise, the requirements are substantively the same.

(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 accrue to any entity to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Promoters will benefit from a better understanding of ticket reporting. The commission will have to spend less time and resources concerning ticket reporting.

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

(a) Initially: No additional costs will occur in compliance with this amendment.

(b) On a continuing basis: No additional costs will occur in compliance with this amendment.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: Funding for the implementation and enforcement of this regulation will come from restricted funds obtained through the licensing and fees established in 201 KAR 27:008, fines assessed in 201 KAR 27:021, 201 KAR 27:105, and the tax on shows required by KRS 229.031.

(7) Provide an assessment of whether an 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 costs will accrue as a result of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes a tax on tickets sold, provided by statute. It also establishes a fee for a ticket audit to be paid by the promoter for the cost of an audit, if one is required.

(9) TIERING: Is tiering applied? Tiering is not applied due to the fact the taxes on all ticket sales are the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is KRS 229.031, 229.041, 229.171, and 229.180.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 regulation will generate about \$50,000 in revenue from taxes sold on tickets, which is approximately the same amount as is currently generated.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will generate around \$50,000 in the first year, which is approximately the same amount as is currently 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? This regulation will generate about \$50,000 in revenue from taxes sold on tickets, which is approximately the same amount as is currently generated. The commission is, however, taking proactive steps in an attempt to increase the popularity of combat sports, which will lead to additional revenue.

(c) How much will it cost to administer this program for the first year? The KWBC does not anticipate any net change in the cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer this program in subsequent years.

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

Revenues (+/-): 0
Expenditures (+/-): 0
Other Explanation: None.

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)**

201 KAR 27:040. Managers.

RELATES TO: KRS 229.021, 229.081[(3)], 229.091, 229.171[(1)], 229.190, 229.200, 229.994]

STATUTORY AUTHORITY: KRS 229.081[(3)], 229.091, 229.171, 229.180[(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth[KRS 229.180(1) grants the authority the power to promulgate, amend, or abrogate administrative regulations necessary to perform its regulatory functions. KRS 229.081(3) provides for the licensing of managers at professional matches and bouts. KRS 229.091(1) provides that every licensee shall be subject to the administrative regulations the authority promulgates]. This administrative regulation sets forth standards governing the conduct of managers.

Section 1. Duties and Responsibilities. (1) A manager shall only do business with a promoter, ring official, or contestant who is licensed and in good standing.

(2) A manager shall not act or attempt to act for a contestant unless authorized by the contestant.

(3) A contract between a manager and a contestant shall be filed with the commission as evidence of the manager's authority to

act for the contestant.

(4) A manager shall keep accurate records of the receipts and expenses of the contestants under their management and control. These records shall be available to the contestants and to the commission[(1) A manager shall be licensed by the authority and shall be governed by KRS Chapter 229 and 201 KAR Chapter 27.

(2) A manager shall report to and be under the general supervision of the inspector or employee of the authority in attendance at the show.

(3) A manager shall be subject to any order given by the inspector or employee of the authority.

(4) An applicant shall file a completed application and pay the license fee established in 201 KAR 27:008, Sections 2 and 3.

~~Section 2. A manager shall do business only with promoters, officials, and contestants who are licensed by the authority and in good standing. A manager shall act as a manager only in shows that have been approved by the authority.~~

~~Section 3. A manager shall not act or attempt to act for a contestant unless legally authorized to do so by the contestant.~~

~~Section 4. Copies of any written contract between a manager and a contestant may be filed with the inspector or employee of the authority as evidence of the manager's authority to act on behalf of the contestant, and shall be filed if requested by the inspector or employee of the authority.~~

~~Section 5. If the inspector has reason to believe that a manager has committed a violation of KRS Chapter 229 201 KAR Chapter 27, the inspector may take one (1) or more of the following actions:~~

- ~~(1) Issuance of a cease and desist order to the manager;~~
- ~~(2) Issuance of a notice of violation to the manager; or~~
- ~~(3) Ejection of the manager from a show.~~

~~Section 6. Upon the finding of a violation of KRS Chapter 229 or 201 KAR Chapter 27 by a manager, the authority may impose one (1) or more of the following penalties:~~

- ~~(1) Suspension of the license of the manager pursuant to KRS 229.200;~~
- ~~(2) Revocation of the license of the manager pursuant to KRS 229.200;~~
- ~~(3) Reprimand of the manager pursuant to KRS 229.200; or~~
- ~~(4) Assessment of a fine pursuant to KRS 229.994(5)].~~

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leewood Drive, Frankfort, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment deletes redundancies while setting forth job requirements of managers.

(b) The necessity of this administrative regulation: This regulation is necessary to clarify and consolidate requirements for managers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the KBWC authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions as provided in KRS Chapter 229.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment deletes redundancies while setting forth job requirements of managers.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes redundancies. The regulations adds a provision to require managers to keep records that must be made available to the commission and the manager's contestants.

(b) The necessity of the amendment to this administrative regulation: Deletion of redundancies makes the regulation more understandable, and the record requirement adds an additional level of financial protection for contestants.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the KBWC authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions as provided in KRS Chapter 229.

(d) How the amendment will assist in the effective administration of the statutes: This amendment deletes redundancies while setting forth job requirements of managers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the KBWC, managers, and contestants represented by managers. The KBWC usually licenses less than ten managers annually.

(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 adds one additional duty to managers by requiring that they keep accurate records of the receipts and expenditures of the contestants they manage. Managers should currently be completing this task. The remaining duties existed in the previous regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Managers will be better able to comply with this regulation because this amendment deletes redundancies and clearly sets forth managers' duties. Contestants will benefit because managers are required to keep accurate books and records of their receipts and expenses.

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

(a) Initially: No Cost.

(b) On a continuing basis: No Cost.

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

There is no additional net cost associated with the implementation and enforcement of this amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied due to the fact all managers must comply with the same standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is KRS 229.081 and 229.180.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 KWBC anticipates no net change in the cost to administer this amendment in the first full year it is in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will generate no revenue.

(c) How much will it cost to administer this program for the first year? The KWBC anticipates no net change in the cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The KWBC anticipate no net change in the cost to administer this program in subsequent years.

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

Revenues (+/-): 0
Expenditures (+/-): 0
Other Explanation: None.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:030. Types of appraisers required in federally related transactions; certification and licensure.

RELATES TO: KRS 324A.010, 324A.030, 324A.035(1), (3), 324A.040(2), 324A.052

STATUTORY AUTHORITY: KRS 324A.035(1), (3), 12 U.S.C. 3331 - 3351

NECESSITY, FUNCTION, AND CONFORMITY: 12 U.S.C. 3331 through 3351 requires the board to promulgate administrative regulations for certification and licensure of appraisers of real property in federally related transactions. This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure.

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:

(1) Certified general real property appraiser;

- (2) Certified residential real property appraiser;
- (3) Licensed real property appraiser; or
- (4) Associate real property appraiser.

Section 2. Scope of Practice. (1) Certified general real property appraiser. A certified general real property appraiser may perform appraisals of all types of real property.

(2) Certified residential real property appraiser. A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units.

(3) Licensed real property appraiser. A licensed real property appraiser may perform appraisals of:

(a) Noncomplex, one (1) to four (4) residential units with a transaction value less than \$1,000,000; and

(b) Complex, one (1) to four (4) residential units with a transaction value less than \$250,000.

(4)(a) Associate. An associate real property appraiser may perform an appraisal of property that the supervising appraiser of the associate may appraise and shall be subject to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

(b) A separate appraisal log shall be maintained for each supervising appraiser.

(c) The associate shall record in the log for each appraisal the following:

1. Type of property;
2. Client name and address;
3. Address of appraised property;
4. Description of work performed by the associate;
5. Scope of the review;
6. Scope of the supervision by the supervising appraiser;
7. Number of actual hours worked by the associate on the assignment; and
8. Signature and state certification number of the supervising appraiser.

(d) The associate shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(e) The supervising appraiser shall:

1. Have been a state certified real property appraiser ~~by the board~~ for a period of three (3) years;
2. Be certified by the board prior to applying to become a supervising appraiser;
3. Be in good standing ~~with the board~~ and shall not have received a suspension, a revocation, or other sanction that limited or prohibited that licensee's practice of real property appraising within the three (3) year period immediately prior to applying to become a supervising ~~supervision~~ appraiser; and
4. ~~3.~~ Be responsible for the training and supervision of the associate.

(f) Only a certified general real property appraiser who satisfies the requirements of a supervising appraiser in paragraph (e) of this subsection may supervise a person acquiring experience toward a Certified General Real Property Appraiser certificate.

(g) Any certified general real property appraiser or a certified residential real property appraiser who satisfies the requirements of a supervising appraiser in paragraph (e) of this subsection may supervise a person acquiring experience toward a Certified Residential Real Property Appraiser certificate.

(h) The supervising appraiser shall:

1. Accept responsibility for an associate's appraisal report by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040;
2. Review reports by the associate;
3. Personally inspect each appraised property and the comparable sales with the associate on the associate's first fifty (50) real property appraisal assignments, to ensure that the associate is competent and is acting in accordance with the competency provision of the Uniform Standards of Professional

Appraisal Practice, incorporated by reference in 201 KAR 30:040, for the property type;

4. Allow an associate who has completed the fifty (50) appraisal assignments required by subparagraph 3. of this paragraph to inspect properties located within fifty (50) miles of the supervisor's office without being accompanied by the supervisor, if the supervisor has determined pursuant to this administrative regulation that the associate is competent to perform an appraisal;

5. For the twelve (12) months following the date of issuance of an associate license, accompany the associate and inspect each appraised property and the comparable sales on each appraisal assignment located more than fifty (50) miles from the supervisor's office;

6. Be limited to a maximum of three (3) real property associates at a time; and

7. Notify the board immediately if the supervision of a real property associate has terminated; and

8. Not be employed by an associate or by a company, firm, or partnership in which the associate has a controlling interest.

(i) A person otherwise qualified for supervising appraiser who has been disciplined by the board under KRS 324A.050 shall be subject to one (1) or more of the following, according to the severity of the prior violation:

1. Prohibited from supervising associates;
2. Limited to the number of associates to supervise; or
3. Be required to take additional courses approved by the board before being permitted to supervise an associate.

(j) An associate shall submit to the board two (2) complete summary appraisal reports.

1. The first report shall be submitted to the board six (6) months following the date of issuance of the associate license. The second report shall be submitted to the board twelve (12) months following the date of issuance of the associate license.

2. If necessary to determine the competency of the associate, the board shall request additional reports from the associate.

(5)(a) A first time supervisor and a new associate shall attend the board-approved course in supervision practices prior to beginning supervision or training.

(b) To be eligible to provide supervision, a supervisor shall attend the board-approved course in supervision practices every three (3) years.

(c) To continue logging credible experience, an associate shall attend the board-approved course in supervision practices every three (3) years.

Section 3. General Requirements for Certification or Licensure. Except as provided by Section 4 of this administrative regulation, certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:

(1) Has met the examination, education, experience, and fee requirements established by 201 KAR 30:050, 30:060, and 30:190; and

(2) Applies to the board on the notarized Appraiser License/Certification Application.

Section 4. Armed Forces Exemption. An applicant who was a member of a Reserve component of the US Armed Forces, who was pursuing an appraiser licensure or certification prior to December 1, 2011, and who was called to active duty between December 1, 2011 and December 31, 2014, may satisfy the examination, education, and experience requirements under the 2008 Real Property Appraiser Qualification Criteria instead of the requirements under Section 3(1) of this administrative regulation for a time period equal to the applicant's time of active duty, plus twelve (12) months.

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

- (a) "Appraiser License/Certification Application", KREAB Form APP100, 1/09; and
 - (b) "Real Property Appraiser Qualification Criteria", 1/08.
- (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.

LARRY DISNEY, Executive Director

APPROVED BY AGENCY: July 12, 2016

FILED WITH LRC: July 12, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2016, 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 through August 31, 2016. 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, email address Larry.Disney@ky.gov.

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 standards and requirements of certification and licensure for appraisers.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with 12 U.S.C. 3331 through 3351 and KRS 324A.035(1) and (3), requiring the board to promulgate administrative regulations for certification and licensure of appraisers of real property.

(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 standards and requirements of licensure and practice certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in enforcing the standard of practice of the profession.

(2) If 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 allows real property appraisers, who are certified real estate appraisers in Kentucky, apply to be supervising appraisers in Kentucky if they have been a certified real property appraiser in any state or jurisdiction for three (3) years, rather than having to have been a Kentucky certified real property appraiser for three (3) years.

(b) The necessity of the amendment to this administrative regulation: This amendment will reflect a change in the Real Property Appraiser Qualification Criteria by the Appraiser Qualification Board (AQB) that is effective July 1, 2016. The AQB establishes the qualification criteria for state licensing, certification, and recertification of real property appraisers. According to the Financial Institutions Reform, Recovery, and Enforcement Act, all state licensed and certified appraisers must meet the minimum education, experience, and examination requirements put forth by the AQB.

(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 standards and requirements of practice.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation allows the board to regulate appraisers who supervise a person acquiring experience toward a Certified General Real Property Appraiser certificate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately one thousand eight hundred persons certified by the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A real property appraiser shall have been certified by a state, or other jurisdiction, certifying board for three (3) years and presently be certified by the Kentucky Real Estate Appraisers Board prior to applying to become a supervising appraiser. This amendment lessens the burden for potential supervising appraisers as they will now only be required to have been certified for three (3) years by any state or jurisdiction, rather than specifically by the Kentucky Real Estate Appraisers 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 additional costs for complying with the amendment other than cost of the board-approved supervision practices course required every three (3) years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensees will be up to date in the profession and receive additional instruction in appraisal supervision and training.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 and its licensed or certified Associates.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A.035(1) and (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
Kentucky Department of Fish and Wildlife Resources
(Amendment)**

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 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 decking exceeding twenty-two (22) feet, except for:

- 1. Guist Creek Lake, where a pontoon boat with a float or decking 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 decking up to thirty (30) feet may be operated:

- a. Cedar Creek Lake;
- b. Lake Beshear; or
- c. Lake Malone.

(2) List of lakes:

- (a) ~~Ballard WMA Lakes~~[Arrowhead Slough], Ballard County;
- (b) Beaver Creek Lake, Anderson County;
- (c) ~~Beaver Dam Slough~~, Ballard County;
- ~~(d)~~ Bert Combs Lake, Clay County;
- ~~(d)~~ Boatwright WMA lakes~~(e)~~ Big Turner Lake], Ballard County;

- ~~(e)~~[(f)] Boltz Lake, Grant County;
- ~~(f)~~[(g)] Briggs Lake, Logan County;
- ~~(g)~~[(h)] Bullock Pen Lake, Grant County;
- ~~(h)~~[(i)] Burnt Pond, Ballard County;
- ~~(i)~~ Burnt Slough, Ballard County;
- ~~(k)~~ Butler Lake, Ballard County;
- ~~(h)~~ Carnico Lake, Nicholas County;
- ~~(i)~~[(m)] Carpenter Lake, Daviess County;
- ~~(j)~~[(n)] Carter Caves Lake, Carter County;
- ~~(k)~~[(o)] Cedar Creek Lake, Lincoln County;
- ~~(l)~~[(p)] Corinth Lake, Grant County;
- ~~(m)~~[(q)] Cross Slough, Ballard County;

- ~~(r)~~ Cypress Slough, Ballard County;
- ~~(s)~~ Deep Slough, Ballard County;
- ~~(t)~~ Dennie Gooch Lake, Pulaski County;
- ~~(n)~~[(u)] Elmer Davis Lake, Owen County;
- ~~(o)~~[(v)] Fishpond Lake, Letcher County;
- ~~(p)~~[(w)] Goose Lake, Muhlenberg County;
- ~~(q)~~[(x)] Greenbo Lake, Greenup County;
- ~~(r)~~[(y)] Guist Creek Lake, Shelby County;
- ~~(s)~~[(z)] Happy Hollow Lake, Ballard County;
- ~~(aa)~~ Island Lake, Ohio County;
- ~~(t)~~[(bb)] Kentucky River WMA, Boone Tract Lakes, Henry County;

- ~~(u)~~[(cc)] Kincaid Lake, Pendleton County;
- ~~(v)~~[(dd)] Kingdom Come Lake, Harlan County;
- ~~(w)~~[(ee)] Kingfisher Lakes, Daviess County;
- ~~(x)~~[(ff)] Lake Beshear, Caldwell County;
- ~~(y)~~[(gg)] Lake Chumley, Lincoln County;
- ~~(z)~~[(hh)] Lake Malone, Muhlenberg County;
- ~~(aa)~~[(ii)] Lake Mauzy, Union County;
- ~~(bb)~~[(jj)] Lake Reba, Madison County;
- ~~(cc)~~[(kk)] Lake Washburn, Ohio County;
- ~~(dd)~~[(ll)] Lebanon City Lake, Marion County;
- ~~(ee)~~[(mm)] Lincoln Homestead Lake, Washington County;
- ~~(ff)~~[(nn)] Little Green Sea, Ballard County;
- ~~(oo)~~ Little Turner Lake, Ballard County;
- ~~(pp)~~ Long Pond, Ballard County;
- ~~(qq)~~ Marion County Lake, Marion County;
- ~~(gg)~~[(rr)] Martin County Lake, Martin County;
- ~~(hh)~~[(ss)] McNeely Lake, Jefferson County;
- ~~(ii)~~[(tt)] Metcalfe County Lake, Metcalfe County;
- ~~(jj)~~[(uu)] Mitchell Lake, Ballard County;
- ~~(www)~~ Pan Bowl Lake, Breathitt County;
- ~~(kk)~~[(xx)] Pikeville City Lake, Pike County;
- ~~(ll)~~[(yy)] Sandy Slough, Ballard County;
- ~~(zz)~~ Shanty Hollow Lake, Warren County;
- ~~(mm)~~[(aaa)] Shelby Lake, Ballard County;
- ~~(bbb)~~ South Lake, Ohio County;
- ~~(nn)~~[(ccc)] Spurlington Lake, Taylor County; or
- ~~(oo)~~[(ddd)] Swan Lake, Ballard County;
- ~~(eee)~~ Twin Pockets Slough, Ballard County; or
- ~~(fff)~~ Wilgreen Lake, Madison County.

- (3) Length restrictions in this section shall not apply to a canoe.
- (4) A person shall not operate a personal watercraft on Cedar Creek Lake pursuant to KRS 235.010(4).

Section 3. (1) A person shall not operate a boat:
(a) Motor without an underwater exhaust; or
(b) Faster than idle speed while passing a boat with an occupant actively engaged in fishing, except in a designated skiing zone.

(2) The requirements established in subsection (1) of this section shall apply on:

- (a) Beaver Lake, Anderson County;
- (b) Boltz Lake, Grant County;
- (c) Bullock Pen Lake, Grant County;
- (d) Carnico Lake, Nicholas County;
- (e) Cedar Creek Lake; Lincoln County;
- (f) Corinth Lake, Grant County;
- (g) Elmer Davis Lake, Owen County;
- (h) Greenbo Lake, Owen County;
- (i) Guist Creek Lake, Shelby County;
- (j) Kincaid Lake, Pendleton County;
- (k) Lake Beshear, Caldwell County;
- (l) Lake Malone, Muhlenberg County;
- (m) Pan Bowl Lake, Breathitt County;
- (n) Shanty Hollow Lake, Warren County;
- (o) Swan Lake, Ballard County; and
- (p) Wilgreen Lake, Madison County.

Section 4. A person shall not operate an electric or an internal combustion boat motor on:

- (1) Dennie Gooch Lake, Pulaski County;
- (2) Kingdom Come Lake, Harlan County; or

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(3) 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:

- (1) ~~Arrowhead Slough, Ballard County;~~
- (2) ~~Beaver Dam Slough, Ballard County;~~
- (3) ~~Bert Combs Lake, Clay County;~~
- (2) ~~(4) Big Turner Lake, Ballard County;~~
- (5) ~~Briggs Lake, Logan County;~~
- (3) ~~(6) Burnt Pond, Ballard County;~~
- (7) ~~Burnt Slough, Ballard County;~~
- (8) ~~Butler Lake, Ballard County;~~
- (9) ~~Carpenter Lake, Daviess County;~~
- (4) ~~(10) Carter Caves Lake, Carter County;~~
- (5) ~~(11) Cross Slough, Ballard County;~~
- (12) ~~Cypress Slough, Ballard County;~~
- (13) ~~Deep Slough, Ballard County;~~
- (14) ~~Fishpond Lake, Letcher County;~~
- (6) ~~(15) Happy Hollow Lake, Ballard County;~~
- (16) ~~Kentucky River WMA, Boone Tract Lakes, Henry County;~~
- (7) ~~(17) Kingfisher Lake, Daviess County;~~
- (8) ~~(18) Lake Mauzy, Union County;~~
- (9) ~~(19) Lake Reba, Madison County;~~
- (10) ~~(20) Lake Washburn, Ohio County;~~
- (11) ~~(21) Lebanon City Lake, Marion County;~~
- (12) ~~(22) Lincoln Homestead Lake, Washington County;~~
- (13) ~~(23) Little Green Sea, Ballard County;~~
- (24) ~~Little Turner Lake, Ballard County;~~
- (25) ~~Long Pond, Ballard County;~~
- (26) ~~Marion County Lake, Marion County;~~
- (14) ~~(27) Martin County Lake, Martin County;~~
- (15) ~~(28) McNeely Lake, Jefferson County;~~
- (16) ~~(29) Metcalfe County Lake, Metcalfe County;~~
- (17) ~~(30) Mill Creek Lake, Wolfe County;~~
- (18) ~~(31) Mitchell Lake, Ballard County;~~
- (32) ~~Pikeville City Lake, Pike County; or~~
- (19) ~~(33) Sandy Slough, Ballard County;~~
- (34) ~~Shelby Lake, Ballard County;~~
- (35) ~~Spurlington Lake, Taylor County; or~~
- (36) ~~Twin Pockets Slough, Ballard County.~~

Section 6. A person shall not operate a motorboat faster than idle speed on:

- (1) ~~Ballard WMA lakes, Ballard County;~~
- (2) ~~Beulah Lake, Jackson County;~~
- (3) ~~Boatwright WMA lakes, Ballard County;~~
- (4) ~~Carnico Lake, Nicholas County;~~
- (5) ~~(2) Goose Lake, Muhlenberg County;~~
- (6) ~~(3) Greenbo Lake, Greenup County;~~
- (7) ~~(4) Island Lake, Ohio County;~~
- (8) ~~(5) South Lake, Ohio County;~~
- (9) ~~(6) Pan Bowl Lake, Breathitt County; or~~
- (10) ~~(7) Wilgreen Lake, Madison County.~~

Section 7. A person operating a boat motor greater than ten (10) horsepower shall not exceed idle speed on:

- (1) ~~Beaver Lake, Anderson County;~~
- (2) ~~Boltz Lake, Grant County;~~
- (3) ~~Bullock Pen Lake, Grant County;~~
- (4) ~~Corinth Lake, Grant County;~~
- (5) ~~Elmer Davis Lake, Owen County;~~
- (6) ~~Herb Smith-Cranks Creek Lake, Harlan County;~~
- (7) ~~Kincaid Lake, Pendleton County;~~
- (8) ~~Martins Fork Lake, Harlan County; or~~
- (9) ~~Shanty Hollow Lake, Warren County; or~~
- (10) ~~Swan Lake, Ballard County.~~

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: July 5, 2016
FILED WITH LRC: July 13, 2016 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 23, 2016 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 through August 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation limits the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the safety of individuals boating on these small lakes and to minimize interference with other users.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it 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 the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps fulfill the purpose of KRS 150.620 and 235.280 by providing fair, reasonable, equitable, and safe use of small lakes in the state.

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

(a) How the amendment will change this existing administrative regulation: This amendment will require all boats to operate at idle speed only on Beulah Lake in Jackson County and all Ballard and Boatwright WMA lakes in Ballard County.

(b) The necessity of the amendment to this administrative regulation: The Jackson County Water Association recently passed a local ordinance requiring idle speed operation of motor boats on their water supply lake (Beulah Lake). The Department manages the fisheries on this lake through a management agreement with the water association and therefore requires an idle speed regulation on Beulah Lake in order for conservation officers to enforce the local ordinance. All lakes on Ballard and Boatwright WMA's, with the exception of Swan Lake, are currently regulated under a trolling motor only restriction. Many of these lakes are long and narrow and tough to access exclusively with a trolling motor. Area managers feel the lakes could be better utilized by anglers and hunters by allowing access with outboard motors operated at idle speed.

(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 access Beulah Lake and all lakes on Ballard and Boatwright WMA's from a boat will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: People accessing Beulah Lake and all Ballard and Boatwright WMA lakes will only be able to operate a boat motor at idle speed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to individuals as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All individuals accessing Beulah Lake and all Ballard and Boatwright WMA lakes from a boat will be able to do so safely.

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

(a) Initially: There will be no cost initially to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees will be directly or indirectly increased.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals will be treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters it 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 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? Revenue will not be generated by this administrative regulation for the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program in subsequent years.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(6) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(7) "Processed fish" means a fish that has been gutted and head removed.

(8) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(9) "Single hook" means a hook with no more than one (1) point.

(10) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(11) "Slot limit" means a size range of a fish species that shall be released by an angler.

(12) "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(13) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Limits and Requirements. (1) A person taking fish from public or private waters using traditional fishing methods shall observe the daily creel limits and size limits established in paragraphs (a) through (j) of this subsection, except as established in Section 3 of this administrative regulation or pursuant to 301 KAR 1:180:

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(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

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- (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 rainbow trout.
 4. Twelve (12) inch size limit on brown trout.
 5. Brook trout, catch and release only; and
- (j) 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 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 items established in paragraphs (a) through (h) of this subsection to the artificial bait:
- (a) An insect;
 - (b) Minnow;
 - (c) Fish egg;
 - (d) A worm;
 - (e) Corn;
 - (f) Cheese;
 - (g) Cut bait; or
 - (h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.
- (13) The fishing season shall be open year round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (78)[(77)] of this section.[:]

- (1) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;
- (2) Barkley Lake.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Crappie size limit, ten (10) inches; daily creel limit, twenty (20).
- (c) Sauger size limit, fourteen (14) inches;
- (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 Road 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) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait;
- (6) Beshears 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

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(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;

(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.

(a)1. Largemouth bass size limit, fifteen (15) inches.

2. Smallmouth bass size limit, eighteen (18) inches.

3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).

4. Crappie size limit, ten (10) inches.

(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.

(20) Cumberland River downstream from Barkley Lake Dam. Sauger 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 subsections ~~subsections~~ (37) and (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.

(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) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.

(e) Largemouth bass size limit, fifteen (15) inches.

(f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15);

(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.

(c) Muskellunge size limit, thirty-six (36) inches;

(24) Dix River for two (2) miles downstream from Herrington

Lake Dam. A person shall only fish with artificial bait;

(25) Doe Run Lake, Kenton County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait;

(26) Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;

(27) 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) 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;

(29) Fishtrap Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches.

(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;

(30) 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) Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish, daily limit, five (5); size limit, fifteen (15) inches;

(32) 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) Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches;

(34) Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad as bait.

(b) Bluegill and sunfish daily and possession limit, fifteen (15) fish;

(35) Green River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Muskellunge size limit, thirty-six (36) inches;

(36) Guist Creek Lake, Shelby County. Channel catfish size limit twelve (12) inches;

(37) Hatchery Creek, upper section as established by signs, Russell County. Rainbow trout, brown trout, and brook trout, no size limit; daily creel limit, five (5), singly or in combination;

(38) Hatchery Creek, lower section as established by signs, 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 (21) 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;

(39) ~~(38)~~ Jerrico Lake, Henry County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait;

~~(40) (39)~~ Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches; daily limit, twenty (20).

(c) Sauger size limit, fourteen (14) inches;

~~(41) (40)~~ Kentucky River WMA, Boone Tract, Benjy Kinman Lake.

(a) Largemouth bass. Catch and release only.

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- (b) Crappie daily creel limit, fifteen (15).
- (c) Sunfish daily creel limit, fifteen (15).
- (d) Catfish daily creel limit, four (4);
- ~~(42)~~~~(44)~~ 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);
- ~~(43)~~~~(42)~~ Kincaid Lake, Pendleton County. Channel catfish size limit, twelve (12) inches;
- ~~(44)~~~~(43)~~ Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
- (45) Lake Chumley, and the department-owned property surrounding the lake, Boyle and Lincoln counties. Closed to public access from one-half hour (1/2) after sunset through one-half (1/2) hour before sunrise;
- ~~(46)~~~~(44)~~ Lake Malone, Muhlenberg and Logan counties~~[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;
- ~~(47)~~~~(45)~~ Lake Mingo, Jessamine County. A person shall not possess shad or use shad as bait;
- ~~(48)~~~~(46)~~ Lake Pollywog, Grant County. A person shall not possess shad or use shad as bait;
- ~~(49)~~~~(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;
- ~~(50)~~~~(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;
- ~~(51)~~~~(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);
- ~~(52)~~~~(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;
- ~~(53)~~~~(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);
- ~~(54)~~~~(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;
- ~~(55)~~~~(53)~~ Marion County Lake.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) A person shall not possess shad or use shad as bait;
- ~~(56)~~~~(54)~~ McNeely Lake, Jefferson County.
- (a) Channel and blue catfish size limit, twelve (12) inches.
- (b) A person shall not possess shad or use shad as bait;
- ~~(57)~~~~(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;
- ~~(58)~~~~(56)~~ New Haven Optimist Lake, Nelson County.
- (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).
- (b) Channel catfish daily creel limit, four (4).
- (c) A person shall not possess shad or use shad as bait;
- ~~(59)~~~~(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;
- ~~(60)~~~~(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;
- ~~(61)~~~~(59)~~ Otter Creek, Meade County.
- (a) Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches.
- (b) Daily limit shall not include more than one (1) smallmouth or largemouth bass over sixteen (16) inches;
- ~~(62)~~~~(60)~~ Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only;
- ~~(63)~~~~(61)~~ Paintsville Lake.
- (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
- (b) Smallmouth bass size limit, eighteen (18) inches;
- ~~(64)~~~~(62)~~ Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;
- ~~(65)~~~~(63)~~ Pennyrile Lake, Christian County. ~~Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;~~
- ~~(64)~~ Pikeville City Lake, Pike County. A person shall release largemouth bass;
- ~~(66)~~~~(65)~~ Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall only fish with an artificial bait with a single hook;
- ~~(67)~~~~(66)~~ Reformatory Lake, Oldham County. Channel and blue catfish size limit, twelve (12) inches;
- ~~(68)~~~~(67)~~ Rough River Lake.
- (a) Crappie size limit, nine (9) inches.
- (b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches;
- ~~(69)~~~~(68)~~ Shanty Hollow Lake, Warren County.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) Channel catfish size limit, twelve (12) inches.
- (c) A person shall not possess shad or use shad as bait;
- ~~(70)~~~~(69)~~ Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;
- ~~(71)~~~~(70)~~ Sportsman's Lakes, Franklin County. A person shall not possess or use shad as bait;
- ~~(72)~~~~(71)~~ Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;
- ~~(73)~~~~(72)~~ Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;
- ~~(74)~~~~(73)~~ Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Blue and channel catfish:
 1. Aggregate daily creel limit of fifteen (15); and
 2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.
- (c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15);

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~~(75)~~~~(74)~~ Tennessee River downstream from Kentucky Lake Dam. Sauger size limit, fourteen (14) inches;

~~(76)~~~~(75)~~ Trammel Creek, Allen County.

~~(a)~~ Brown trout size limit, sixteen (16) inches; daily creel limit, one (1).

~~(b)~~ Rainbow trout daily limit, five (5);

~~(77)~~~~(76)~~ Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches; and

~~(78)~~~~(77)~~ Yatesville Lake: Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

Section 4. Creel and Size Limits for Waters Containing Rockcastle Strain Walleye. (1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from Lock and Dam 1, including Barren River Lake;

(b) Cumberland River and tributaries above Cumberland Falls;

(c) Kentucky River and tributaries upstream from Lock and Dam 14;

(d) Middle Fork Kentucky River and tributaries;

(e) North Fork Kentucky River below Carr Creek Dam and tributaries;

(f) South Fork Kentucky River and tributaries;

(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;

(h) Martins Fork Lake; and

(i) Wood Creek Lake.

(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily creel limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established in subsection (3) of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all trout.

(3) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;

(j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(k) 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 Camp Creek in Wolf 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 in subsection (2) of this section:

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);

(b) Catfish daily creel limit, four (4);

(c) Sunfish or bream daily creel limit, fifteen (15); and

(d) Rainbow trout daily creel limit, five (5).

(2) Special lakes and ponds:

(a) Alexandria Community Park Lake, Campbell County;

(b) Anderson County Community Park Lake, Anderson County;

(c) Bloomfield Park Lake, Nelson County;

(d) Bob Noble Park Lake, Nelson County;

(e) Brickyard Pond, Knox County;

(f) Camp Ernst, Boone County;

(g) Carlson Lake, Meade County in Fort Knox;

(h) Cherokee Park Lake, Jefferson County;

(i) Dickerson Lake, Meade County in Fort Knox;

(j) Easy Walker Park Pond, Montgomery County;

(k) Fisherman's Park lakes, Jefferson County;

~~(l) Kingdom Come State Park Lake, Harlan County;~~

~~(m) Jacobsen Park Lake, Fayette County;~~

~~(n) James D. Beville Park Lake, Grayson County;~~

~~(o) Kentucky Horse Park lakes, Fayette County;~~

~~(p) Kingdom Come State Park Lake, Harlan County;~~

~~(q) Lake Mingo, Jessamine County;~~

~~(r) Lake Pollywog, Grant County;~~

~~(s) Lower Sportsman's Lake, Franklin County;~~

~~(t) Lusby Lake, Scott County;~~

~~(u) Madisonville City Park lakes, Hopkins County;~~

~~(v) Martin County Lake, Martin County;~~

~~(w) Maysville-Mason County Recreation Park Lake, Mason County;~~

~~(x) Middleton Mills Long Pond, Kenton County;~~

~~(y) Middleton Mills Shelterhouse Pond, Kenton County;~~

~~(z) Mike Miller Park Lake, Marshall County;~~

~~(aa) Miles Park lakes, Jefferson County;~~

~~(ab) Millennium Park Pond, Boyle County;~~

~~(ac) Panther Creek Park Lake, Daviess County;~~

~~(ad) Prisoners Lake, Kenton County;~~

~~(ae) Scott County Park Lake, Scott County;~~

~~(af) Southgate Lake, Campbell County;~~

~~(ag) Three Springs Lake, Warren County;~~

~~(ah) Tom Wallace Park Lake, Jefferson County;~~

~~(ai) Upper Sportsman's Lake, Franklin County;~~

~~(aj) Watterson Park Lake, Jefferson County;~~

~~(ak) Waverly Park Lake, Jefferson County;~~

~~(al) Waymond Morris Park Lake, Daviess County;~~

~~(am) Whitehall Park Lake, Madison County; and~~

~~(an) Yellow Creek Park Lake, Daviess County.~~

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: July 6, 2016

FILED WITH LRC: July 13, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2016 at 11 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,

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you may submit written comments on the proposed administrative regulation through August 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the sport fish populations of Kentucky.

(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 creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to establish creel and size limits for fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by limiting the number and size of fish that may be taken from Kentucky's waters.

(2) If 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 remove the 30-fish daily creel limit on yellow bass statewide, remove the largemouth bass slot limit size regulation on Pennyryle Lake, decrease the rainbow trout daily creel limit on Trammel Creek from 8 fish to 5 fish, simplify the trout regulations on the upper section of Hatchery Creek by making it a 5 fish daily creel limit, with no size limit, singly or in combination for all trout species, add the Kentucky Horse Park lakes to the list of special lakes and ponds in Section 7, and add the Lake Chumley night-time closure restriction to this regulation as a cleanup.

(b) The necessity of the amendment to this administrative regulation: The 30-fish statewide daily creel limit on yellow bass has no biological significance to the population which can reach nuisance levels at times. Increased harvest will be beneficial to this population as well as other sport fish species. Over the course of the slot limit size regulation on Pennyryle Lake, no positive change in the largemouth bass population was documented. In order to simplify regulations, reversion to the statewide largemouth bass regulation is recommended. Trammel Creek has the potential to produce older, larger trout for anglers. In order to allow more trout to survive to these larger sizes, a reduction in the rainbow trout daily creel limit from 8 fish to 5 fish is recommended. With the construction of the new, lower section of Hatchery Creek, there have been some larger trout entering the upper section, which has created confusion with anglers concerning what they can keep. In order to simplify the regulations on the upper section of the creek, it is recommended that anglers be able to keep 5 trout of any species daily, with no size restriction. The Kentucky Horse Park is now allowing the public to fish ponds on the property. One of the ponds (Rolex Pond) is now part of the Fishing in Neighborhoods (FINS) program. To avoid confusion, all ponds on the Kentucky Horse Park property should follow the FINS fishing regulations. Night-time access to Lake Chumley and the department property surrounding it is currently regulated under 301 KAR 1:192. It is recommended to include this access restriction in 301 KAR 1:201 as a cleanup and to subsequently repeal 301 KAR 1:192.

(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 anglers fishing at the water bodies and for the species identified in 2(a) above will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers will need to comply with the changes identified in 2(a).

(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 incurred by the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers who fish at the water bodies and for the fish the species identified in 2(a) above will benefit in the long run from higher quality sport fisheries and better angling opportunities.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program 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 was not applied because all individuals fishing in Kentucky are treated equally with these amendments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department to promulgate administrative regulations to regulate bag, creel, and possession limits of game and fish. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate direct revenue. It is unknown if this administrative regulation could indirectly increase any fishing license sales during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no direct revenue generated in subsequent years, and it is unknown if fishing license sales will be indirectly

increased because of this amendment.

(c) How much will it cost to administer this program for the first year? There will be no initial cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no 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:

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

301 KAR 2:132. Elk quota hunts, elk depredation permits, landowner cooperators permits, and voucher cooperators permits.

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.105, 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "At-large" means any portion of the elk zone not included in a limited entry area.

(4) "Bait":

(a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and

(b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(5) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(6) "Elk" means *Cervus elaphus nelsoni*.

(7) "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

(8) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for at least five (5) years.

(9) "Limited Entry Area" or "LEA" means a designated area in the restoration zone with specific management restrictions.

(10) "Out-of-zone" means all counties not included in the

restoration zone.

(11) "Restoration zone" means the Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(12) "Spike" means an elk having one (1) or two (2) antler points on each side.

(13) "Voucher cooperator" means a landowner or lessee who owns or leases at least 100 acres of land in the restoration zone and enters into an agreement with the department to allow elk hunting access.

(14) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(1) Attach a department-issued disposal permit to an elk prior to moving the carcass; and

(2) Not remove the disposal permit until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk quota hunt application period shall be January 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youth may enter a separate drawing pool for ten (10) either-sex elk permits. These permits shall be valid for use during all elk seasons:

(a) Anywhere in the at-large portion of the restoration zone; or

(b) Within an LEA if the youth applies for and is drawn for an LEA, pursuant to Section 6(3) of this administrative regulation.

(6) A youth applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(7) An applicant for the youth-only elk quota hunt may also apply for the regular quota hunts. The regular quota hunts shall be as established in subsection (12) of this section.

(8) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) Nonresidents shall not comprise more than ten (10) percent of all drawn applicants in each quota hunt pool.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be four (4) separate regular elk quota hunts consisting of:

(a) Antlered archery and crossbow;

(b) Antlered firearms;

(c) Antlerless archery and crossbow; and

(d) Antlerless firearms.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

(b) Not be eligible to be drawn in more than one (1) of the four (4) quota hunt pools;

(c) Only be selected by a random electronic drawing; and

(d) Pay a nonrefundable application fee of ten (10) dollars for each entry.

(14) A person who is drawn for an[antlered] elk quota hunt shall be ineligible to be drawn for any[antlered] elk quota hunt for the following[subsequent] three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at 1-800-858-1549 for assistance in applying.

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Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 6 and 7 of this administrative regulation.

(3) A landowner cooperator permit shall only be used on the land that is established in the agreement, except that it may be used on adjacent property if:

(a) The adjacent property is owned by a different landowner; and

(b) The adjacent landowner has granted permission to the permit holder.

(4) A landowner cooperator permit may be transferred to any person eligible to hunt in Kentucky, but prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

1. Name;
2. Social Security number;
3. Address; and
4. Telephone number.

(5) The landowner cooperator permit shall not be transferable if it was already used for the harvest of one (1) elk.

(6) Public access agreements with the department shall be recorded in writing.

Section 5. Voucher Cooperator Permits (1) A voucher cooperator shall accrue:

(a) Two (2) voucher points for each legally harvested antlered elk; and

(b) One (1) voucher point for each legally harvested antlerless elk.

(2) A voucher cooperator who accrues twenty (20) total points on land enrolled pursuant to Section 1(13) of this administrative regulation shall receive one (1) either-sex elk permit from the department.

(3) A recipient of a voucher cooperator elk permit shall comply with all of the requirements established in Sections 6 and 7 of this administrative regulation.

(4) A voucher cooperator elk permit shall only be used on:

(a) The property enrolled with the department per agreement; or

(b) Other property that the landowner or lessee owns or leases.

(5) A voucher cooperator permit may be transferable to any person eligible to hunt in Kentucky.

(6) If a voucher cooperator permit is to be transferred, then the landowner, lessee, or person who has received the transferred permit shall provide to the department by August 15 the hunter's:

- (a) Name;
- (b) Social security number;
- (c) Address; and
- (d) Telephone number.

(7) A permit shall not be transferable after being used for the harvest of an elk.

Section 6. Hunter Requirements. (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) A drawn hunter may apply to hunt in up to four (4) areas in any combination of the limited entry areas by completing the application process on the department's Web site.

(a) Up to five (5) drawn hunters may apply for their LEA choices as a party.

(b) If the party is drawn for the LEA, all hunters in the party shall be assigned to that same LEA.

(c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or to the at-large area.

(4) A hunter who does not apply for an LEA or is not drawn for an LEA shall be assigned to the at-large area.

(5) A hunter drawn for an LEA may hunt only in the assigned LEA, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(6) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(7) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait inside the elk restoration zone;

(d) Drive elk from outside the assigned area;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.

(8) A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

(9) A youth shall be accompanied by an adult who shall remain in a position to take immediate control of the youth's firearm.

(10) An adult accompanying a youth shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(11) A hunter may use any deer hunting method authorized by 301 KAR 2:172.

(12) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take an elk:

(a) A crossbow or archery equipment loaded with a non-barbed broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Of .270 caliber or larger; and

3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading firearm of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .270 caliber or larger designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(13) A crossbow shall contain a working safety device.

(14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds.

(15) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(16) A hunter drawn for a firearms elk permit shall hunt elk pursuant to that permit only during the seven (7) day period assigned during the initial drawing.

(17) An individual who receives or is transferred a landowner cooperator permit, a voucher cooperator permit, or a special commission permit may hunt in all of the antlered-only or antlerless-only quota hunts and shall hunt in accordance with the seasons and limits established in Section 7 of this administrative regulation.

(18) A person who is drawn for an archery or crossbow permit

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or has a landowner cooperators permit, a special commission permit, or voucher cooperators permit may hunt with a crossbow during all archery and crossbow seasons, if at the time of the hunt, the person:

- (a) Is a youth;
- (b) Is sixty-five (65) years or older; or
- (c) Has a crossbow hunting method exemption permit for hunting deer pursuant to 301 KAR 3:027.

Section 7. Elk Quota Hunt Seasons and Limits. (1) A person drawn for an antlerless or antlered archery and crossbow permit shall not hunt when an elk firearms season is open.

(2) A person drawn for an antlered archery and crossbow permit shall use:

(a) Archery equipment to take an antlered elk beginning the third Saturday in September through the third Monday in January; and

(b) A crossbow to take an antlered elk from the fourth Saturday in September through the fourth Friday in December.

(3) A person drawn for an antlerless archery and crossbow permit shall use:

(a) Archery equipment to take an antlerless elk beginning the third Saturday in October through the third Monday in January; and

(b) A crossbow to take an antlerless elk from the third Saturday in October to the fourth Friday in December.

(4) A person drawn for an antlered firearms permit shall use a modern gun or muzzleloader to take an antlered elk during one (1) of two (2) seven (7) day periods randomly assigned by the department from the:

(a) First Saturday in October for seven (7) consecutive days; or

(b) Second Saturday in October for seven (7) consecutive days.

(5) A person drawn for an antlerless firearms permit shall use a modern gun or muzzleloader to take an antlerless elk during one (1) of two (2) seven (7) periods randomly assigned by the department from the:

(a) Second Saturday in December for seven (7) consecutive days; or

(b) First Saturday in January for seven (7) consecutive days.

Section 8. LEA Boundaries. (1) Hazard LEA - Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quicksand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary.

(2) Levisa Fork LEA - Starting at the intersection of State Hwy 1789 and State Hwy 460 at Millard, the boundary proceeds south and east on Hwy 460 to the intersection of Hwy 460 and State Hwy 1499 at Mouthcard. The boundary then runs north along State Hwy 1499 to the intersection of State Hwy 1499 and State Hwy 194. It then runs west and north on Hwy 194 to the intersection of Hwy 194 and State Hwy 3418 (Ridge Line Road). The boundary then runs west on Hwy 3418 to the intersection of State Hwy 3418 and Raccoon Road. The boundary then runs west on Raccoon Road to the intersection of Raccoon Road and State Hwy 1441. The boundary then runs south along Hwy 1441 to the intersection of State Hwy 1441 and State Highway 1789. The boundary then runs west to the intersection of Hwy 1789 and State Highway 460, completing the boundary.

(3) Middlesboro LEA - Starting at the intersection of US Hwy 25E and the Tennessee border at Middlesboro, the boundary proceeds southward and westward on the Tennessee and Kentucky border until the intersection of State Hwy 190. The boundary proceeds northward and westward on State Hwy 190 to the intersection of US Hwy 25E. The boundary then goes south on US Hwy 25E to the Tennessee border, completing the boundary.

(4) Prestonsburg LEA - The area shall be within the boundary

of the Czar Hunter Access Area as indicated by signage.

(5) Straight Creek LEA - Starting at the intersection of State Hwy 66 and State Hwy 221 at Straight Creek, the boundary proceeds east on State Hwy 221 to the intersection with State Hwy 2009. The boundary then proceeds north along State Hwy 2009 to the intersection with US Route 421. The boundary then proceeds north on US Route 421 to the intersection with State Hwy 406 near Stinnett. The boundary then follows State Hwy 406 west to the intersection with State Highway 66. The boundary then follows State Hwy 66 south to the intersection with Hwy 221 to complete the boundary.

(6) Tug Fork LEA - The area shall be within the boundary of the Revelation Energy Hunter Access Areas in Martin, Pike, and Floyd Counties, as established by signage.

Section 9. Post-season Quota Hunt on Private Land. (1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants who:

(a) Were not drawn for the previous elk quota hunts; and

(b) Are residents of counties included, wholly or in part, within an EMU boundary.

(3) A drawn applicant shall comply with the requirements in Section 6 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) EMU boundaries shall be:

(a) Knott County EMU - Starting at the intersection of Kentucky Route 777 and Kentucky Route 550 near Porter Junction, the boundary proceeds east along Kentucky Route 777 to the intersection with Kentucky Route 680. The boundary then proceeds east along Kentucky Route 680 to the intersection with Kentucky Route 122 at Minnie. The boundary proceeds south along Kentucky Route 122 to the intersection with Kentucky Route 1498 near Bevinsville. The boundary then continues south on Kentucky Route 1498 to the intersection with Kentucky Route 7. The boundary then proceeds south on Kentucky Route 7 to the intersection with Kentucky Route 1410. The boundary then proceeds west on Kentucky Route 1410 to the intersection with Kentucky Route 160. The boundary then proceeds north on Kentucky Route 160 to the intersection with Kentucky Route 550 in Hindman. The boundary then proceeds north on Kentucky Route 550 to the intersection with Kentucky Route 7, with which Kentucky Route 550 merges and both continue north, to the intersection with Kentucky Route 777 near Porter Junction, thus completing the boundary.

(b) Stoney Fork EMU - Starting at the intersection of State Hwy 2058 and U.S. Hwy 421 near Helton, the boundary then proceeds south along U.S. Hwy 421 to the intersection of U.S. Hwy 421 and U.S. Hwy 119 near Harlan, then west along U.S. Hwy 119 to the intersection of U.S. Hwy 119 and U.S. Hwy 25E. The boundary then goes north following U.S. Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to U.S. Hwy 421 at Helton, thus completing the boundary.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 10. Tagging and Checking Requirements. (1) Immediately after taking an elk, a hunter shall record on a hunter's log:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

(d) County of harvest.

(2) A hunter shall check a [the] harvested elk before midnight on the day the elk is recovered by:

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(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(3) A hunter who has checked in an elk shall record the confirmation number on a hunter's log.

(4) If the hide or head is removed from the carcass before the elk is checked in, then the hunter shall be required to demonstrate proof of the sex of the elk.

(a) For antlered elk the hunter shall retain the:

1. Head with antlers; or
2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless elk the hunter shall retain the:

1. Head; or
2. Udder or vulva attached to the carcass.

(5) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

(a) Confirmation number;

(b) Name; and

(c) Telephone number.

(6) A person shall not provide false information in:

(a) Completing the hunter's log;

(b) Checking an elk; or

(c) Creating a carcass tag.

Section 11. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in paragraphs (a) through (f) of this subsection within the restoration zone pursuant to the conditions of the permit received:

(a) Wildlife Management Areas;

(b) Hunter Access Areas;

(c) State forests;

(d) Big South Fork National River and Recreation Area;

(e) Daniel Boone National Forest; or

(f) Jefferson National Forest.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone shall be subject to the requirements established in Section 12 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as established in Section 7 of this administrative regulation.

(b) A firearm shall not be used to hunt elk.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 12. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with the weapons and ammunition requirements established in Section 6 of this administrative regulation.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 10 of this administrative regulation.

Section 13. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

Section 14. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, voucher cooperator permit, or special commission permit may defer use of the permit to the following year if:

(1) There is a death of the permit holder's:

(a) Spouse;

(b) Child; or

(c) Legal guardian, if the permit holder is under eighteen (18) years old; and

(2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:

(a) A marriage certificate;

(b) A birth certificate; or

(c) An affidavit of paternity or maternity.

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: July 5, 2016

FILED WITH LRC: July 13, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2016 at 9:00 A.M. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through August 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission, landowner cooperator permits and cooperator voucher permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage elk populations in Kentucky, while providing optimal elk hunting opportunities.

(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 hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the statutes by establishing the requirements for the elk permit drawing, quota hunts, legal methods of harvest, the conditions under which special commission permits, landowner cooperator permits, and voucher cooperator permits can be used, the procedures for elk damage abatement and any postseason hunt held after the quota hunts.

(2) If 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 modifies the ineligibility period for drawn elk hunters. Previously, only those hunters drawn for an antlered elk tag were required to sit out 3 years before applying for the quota hunt. This amendment will require a hunter who was drawn for any elk quota hunt to be ineligible for 3 years before applying for another elk quota hunt.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to improve a hunter's chances of getting drawn for an elk permit by requiring those individuals who have been drawn for any elk permit in the last 3 years to sit out.

(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: There are approximately 25,000 to 45,000 people who apply to hunt elk in Kentucky each year, of which approximately 910 are drawn.

(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: Any hunter drawn for an elk quota hunt will be ineligible to apply for the following 3 years. Hunters who received permits through other means will not be affected.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not change any cost to the entities identified in (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional hunters may have the opportunity to get drawn for a quota hunt permit due to the reduction of individuals in the applicant pool resulting from the ineligibility period for all drawn hunters.

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

(a) Initially: Other than a minor administrative cost, there will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: Additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk management and quota hunts already exists.

(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 nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. Residents of the counties within the EMUs who are not drawn for the regular quota hunt shall be eligible for a late season depredation hunt. This hunt allows residents to assist landowners in removing elk causing property damage in 2 areas with chronic nuisance elk problems. Fewer than 50 tags for antlerless and spike bulls will be drawn. These tags can only be used on private land within one of the 2 Elk Management Units (EMUs). The number of tags to be issued will be determined by the level of nuisance elk cases or property damage caused by elk documented within the EMUs prior to January each year.

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, KRS 150.177, KRS 150.178, KRS 150.390.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? For the 2015 elk season, approximately 70,348 applications were purchased at \$10 per application \$703,480 of revenue to the department). Approximately 742 of the 910 drawn hunters paid for elk permits, generating \$72,000 in additional revenue to the department. Total revenue directly generated by the elk hunts for the department was \$776,000 for the 2015 season.

(b) How 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 approximately \$600,000 to \$800,000 will be generated from quota hunt applications and elk permits for the department. There is also a positive economic impact to cities, counties and local businesses in and near the elk restoration zone as hunters visit to hunt. This economic impact is estimated at \$2,000,000 annually in or near the elk zone.

(c) How much will it cost to administer this program for the first year? There will be no additional costs for the first year. The department already has mechanisms in place for quota hunt application procedures, random drawings and other aspects of the elk hunts.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred 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:

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Fire Commission
(Amendment)**

739 KAR 2:040. Survivor benefits for death of a firefighter.

RELATES TO: KRS 61.315, Chapter 95A, 136.392
STATUTORY AUTHORITY: KRS 61.315(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315 authorizes the payment of survivor benefits of \$80,000~~[\$50,000]~~ to the survivor of a paid or volunteer firefighter who is killed in the line of duty after July 1, 2002~~[1994]~~. This administrative regulation establishes the procedures and criteria ~~that~~~~[which]~~ shall be utilized to determine the eligibility of the firefighter's survivor benefits. This administrative regulation applies to both paid and volunteer firefighters.

Section 1. Definitions. (1)~~["Active member" means a paid firefighter that is listed on the department roster and participates in the department's training programs and other various activities.~~

(2)] "Commission" means commission as defined by KRS 95A.210(1).

~~(2)~~~~(3)]~~ "Death in the line of duty" means death ~~that~~~~[which]~~

occurs as a direct result of an act or acts in the performance of duty as established in 739 KAR Chapter 2 and includes ~~described in these administrative regulations and shall include~~ death ~~that~~ that ~~which~~ results from a heart or circulatory malfunction ~~that~~ that ~~which~~ is treated within forty-eight (48) hours after participation in the performance of these duties or as the result of illness, cancer as established in paragraph (b) of this subsection, or other sickness or injury caused by the performance of these duties ~~that~~ that ~~which~~ result in death within twelve (12) months of the activities as ~~established~~ described elsewhere in ~~this~~ these administrative ~~regulation, if~~ regulations providing death is not caused by suicide or self-inflicted injury.

(a) If death occurs after twelve (12) months and is believed to be related to the ~~above stated~~ causes as established in this subsection, the commission has the right of review with the possibility of determination of death in performance of duty.

(b) If a firefighter dies as the result of cancer, the death shall be a direct result of an act in the line of duty if the firefighter:

1. Was a firefighter for at least five (5) consecutive years;

2. Developed one (1) or more of the following cancers that caused the firefighter's death within ten (10) years of separation from service as a firefighter:

a. Bladder cancer;

b. Brain cancer;

c. Colon cancer;

d. Non-Hodgkin's lymphoma;

e. Kidney cancer;

f. Liver cancer;

g. Lymphatic or hematopoietic cancer;

h. Prostate cancer;

i. Testicular cancer;

j. Skin cancer;

k. Cervical cancer; or

l. Breast cancer;

3. Did not use tobacco products for a period of ten (10) years prior to the diagnosis of cancer;

4. Was under the age of sixty-five (65) at the time of death;

5. Was not diagnosed with any cancer prior to employment as a firefighter; and

6. Was exposed while in the course of firefighting to a known carcinogen as defined by the International Agency for Research on Cancer or the National Toxicology Program, and the carcinogen is reasonably associated with one (1) or more of the cancers listed in subparagraph 2. of this paragraph ~~[These activities shall not include participation in any sports or athletic event or contest, whether for the purpose of fund raising or any other purpose].~~

(3) ~~(4)~~ "Child or children" means stepchildren, legally adopted children, and children born posthumously.

(4) ~~(5)~~ "Firefighter" means firefighter as defined ~~by~~ in KRS 61.315(1).

(5) ~~(6)~~ "Heart or circulatory malfunction" means myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident ~~that~~ that ~~which~~ the symptoms ~~of such malfunction~~ are first medically treated within forty-eight (48) hours after participation in the performance of the duties of a paid firefighter as established in 739 KAR Chapter 2 ~~described in these administrative regulations~~.

(6) ~~(7)~~ "Performance of duty" means a firefighter acting in the performance of his or her duties when engaged in the following activities if the activities are performed at the direction or with the knowledge of an officer of the fire department or when immediate action is required at the scene of an emergency not involving his department or other emergency organization:

(a) Firefighting;

(b) Fire drills or other related training;

(c) Rescue or emergency activities;

(d) Repairing or doing other work about or in the fire or emergency apparatus or building and grounds of the fire department;

(e) Traveling to or from a ~~Answering an emergency~~ call for service;

(f) Riding in or upon the fire or emergency apparatus ~~that~~ that ~~which~~ is owned or used by the fire department;

(g) Performing other ~~activities~~ duties of the fire department as authorized by the jurisdiction ~~that~~ which the department serves; or ~~and~~

(h) Attending meetings related to the fire service and travel to and from the meetings whether local, state, or national, as long as he or she is representing his local, state, or national fire related organization.

Section 2. Requirements for Eligibility. (1) Survivors. Benefits shall be paid to the surviving spouse, surviving children or both; or the surviving parents, as set forth in KRS 61.315(2).

(2) Heart or circulatory malfunction limitations. If an individual becomes an active member of a fire department and has not within five (5) years prior to the date of membership been medically diagnosed as having had or has received any medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident, his eligible survivors shall receive the benefits if the firefighter is killed in the line of duty.

(a) If the firefighter has been medically diagnosed as ~~as a~~ having had or receiving medication for an illness established in this subsection ~~the above illnesses~~ within five (5) years prior to becoming an active member of a fire department and presents a medical statement to the commission from the firefighter's doctor that the firefighter has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting, the eligible survivors shall be eligible to receive the benefits granted through KRS 61.315 if the firefighter is killed in the line of duty.

(b) If a firefighter of a fire department is medically diagnosed as having had or is prescribed medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident and returns to active fire service, his or her ~~their~~ survivors shall not be eligible to receive benefits from this program in event of the firefighter's death caused by heart or circulatory malfunction until a medical statement from their doctor that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting is supplied the commission. Upon review and approval of the statement by the commission, the firefighter's survivors shall again become eligible to receive benefits from this program.

(c) A deceased firefighter's survivors shall not be eligible for benefits under this administrative regulation if the deceased firefighter was mistakenly or fraudulently included on a fire department's roster, or did not actively serve as a firefighter for a minimum of five (5) years prior to diagnosis of the cause of death.

(3) Autopsy. The commission shall ~~reserve~~ reserves the right to request an autopsy providing sufficient cause ~~is can be~~ shown for this request. If an autopsy is performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be submitted ~~furnished~~ to the commission.

Section 3. Application. (1) Upon the death in the line of duty of a firefighter, the fire department of which the firefighter was a member at the time of death shall notify the commission's administrator of the death immediately. Upon receipt of the notification, the administrator shall send Form KPF-4 ~~[, July 14, 1998,]~~ to the notifying fire department in care of the chief, ~~as well as~~ as Form KPF-5 to the known survivors of the deceased firefighter, and the Requirements for Cancer Death Benefits form to both the notifying fire department in care of the chief and the known survivors of the deceased firefighter.

(2) Upon receipt of Forms KPF-4 and KPF-5 and the Requirements for Cancer Death Benefits form ~~[, July 14, 1998,]~~, the chief and survivors or their representative shall complete ~~properly fill out~~ the forms and return them to the commission in care of the administrator.

(3) Upon the receipt of the properly completed forms, a duly licensed physician member of the commission shall review all pertinent medical records and forms submitted on behalf of the deceased firefighter and make a medical determination of if the deceased firefighter meets the requirements of this administrative regulation. Upon the medical director's determination that the

deceased firefighter meets the requirements of this administrative regulation, a committee of the commission appointed by the chair[chairman] of the commission shall review the forms and forward the forms[them] with the commission's[their] recommendations to the full commission for determination of eligibility. If there are questions about the forms, the committee and the administrator may seek clarification of the questions on behalf of the commission.

Section 4. Certification of Payment of Benefits. Upon certification of survivorship rights to the Firefighter's Death Benefit, the sum of ~~\$80,000~~~~[\$50,000]~~ shall be paid in check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2) and the treasurer shall transmit the check to the commission's administrator for payment to the eligible survivor or survivors.

Section 5. False and Fraudulent Statements. A person who knowingly or willfully makes any false or fraudulent statements or representation in any record or report to the commission under KRS[Chapter] 61.315 or this administrative regulation shall cause the survivors to become ineligible for further funds and those survivors may be responsible for the return to the state treasury of those funds that[which] were received through these false or fraudulent statements or representations.

Section 6. Appeals. (1) A decision[Decisions] of the commission~~[negatively]~~ affecting the eligibility of a survivor to be a recipient of the fund shall not be final until the survivor shall have been afforded an opportunity to be heard on the matter.

(2) An appeal may be taken from a final decision of the commission to withhold payment from the fund to any survivor. The appeal shall be to the circuit court of the circuit where the controversy originated.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Report of Firefighter's Death, Form KPF-4, November 25, 2014~~[July 14, 1998]~~.

(b) Claim for Survivor Benefits, Form KPF-5, December 1, 2014~~[July 14, 1998]~~.

(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 118 James Court, Suite 50, Lexington, Kentucky 40505~~[1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40604]~~, Monday through Friday, 8 a.m. to 4:30 p.m.

GILBERT "TIGER" ROBINSON, Chair

APPROVED BY AGENCY: July 12, 2016

FILED WITH LRC: July 13, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2016 at 10:00 a.m. Eastern Standard Time at the Kentucky Fire Commission, 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until through the end of the calendar day on August 31, 2016. 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: Anne-Tyler Morgan, Legal Counsel, Kentucky Fire Commission; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 281-6480, email address atmorgan@mmlk.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anne-Tyler Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 739 KAR 2:040 establishes the procedures and criteria which shall be utilized to determine the eligibility of the firefighter's survivor benefits

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 61.315, which authorizes the payment of survivor benefits to the survivor of a paid or volunteer firefighter who is killed in the line of duty after July 1, 2002.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 61.315(3), which authorizes the Commission to promulgate administrative regulations establishing criteria and procedures including but not limited to defining when a firefighter has died in line of duty.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 61.315(3) authorizes the Commission to promulgate administrative regulations establishing criteria and procedures including but not limited to defining when a firefighter has died in line of duty. This administrative regulation establishes the procedures and criteria which shall be utilized to determine the eligibility of the firefighter's survivor benefits.

(2) If 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 defines when a firefighter has died in the line of duty as a result of cancer, in accordance with 16 RS SB 195.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update KRS 61.315 in accordance with 16 RS SB 195.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 61.315, which authorizes the Commission to promulgate administrative regulations defining when a firefighter has died in the line of duty.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that the criteria for when a firefighter has died in the line of duty as the result of cancer are clear and defined.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All beneficiaries of firefighters who have died in the line of duty as the result of cancer as defined 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: All beneficiaries shall establish that the firefighter at issue meets the criteria of the administrative regulation in order to be eligible for the benefits thereunder.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All beneficiaries who can establish that the firefighter at issue meets the criteria of this administrative regulation shall be entitled to the benefits provided by KRS 61.315.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Commission shall pay for all administrative costs of reviewing benefit eligibility, which will not change with this amendment.

(a) Initially: The above paragraph is accurate for initial costs.

(b) On a continuing basis: The above paragraph is accurate for continuing costs.

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

implementation and enforcement of this administrative regulation: The Kentucky Fire Commission is a state agency that receives its annual budget from the state government.

(7) Provide an assessment of whether an 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: This regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is applied for Fire Service Instructor levels because with each increasing tier, the instructor is able to teach a wider variety of fire service courses.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 administrative regulation will not relate to any division of state or local government.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.315. No federal statutes necessitate this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for 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 revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government, other than the Commission itself.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government, other than the Commission itself.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:180. Recordkeeping, reporting, statistics.

RELATES TO: KRS 338.015(1), (2), 338.121(3), 338.161, 29 C.F.R. Part 1904

STATUTORY AUTHORITY: KRS 338.061, 338.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires the Department of Workplace Standards, represented by the commissioner to promulgate administrative regulations requiring employers to report occupational safety and health statistics. 29 C.F.R. Part 1904 authorizes requirements for

the recording and reporting of occupational illnesses and injuries. This administrative regulation establishes recordkeeping and reporting requirements for employers pursuant to KRS Chapter 338.

Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body including bone tissue is removed.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

(4) "Loss of eye" means the physical removal of an eye from the socket.

(5) "Occupational Safety and Health Act" means KRS Chapter 338.

(6) "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet.

(7) "Section 11(c) of the Act" means KRS 338.121(3).

Section 2. An employer shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration, except as modified by the definitions in Section 1 and the requirements of Section 3 of this administrative regulation:

(1) 29 C.F.R. Part 1904, effective July 1, 2015;~~[2014; and]~~

(2) Beginning January 1, 2017, the amendments to 29 C.F.R. Part 1904 as published in the May 12, 2016 Federal Register, Volume 81, Number 92; and

(3) The correction to the May 12, 2016 Federal Register, Volume 81, Number 92 as published in the May 20, 2016 Federal Register, Volume 81, Number 98~~[Beginning January 1, 2016, the revisions to 29 C.F.R. Part 1904 as published in the September 18, 2014 Federal Register, Volume 79, Number 181].~~

Section 3. Reporting Fatalities, Amputations, In-Patient Hospitalizations, or Loss of Eye. The reporting requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

(1) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any work-related incident that results in the:

(a) Death of any employee; or

(b) Hospitalization of three (3) or more employees.

(2) The report required pursuant to subsection (1) of this section shall be made within eight (8) hours from when the incident is reported to the employer, the employer's agent, or another employee. If the employer cannot speak with someone in the Frankfort office, the employer shall report the incident using the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742).

(3) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any work-related incident that results in:

(a) An amputation suffered by an employee;

(b) An employee's loss of an eye; or

(c) The hospitalization of fewer than three (3) employees within seventy-two (72) hours following the incident.

(4) The report required pursuant to subsection (3) of this section shall be made within seventy-two (72) hours from when the incident is reported to the employer, the employer's agent, or another employee.

(5) The requirement to report the loss of an eye pursuant to subsection (3)(b) of this section shall be effective January 1, 2016.

As approved by the Kentucky Labor Cabinet, Department of Workplace Standards.

DERRICK K. RAMSEY, Secretary

ERVIN DIMENY, Commissioner

APPROVED BY AGENCY: July 7, 2016

FILED WITH LRC: July 11, 2016

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2016 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047

US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1904 and updates the C.F.R. to July 1, 2015. Section 2 also establishes the amendments to 29 C.F.R. 1904 published in the May 12, 2016 Federal Register, Volume 81, Number 92 as well as the correction to this Federal Register published in the May 20, 2016 Federal Register, Volume 81, Number 98. Section 3 amends and replaces the requirements of 29 C.F.R. 1904.39 with state-specific reporting occupational injuries and illnesses that have been in effect since 2006. With the May 12, 2016 final rule OSHA is amending the recordkeeping text of the regulation to require certain employers to electronically report injury and illness statistics. The final rule also adds language clarifying how an employer must inform employees of their right to report injuries and illnesses and clarifies that reporting policies must not deter or discourage employees from reporting injuries and illnesses. The new requirement to report will affect all employers with 250 or more employees and only specified employers is high hazard industries with 20-249 employees will have to report. The report will be made electronically to OSHA and will contain information that is already collected by the employer to fulfill the 300(A)(1) log requirements. This information will be submitted once a year and will be used to more efficiently direct enforcement and compliance assistance resources. The second element of this final rule clarifies an employer's obligation to inform employees of their right to report workplace injuries and illnesses. Wording was added to the standard to prevent an employer from discriminating or retaliating against an employee who reports an injury or illness. The new requirements also ensure an employer's reporting procedure or policy does not deter or discourage employees from reporting work related injuries and illnesses. The May 20, 2016 Federal Register simply reinstates language related to access to the 300(1) log information, which was inadvertently deleted in the May 12, 2016 final rule. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 12, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements in Section 2 of the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.161 (1) requires the Department of Workplace Standards to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. This amendment adopts the federal

requirement, which, according to OSHA, improves the reporting requirement so that the OSH Program can better target employers for enforcement and compliance assistance purposes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: According to OSHA, the recordkeeping and reporting regulation enhances worker safety throughout Kentucky by maintaining a useful database of injuries and illnesses and keeps the state occupational safety and health program at least as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1904. Section 2 also updates the C.F.R. to July 2015 and establishes the amendments to 29 C.F.R. 1904 published in the May 12, 2016 Federal Register, Volume 81, Number 92. The amendments in the Federal Register adds a requirement to report information that employers already maintain electronically so that OSHA and the OSH Program can better focus their resources for compliance and compliance assistance purposes. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 12, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements in Section 2 of the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment also conforms to KRS 338.161, which requires the Department of Workplace Standards to develop and maintain a program of collection, compilations, and analysis of occupational safety and health statistics. This amendment adopts the federal requirement, which, according to OSHA improves the reporting requirement so that the OSH Program can better target employers for enforcement and compliance assistance purposes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. According to OSHA, the recordkeeping and reporting regulation ensures that data collected in Kentucky are useful in comparing illness and injury incident rates to those nationally.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require employers with over 250 employer to annually report information that is already required by the standard and will require the reporting of specified employers that employee 20-249 employees. Employers may also need to amend their in-house injury and illness reporting procedures and policies if they are deemed to deter or discourage an employee from reporting an injury or illness.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA estimates that it will cost each employer somewhere between \$183 and \$9 per year (dependent on the size of the employer) to comply with the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): According to OSHA, improved employee protection is likely to result from the promulgation of this

amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted/state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2), 29 U.S.C. 667

2. State compliance standards. This amendment requires employers to comply with the recordkeeping requirements of 29 C.F.R. 1904 for recording occupational injuries and illnesses. Additionally, employers must report hospitalizations, amputations, and the loss of eye as required under Section 3 of the regulation.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 12, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal recordkeeping requirements in Section 2 of the regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation poses different requirements than the federal mandate in Sections 1 and 3, in that the definition of amputation and injury reporting times are different, but this difference is not stricter than the federal mandate. This amendment does not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirement to report occupational hospitalizations, amputations, and fatalities has been in place since 2006. The additional requirement to report the loss of eye aligns the reporting requirements with the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.161, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Part 1953.4.

3. Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? OSHA estimates that it will cost each employer somewhere between \$183 and \$9 per year (dependent on the size of the employer) to comply with the amendments. There are no associated costs related to the reporting revisions as the reporting requirements have been in place since 2006.

(d) How much will it cost to administer this program for subsequent years? OSHA estimates that it will cost each employer somewhere between \$183 and \$9 per year (dependent on the size of the employer) to comply with the amendments.

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

Revenues (+/-): Unknown.

Expenditures (+/-):

Other explanation:

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

804 KAR 4:390. License renewals.

RELATES TO: KRS 243.090(1)

STATUTORY AUTHORITY: KRS 241.060(1), 243.090(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.090(1) requires the Department of Alcoholic Beverage Control to establish a year-round system for renewal of licenses. This administrative regulation establishes the system for license renewal.

Section 1. Definition. "Batch renewal" means the simultaneous renewal of multiple licenses held by a licensee for more than two (2) premises.

Section 2. All licenses in Ballard, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Hickman, Larue, Livingston, Lyon, Marshall, McCracken, McLean, Meade, Metcalfe, Monroe, Ohio, Owen, Spencer, Trigg, Trimble, Union, and Webster Counties shall have an annual term beginning February 1 and ending January 31 of the following year and shall be renewed[renew] in the month of January.

Section 3. All licenses in Adair, Allen, Barren, Bath, Bell, Boyle, Breathitt, Casey, Clark, Clay, Clinton, Elliott, Estill, Fleming, Floyd, Garrard, Harlan, Harrison, Hopkins, Jackson, Jessamine, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lincoln, Logan, Madison, Magoffin, Marion, Martin, McCreary, Menifee, Mercer, Montgomery, Morgan, Muhlenberg, Nelson, Owsley, Perry, Powell, Pulaski, Rockcastle, Russell, Simpson, Taylor, Todd, Warren, Washington, Wayne, and Whitley Counties shall have an annual term beginning May 1 and ending April 30 of the following year and shall be renewed[renew] in the month of April.

Section 4. 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 have an annual term beginning July 1 and ending June 30 of the following year and

shall be renewed[renew] in the month of June.

Section 5. All licenses in Jefferson County shall have an annual term beginning November 1 and ending October 31 of the following year and shall be renewed[renew] in the month of October.

Section 6. All licenses in Boone, Campbell, Fayette, and Kenton Counties shall have an annual term beginning December 1 and ending November 30 of the following year and shall be renewed[renew] in the month of November.

Section 7. The license of a statewide or out-of-state licensee shall have an annual term beginning January 1 and ending December 31 of the following year and shall be renewed[renew] in December.

Section 8. All batch renewals shall have an annual term beginning September 1 and ending August 31 of the following year and shall be renewed[renew] in August.

Section 9. Unless a licensee notifies the department of its intent to renew premises licenses by batch as provided in Section 10 of this administrative regulation, a licensee that holds multiple licenses that cover multiple premises shall renew its licenses using the license expiration date based on the county of each premises.

Section 10. A licensee that holds multiple licenses for more than two (2) premises may renew the licenses by batch at the same time. A licensee who wants to renew premises by batch shall notify the department in writing. Upon written notification, the licenses shall then be renewed in August, as provided in Section 8 of this administrative regulation.

Section 11. A licensee that holds multiple licenses for more than two (2) premises shall not be required to send a letter requesting that its licenses be renewed separately unless the licensee wishes to change its current renewal schedule from batch to separate or from separate to batch[elects to do batch renewal may return to separate monthly renewal by sending a letter to the department requesting the change].

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 5130.9, for time periods identified on renewal application forms. Class B Craft Distilleries shall submit copies of their federal Monthly Report of Production Operations, TTB F 511.40, for time periods identified on renewal application forms.

Section 13. The department may elect to not renew a license if the licensee exceeds a production limit for its license type or fails to meet food sales percentages required for its license type, or if renewal of the license would otherwise be contrary to law.

Section 14. If a licensee fails to renew its license 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.

STEVEN A. EDWARDS, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016
FILED WITH LRC: July 15, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2016 at 1:00 pm 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 at least five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the day on August 31, 2016. 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, Staff Attorney, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479, email Melissa.McQueen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melissa McQueen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth a system for year-round renewals of alcoholic beverage licenses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 243.090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.090 requires the department to establish a year-round system of license renewals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation assists the department by distributing the workload of license renewals throughout the calendar year.

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

(a) How the amendment will change this existing administrative regulation: The amendment specifies what documents are required to be submitted with the renewal application.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with statutory changes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment reflects the new classification of the rectifier license type.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the department in regulating licensees to ensure they are operating under the correct license type.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All rectifier licensees who rectify less than 50,000 gallons per year will be affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The licensees will have to ensure that they are in compliance with the statutory requirements which pertain to their license in order for their license to be renewed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not expected to be any additional costs as they are already required to prepare and submit these forms to the

TTB.

(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 implement the amendment of this administrative regulation.

(b) On a continuing basis: None.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations and KRS 243.090 requires the department to establish a year-round system of license renewal.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures are not expected to increase. No revenue will be generated by this administrative regulation.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

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

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

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

Revenues (+/-):

Expenditures (+/-):

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

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

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

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

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

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

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

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

(2) A temporary license; ~~or~~

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

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

~~Section 3.] A licensee seeking to renew[who is renewing] a license pursuant to KRS 243.090 shall complete and submit to the department[~~of Alcoholic Beverage Control~~] the Application for License Renewal.~~

Section 3.~~[4.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Basic Application for Alcoholic Beverage License", July 2016~~[June 2015]~~; and

(b) "Application for License Renewal", July 2016~~[June 2015]~~.

(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/>.

STEVEN A. EDWARDS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2016 at 1:00 pm 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 at least five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a

transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the day on August 31, 2016. 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, Staff Attorney, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479, email Melissa.McQueen@ky.gov.

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 incorporates the forms the department uses to issue and renew alcoholic beverage licenses.

(b) The necessity of this administrative regulation: This regulation is necessary because the department is required by statute to set forth what information is needed to obtain or renew an alcoholic beverage license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.380 and 243.390 require the department to set forth what information is required to obtain or renew a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies what information needs to be provided to the department in order to obtain or renew an alcoholic beverage license. By incorporating the application and renewal application, the information that is required to apply for, or renew, an alcoholic beverage license is ascertainable.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the renewal form and includes information on how to utilize the Kentucky One-Stop Business ("KyBOS") Portal for on-line renewals. Additionally, the basic application and renewal application forms have also changed in order to comply with the numerous provisions of Senate Bill 11 ("SB 11"), which created several new license types.

(b) The necessity of the amendment to this administrative regulation: The renewal application needed to be amended to add information about the KyBoS Portal website for licensees to renew online through that portal, and this amended form needs to be incorporated into the administrative regulation. Additionally, the basic application and renewal application forms have also been amended to account for new license types created by SB 11.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.380 and 243.390 require the department to set forth what information is required to obtain or renew a license. This amendment updates the renewal form to clarify what website licensees need to use to utilize the KyBoS Portal if they wish to renew online. With this amendment, the basic application and renewal application forms will also comply with the requirements of SB 11, which goes into effect on July 15, 2016.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will make the basic application and renewal application compliant with the provisions of SB 11, which adds new license types. Additionally, it clarifies what information licensees need in order to renew their alcoholic beverage licenses through the KyBoS Portal.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any person or entity who wishes to apply for any alcoholic beverage license, or renew an alcoholic beverage license online, will be affected by this administrative regulation. The Department of Alcoholic Beverage Control will also 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: The required actions of applying, or renewing, a license are no different than the process the licensees and applicants currently follow to obtain or renew an alcoholic beverage license, although they will be receiving information on how to do this through the KyBos Portal instead of going directly through the department's website.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The KyBos Portal will be utilized for on-line renewals and is incorporated by reference on the revised renewal form. The Department's proposed budget allocates \$290,000 per year of its restricted funds for on-line renewals through the KyBos Portal. Throughout discussions with the Department about utilizing the KyBos Portal for online renewals, the Commonwealth Office of Technology ("COT"), through its representative(s), has repeatedly stated that the Department will have no additional costs for using the KyBos Portal.

(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: It is estimated that this will cost the Department approximately \$290,000 per year to utilize the KyBos Portal.

(b) On a continuing basis: It is estimated that this will cost the Department approximately \$290,000 per year to utilize the KyBoS Portal for online license renewals.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: It is estimated that it will cost the Department approximately \$290,000 per year to utilize the KyBos Portal for online license renewals.

(7) Provide an assessment of whether an 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 based upon representations by COT.

(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 establish or increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control and the Commonwealth Office of Technology are the only government agencies expected to 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 241.060(1) authorizes the board to promulgate administrative regulations. The One-Stop Business Portal was created by KRS 14.250.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Department of Alcoholic Beverage Control is expected to spend approximately \$290,000 per year on this program. No revenue will be generated by this administrative regulation.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be approximately \$290,000 for the first year.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be approximately \$290,000 for each subsequent 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: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be approximately \$290,000 per year.

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

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

RELATES TO: KRS 241.060(1)

STATUTORY AUTHORITY: KRS 241.060(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 ~~additional~~^{special} application forms for specific licenses and required registration forms.

Section 1. ~~Additional~~^{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 ~~additional~~^{special} application form for the specific license type for which the application is made. The ~~additional~~^{special} application forms are listed below:

- (1) ~~Transporter/Solicitor/Out-Of-State~~^{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) ~~Rectifier's~~^{Distiller's} License: Change of License Application.

Section 2. Registration Forms. ~~If~~^{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 form. It may~~^{to} be completed electronically at:

~~(1)~~^(a)

~~https://www.productregistrationonline.com/GetStarted/Ky#selectPermit;~~

~~(2)~~^(b)

~~https://www.productregistrationonline.com/distributor/login; or~~

~~(3)~~^(c)

~~https://www.productregistrationonline.com/producer/login.~~

Section 3. Additional Forms. An applicable licensee shall complete and submit the following additional forms:

- (1) Dormancy Request for Quota Retail Licenses;
- (2) Amendment to Application Authorization Form;
- (3) ABC Retailer Sampling ~~Notification~~^{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) ~~"Transporter/Solicitor/Out-Of-State~~^{Special Agent/Solicitor, Out-of-State Producer/Supplier of Distilled Spirits/Wine, Out-of-State Producer/Supplier of Malt Beverage} Application", ~~July 2016~~^{September 2014};

(b) "Special Temporary License Application", ~~July 2016~~^{September 2014};

(c) "Supplemental License Application", ~~July 2016~~²⁰¹⁵;

(d) ~~"Presentation/Speaker Request Form", March 2016~~^{Microbrewer's Retail Gross Receipts Report to Distributor", June 2015};

(e) "Product Registration Online", September 2014;

(f) ~~"Rectifier's~~^{Distiller's} License: Change of License Application", ~~May 2016~~^{July 2014};

(g) "Dormancy Request for Quota Retail Licenses", June 2013;

(h) "Amendment to Application Authorization Form", ~~May 2016~~^{July 2014};

(i) "ABC Retailer Sampling ~~Notification~~^{Request}", ~~May 2016~~^{June 26, 2013};

(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~~

(p) "Remittance Form", ~~February 2016; and~~

~~(q) "Order Form", 2015~~^{3/27/2015}.

(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>.

STEVEN A. EDWARDS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2016 at 1:00 pm 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 at least five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the day on August 31, 2016. 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, Staff Attorney, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479, email Melissa.McQueen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference special application forms for specific licenses and required registration forms.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to notify applicants and licensees of the forms used by the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 authorizes the board to promulgate administrative regulations relating to the licensing of alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist applicants and licensees in determining which forms the department uses in the alcoholic beverage licensing process.

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates forms the department uses and changes the applications to comply with the provisions of Senate Bill 11 ("SB 11"), which is effective July 15, 2016. Additionally, this amendment removes the "Microbrewer's Retail Gross Receipts Report to Distributor" form from the list of forms used by this department. The form was created by this department but is used by the Department of Revenue and they have agreed to take custody of this form and incorporate it into their regulations.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with statutory changes to comply with SB 11, which added new license types and amended numerous alcoholic beverage statutes in Chapters KRS 241 to 244.

(c) How the amendment conforms to the content of the authorizing statutes: The department is authorized to promulgate administrative regulations pursuant to KRS 214.060(1).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will make the department's forms compatible with the provisions of SB 11, which will allow the department to review applications, and issue licenses for the new license types that have been created.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees and potential licensees will be affected by this amendment as several of the department's applications and forms have changed. The Department of Revenue is affected by this regulation as they have agreed to maintain the "Microbrewer's Retail Gross Receipts Report to Distributor" as that form is used by that department and not by the Department of Alcoholic Beverage Control.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Current licensees who have a Rectifier's license will have to determine if they meet the criteria for a Class B license, and if so, they will have to fill out the form requesting the change and submit it to the department. Applicable licensees will need to submit the appropriate form as needed in order to comply with various statutes. These are processes they are already required to complete.

(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 not expected to be any benefits to licensees as a result of this administrative regulation. A licensee which qualifies for the new Class B Rectifier's license and completes the license change form will see a benefit of paying a

lesser licensing fee.

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

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

(b) On a continuing basis: None.

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

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control and the Department of Revenue 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 241.060(1) authorizes the board to promulgate administrative regulations.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures are expected.

(a) How much 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 amendment is not expected to generate any revenue.

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

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

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

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

Revenues (+/-): This administrative regulation amendment is not expected to generate any revenue.

Expenditures (+/-):

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

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 11:010. Equipment and supplies.

RELATES TO: KRS 244.500, 244.590

STATUTORY AUTHORITY: KRS 241.060(1), 244.590(1)(c),

(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations governing procedures relative to the supervision and control of the use, manufacture, sale, advertising, and trafficking of alcoholic beverages. KRS 244.590(1)(c) authorizes the administrator of the malt beverage unit to prescribe by administrative regulation the types of equipment or other things of value a brewer or distributor may furnish to a malt beverage retailer. This administrative regulation establishes the items that a brewer or distributor may furnish to a retail licensee and other licensees.

Section 1. (1) A brewer or distributor may furnish the following equipment to retail licensees that sell draft malt beverages:

- (a) Tapping accessories;
- (b) Rods;
- (c) Vents;
- (d) Taps;
- (e) Hoses;
- (f) Washers;
- (g) Couplings;
- (h) Vent tongues;
- (i) Check valves; and
- (j) Tap knobs.

(2) If tap knobs, or similar devices, bearing brand names are furnished they shall not be used to dispense malt beverages of a different brand from that designated on the knob. Other equipment shall not be furnished to retail malt beverage licensees.

Section 2. A brewer or distributor may furnish vats, tubs, tanks, or portable dispensing units to special temporary licensees, picnics, bazaars and carnivals. The equipment may bear a trade name, trademark, trade slogan or a facsimile of a product, container or display, associated with a particular brand that is visible to the consumer.

Section 3. (1) A brewer or distributor may provide refrigerated coolers to retailers by gift, lease, loan, or sale on condition that the brewer or distributor enters into a written agreement with the retailer that clearly states:

(a) Whether the cooler is being provided to the retailer by gift, lease, loan, or sale; and

(b) The terms under which the cooler is being provided to the retailer, including:

- 1. Which entity owns the cooler; and
- 2. Which entity is responsible for the upkeep and maintenance of the cooler.

(2) The written agreement shall be a record to be kept and maintained by each licensee pursuant to KRS 244.150(1).

(3) A brewer or distributor shall not provide more than one (1) refrigerated cooler to any one (1) retail licensed premises at any given time, by gift, loan, lease, or sale, except that this provision shall not apply to NQ-1 retail licensed premises.

(4) A brewer or distributor shall not provide the refrigerated cooler to the retailer under terms or conditions intended or designed to encourage or induce the retailer to sell or use the products of the brewer or distributor to the exclusion of other brewers' or distributors' products.

(5) A brewer or distributor shall not provide the refrigerated cooler to the retailer under terms or conditions intended or designed to restrict the retailer's use of the refrigerated cooler to only products of the providing brewer or distributor to the exclusion of other brewers' or distributors' products.

(6) A brewer or distributor shall not provide the refrigerated

cooler under terms or conditions intended or designed to require the retailer to place the brewer or distributor's products in certain locations in the cooler, or prohibit or direct the placement of other brewers' or distributors' products.

(7) A brewer shall not expressly or implicitly require any distributor of its products to provide delivery of, services to, or maintenance of, refrigerated coolers provided by the brewer, or retaliate against a distributor who refuses to do so, however this provision shall not prohibit a distributor's voluntary agreement to do so.

(8) A retailer shall not require or request a brewer or distributor to provide a refrigerated cooler to it as an express or implied condition for the retailer's sale, use, or placement of the brewer's or distributor's products at the retail licensed premises, or retaliate against a brewer or distributor who refuses to do so.

(9) Any refrigerated cooler provided by a brewer or distributor to a retailer shall not:

(a) Exceed twenty-five (25) cubic feet of storage space;

(b) Be constructed in any manner that limits the type of product that may be displayed in the cooler; and

(c) Leave the retailer's licensed premises.

(10) Any refrigerated cooler provided by a brewer or distributor to a retailer shall have:

(a) Adjustable temperature controls;

(b) Adjustable shelving inside the cooler; and

(c) Capability of storing differing product types and brands without the need to physically modify the unit.

(11) A retailer shall not modify or cover any advertising on the sides of a refrigerated cooler provided by a brewer or distributor; however a retailer may advertise sale prices and promotions on the front of the cooler.

STEVEN A. EDWARDS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2016 at 1:00 pm 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 at least five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the day on August 31, 2016. 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, Staff Attorney, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-7479, email Melissa.McQueen@ky.gov.

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 establishes what items a brewer or distributor may furnish to retailers who sell malt beverages.

(b) The necessity of this administrative regulation: This regulation is necessary to clarify what items are permissible for a brewer or distributor to furnish to a retailer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 244.590(1)(c) authorizes the promulgation of administrative regulations on this subject.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies what equipment and supplies a brewer or distributor may furnish to a retailer of malt beverages.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds refrigerated coolers to the list of items a brewer or distributor may provide to a malt beverage retailer by gift, lease, loan or sale.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as a result of the amendment of KRS 243.590.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 244.590(1)(c) authorizes the promulgation of administrative regulations on this subject.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation clarifies that brewers or distributors may supply refrigerated coolers to retailers and it defines the parameters for this provision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Brewers, distributors and malt beverage retailers will be affected by this administrative regulation. The Department of Alcoholic Beverage Control will also 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: In order to comply with the regulation the regulated entities will have to ensure they follow the parameters for providing refrigerated coolers, including keeping written documentation of all agreements.

(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 complying with this administrative regulation amendment.

(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: There are no costs to implement this administrative regulation.

(b) On a continuing basis: There are no continuing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are not costs associated with implementing this administrative regulation and enforcement costs, if any, would be minimal and would be absorbed into regular employee duties.

(7) Provide an assessment of whether an 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? Yes. NQ-1 licensees are exempted from the provision that no more than one cooler may be provided to a retailer. This distinction was made due to the fact that NQ-1 licensees are large retail locations that generally have more than one floor and/or cover thousands of square feet of space; therefore, it is not the same for a brewer or distributor to provide one cooler to that type of licensee as it is for a smaller retailer licensee such as a convenience store.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control is the only government agency expected to 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 244.590(1)(c) authorizes the promulgation of administrative regulations on this subject.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues 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 Department of Alcoholic Beverage Control does not expect that this amendment will require any additional expenditures as a result of 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.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? There are no costs to administer this amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this amendment for each subsequent 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: There are no expected costs to administer this amendment.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amendment)**

907 KAR 7:010. Home and community based waiver services version 2.

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements for home and community based waiver services version 2.

Section 1. Definitions. (1) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "Abuse" regarding:

(a) An adult is defined by KRS 209.020(8); or

(b) A child means abuse pursuant to KRS Chapter 600 or 620.

(3) "ADHC" means adult day health care.

(4) "ADHC center" means an adult day health care center

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licensed in accordance with 902 KAR 20:066.

(5) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a participant who:

(a) Does not require twenty-four (24) hour care in an institutional setting; and

(b) May need twenty-four (24) hour respite services when experiencing a short-term crisis due to the temporary or permanent loss of the primary caregiver.

(6) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(7) "Area agency on aging and independent living" means:

(a) An area agency on living as defined by 42 U.S.C. 3002(6); and

(b) A local agency designated by the Department for Aging and Independent Living to administer funds received under Title III for a given planning and service area.

(8) "Assessment" means an evaluation completed using the Kentucky Home Assessment Tool (K-HAT).

(9) "Blended services" means a non-duplicative combination of HCB waiver services that are not participant-directed services as well as participant-directed services.

(10) "Center for independent living" is defined by 42 U.S.C. 796a(1).

(11) "Certified nutritionist" is defined by KRS 310.005(12).

(12) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(13) "Chemical restraint" means a drug or medication:

(a) Used to restrict an individual's:

1. Behavior; or

2. Freedom of movement; and

(b) 1. That is not a standard treatment for the individual's condition; or

2. Dosage that is not an appropriate dosage for the individual's condition.

(14) "Communicable disease" means a disease that is transmitted:

(a) Through direct contact with an infected individual;

(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another or a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another; or

(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(15) "DAIL" means the Department for Aging and Independent Living.

(16) "DCBS" means the Department for Community Based Services.

(17) "Department" means the Department for Medicaid Services or its designee.

(18) "Electronic signature" is defined by KRS 369.102(8).

(19) "Experimental goods or services" means goods or services that are serving the ends of or used as a means of experimentation.

(20) "Exploitation" regarding:

(a) An adult is defined by KRS 209.020(9); or

(b) A child means exploitation pursuant to KRS Chapter 600 or 620.

(21) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(22) "Home and community based waiver services" or "HCB waiver services" means home and community based waiver services:

(a) Covered by the department pursuant to this administrative regulation; and

(b) For individuals who meet the requirements of Section 4 of this administrative regulation.

(23)[(22)] "Home and community support services" means nonresidential and nonmedical home and community based services and supports that:

(a) Meet the participant's needs; and

(b) Constitute a cost-effective use of funds.

(24)[(23)] "Home delivered meal provider" means a food

service establishment as defined by KRS 217.015(21).

(25)[(24)] "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081; and

(b) Medicare and Medicaid certified.

(26)[(25)] "Illicit drug" means:

(a) A drug, prescription or not prescription, used illegally or in excess of therapeutic levels; or

(b) A prohibited drug.

(27)[(26)] "Immediate family member" is defined by KRS 205.8451(3).

(28)[(27)] "Informed choice" means a choice among options based on accurate and thorough knowledge and understanding to the participant regarding:

(a) The services and supports to be received; and

(b) From whom services and supports will be received.

(29)[(28)] "Legally responsible individual" means an individual who:

(a) Has a duty under state law to care for another person; and

(b) 1. Is a parent (biological, adoptive, or foster) of a minor child and provides care to the child;

2. Is the guardian of a minor child and provides care to the child; or

3. Is a spouse of a participant.

(30)[(29)] "Licensed clinical social worker" means an individual who meets the requirements established by KRS 335.100.

(31)[(30)] "Licensed dietitian" is defined by KRS 310.005(11).

(32)[(31)] "Licensed medical professional" means:

(a) A physician;

(b) An advanced practice registered nurse;

(c) A physician assistant;

(d) A registered nurse;

(e) A licensed practical nurse; or

(f) A pharmacist.

(33)[(32)] "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition established by KRS 314.011(9); and

(b) Works under the supervision of a registered nurse.

(34)[(33)] "Licensed social worker" means an individual who meets the requirements established by KRS 335.090.

(35)[(34)] "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal located at <http://chfs.ky.gov/dms/mwma.htm>.

(36)[(35)] "Natural supports" means a non-paid person, persons, primary caregiver, or community resource who can provide or has historically provided assistance to the participant or due to the familial relationship would be expected to provide assistance.

(37)[(36)] "Neglect" regarding:

(a) An adult is defined by KRS 209.020(016); or

(b) A child means neglect pursuant to KRS Chapter 600 or 620.

(38)[(37)] "NF" means nursing facility.

(39)[(38)] "NF level of care" means a high intensity or low intensity patient status determination made by the department in accordance with 907 KAR 1:022.

(40)[(39)] "Normal baby-sitting" means general care provided to a child that includes custody, control, and supervision.

(41)[(40)] "Normal care sitting" means general care:

(a) Provided to an adult who is at least eighteen (18) years of age; and

(b) That includes custody, control, and supervision.

(42)[(41)] "Participant" means a recipient who meets the:

(a) NF level of care criteria established in 907 KAR 1:022; and

(b) Eligibility criteria for HCB waiver services established in Section 4 of this administrative regulation.

(43)[(42)] "Participant corrective action plan" means a written plan that is developed by the case manager or service advisor in conjunction with the participant or representative to identify, eliminate, and prevent future violations from occurring by:

(a) Providing the participant or representative with the specific administrative regulation that has been violated;

(b) Identifying factual information regarding the violation; and

(c) Reaching an agreement between the case manager and

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the participant or representative to the resolution and being in compliance within the timeframe established in the participant corrective action plan being issued.

~~(44)~~~~(43)~~ "PDS" means participant-directed services.

~~(45)~~~~(44)~~ "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 7 of this administrative regulation.

~~(46)~~~~(45)~~ "Person-centered team" means a participant, the participant's guardian or representative, and other individuals who are natural or paid supports and who:

(a) Recognize that evidenced based decisions are determined within the basic framework of what is important for the participant and within the context of what is important to the participant based on informed choice;

(b) Work together to identify what roles they will assume to assist the participant in becoming as independent as possible in meeting the participant's needs; and

(c) Include providers who receive payment for services and who shall:

1. Be active contributing members of the person-centered team meetings;

2. Base their input upon evidence-based information; and

3. Not request reimbursement for person-centered team meetings.

~~(47)~~~~(46)~~ "Physical restraint" means any manual method or physical or mechanical device, material, or equipment that:

(a) Immobilizes or reduces the ability of a person to move his or her arms, legs, body, or head freely; and

(b) Does not include:

1. Orthopedically prescribed devices or other devices, surgical dressings or bandages, or protective helmets; or

2. Other methods that involve the physical holding of a person for the purpose of:

a. Conducting routine physical examinations or tests;

b. Protecting the person from falling out of bed; or

c. Permitting the person to participate in activities without the risk of physical harm.

~~(48)~~~~(47)~~ "Physician assistant" or "PA" is defined by KRS 311.840(3).

~~(49)~~~~(48)~~ "Plan of treatment" means a care plan developed and used by an ADHC center based on the participant's individualized ADHC service needs, goals, interventions, and outcomes.

~~(50)~~~~(49)~~ "Prohibited drug" means a drug or substance that is illegal under KRS Chapter 218A.

~~(51)~~~~(50)~~ "Public health department" means an agency recognized by the Department for Public Health pursuant to 902 KAR Chapter 8.

~~(52)~~~~(51)~~ "Recipient" is defined by KRS 205.8451(9).

~~(53)~~~~(52)~~ "Registered nurse" or "RN" means a person who:

(a) Meets the definition established by KRS 314.011(5); and

(b) Has one (1) year or more experience as a professional nurse.

~~(54)~~~~(53)~~ "Representative" is defined by KRS 205.5605(6).

~~(55)~~~~(54)~~ "Service advisor" is defined by KRS 205.5605(7).

~~(56)~~~~(55)~~ "Sex crime" is defined by KRS 17.165(1).

~~(57)~~~~(56)~~ "Violent crime" is defined by KRS 17.165(3).

~~(58)~~~~(57)~~ "Violent offender" is defined by KRS 17.165(2).

Section 2. Provider Participation Requirements Excluding Participant-Directed Services. (1) In order to provide HCB waiver services version 2, excluding participant-directed services, an HCB waiver provider shall:

(a) Be:

1. Approved by the department, licensed, or certified; and

2.a. An adult day health care center;

b. A home health agency;

c. A center for independent living;

d. A public health department;

e. A home delivered meal provider; or

f. An area agency on aging and independent living; and

(b) Meet the service requirements specified in Section 5 of this

administrative regulation for any service provided by the provider.

(2) An out-of-state HCB waiver provider shall comply with the requirements of this administrative regulation.

(3) An HCB waiver provider:

(a) Shall comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672;

3. 907 KAR 1:673;

4. 907 KAR 7:005 if the provider is a certified waiver provider;

5. 902 KAR 20:081 if the provider is a home health agency; and

6. This administrative regulation;

(b) Shall not enroll a participant for whom the provider cannot provide HCB waiver services;

(c) Shall choose to accept or not accept a participant;

(d)1. Shall implement a procedure to ensure that critical incident reporting is done in accordance with Section 9 of this administrative regulation;

2. Shall implement a process for communicating the critical incident, the critical incident outcome, and the critical incident prevention plan to the participant, a family member of the participant, or participant's guardian or legal representative; and

3. Shall maintain documentation of any communication provided in accordance with subparagraph 2 of this paragraph by:

a. Entering a record of the communication in the:

(i) MWMA; and

(ii) Participant's case record; and

b. Having the documentation signed and dated by the staff member making the entry;

(e) Shall inform a participant or any interested party in writing of the provider's:

1. Hours of operation; and

2. Policies and procedures;

(f) Shall not permit a staff member who has contracted a communicable disease to provide a service to a participant until the condition is determined to no longer be contagious;

(g) Shall ensure that a staff supervisor is available at all times to provide oversight and technical assistance;

(h) Shall ensure that each staff person:

1. Prior to independently providing a direct service, is trained regarding:

a. Abuse, neglect, fraud, and exploitation;

b. The reporting of abuse, neglect, fraud, and exploitation;

c. Person-centered planning principles;

d. Documentation requirements; and

e. HCB services definitions and requirements;

2. Receives DAIL attendant care certification training initially and then annually thereafter;

3. Receives cardio pulmonary resuscitation certification and first aid certification provided by a nationally accredited entity within six (6) months of employment;

4. Maintains current CPR certification and first aid certification for the duration of the staff person's employment;

5.a. Completes a tuberculosis (TB) risk assessment performed by a licensed medical professional within the past twelve (12) months and annually thereafter; and

b.(i) If a TB risk assessment resulted in a TB skin test being performed, have a negative result within the past twelve (12) months as documented on test results received by the provider within thirty (30) days of the date of hire; and

(ii) If it is determined that signs or symptoms of active disease are present, in order for the person to be allowed to work, be administered follow-up testing by his or her physician or physician assistant with the testing indicating the person does not have active TB disease; and

6. Prior to the beginning of employment, has successfully passed a drug test with no indication of prohibited or illicit drug use;

(i) Shall maintain documentation:

1.a. Of an annual TB risk assessment or negative TB test for each staff who provides services or supervision; or

b. Annually for each staff with a positive TB test that ensures

no active disease symptoms are present; and

2. Of the results of a drug test for each staff;

(j)1. Shall:

a. Prior to hiring an individual, obtain:

(i) The results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment;

(ii) The results of a Nurse Aide Abuse Registry check as described in 906 KAR 1:100 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment; and

(iii) The results of a Caregiver Misconduct Registry check as described in 922 KAR 5:120 and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment; and

b. Within thirty (30) days of the date of hire, obtain the results of a Central Registry check as described in 922 KAR 1:470 and an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to employment; or

2. May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subparagraph 1 of this paragraph; and

(k) Shall not allow a staff person to provide HCB waiver services if the individual:

1. Has a prior conviction of or pled guilty to a:

a. Sex crime; or

b. Violent crime;

2. Is a violent offender;

3. Has a prior felony conviction;

4. Has a drug related conviction, felony plea bargain, or amended plea bargain conviction within the past five (5) years;

5. Has a positive drug test for an illicit or a prohibited drug;

6. Has a conviction of abuse, neglect, or exploitation;

7. Has a Cabinet for Health and Family Services finding of:

a. Child abuse or neglect pursuant to the Central Registry as described in 922 KAR 1:470; or

b. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct

Registry as described in 922 KAR 5:120;

8. Is listed on the Nurse Aide Abuse Registry pursuant to 906 KAR 1:100;

9. Within twelve (12) months prior to employment, is listed on or has a finding indicated on another state's equivalent of the:

a. Nurse Aide Abuse Registry as described in 906 KAR 1:100 if the other state has an equivalent;

b. Caregiver Misconduct Registry as described in 922 KAR 5:120 if the other state has an equivalent; or

c. Central Registry as described in 922 KAR 1:470 if the other state has an equivalent; or

10. Has been convicted of Medicaid or Medicare fraud.

(4) A home delivered meal provider shall:

(a) Comply with KRS Chapter 217 and 902 KAR 45:005 requirements regarding food and food service establishments; and

(b) Be subject to:

1. Monitoring; and

2. Annual certification by DAIL in accordance with 907 KAR 7:005.

Section 3. Maintenance of Records. (1)(a) Regarding each participant, an HCB waiver provider shall maintain:

1. A case record;

2. Fiscal reports and service records regarding services provided; and

3. Critical incident reports.

(b) A case record shall:

1. Be maintained in the MWMA; and

2. Contain:

a. A comprehensive assessment approved by the department;

b. A completed person-centered service plan;

c. A copy of the MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form signed

by the participant or participant's legal representative at the time of application or reapplication and each recertification thereafter;

d. The name of the:

(i) Case manager or service advisor; and

(ii) Independent assessor;

e. Documentation of all level of care determinations;

f. Documentation related to prior authorizations including requests, approvals, and denials;

g. Documentation of each contact with, or on behalf of, the participant;

h. Documentation that the participant, if receiving ADHC services, was provided a copy of the ADHC center's posted hours of operation;

i. Documentation that the participant or participant's legal representative was informed of the procedure for reporting complaints and critical incidents; and

j. Documentation of each service provided, which shall include:

(i) The date the service was provided;

(ii) The duration of the service;

(iii) The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant's home;

(iv) Itemization of each service delivered;

(v) The participant's arrival and departure time, excluding travel time, if the service was provided at the ADHC center;

(vi) A monthly progress note each month, which shall include documentation of changes, responses, and services utilized to evaluate the participant's health, safety, and welfare needs; and

(vii) The signature of the service provider.

(c)1. Fiscal reports regarding services provided, service records regarding services provided, and critical incident reports shall be retained:

a. At least six (6) years from the date that a covered service is provided unless the participant is a minor; or

b. If the participant is a minor, the longer of:

(i) Three (3) years after the participant reaches the age of majority under state law; or

(ii) Six (6) years from the date that a covered service is provided.

2. If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in subparagraph 1. of this paragraph, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(2) Upon request, an HCB provider shall make information regarding service and financial records available to the:

(a) Department;

(b) Cabinet for Health and Family Services, Office of Inspector General or its designee;

(c) DAIL;

(d) The United States Department for Health and Human Services or its designee;

(e) General Accounting Office or its designee;

(f) Office of the Auditor of Public Accounts or its designee; or

(g) Office of the Attorney General or its designee.

Section 4. Participant Eligibility Determinations and Redeterminations. (1)(a) To be eligible to receive HCB waiver services, an individual:

1. Shall be determined by the department to meet NF level of care requirements;

2. Without waiver services may be admitted by a physician's order to an NF;

3. Shall be screened by the department for the purpose of making a preliminary determination of whether the individual might qualify for HCB waiver services; and

4. Shall meet the Medicaid eligibility requirements established in 907 KAR 20:010.

(b) In addition to the individual meeting the requirements established in paragraph (a) of this subsection, the individual, a representative on behalf of the individual, or independent assessor shall:

1. Apply for 1915(c) home and community based waiver services via the MWMA; and

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2. Complete and upload into the MWMA a:
 - a. MAP - 115 Application Intake - Participant Authorization; and
 - b. MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form.

(c) A participant, participant's guardian, or participant's legal representative shall annually sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form at the time of each recertification to document that the participant was informed of the choice to receive HCB waiver or institutional services.

(2) The department shall perform a level of care determination for each participant:

- (a) At least once every twelve (12) months; and
- (b) More often if there is a change in function or condition.

(3) An HCB waiver service shall not be provided to a participant who:

- (a) Does not require a service other than:
 1. An environmental or minor home adaptation;
 2. A home delivered meal;
 3. Conflict free case management; or
 4. Goods and services;

(b) Is an inpatient of:

1. A hospital;
2. An NF; or
3. An intermediate care facility for individuals with an intellectual disability;

(c) Is a resident of a licensed personal care home;

(d) Has a primary diagnosis that is not related to age or a disability; or

(e) Is receiving services from another Medicaid 1915(c) home and community based services waiver program.

(4) An eligible participant or the participant's legal representative shall select a participating HCB waiver provider from which the participant wishes to receive HCB waiver services.

(5) An HCB waiver provider shall notify in writing electronically or in print the local DCBS office and the department of a participant's:

(a) Termination from the HCB waiver program;

(b)1. Admission to an NF for less than sixty (60) consecutive days; and

2. Return to the HCB waiver program from an NF within sixty (60) consecutive days; or

(c) Failure to access services within the parameters of the participant's level of care determination for greater than sixty (60) days.

Section 5. Covered Services and Related Requirements. (1)(a) HCB waiver services shall include:

1. Conflict free case management;
2. Attendant care;
3. Specialized respite care services;
4. Environmental or minor home adaptations;

5. ADHC services;

6. Goods and services; or
7. Home delivered meals.

(b)1. Participant-directed services shall include:

- a. Environmental or minor home adaptations;
- b. Goods and services;
- c. Home and community supports;
- d. Non-specialized respite care services; or
- e. PDS coordination services.

2. Participant-directed services provided to a participant shall not replace the participant's natural support system.

(2)(a) An HCB waiver service and a PDS, except as established in subparagraph 3 of this paragraph, shall:

1. Be prior authorized by the department based upon a request that provides all of the information needed to ensure that the service or modification of the service meets the needs of the participant;

2. Be provided pursuant to the participant's person-centered service plan;

3. Except for PDS, not be provided by an immediate family member, guardian, or legally responsible individual of the

participant;

4. Be accessed within sixty (60) days of the date of prior authorization;

5. Be a one (1) on one (1) encounter except for:

a. An ADHC service in which case the ADHC center providing the service shall comply with the ADHC personnel requirements established in 902 KAR 20:066; or

b. A service for which a one (1) on one (1) encounter is not appropriate due to the participant's circumstances or condition in which case the circumstances or condition shall be documented in the:

- (i) Assessment; and
- (ii) Person-centered service plan;

6. Not occur at the same time as another service, regardless of payer source, except for a:

- a. Doctor visit; or
- b. Physical therapy, occupational therapy, or speech-language pathology service appointment; and

7. Be provided by an individual who:

a. Does not have a communicable disease pursuant to Section 2(3)(f) of this administrative regulation; and

b. Provides services at a level that appropriately and safely meets the needs of the participant.

(b) A 1915(c) home and community based waiver service that is not part of a hospice service package may be covered in conjunction with hospice services.

(3) To request prior authorization:

(a) For a non-PDS HCB waiver service, a case manager shall submit a completed person-centered service plan to the department; or

(b) For a PDS, a service advisor shall submit a completed person-centered service plan to the department.

(4) Except for case management and PDS coordination, services shall not begin and payment shall not be made for services until:

(a) A level of care determination has been approved by the department;

(b) A person-centered service plan has been:

1. Developed by the person-centered team; and
2. Approved by the department; and

(c)1. DCBS has determined that the individual meets financial eligibility requirements and valid documentation of eligibility is on file for a new applicant for Medicaid; or

2. The first day of the month following the level of care determination if the applicant is a recipient currently enrolled with a managed care organization. The managed care organization shall be responsible for ensuring the applicant's health, safety, and welfare during the period between the level of care determination and the first day of the month following the level of care determination.

(5)(a) Case management requirements shall be as established in Section 8 of this administrative regulation.

(b) Except for the requirement established in Section 8(7)(b), the requirements established in Sections 6 and 8 of this administrative regulation shall apply to service advisors.

(6)(a) An attendant care service shall provide care that consists of:

1. General household activities including:

- a. Cleaning;
- b. Cooking; or
- c. Chores;

2. Personal care services including assistance with:

- a. Bathing;
- b. Grooming;
- c. Dressing;
- d. Eating;
- e. Toileting;
- f. Transferring;
- g. Assistance with self-administration of medication; or
- h. Ambulation; or

3. Transporting a participant to a needed place as specified in the participant's person-centered service plan including:

- a. A grocery;

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- b. A pharmacy; or
- c. An appointment.
- (b)1. An individual transporting a participant shall have a valid driver's license.

2. A minimum of current liability insurance shall be required for a vehicle used to transport a participant.

(c)1. An attendant care provider shall maintain a sign in and out log documenting the provision of services to participants.

2. Documentation shall include:

- a. The date the service was provided;
- b. The duration of the service;
- c. The arrival and departure time of the provider;
- d. A description of the service provided; and
- e. The name, title, and signature of the staff who provided the service.

(7)(a) A specialized respite care service shall:

1. Be short-term care based on the absence or need for relief of the non-paid primary caregiver;

2. Be provided by staff who provides services at a level that appropriately and safely meets the needs of the participant;

3. Be provided to a participant who has care needs beyond normal baby-sitting or normal care sitting;

4. If the participant receiving the service is assessed pursuant to 907 KAR 7:015 as qualifying the provider for Level II reimbursement, have twenty-four (24) hour access to an RN for emergency situations and consultations; and

5. If applicable, be provided in accordance with 902 KAR 20:066.

(b)1. A provider of specialized respite care shall maintain a sign in and out log documenting the provision of services to participants.

2. Documentation shall include:

- a. The date the service was provided;
- b. The duration of the service;
- c. The arrival and departure time of the provider;
- d. A description of the service provided; and
- e. The name, title, and signature of the staff who provided the service.

(8)(a) An environmental or minor home adaptation service shall:

1. Be a physical adaptation to a home owned by the participant or family member of the participant that is necessary to ensure the health, welfare, and safety of the participant;

2. Meet all applicable safety and local building codes;

3. Relate strictly to the participant's disability and needs;

4. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the participant;

5. Be provided by a licensed and insured provider qualified to provide the modification;

6. Not add to the total square footage of a home except if necessary to complete an adaptation;

7. Be submitted on the person-centered service plan for prior authorization; and

8. Not be covered unless prior authorized.

(b) A personal emergency response system shall be considered a covered environmental or minor home adaptation if it meets the requirements established in this subsection.

(9)(a) An ADHC service shall:

1. Be provided to a participant who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to participants during the posted hours of operation:

a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

c. Snacks;

d. The presence of an RN or LPN;

e. Age and diagnosis appropriate daily activities; and

f. Routine services that meet the daily personal and health care

needs of a participant, including:

(i) Monitoring of vital signs;

(ii) Assistance with activities of daily living; and

(iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a participant;

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include specialized respite care services pursuant to subsection (7) of this section;

5. Be provided to a participant by the health team in an ADHC center, which may include:

a. A physician;

b. A physician assistant;

c. An APRN;

d. An RN;

e. An LPN;

f. An activities director;

g. A licensed social worker;

h. A certified social worker;

i. A licensed clinical social worker;

j. A certified nutritionist; or

k. A health aide; and

6. Be provided pursuant to a plan of treatment that is included in the participant's person-centered service plan.

(b) A plan of treatment shall:

1. Be developed and signed by each member of the plan of treatment team, which shall include the participant, participant's guardian, or participant's legal representative;

2. Include:

a. Pertinent diagnoses;

b. Mental status;

c. Services required;

d. Medication or food allergies and special diet;

e. Contradictions for specific types of activities and preventive health care measures;

f. Frequency of visits to the ADHC center;

g. Prognosis;

h. Rehabilitation potential;

i. Functional limitation;

j. Activities permitted;

k. Nutritional requirements;

l. Medication;

m. Treatment;

n. Safety measures to protect against injury;

o. Instructions for timely discharge; and

p. Other pertinent information; and

3. Be developed annually from information on the assessment and revised as needed.

(c)1. Modification of an ADHC unit of service shall require:

a. Modification of the participant's person-centered service plan; and

b. Prior authorization.

2. Upon approval or denial of a prior authorization request, the department shall provide written notification to the case manager and to the participant.

3. A case manager shall:

a. Inform the ADHC center of approval or denial; and

b. Document the approval or denial in the case record.

(d)1. An ADHC center shall maintain a sign in and out log documenting the provision of services to participants.

2. Documentation shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the participant;

d. A description of the service provided; and

e. The title, name, and signature of the staff who provided the service.

(11) Goods and services shall:

(a) Be individualized;

(b) Meet identified needs required by the participant's person-centered service plan that are necessary to ensure the health,

welfare, and safety of the participant;

(c) Be items that are utilized to reduce the need for personal care or to enhance independence within the participant's home or community;

(d) Not include experimental goods or services;

(e) Not include chemical or physical restraints; and

(f) Not be covered unless prior authorized by the department.

(12) A home delivered meal shall:

(a) Meet at least one-third (1/3) of the recommended daily allowance per meal and meet the requirements of the current version of the Dietary Guidelines for Americans published by United States Department of Agriculture and the United States Department of Health and Human Services;

(b) Be provided to a participant who is unable to prepare his or her own meals and for whom there are no other persons available to do so including natural supports;

(c) Be furnished in accordance with menus that are approved in writing by a licensed dietitian;

(d) Take into consideration the participant's medical restrictions; religious, cultural, and ethnic background; and dietary preferences;

(e) Be individually packaged heated meals;

(f)[4.] Be provided for inclement weather, holidays, or emergencies if prior approval is provided by the department and if the meals:

1. Are individually packaged if not heated;

2. Are shelf stable; or

3. Have components separately packaged if the components are clearly marked as components of a single meal; and

(g) Not:

1. Supplement or replace meal preparation activities that occur during the provision of attendant care services or any other similar service;

2. Supplement or replace the purchase of food or groceries;

3. Include bulk ingredients, liquids, and other food used to prepare meals independently or with assistance;

4. Be provided while the participant is hospitalized, residing in an institutional setting, or while in attendance at an ADHC center; or

5. Duplicate a service provided through other programs operated by any governmental agency.

(13)(a) Home and community support services shall consist of:

1. General household activities including;

a. Cleaning;

b. Cooking; or

c. Chores;

2. Personal care services including assistance with:

a. Bathing;

b. Grooming;

c. Dressing;

d. Eating;

e. Toileting;

f. Transferring;

g. Assistance with self-administration of medication; or

h. Ambulation; or

3. Transporting a participant to a needed place as specified in the participant's person-centered service plan including:

a. A grocery;

b. A pharmacy; or

c. An appointment.

(b)1. An individual transporting a participant shall have a valid driver's license.

2. A minimum of current liability insurance shall be required for a vehicle used to transport a participant.

(14) Non-specialized respite care shall be provided:

(a) To a participant who has care needs beyond normal baby-sitting or normal care sitting; and

(b) In relief of a non-paid primary caregiver.

(15)(a) PDS coordination services shall include service advisory and management of funds.

(b) The financial management service provider shall:

1. Perform, on behalf of the participant, the employer responsibilities of payroll processing, which shall include:

a. Issuing paychecks;

b. Withholding federal, state, and local tax and making tax payments to the appropriate tax authorities; and

c. Issuing W-2 forms;

2. Be responsible for performing all fiscal accounting procedures at least every thirty (30) days including issuing expenditure reports to:

a. The participant, the participant's guardian, or the participant's legal representative;

b. The participant's case manager; and

c. Upon request, the department;

3. Maintain a separate account for each participant while continually tracking and reporting funds, disbursements, and the balance of the participant's prior authorizations; and

4. Process and pay invoices for:

a. PDS goods and services approved in the person-centered service plan; and

b. Environmental or minor home adaptations in the person-centered service plan.

Section 6. Miscellaneous Participant-Directed Services Requirements. (1) A PDS provider shall:

(a) Be selected by the participant;

(b) Be at least eighteen (18) years of age;

(c) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(d) Be able to communicate effectively with the participant, representative, participant's guardian, or family of the participant;

(e) Be able to understand and carry out instructions;

(f) Be able to keep records as required by the participant;

(g) Comply with the requirements for background and related checks established in Section 2(3)(j) of this administrative regulation;

(h) Not be a PDS provider excluded from providing services in accordance with Section 2(3)(k) of this administrative regulation;

(i)1. Prior to the beginning of employment, complete training on the:

a. Reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030; and

b. Needs of the participant; and

2. Receive DAIL attendant care training initially and then annually thereafter];

(j)1. Obtain first aid certification within six (6) months of providing PDS services; and

2. Maintain first aid certification for the duration of being a PDS provider;

(k)1. Except as established in subparagraph 2 of this paragraph:

a. Obtain cardiopulmonary resuscitation (CPR) certification by a nationally accredited entity within six (6) months of employment; and

b. Maintain CPR certification for the duration of being a PDS provider; or

2. If the participant to whom a PDS provider provides services has a signed Do Not Resuscitate order, not be required to meet the requirements established in subparagraph 1 of this paragraph;

(l) Comply with the TB risk assessment and test requirements established in Section 2(3)(h)5. of this administrative regulation;

(m) Maintain and submit timesheets:

1. Signed by the:

a. Participant or representative; and

b. Provider; and

2. Documenting:

a. Hours worked;

b. The provision of a service including:

(i) A full description of the service provided; and

(ii) Any concerns or issues, if existing, regarding the general well-being of the participant; and

c. The participant's choice of daily activities and services; and

(n) Submit a completed Kentucky Consumer Directed Options/Participant Directed Services Employee/Provider Contract to the service advisor.

(2)(a) A participant may designate a representative to act on

the participant's behalf.

(b) A representative shall:

1. Submit to all of the background and related checks established in Section 2(3)(j) of this administrative regulation;
2. Be at least eighteen (18) years of age;
3. Be chosen by the participant, except as established in paragraph (c) of this subsection, to manage and direct all related aspects of the participant's PDS; and
4. Not be a PDS representative if found in violation of the provisions established in subsection (1)(h) of this section.

(c) A representative shall be chosen for a participant if a condition established in this paragraph exists. If the participant:

1. Is under eighteen (18) years of age, a family member of the participant shall appoint a representative for the participant;
2. Has a guardian or legal representative, the participant's guardian or legal representative shall appoint a representative for the participant; or
3. Has failed to adhere to the terms of a participant corrective action plan and chooses to continue receiving PDS, the participant's person-centered team shall present a list of multiple potential representatives to the participant from which the participant shall choose a representative.

(d) A participant's choice of representative shall be made via a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS), which the participant shall submit to the participant's service advisor.

(3) A participant may voluntarily terminate PDS by completing a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS) and submitting it to the participant's service advisor.

(4) The department shall immediately terminate a participant from receiving PDS if:

- (a) Imminent danger to the participant's health, safety, or welfare exists; or
- (b) The participant's person-centered service plan indicates he or she requires more hours of service than the program can provide, which may jeopardize the participant's safety and welfare due to being left alone without a caregiver present.

(5) A service advisor:

(a) Providing PDS coordination shall:

1. Meet the case manager requirements established in Section 8(1) and (2) of this administrative regulation; and
2. Within seven (7) days of receiving a referral regarding a participant from an independent assessor, schedule a face-to-face visit with the participant, the participant's guardian, or the participant's legal representative;
- (b) Shall work with the participant or participant's legal representative to develop a participant corrective action plan:
 1. If the participant, participant's legal representative, or PDS employee has exhibited abusive, intimidating, or threatening behavior; or
 2. Pursuant to Section 8(7)(d) of this administrative regulation;

(c) For a participant with a participant corrective action plan:

1. Shall monitor the progress of the participant corrective action plan; and
- 2.a. Shall determine that the participant corrective action plan has been satisfied and continue with PDS;
- b. May assist or direct the participant in appointing a representative pursuant to subsection (2)(c) of this section; or
- c. Shall proceed with involuntary termination of PDS if the participant or legal representative is unable or unwilling to comply with the participant corrective action plan;
- (d) If proceeding with involuntary termination, shall:
 1. Notify the independent assessor in writing of termination of PDS within thirty (30) days;
 2. Provide the participant or participant's legal representative with written information regarding the traditional waiver program and traditional waiver providers;
 3. Provide the participant or participant's legal representative with information regarding the right to appeal the PDS denial in accordance with 907 KAR 1:563;
 4. Complete and submit to the department a MAP-2000, Initiation/Termination of Consumer Directed Option

(CDO)/Participant Directed Services (PDS) terminating the participant from PDS; and

5. Document the:

- a. Reason for the termination;
- b. Actions taken to assist the participant with the participant corrective action plan; and
- c. Outcomes; and
- (e) Shall conduct at least one (1) in person visit with:
 1. The participant each month at the:
 - a. Participant's residence; or
 - b. ADHC center if the participant receives services at an ADHC center; and
 2. The participant's representative each three (3) months if designated by the participant.

(6) Except as provided in subsection (4) or (5) of this section regarding a participant's termination from PDS, the participant's service advisor shall:

- (a) Notify the independent assessor and service provider of potential termination;
- (b) Assist the participant in developing a participant corrective action plan;
- (c) Allow at least thirty (30) but no more than ninety (90) days for the participant to resolve the issue, develop and implement a prevention plan, or designate a PDS representative;

(d) Complete and submit to the department a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS) terminating the participant from receiving PDS if the participant fails to meet the requirements established in paragraph (c) of this subsection; and

(e) Assist the participant in transitioning back to traditional HCB services by providing a current list of traditional HCB service providers.

(7) A personal services agency shall:

- (a) Meet the requirements established in 906 KAR 1:180; and
- (b) Comply with the requirements of this section.

(8) An immediate family member, guardian, or legally responsible individual may provide a PDS upon written approval from the department if:

(a) The individual submits to the department a completed PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as a Paid Service Provider;

- (b) The individual has unique abilities necessary to meet the needs of the participant;
- (c) The individual has obtained education, job experience, volunteerism, or training beyond the direct care of the participant;
- (d) The services being provided are not natural supports;
- (e) The individual enables the participant to be integrated in the community; and
- (f)1. The nearest provider is more than thirty (30) miles from the participant's residence; or
2. A qualified provider cannot:
 - a. Provide the necessary services according to the person-centered service plan; or
 - b. Accommodate the participant's schedule.

(9) A service advisor through PDS coordination shall:

- (a) Advise a participant regarding any aspect of PDS or blended services and facilitate access to services;
- (b) Provide information for accessing assistance twenty-four (24) hours per day, seven (7) days per week;
- (c) Comply with all applicable federal and state laws and requirements;
- (d) Continually monitor a participant's health, safety, and welfare and provide information on how to access resources;
- (e) Request a:
 1. Copy of the participant's current person-centered service plan; or
 2. Reassessment through the independent assessor; and
- (f) Conduct at least one (1) face-to-face visit:
 1. With the participant monthly;
 2. With the participant and the participant's representative, if the participant has a representative, at least once every three (3) months; and
 3. At the participant's residence at least once every three (3)

months.

(10) A participant shall be responsible for all employer-related expenses and responsibilities.

(11) A PDS provider shall not provide more than forty (40) hours of PDS in a calendar week (Sunday through Saturday).

Section 7. Person-centered Service Plan Requirements. (1) A person-centered service plan shall:

- (a) Be established for each participant;
- (b) Be developed by:
 1. The participant, the participant's guardian, or the participant's legal representative;
 2. The participant's case manager or service advisor;
 3. The participant's person-centered team; and
 4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;
- (c) Use a process that:
 1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;
 2. Is timely and occurs at times and locations convenient for the participant;
 3. Reflects cultural considerations of the participant;
 4. Provides information:
 - a. Using plain language in accordance with 42 C.F.R. 435.905(b); and
 - b. In a way that is accessible to an individual with a disability or who has limited English proficiency;
 5. Offers an informed choice;
 6. Includes a method for the participant to request updates to the person-centered service plan as needed;
 7. Enables all parties to understand how the participant:
 - a. Learns;
 - b. Makes decisions; and
 - c. Chooses to live and work in the participant's community;
 8. Discovers the participant's needs, likes, and dislikes; and
 9. Empowers the participant's person-centered team to create a person-centered service plan that:
 - a. Is based on the participant's:
 - (i) Assessed clinical and support needs;
 - (ii) Strengths;
 - (iii) Preferences; and
 - (iv) Ideas;
 - b. Encourages and supports the participant's:
 - (i) Rehabilitative needs;
 - (ii) Habilitative needs; and
 - (iii) Long term satisfaction;
 - c. Is based on reasonable costs given the participant's support needs;
 - d. Includes:
 - (i) The participant's goals;
 - (ii) The participant's desired outcomes; and
 - (iii) Matters important to the participant;
 - e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;
 - f. Includes:
 - (i) Information necessary to support the participant during times of crisis; and
 - (ii) Risk factors and measures in place to prevent crises from occurring;
 - g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;
 - h. Records the alternative home and community-based settings that were considered by the participant;
 - i. Reflects that the setting in which the participant resides was chosen by the participant;
 - j. Is understandable to the participant and to the individuals who are important in supporting the participant;

k. Identifies the individual or entity responsible for monitoring the person-centered service plan;

l. Is finalized and agreed to with the informed consent of the participant or participant's representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;

m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;

n. Includes those services that the individual elects to self-direct; and

o. Prevents the provision of unnecessary or inappropriate services and supports; and

(d) Include in all settings the ability for the participant to:

1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience; and

2.a. Choose when and what to eat;

b. Have access to food at any time;

c. Choose with whom to eat or whether to eat alone; and

d. Choose appropriate clothing according to the:

(i) Participant's preference;

(ii) Weather; and

(iii) Activities to be performed.

(2) If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.

(3)(a) A participant's person-centered service plan shall be:

1. Entered into the MWMA by the participant's case manager or service advisor; and

2. Updated in the MWMA by the participant's case manager or service advisor.

(b) A participant or participant's authorized representative shall complete and upload into the MWMA a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA.

Section 8. Case Management Requirements. (1) A case manager shall:

(a) Have:

1.a. A bachelor's degree in a health or human services field from an accredited college or university; and

b.(i) At least one (1) year of experience in a health or human services field; or

(ii) The educational or experiential equivalent in the field of aging or disabilities; or

(b) Be a registered nurse who has:

1. At least two (2) years of experience as a professional nurse in the field of aging or disabilities; or

2. A master's degree in a health or human services field from an accredited college or university.

(2) A case manager shall be supervised by a case management supervisor who:

(a) Has at least four (4) years of experience as a case manager in the field of aging or disabilities; and

(b) Meets the requirements established in subsection (1) of this section.

(3) A case manager shall meet with a participant, the participant's guardian, or the participant's legal representative within seven (7) days of receiving a referral from an independent assessor regarding the participant.

(4) A case manager shall:

(a) Communicate in a way that ensures the best interest of the participant;

(b) Be able to identify and meet the needs of the participant;

(c)1. Be competent in the participant's language either through personal knowledge of the language or through interpretation; and

2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;

(d) Ensure that:

1. The participant is educated in a way that addresses the participant's:

a. Need for knowledge of the case management process;

b. Personal rights; and

c. Risks and responsibilities as well as awareness of available services; and

2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;

(e) Have a code of ethics to guide the case manager in providing case management that shall address:

1. Advocating for standards that promote outcomes of quality;
2. Ensuring that no harm is done;
3. Respecting the rights of others to make their own decisions;
4. Treating others fairly; and
5. Being faithful and following through on promises and commitments;

(f)1. Lead the person-centered service planning team; and

2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's person-centered service plan;

(g)1. Include the participant's participation, guardian's participation, or legal representative's participation in the case management process; and

2. Make the participant's preferences and participation in decision making a priority;

(h) Document:

1. A participant's interactions and communications with other agencies involved in implementing the participant's person-centered service plan; and

2. Personal observations;

(i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's person-centered service plan;

(j) Be accountable to:

1. A participant to whom the case manager provides case management in ensuring that the participant's needs are met;

2. A participant's person-centered team and provide leadership to the team and follow through on commitments made; and

3. The case manager's employer by following the employer's policies and procedures;

(k) Stay current regarding the practice of case management and case management research;

(l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant's person-centered service plan is successful and done so in a way that is efficient regarding the participant's financial assets and benefits;

(m) Accurately reflect in the MWMA if a participant is:

1. Terminated from the HCB waiver program;
2. Admitted to a hospital;
4. Admitted to a skilled nursing facility;
4. Transferred to another Medicaid 1915(c) home and community based waiver service program; or
5. Relocated to a different address; and

(n) Provide information about participant-directed services to the participant, participant's guardian, or participant's legal representative:

1. At the time the initial person-centered service plan is developed; and

2. At least annually thereafter and upon inquiry from the participant, participant's guardian, or participant's legal representative.

(5)(a) Case management for any individual who begins receiving HCB waiver services shall be conflict free except as allowed in paragraph (b) of this subsection.

(b)1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified HCB waiver provider within thirty (30) miles of the participant's residence.

2. An exemption to the conflict free case management requirement shall be granted if:

- a. A participant requests the exemption;

b. The participant's case manager provides documentation of evidence to the department that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;

c. The participant or participant's representative and case manager signs a completed MAP 531 Conflict-Free Case Management Exemption; and

d. The participant, participant's representative, or case manager uploads the completed MAP 531 Conflict-Free Case Management Exemption into the MWMA.

3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall document conflict of interest protections, separating case management and service provision functions within the provider entity and demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.

(c) A participant who receives HCB waiver services shall transition to conflict free case management when the participant's next level of care determination occurs.

(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant's:

1. Case manager; or
2. Provider of non-case management HCB waiver services.

(e) If a participant chooses a new case manager in order to comply with the conflict free case management requirement, the new case manager and the participant's assessment team shall be responsible for:

1. Developing the material necessary for the participant's next level of care determination;
2. Submitting the material associated with the participant's next level of care determination to the MWMA;
3. Developing the participant's next person-centered service plan; and
4. Submitting the participant's next person-centered service plan to the MWMA.

(6) Case management shall involve:

(a) A constant recognition of what is and is not working regarding a participant; and

(b) Changing what is not working.

(7) A case manager shall:

(a) Arrange for a service but not provide a service directly;

(b) Contact the participant at least monthly by telephone or through a face-to-face visit with a minimum of one (1) face-to-face visit between the case manager and the participant:

1. Every other month in:
 - a. An adult day health care center; or
 - b. The participant's residence; and
2. At least three (3) times a calendar year in the participant's residence;

(c) Ensure that services are provided in accordance with the participant's person-centered service plan;

(d) Issue a participant corrective action plan if:

1. The participant does not comply with the person-centered service plan;
2. The participant, a family member of the participant, an employee of the participant, the participant's guardian, or a legal representative of the participant threatens, intimidates, or consistently refuses services from any HCB waiver provider;
3. Imminent threat of harm to the participant's health, safety, or welfare exists;

4. The participant, a family member of the participant, an employee of the participant, the participant's guardian, or a legal representative of the participant interferes with or denies the provision of an assessment, case management, or service advisory; or

5. If the PDS provider does not comply with the PDS provider requirements established in Section 6(1) of this administrative

regulation; and

(e) Issue a recommendation to the department for termination from HCB waiver services or PDS if a participant corrective action plan cannot be agreed upon or fulfilled by the participant, participant's guardian, or participant's legal representative.

Section 9. Critical Incident Reporting. (1)(a) An event that potentially or actually impacts the health, safety, or welfare of the participant shall be a critical incident.

(b) A critical incident may include:

1. Death;
2. Alleged or suspected abuse, neglect, or exploitation;
3. Homicidal or suicidal ideation;
4. Missing person;
5. A medication error resulting in consultation or intervention of a licensed medical professional;
6. An event involving police or emergency response personnel intervention; or
7. Other action or event that may result in harm to the participant.

(2)(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant.

(b) If the critical incident:

1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA by the individual who witnessed or discovered the critical incident; or
2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported by the individual who witnessed or discovered the critical incident via the MWMA within eight (8) hours of discovery.

(c) The HCB waiver provider shall:

1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and
2. Prepare a report of the investigation, which shall be recorded in the MWMA and shall include:
 - a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;
 - b. Details of the critical incident; and
 - c. Relevant participant information including:
 - (i) A listing of recent medical concerns;
 - (ii) An analysis of causal factors; and
 - (iii) Recommendations for preventing future occurrences.

(d) The participant's case manager shall follow up to ensure that the participant's health, safety, and welfare are not jeopardized.

(3) An HCB provider shall report a medication error by making an entry into the MWMA.

Section 10. Involuntary Termination of HCB Waiver Services.

(1) If the department involuntarily terminates a participant's participation in the HCB waiver program, the department shall:

(a) Notify in writing of the decision to terminate services the:

1. Participant's independent assessor;
2. Participant, participant's guardian, or participant's legal representative;
3. Participant's case manager; and
4. Participant's HCB waiver service providers; and
- (b) Inform the participant, participant's guardian, or participant's legal representative of the right to appeal the department's decision to terminate HCB waiver services.

(2)(a) If an HCB waiver provider involuntarily terminates providing HCB waiver services to a participant, the HCB waiver provider shall:

1. At least thirty (30) days prior to the effective date of the termination:
 - a. Simultaneously notify in writing the:
 - (i) Participant, participant's guardian, or participant's legal representative;
 - (ii) Participant's case manager;
 - (iii) The participant's independent assessor; and
 - (iv) Department;

2. Document the termination in the MWMA; and
3. In conjunction with the participant's case manager:
 - a. Provide the participant, participant's guardian, or participant's legal representative with the name, address, and telephone number of each HCB waiver provider in Kentucky;
 - b. Provide assistance to the participant, participant's guardian, or participant's legal representative in contacting another HCB waiver provider; and
 - c. Provide a copy of pertinent information to the participant, participant's guardian, or participant's legal representative.
- (b) The notice referenced in paragraph (a) of this subsection shall include:
 1. A statement of the intended action;
 2. The basis for the intended action;
 3. The authority by which the intended action is taken; and
 4. The participant's right to appeal the intended action through the provider's appeal or grievance process.

Section 11. Use of Electronic Signatures. The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 12. Applicability and Transition to Version 2. (1) The provisions and requirements established in this administrative regulation shall not apply to individuals receiving HCB waiver services version 1 pursuant to 907 KAR 1:160.

(2) A participant receiving services pursuant to 907 KAR 1:160 shall transition to receiving services pursuant to this administrative regulation upon the participant's next level-of-care determination if the determination confirms that the individual is eligible for HCB waiver services version 2.

Section 13. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval of the coverage.

Section 14. Appeal Rights. An appeal of a department determination regarding NF level of care or services to a participant shall be in accordance with 907 KAR 1:563.

Section 15.[44.] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "MAP – 115 Application Intake – Participant Authorization", May 2015;
- (b) "MAP – 116 Service Plan – Participant Authorization", May 2015;
- (c) "MAP – 531 Conflict-Free Case Management Exemption", May 2015;
- (d) "PDS Request Form for Immediate Family Member, Guardian, or Legally Responsible Individual as a Paid Service Provider", August 2015;
- (e) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;
- (f) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS)", June 2015;
- (g) "Kentucky Consumer Directed Options/Participant Directed Services Employee/Provider Contract", June 2015; and
- (h) "Kentucky Home Assessment Tool (K-HAT)", July 1, 2015.

(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 at: <http://www.chfs.ky.gov/dms/incorporated.htm>.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 17, 2016

FILED WITH LRC: June 30, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2016, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing August 15, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen, (502) 564-4321, stuart.owen@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding a new version – Version 2 – of home and community based (HCB) waiver services. The HCB program enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for a new version – Version 2 - of Medicaid's home and community based waiver program and in accordance with federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a new version of a program that enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(2) If 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 inserts a section establishing that coverage of services will be contingent on federal funding and approval.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to protect the viability of the Medicaid Program by ensuring that services' coverage is contingent on federal approval and federal funding.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring that services' coverage is contingent on federal approval and federal funding.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by ensuring that services' coverage is contingent on federal approval and federal

funding.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Currently sixty-three (63) providers (home health departments and adult day health care centers) are enrolled as HCB waiver program providers and over 9,500 individuals are receiving services through the 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: No action is required as a result of the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Parties will benefit from the receipt of federal funding for the program which is necessary to maintain the program.

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

(a) Initially: The amendment imposes no cost as it ensures that services' coverage is contingent on federal approval and funding.

(b) On a continuing basis: The amendment imposes no cost as it ensures that services' coverage is contingent on federal approval and funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 1915(c) home and community based waiver programs are not federally mandated.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 1915(c) home and community based waiver programs are not federally mandated.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 1915(c) home and community based waiver programs are not federally mandated.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 1915(c) home and community based waiver programs are not federally mandated.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amendment)**

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment imposes no cost as it ensures that services' coverage is contingent on federal approval and funding.

(d) How much will it cost to administer this program for subsequent years? The amendment imposes no cost as it ensures that services' coverage is contingent on federal approval and funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

907 KAR 7:015. Reimbursement for home and community based waiver services version 2.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

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, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program reimbursement requirements and provisions for home and community based waiver services version 2.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20:066; and

(b) Certified for Medicaid participation by the department.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Fixed upper payment limit" means the maximum amount the department shall reimburse per unit.

(6) [(5)] "HCB" means home and community based waiver.

(7) [(6)] "Participant" means a recipient who:

(a) Meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) Meets the eligibility criteria for HCB services established in 907 KAR 7:010.

(8) [(7)] "Recipient" is defined by KRS 205.8451(9).

Section 2. HCB Service Reimbursement. (1)(a) Except as provided in Section 3, 4, or 5 of this administrative regulation, the department shall reimburse for a home and community based waiver service or item at the lesser of the billed charges or the fixed upper payment limit for each unit.

(b) The fixed upper payment limits, unit amounts, and reimbursement maximums established in the following table shall apply:

Service	Fixed Upper Payment Limit	Unit Amount	Maximum
PDS coordination	\$162.50 per unit		Two (2) units per month
Case management	\$100.00	One (1) month	One (1) unit per month
Attendant care not as a PDS	\$24.00 per hour	One (1) hour	\$200 per day alone or in combination with ADHC services. Travel to and from the participant's residence shall be excluded
Home and community supports	\$2.88 per unit	Fifteen (15) minutes	Forty-five (45) hours per week; Maximum of \$200 per day alone or in combination with ADHC services; Travel to and from the participant's residence shall be excluded
Non-specialized respite	\$2.75 per unit	Fifteen (15) minutes	\$200 per day alone or in combination with

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			specialized respite. Non-specialized respite alone or in combination with specialized respite shall not exceed \$4,000 per level of care year.
Goods and services	\$3,500 per level of care year	Level of care year	\$3,500 per level of care year; shall not be covered unless prior authorized
Home delivered meals	\$7.50 per hot meal	One (1) hot meal	One (1) hot meal per day and five (5) hot meals per week
Adult day health care services	\$2.83 per unit for Level I services; \$3.43 per unit for Level II services except for specialized respite, which shall be \$10.00 per unit for Level II	Fifteen (15) minutes	200 units per week
Specialized respite	\$4.00 per unit for Level I; \$10.00 per unit for Level II	Fifteen (15) minutes	\$200 per day alone or in combination with non-specialized respite. Specialized respite alone or in combination with non-specialized respite shall not exceed \$4,000 per level of care year.
Environmental or minor home adaptation	\$2,500 per level of care year	One (1) level of care year	\$2,500 per level of care year; shall not be covered unless prior authorized

(2)(a) Reimbursement for a service provided as a PDS shall not exceed the department's allowed reimbursement for the same service as established in the table in subsection (1) of this section.

(b) Participants receiving services through the PDS option shall have three (3) months from the date of level of care recertification to comply with the reimbursement limit established in paragraph (a) of this subsection.

(3)(a) Three (3) quotes from a prospective provider shall be required for:

1. An environmental or minor home adaptation; or
2. Goods and services.

(b) Documentation justifying the need for the following shall be uploaded into the MWMA:

1. An environmental or minor home adaptation; or
2. Goods and services.

(5) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

Section 3. Local Health Department HCB Service Reimbursement. (1) The department shall reimburse a local health department for HCB services:

- (a) Pursuant to Section 2 of this administrative regulation; and
- (b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall:

(a) Each year complete a Home Health and Home and Community Based Cost Report completed in accordance with the Home Health and Home and Community Based Cost Reporting Instructions; and

(b) Submit the Home Health and Home and Community Based Cost Report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual Home Health and Home and Community Based Cost Report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department's HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

(a) Payments received for HCB services provided during a fiscal year; and

(b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual Home Health and Home and Community Based Cost Report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's Home Health and Home and Community Based Cost Report if it determines an audit is necessary.

Section 4. Reimbursement for an ADHC Service. (1) Reimbursement for an ADHC service shall:

(a) Be made:

1. Directly to an ADHC center; and
2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 200 units per calendar week per participant.

(2) Level I reimbursement shall be the lesser of:

- (a) The provider's usual and customary charges; or
- (b) Two (2) dollars and eighty-three (83) cents per unit of service.

(3)(a) Except as established in paragraph (b) of this subsection, Level II reimbursement shall be the lesser of:

1. The provider's usual and customary charges; or
2. Three (3) dollars and forty-three (43) cents per unit of service.

(b)1. The department shall pay a Level II reimbursement for specialized respite provided by a:

- a. Registered nurse; or
- b. Licensed practical nurse under the supervision of a registered nurse.

2. The Level II reimbursement for specialized respite shall be the lesser of:

- a. The ADHC center's usual and customary charges; or
- b. Ten (10) dollars per unit of service.
- (c) An ADHC center's reimbursement for Level II services shall

be:

1. Per participant; and
2. Based upon the participant's assessed level of care and most recent person-centered service plan.
- (4) An ADHC basic daily service shall constitute care for one (1) participant.
- (5) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.
- (6) The level of and reimbursement rate for any ADHC service provided to a participant shall be determined by an assessment of the participant using the Kentucky Home Assessment Tool (K-HAT).

Section 5. Criteria for High Intensity Level II Reimbursement and Home Health Level II Reimbursement. (1) Any ADHC service provided to a participant by an ADHC center shall qualify for Level II reimbursement if the participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT).

(2)(a) Specialized respite care provided to a participant by a home health agency shall qualify for Level II reimbursement if:

1. The participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT); and
2. Provided by a:
 - a. Registered nurse; or
 - b. Licensed practical nurse under the supervision of a registered nurse.

(b) The Level II reimbursement for specialized respite provided by a home health agency shall be the reimbursement established in Section 4(3)(b) of this administrative regulation.

(3) If a participant's assessment determines that:

(a) ADHC services to the participant do not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center for services provided to the participant; or

(b) Specialized respite care to the participant does not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center or home health agency for the specialized respite care service.

Section 6. Applicability. The reimbursement provisions and requirements established in this administrative regulation shall:

(1) Apply to services or items provided to individuals who receive home and community based services version 2 pursuant to 907 KAR 7:010; and

(2) Not apply to services or items provided to individuals receiving home and community based services version 1 pursuant to 907 KAR 1:160.

Section 7. Federal Approval and Federal Financial Participation. The department's reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the reimbursement.

Section 8. Appeal Rights. An HCB service provider may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9.[8-] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Kentucky Home Assessment Tool (K-HAT)", July 1, 2015;
- (b) "The Home Health and Home and Community Based Cost Report", November 2007; and
- (c) "The Home Health and Home and Community Based Cost Report Instructions", November 2007.

(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 40601, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 17, 2016

FILED WITH LRC: June 30, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2016, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing August 15, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen, (502) 564-4321, stuart.owen@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program reimbursement provisions and requirements regarding a new version – Version 2 – of home and community based (HCB) waiver services. The HCB program enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish reimbursement policies for a new version – Version 2 - of Medicaid's home and community based waiver program and in accordance with federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid reimbursement provisions and requirements for a new version of a program that enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid reimbursement provisions and requirements for a program that enables individuals who have nursing facility level-of-care needs to live, and receive services, in a community setting rather than in a nursing facility.

(2) If 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 inserts a section establishing that reimbursement of services will be contingent upon federal funding and approval.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to protect the viability of the Medicaid Program by ensuring that reimbursement of services is contingent on federal approval and federal funding.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring that reimbursement of services

is contingent on federal approval and federal funding.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by ensuring that reimbursement of services is contingent on federal approval and federal funding.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Currently sixty-three (63) providers (home health departments and adult day health care centers) are enrolled as HCB waiver program providers and over 9,500 individuals are receiving services through the 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: No action is required as a result of the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Parties will benefit from the department's receipt of federal funding for the program as it is necessary to maintain the program.

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

(a) Initially: The amendment imposes no cost as it ensures that reimbursement of services is contingent on federal approval and funding.

(b) On a continuing basis: The amendment imposes no cost as it ensures that reimbursement of services is contingent on federal approval and funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 1915(c) home and community based waiver programs are not federally mandated.

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 1915(c) home and community based waiver programs are not federally mandated.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 1915(c) home and community based waiver programs are not federally mandated.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 1915(c) home and community based waiver programs are not federally mandated.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect the Department for Medicaid Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment imposes no cost as it ensures that reimbursement of services is contingent on federal approval and funding.

(d) How much will it cost to administer this program for subsequent years? The amendment imposes no cost as it ensures that reimbursement of services is contingent on federal approval and funding.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(Amendment)

921 KAR 1:420. Child support distribution.

RELATES TO: KRS 13B.010(2), 13B.170, 205.720, 205.750, 205.755, 205.795, 405.520, 407.5101, 45 C.F.R. 302.32, 302.38, 302.51-302.54, 303.72(h)(5), [407-5404-] 42 U.S.C. 651

STATUTORY AUTHORITY: KRS 194A.050(1), 205.755(1), 205.795

NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS 205.755(1) authorizes the secretary to prescribe the manner in which distributions of payments of support shall be made, consistent with state and federal law and administrative regulations. This administrative regulation establishes procedures for distribution of child support payments.

Section 1. Allocation of income withheld payments in IV-D and non-IV-D cases. (1) The cabinet shall allocate an income withheld payment among an obligor's cases that include an income withholding order by:

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(a) Totaling the obligor's current support obligations subject to income withholding;

(b) Dividing each current support obligation by the total amount from paragraph (a) of this subsection, to determine a percentage; and

(c) Multiplying the withheld payment received from the employer by the percentage from paragraph (b) of this subsection, to determine the portion of the payment to be applied to each current support obligation subject to income withholding.

(2) The cabinet shall allocate the payment amount determined in subsection (1)(c) of this section to each of the obligor's current support obligation amounts subject to income withholding.

(3) If the obligor's current support obligations subject to income withholding are satisfied for the current month, the cabinet shall allocate a remaining income withholding amount among the obligor's ordered arrears obligations subject to income withholding by:

(a) Totaling the obligor's ordered arrears obligations subject to income withholding;

(b) Dividing the monthly arrears obligation for each child support case by the total amount from paragraph (a) of this subsection, to determine a percentage; and

(c) Multiplying the remaining income withholding amount by the percentage from paragraph (b) of this subsection, to determine the portion of the payment to be applied to each arrears obligation subject to income withholding.

(4) The cabinet shall allocate the payment amount determined in subsection (3)(c) of this section to each of the obligor's arrears obligations subject to income withholding.

(5) If the obligor's current support and arrears obligations subject to income withholding are satisfied for the current month, the cabinet shall allocate a remaining income withheld amount proportionately according to subsections (1) through (4) of this section.

(6) Allocation of nonwage payments in IV-D and non-IV-D cases. The cabinet shall allocate nonwage payments:

(a) As designated by an obligor for a specific case; or

(b) If not designated by an obligor, by allocating a proportionate share to each of the obligor's child support cases, as determined in subsections (1) through (4) of this section.

Section 2. K-TAP and Kinship Care Accounts Distribution. (1) A child support payment collected on behalf of a K-TAP or Kinship Care recipient shall be:

(a) Payable to the Department for Income Support, [Division of] Child Support Enforcement; and

(b) Reported to the K-TAP or Kinship Care agency within ten (10) working days of the end of the month in which an escrow payment is disbursed to a recipient.

(2) Upon receipt of a notice of payment, the K-TAP or Kinship Care agency shall redetermine eligibility for assistance payments and report the result to the child support agency.

(a) If the K-TAP or Kinship Care case becomes ineligible, the child support agency shall:

1. Distribute to the family at the end of the month the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 921 KAR 1:380, Section 1(4)(b).

(b) Unless a hearing is requested or a case remains eligible for assistance, the child support agency shall distribute the collection as specified in Section 6 of this administrative regulation.

Section 3. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Payable to the Department for Income Support, [Division of] Child Support Enforcement; and

(2) Distributed and disbursed to the foster care agency.

Section 4. Distribution of Tax Refund Intercept Amounts. (1) A tax refund intercepted in a public assistance account shall be:

(a) Applied to assigned arrearage and forwarded to the public assistance agency within thirty (30) calendar days of the date of initial receipt; or

(b) If no assigned arrearage remains, the amount collected shall be:

1. Distributed to the family within thirty (30) calendar days, unless a joint income tax return is filed; or

2. Held by the cabinet for six (6) months before being distributed if a joint income tax return is filed.

(2) A tax refund intercepted for a nonpublic assistance account shall be:

(a) Applied to assigned arrearage; or

(b) If no assigned arrearage remains:

1. Held by the cabinet for six (6) months, if a joint income tax return is filed, before being distributed; or

2. Forwarded to the family within thirty (30) calendar days of the date of initial receipt.

(3) Within fifteen (15) calendar days of the date of resolution of an obligor's appeal contesting the accuracy of a past-due arrears, the cabinet shall forward the ordered amount to:

(a) The obligor, if resolution is in the obligor's favor; or

(b) The agency or family, if resolution is against the obligor.

Section 5. Interstate Case Payment Distribution. A child support payment that is collected by a responding state on behalf of an initiating state shall be forwarded to the location specified by the child support agency in the initiating state, within two (2) business days of initial receipt.

Section 6. Treatment of Escrow and Excess Payments. (1) A child support payment shall be applied to the obligation amount for the month in which the support is received.

(2) In a K-TAP or Kinship Care case, if the obligation for current support and the collection for current support exceed the grant paid for the month in which the collection was made, the difference between the grant and the obligation or the collection, whichever is less, shall be considered escrow and distributed as follows:

(a) The portion that represents the federal share, as determined by the Medicaid match rate, shall be sent to the federal government for reimbursement of public assistance previously paid;

(b) The portion that represents the state share, as determined by the Medicaid match rate, shall be sent to the family; and

(c) An amount in excess of the current obligation shall be applied to arrearage.

Section 7. Return of Overpayment. (1) If a child support overpayment is found to be due to the noncustodial parent, the amount shall be verified and, if legitimate, approved by the Department for Income Support, [Division of] Child Support Enforcement, Processing and Distribution [Accounting] Branch.

(2) Upon approval by the Processing and Distribution [Accounting] Branch, a check writer shall be sent to the Department of Treasury for processing.

(3) A check for the approved amount of child support overpayment shall be issued to the noncustodial parent within one (1) to seven (7) days, unless the overpayment is due to a [joint] tax return. If the overpayment is due to a [joint] tax return, the approved amount shall be issued to the noncustodial parent [through a manual voucher]:

(a) Within thirty (30) days if a single return [Once the unobligated spouse's share of the refund has been paid]; or

(b) Within six (6) months, if a joint return, from the date of the notification of federal tax offset or until notified that the unobligated spouse's share of the refund has been paid, whichever is earlier, [Six (6) months from notification of the federal tax offset] in accordance with 45 C.F.R. 303.72(h)(5).

STEVEN P. VENO, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 17, 2016

FILED WITH LRC: June 27, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2016, at 9:00 a.m. in the Health Services

Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until August 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40602, phone 502-564-7905, fax 502-564-7573, Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mary W. Sparrow, marry.sparrow@ky.gov, (502) 564-2285 ext. 4832

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the allocation and distribution of child support payments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out how payments are allocated and distributed in accordance with state and federal law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 194A.050, 205.712, 205.720, 205.721, 205.750, 205.755, 205.795 and 405.467, and by virtue of applying for federal funds under 42 U.S.C. 654, 659, and 666 to establish procedures to allocate and distribute child support payments for recipients of IV-A, IV-E, Title XIX, and individuals who apply for IV-D services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation, through the processes and procedures outlined, will assist in the effective allocation and distribution of child support payments.

(2) If 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 name of the Child Support Enforcement program has been updated, as well as the process of how an overpayment from a tax intercept is issued to a noncustodial parent.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the program name and the process of issuing a payment to a noncustodial parent as a result of an overpayment from a tax intercept.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by outlining the processes and procedures utilized by the Child Support Enforcement program in the allocation and distribution of child support payments.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes through revisions made in the procedures for issuing a payment to a noncustodial parent based on an overpayment from a tax intercept.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects noncustodial parents, child support enforcement workers, General Accounting, Division of Accounting and Procurement Services and the Department of the Treasury.

(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 will be no new responsibilities added to those already existing for any individual, business, organization, or state and local government.

(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 costs for the entities involved to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Noncustodial parents will receive their tax intercept refund from an overpayment more quickly as the refund does not have to go through the manual voucher process. This change will also reduce the number of manual vouchers being sent to General Accounting, Division of Accounting and Procurement Services and the Department of the Treasury.

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

(a) Initially: No additional funds will be necessary to implement the amendment to this administrative regulation.

(b) On a continuing basis: No additional funds will be necessary to implement the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds from The Child Support Enforcement State Program under Title IV-D of the Social Security Act support the implementation and enforcement of this administrative regulation. State General Funds are also utilized.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation is applied in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Income Support Child Support Enforcement program, General Accounting, Division of Accounting and Procurement Services and the Department of the Treasury and will be impacted by this amended administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 Code of Federal Regulations 302.32(b)(2)(iii), 302.51(b) and (4)(i), 303.72, 303.100(a)(5), 303.102, 308.2(d)(1) and (2) and 304.20(b)(4). Kentucky Revised Statutes 194A.050, 205.712, 205.720, 205.721, 205.750, 205.755, 205.795 and 405.467

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 additional funding.

(b) How 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 additional funding.

(c) How much will it cost to administer this program for the first year? No additional funds will be necessary to implement this administrative regulation.

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(d) How much will it cost to administer this program for subsequent years? No additional funds will be necessary to implement this administrative regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

OFFICE OF THE ATTORNEY GENERAL
Office of Consumer Protection
(New Administrative Regulation)

40 KAR 2:145. Funeral planning declaration form.

RELATES TO: KRS 367.93101, 367.93105, 367.93107, 367.93109, 367.93111, 367.93113, 367.93115, 367.93117, 367.93121, 367.97501, 367.97514, 367.97524, 367.97527

STATUTORY AUTHORITY: KRS 367.93101(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.93101(3) requires the Office of the Attorney General to promulgate administrative regulations to prescribe a funeral planning declaration form. This administrative regulation prescribes the funeral planning declaration form identified in KRS 367.93101(3) and described in KRS 367.93101 to 367.93121, by which an individual declarant may set forth the declarant's preferences regarding the manner of disposition of the declarant's remains.

Section 1. Funeral Planning Declaration. The Funeral Planning Declaration, Form FPD-1, required by KRS 367.93101(3), shall contain the following information:

- (1) The date the declaration is made;
- (2) The name of the declarant;
- (3) A statement providing that the declarant shall be at least eighteen (18) years of age and of sound mind;
- (4) A statement providing that the declarant willingly and voluntarily makes known the declarant's instructions concerning funeral services, funeral and cemetery merchandise, ceremonies, and the disposition of the declarant's remains after the declarant's death;
- (5) A statement that by executing the declaration any previous declaration is revoked;
- (6) Statements informing the declarant of the following concerning a designee:
 - (a) A designee is an individual designated and directed by the terms of the declaration to carry out the declarant's funeral plan or make arrangements concerning disposition of the declarant's remains, funeral services, cemetery merchandise, funeral merchandise, or ceremonies;
 - (b) If the declarant does not designate a designee in the declaration, the declarant shall provide instructions concerning funeral services, ceremonies, and the disposition of the declarant's remains;
 - (c) A person is not considered to be entitled to any part of the declarant's estate solely by virtue of being designated in the declaration to serve as the declarant's designee;
 - (d) The declarant's designee shall not be a provider of funeral or cemetery services, or responsible for any aspect of disposition of the declarant's remains, or associated with any entity responsible for providing funeral or cemetery services or disposing of the declarant's remains, unless the designee is related to the declarant by birth, marriage, or adoption;
 - (e) A designee shall not be a witness to the declaration; and
 - (f) If the designee or alternate designee fail to assume an obligation set forth in the Funeral Planning Declaration, Form FPD-1, within five (5) days of notification of the declarant's death, the authority to make arrangements shall devolve pursuant to the terms of the Funeral Planning Declaration, Form FPD-1, or KRS 367.93117;
 - (7) If the declarant elects, a statement identifying the name of a designee who shall carry out the instructions that are set forth in the declaration;
 - (8) If the declarant elects to name an alternate designee, a statement identifying the name of an alternate designee if the designee is unwilling or unable to act;
 - (9) If the declarant elects to not select a designee, a statement that the declarant elects to not select a designee and that the declarant directs that the instructions listed in the declaration for funeral services, ceremonies, and the disposition of the declarant's

remains be followed;

(10) Instructions for actions to be taken after the declarant's death, indicating by initials or marks beside each instruction selected by the declarant, from the following:

(a) Concerning disposition of the declarant's body, one (1) of the following:

1. The declarant directs that the declarant's body be buried and, if so, where;

2. The declarant directs that the declarant's cremated remains be disposed of by one (1) of the following methods, or, if no method of disposition is selected, the declarant leaves the decision to the designee:

a. By placing the cremated remains in a grave, crypt, or niche and, if so, where;

b. By scattering them in a scattering area; or

c. On private property with the consent of the owner;

3. The declarant directs that the declarant's body be entombed and, if so, where;

4. The declarant directs that the declarant's body be donated as an anatomical gift pursuant to KRS 311.1911, et. seq., if the declarant has not selected another method for donation of the declarant's body; or

5. The declarant intentionally makes no decision concerning the disposition of the declarant's body and leaves the decision to the designee;

(b) Concerning arrangements, any of the following selected by the declarant:

1. The declarant directs that funeral services be obtained and, if so, from whom, or, if no person from whom to obtain funeral services is selected, then the designee may decide;

2. The declarant directs that funeral and ceremonial arrangements are to be made and, if so, providing instructions regarding the funeral and ceremonial arrangements;

3. The declarant directs the selection of a grave memorial, monument, or marker, and, if so, providing instructions regarding the grave memorial, monument, or marker;

4. The declarant directs the selection of funeral and cemetery merchandise and other property for the disposition of the declarant's remains, funeral, or other ceremonial arrangements, and, if so, providing instructions regarding the funeral and cemetery merchandise and other property for the disposition of the declarant's remains, funeral, or other ceremonial arrangements; or

5. The declarant directs that the designee make all arrangements concerning ceremonies and other funeral or burial services;

(c) Any additional instructions requested by the declarant; and

(d) A statement that the declarant directs that the declarant's designee make alternate arrangements to the best of the designee's ability if it is impossible to make an arrangement specified in the Funeral Planning Declaration, Form FPD-1, because:

1. A funeral home or other service or merchandise provider is out of business, impossible to locate, or otherwise unable to provide the specified service; or

2. The specified arrangement is impossible, illegal, or exceeds the funds available or is inconsistent with the terms of the pre-arranged funeral or cemetery contract;

(11) A statement that it is the declarant's intention that the declarant's Funeral Planning Declaration, Form FPD-1, be honored by the declarant's family and others as the final expression of the declarant's intentions concerning the declarant's funeral and the disposition of the declarant's body after the declarant's death, and that the declarant understands the full import of this declaration;

(12) Concerning execution of the Funeral Planning Declaration, Form FPD-1:

(a) The signature of the declarant or another person in the declarant's presence and at the declarant's direction, the signature date, and the city, county, and state of the declarant's residence; and

(b) If applicable, the printed name of the person who signed at the declarant's direction;

(13) The signatures of two (2) witnesses, printed name, and date of signature of each witness, immediately following a statement that the witness believes the declarant to be of sound mind and to have willfully and voluntarily executed the Funeral Planning Declaration, Form FPD-1, that the witness did not sign the declarant's signature or at the direction of the declarant, that the witness is not a parent, spouse, child, or designee of the declarant, that the witness is not entitled to any part of the declarant's estate, that the declarant signed the declaration in the presence of the witness, and that the witness is competent and at least eighteen (18) years of age; and

(14) An acknowledgement before a notary public or other person authorized to administer oaths, including the signature and title of the notary public or other person authorized to administer oaths, and the date of the signature, immediately following a statement that the declarant appeared before the notary public or other person authorized to administer oaths and acknowledged that the declarant voluntarily dated and signed the Funeral Planning Declaration, Form FPD-1, or directed the Funeral Planning Declaration, Form FPD-1, to be signed and dated in the declarant's presence, and the date of the acknowledgement.

Section 2. Incorporation by Reference. (1) "Funeral Planning Declaration", Form FPD-1, 07-16, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ANDY BESHEAR, Attorney General

APPROVED BY AGENCY: July 15, 2016

FILED WITH LRC: July 15, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2016, at 10:00 a.m., Eastern Time, at the Kentucky Attorney General's Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2016, 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 11:59 p.m., Eastern Time, on August 31, 2016. 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: Kevin R. Winstead, Assistant Attorney General, Kentucky Attorney General's Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 696-5389, fax (502) 573-8317, email address kevin.winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the funeral planning declaration form by which a person may set forth his or her preferences regarding the manner of disposition of his or her remains and instructions regarding the related services, merchandise, and arrangements, which is authorized by KRS 367.93101(3) and governed by KRS 367.93101 to KRS 367.93121 as enacted by Senate Bill 103 (2016 Ky. Acts ch. 59).

(b) The necessity of this administrative regulation: This regulation is necessary for the efficient and uniform application of the requirements of KRS 367.93101 to KRS 367.93121 regarding

funeral planning declarations. KRS 367.93101(3) provides that a declaration is a funeral planning declaration setting forth a declarant's preferences regarding the manner of disposition of the declarant's remains and in a form prescribed by administrative regulation promulgated by the Office of the Attorney General.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation promulgates the funeral planning declaration form by which a person may set forth his or her preferences regarding the manner of disposition of his or her remains and instructions regarding the related services, merchandise, and arrangements. The form conforms to the content, execution, and other requirements of KRS 367.93101 to .93121.

1. KRS 367.93101 defines certain terms. The statute establishes that a declaration shall be in a form prescribed in an administrative regulation promulgated by the Attorney General, and establishes certain duties of a designee.

2. KRS 367.93103 requires that a funeral planning declaration be voluntary, written, signed by the declarant or another person at the declarant's direction and in the declarant's presence, dated, signed before competent witnesses, and acknowledged before a notary public or other person authorized to administer oaths. The statute requires that the declarant be of sound mind and at least 18 years old. The statute allows a declarant to appoint a designee to carry out the terms of the declaration, and limits who may serve as a designee and as a witness to the execution of the declaration.

3. KRS 367.93105 provides that a declaration may specify the declarant's preferences concerning the disposition of the declarant's remains, the person who may direct the disposition of the declarant's remains and the ceremonial arrangements, the person who may provide funeral services, specific directions about funeral services and ceremonial arrangements, the funeral and cemetery merchandise, and disinterment.

4. KRS 367.93107 provides that the most recent declaration prevails and the invalidity of a specific direction shall not affect the validity of the declaration.

5. KRS 367.93109 establishes immunity from liability for good-faith reliance on a declaration, and sets forth presumptions, absent to any actual contrary knowledge, that a declaration was validly executed and has not been revoked and that the declarant was competent at the time the declaration was executed. The statute also provides that directions in a declaration are binding as if the declarant were alive and competent.

6. KRS 367.93111 provides that a declaration remains effective until it is revoked in writing by the declarant and the revocation is delivered to the designee or the person to whom the declaration was given.

7. KRS 367.93115 directs that if a designee or alternate designee does not assume his or her obligations under the declaration within 5 days of notification of the declarant's death, then the authority to make arrangements devolves pursuant to the terms of the declaration or KRS 367.117.

8. KRS 367.93117 establishes the order of authority for the right to control the disposition of a decedent's body and make funeral, burial, and other ceremonial arrangements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 367.93101 to KRS 367.93121, by establishing a funeral planning declaration form that a declarant may use to set forth his or her preferences regarding the disposition of his or remains.

(2) If 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 because this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable because this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable because this is a new administrative regulation.

(d) How the amendment will assist in the effective

administration of the statutes: Not applicable because 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 affects:

1. An unknown number of individuals who may desire to establish, before their deaths, their preferences regarding the disposition of their remains.

2. An unknown number of individuals who may be designated as a designee in a declaration.

3. An unknown number of persons or business entities that perform services related to the disposition of human remains, including funeral homes, crematories, and cemeteries. There are currently 33 crematory authorities licensed with the Attorney General, over 270 cemetery companies registered with the Attorney General, over 460 pre-need burial contract sellers licensed with the Attorney General, and over 510 funeral homes licensed with the Kentucky Board of Embalmers and Funeral Directors.

(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 identified in question (3) will have to take the following actions to comply with this administrative regulation:

1. Except as provided by law, accept a valid funeral planning declaration form regarding the disposition of the declarant's remains and the related services, merchandise, and arrangements, and comply with the directions stated in a funeral planning declaration form.

2. Use the funeral planning declaration form created by this administrative regulation if they provide services or assistance to a declarant in establishing the declarant's preferences and directions stated in a declaration.

3. On and after July 15, 2016, use the funeral planning declaration form if a declarant desires to pre-authorize her or her cremation. The amendments by Senate Bill 103 to the cremation statutes in KRS 367.97501 to .97537, effective July 15, 2016, deleted the preneed cremation authorization form as a method for a person to pre-authorize their cremation, and authorized the declaration as the method to pre-authorize a cremation.

4. For each cremation that is pre-authorized by a funeral planning declaration form, the crematory authority shall attach the original of the declaration form to the cremation authorization form, and maintain the form for a period of time. (This is a requirement of the cremation forms regulation, 40 KAR 2:150, and KRS 367.97504(6).)

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): At ten cents per page, the cost to print the funeral planning declaration form is estimated to be \$0.30 per copy. The estimated total printing cost is unknown because it depends on the number of copies printed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By using the funeral planning declaration form prescribed by this administrative regulation, an individual will be able to execute a funeral planning declaration form that sets forth his or her preferences regarding the disposition of his or her remains, and persons or business entities may provide services or assistance to a declarant in establishing the declarant's preferences and directions stated in a declaration. Additionally, a crematory authority, licensed funeral director, or cemetery acting pursuant to the terms of a declaration shall not be held liable for good-faith reliance on representations made in a valid declaration. Further, for cremations pre-authorized by a declaration, a crematory authority will be able to conduct cremations and accept bodies for cremation based on the declaration.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund appropriations and agency receipts.

(7) Provide an assessment of whether an 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 expected at this time.

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

(9) TIERING: Tiering is not applied in this administrative regulation because the administrative regulation does not disproportionately impact certain classes of regulated entities and the requirements of the statutes apply uniformly to any regulated entity or other person operating in the Commonwealth of Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1). What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of the Attorney General 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 367.93101, .93101(3), .93103, .93105, .93107, .93109, .93111, .93113, .93115, and .93117.

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

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(New Administrative Regulation)

103 KAR 8:160. Valuation of municipal solid waste landfill facilities.

RELATES TO: KRS 132.020, 132.200, 224.1-010

STATUTORY AUTHORITY: KRS 131.130, 132.202

NECESSITY, FUNCTION, AND CONFORMITY: KRS 132.202 requires the department to promulgate an administrative regulation to implement a valuation methodology for the taxation of property used as a landfill, also known as a municipal solid waste disposal facility. This administrative regulation establishes a uniform system of ad valorem valuation for a municipal solid waste disposal facility as defined in KRS 224.1-010(15).

Section 1. Definitions. (1) "Compaction ratio" means the ratio that expresses the relationship of the number of tons (2,000 pounds) of waste that will fill one (1) cubic yard of landfill capacity. For example, a compaction ratio of 0.60 means that sixty (60)

percent of one (1) ton (1,200 pounds) of waste can be compacted into one cubic yard of landfill capacity.

(2) "Cover materials" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(3) "Department" means Department of Revenue, Finance and Administration Cabinet, Commonwealth of Kentucky.

(4) "Discount rate" means a pre-tax percentage rate used to discount the annual royalty income over the projected remaining economic life of the landfill to a present value. The discount rate shall be seventeen (17) percent unless the landfill operator or the department establishes a higher or lower discount rate based upon applicable market factors and the applicable facts and circumstances attributable to the landfill.

(5) "Effective tipping fee" means the average net dollar amount collected per ton for depositing waste into the landfill being assessed not including surcharges, host fees, and related taxes.

(6) "Landfill" means a municipal solid waste disposal facility as defined by KRS 224.1-010(15) but does not include construction and demolition debris (CDD) landfills of less than one (1) acre.

(7) "Landfill valuation method" means a discounted cash flow, also known as yield capitalization, which is a valuation methodology used to determine the fair cash value of a landfill's real property.

(8) "Other landfill income" means the five (5) year average of income generated by a landfill from sources other than effective tipping fees, net of applicable expenses.

(9) "Present value" means the sum of the discounted projected annual royalty income over the remaining life of the landfill. The present value formula is:

$$PV = \frac{CF_1}{(1 + Y)^1} + \frac{CF_2}{(1 + Y)^2} + \frac{CF_3}{(1 + Y)^3} + \frac{CF_4}{(1 + Y)^4} + \frac{CF_5}{(1 + Y)^5} + \dots + \frac{CF_n}{(1 + Y)^n}$$

PV = present value of landfill

CF = the annual projected royalty income

Y = the annual pre-tax discount rate

n = the number of annual periods in the projection

(10) "Remaining permitted capacity" means the volume of permitted airspace remaining for the placement of waste materials.

(11) "Reversionary value" means the potential future market value of a landfill after all post-closure regulatory requirements, including a required minimum post-closure monitoring period of at least thirty (30) years, have been fulfilled by the owner or operator.

(12) "Royalty income" means that portion of effective tipping fees and other landfill income that would be paid pursuant to a presumed comparable market lease agreement by the landfill operator to the real property owner in consideration for the right to use the real property for landfill purposes.

(13) "Royalty rate" means a percentage rental rate to real property applied to the sum of the annual effective tipping fee revenue and other landfill income that results in the estimated royalty income for each year of the estimated remaining economic life of the landfill. The royalty rate shall be eighteen (18) percent unless the landfill operator or the department establishes a higher or lower royalty rate based upon applicable market factors and the applicable facts and circumstances attributable to the landfill.

(14) "Tax year" means a calendar tax year.

(15) "Tons of waste" means the five (5) year average of annual tons of waste received by the landfill, as determined utilizing information submitted to the Division of Waste Management for the Kentucky Department for Environmental Protection on Form DEP 7046 or DEP 7046Q. When calculating the average, consideration shall be given to factors that alter the five (5) year average as an appropriate estimate.

(16) "Waste" means waste as defined by KRS 224.1-010(31)(a).

Section 2. Landfill valuation methodology formula. (1) The department shall determine the fair cash value of a landfill's real property in compliance with the landfill valuation method established in this subsection.

(a) The department shall estimate the remaining permitted economic life of the landfill by dividing the estimated annual cubic yards of waste deposited into the landfill into the total remaining permitted capacity of the landfill.

1. The compaction ratio shall be calculated by taking the average of the five (5) most recent compaction ratios from the Solid Waste Landfill Annual Survey submitted to the Division of Waste Management for the Kentucky Department for Environmental Protection on Form DEP 8059. When calculating the average, consideration shall be given to factors that alter the five (5) year average as an appropriate estimate.

2. The remaining permitted capacity shall be as reported on the remaining airspace line item in the most recent Solid Waste Landfill Annual Survey submitted to the Division of Waste Management for the Kentucky Department for Environmental Protection on Form DEP 8059 for the landfill being assessed. The volume shall be adjusted for the capacity consumed from the date of the survey used to prepare the calculation, until the end of the tax year with no annual intake volume growth over the remaining forecasted permitted life of the landfill. Actual tons for the applicable dates shall be converted to permitted cubic yards using the compaction ratio and the result shall be subtracted from the remaining permitted capacity as presented in Form 8059. If cover materials are used at the landfill, the total remaining permitted capacity shall be multiplied by .85 to account for a standard reduction of remaining permitted capacity for cover materials.

3. The estimated annual cubic yards of waste deposited into the landfill shall be equal to the average of the annual cubic yards of waste deposited into the landfill for the five (5) tax years prior to

the current tax year. The landfill operator shall report to the department the annual cubic yards of waste deposited into the landfill for the five (5) tax years prior to the current tax year by April 30 of the current tax year.

4. The remaining economic life of the landfill shall be calculated as follows: remaining permitted capacity (cubic yards) divided by the estimated annual cubic yards of waste deposited equals the remaining permitted economic life of the landfill.

5. The landfill operator shall provide the department with copies of the annual surveys and all quarterly reports filed by the landfill operator with the Division of Waste Management pursuant to 401 KAR 47:190 during the five (5) years on or before April 30 of the current tax year and a copy of its current operating permit.

(b) The effective tipping fee shall be calculated by dividing landfill historical tipping fee revenue (excluding surcharges, host fees, and related taxes) collected for the five (5) most recent tax years by landfill related historical tonnage for the five (5) most recent tax years as demonstrated by the records of the landfill operator.

1. The landfill operator shall provide the department with its calculation of the effective tipping fees for the five (5) tax years prior to the current tax year, together with its annual operating financial statements for each tax year, that shall include tipping fee revenue, expenses for surcharges, host fees and related taxes, and other landfill income.

2. The department shall review the effective tipping fees calculation submitted by the landfill operator and shall estimate the forecasted effective tipping fee for the current tax year. Increases in forecasted effective tipping fees shall be determined by an indexed factor not to exceed the annual Consumer Price Index (CPI), as defined by KRS 154.30-010, for the year prior to the current tax year.

3. In estimating the annual effective tipping fee, the department shall consider any facts or circumstances that exist that may have an impact on current or future effective tipping fees.

(c) The department shall estimate the other landfill income for the current tax year based upon the records of the landfill operator for the five (5) tax years prior to the current tax year.

1. The landfill operator shall provide the department with its calculation of other landfill income for the five (5) tax years prior to the current tax year, together with its annual operating financial statements provided pursuant to this section.

2. The department shall review the other landfill income submitted by the landfill operator and included in the operating financial statements submitted and shall estimate other landfill income for the current tax year and any annual increase in the other landfill income.

3. In estimating other landfill income, the department shall consider all relevant facts or circumstances that exist that may have an impact on current or future other landfill income.

(d) If the landfill does not have five (5) years of operating data, due to its date of first operation being less than five (5) years prior to the current tax year, the department shall determine the landfill's compaction ratio, consumed landfill capacity, estimated annual cubic yards of waste deposited, effective tipping fees, and other landfill income as a rolling average of the number of years for which operating data exists for the landfill.

(e) The department shall estimate an annual royalty income for each year of the landfill's remaining economic life by the following calculation: $((\text{effective tipping fee} \times \text{tons of waste}) + \text{other landfill income}) \times \text{royalty rate} - \text{general administrative expenses} = \text{royalty income}$.

(f) The department shall determine the present value of the royalty income of the landfill for all remaining years of its remaining permitted economic life by applying the discount rate to each year's royalty income as determined pursuant to paragraph (e) of this subsection.

(g) The present value of the royalty income for all remaining years of the landfill's remaining economic life shall be the landfill real property valuation to be used as a tax basis.

(h) The department shall estimate a reversionary value, if any, as of the date that all post closure regulatory monitoring requirements of federal, state, or local governments are completed.

The reversionary value shall be discounted to its present worth as of January 1 of the current tax year and the resulting value shall be added to the sum of all year's present values as calculated pursuant to paragraph (f) of this subsection.

(2) The fair cash value of any other real property, including improvements, not already included in the valuation of the landfill through the landfill valuation method shall be assessed by the department in the same manner as real property of all other taxpayers under KRS Chapter 132.

(a) State and local real property taxes shall be applied to the assessed value of the other real property and shall be added to the taxes assessed on the real property value determined by the landfill valuation method.

(b) The landfill operator shall provide the department with a summary statement of the total acreage of land owned by the landfill company, the total acreage of the permitted landfill area, and the total acreage of the active contained landfill.

(3) Any information required to be supplied by the landfill owner or operator in connection with this administrative regulation shall be held in strict confidence by the department unless otherwise required by law.

(4) The allocation of value of tangible personal property incorporated into a landfill and certified as pollution control pursuant to KRS 132.020(1)(k) shall be determined by taking the present value of landfill royalty income, as determined in subsection (1) of this section and subtracting out the value attributable to undeveloped land and the value attributable to real property structures (i.e., demonstrative and nonexclusive examples of which include maintenance buildings, perimeter fencing, etc.) not certified as pollution control. The remaining value shall constitute the value allocation attributable to certified pollution control tangible personal property incorporated into the landfill.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2016

FILED WITH LRC: July 14, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016 from 10:00 a.m. to 12:00 p.m., in Room 383, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541, Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a new valuation system for municipal solid waste disposal facilities ("landfills").

(b) The necessity of this administrative regulation: This administrative regulation was mandated by 2016 Ky. Acts Ch. 93, § 1 (to be codified as KRS 132.202), which requires the Department of Revenue to promulgate administrative regulations under KRS Chapter 13A to implement a valuation methodology for landfills.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 2016 Ky. Acts, Ch. 93, § 4 removed

landfills from the list of companies taxed as "public service companies" under KRS 136.120 et seq. § 1 of the Act requires the Department of Revenue to centrally assess all landfills and to bill and collect all ad valorem taxes on such facilities. This administrative regulation establishes a uniform valuation system for landfills based on a discounted cash flow model that determines the value of permitted landfill property based on the tipping fees (the fee charged per ton of waste disposed) it will earn over its remaining useful life. The regulation will establish the procedure for calculating the remaining years of economic life of a landfill—based on the information in the quarterly and annual reports permitted landfills already must file with the Kentucky Department of Waste Management—and will also establish how future tipping fees are to be estimated over the life of the landfill. It will also provide for the valuation of the real property outside the permitted landfill acreage and for the estimation of other income a landfill company may earn from activities such as the production of electricity from captured landfill gas. The definition of "landfills" excludes less-than-1-acre construction and demolition debris ("CDD") landfills, as these facilities are generally privately-owned by construction and/or demolition companies and used to dispose of waste from their operations. Thus, most of them do not generate tipping fee revenues, which is what the landfill valuation model is based upon. These types of facilities were never subject to assessment by Revenue under the former statutory arrangement, and the legislature's intention with regard to the revenue impact of HB 402 was to remain revenue neutral. Excluding CDD landfills from the regulation will accomplish this intention, with assessment of those properties remaining the responsibility of the local PVAs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The valuation system for landfills under KRS 136.120(1)(a)(17) was inherently flawed by the limited scope of the property identified in that statute subject to taxation (the statute identified the entities subject to tax as "municipal solid waste disposal facilities, as defined by KRS 224.1-010(15)," whereas all other entities identified under KRS 136.120 are either "companies" or "carriers"). This was inconsistent with the requirement under KRS 136.115 to assess the value of the franchise of companies identified in KRS 136.120, where the "franchise" represents the value of the business operation as a whole. The inconsistency between the statutes led to inconsistent and uneven assessments, which, in turn, led to annual protests of almost all landfill assessments and, eventually led to litigation over the proper valuation methodology. This regulation will establish a uniform and consistent methodology for valuing municipal solid waste landfills using a discounted cash flow analysis.

(2) If 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: This administrative regulation will affect all permitted landfills in Kentucky. There are currently 26 landfills operating in the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The municipal solid waste landfill owner will be required to file an annual return with the Department of Revenue along with copies of its permit, the annual surveys, and all quarterly reports filed by the landfill operator with the Division of Waste Management pursuant to 401 KAR 47:190 during the five

years on or before April 30 of the current tax year. The landfill operator will also be required to provide the Department of Revenue with its calculation of the effective tipping fees for the five tax years prior the current tax year, together with its annual operating financial statements for each tax year which shall include tipping fee revenue, expenses for surcharges, host fees and related taxes, and other landfill income. If data for five years is not available due to the beginning date of operation being less than five years prior to the current tax year, a rolling average of the available years' data will be used.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by complying with the regulation. The uniform valuation methodology will provide consistency as to a landfill's assessment on a year-to-year basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Municipal solid waste landfill owners will now have a greater degree of certainty from year-to-year what their assessments will be, as the value calculated by the methodology is based on information and records that are readily available to them.

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

(a) Initially: The Department of Revenue will not incur additional cost as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs on an ongoing basis as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be done with existing funds and personnel primarily through the Department of Revenue, Office of Property Valuation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation establishes the uniform valuation methodology for all municipal solid waste landfills in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, Office of Property Valuation and counties or municipalities which may own and/or operate a municipal solid waste disposal facility ("landfill").

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.100; KRS 131.130(1); KRS 132.202.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 establishes a uniform valuation methodology for all landfills in Kentucky.

(a) How much 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 new revenues will be generated. Total revenue receipts for all landfills in Kentucky are approximately \$2.1 million (\$380,000 state, \$1.72 million local) annually, and it is anticipated that the new valuation methodology will produce revenues very near to this amount. However, it is anticipated that there may be some landfill assessments that will be lower than prior years' settlement amounts and some that will be higher than prior years' settlement amounts.

(b) How 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 amount of revenues collected in future years by will be similar to the first year.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

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

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

**PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(New Administrative Regulation)**

201 KAR 27:021. Drug testing for boxing, kickboxing, mixed martial arts, and elimination event shows.

RELATES TO: KRS 229.071, 229.081, 229.091, 229.111, 229.171, 229.180, 229.200, 229.991

STATUTORY AUTHORITY: KRS 229.071, 229.081, 229.091, 229.111, 229.171, 229.180, 229.200, 229.991

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. This administrative regulation establishes the policies, procedures, and penalty guidelines associated with drug testing for participants in boxing, kickboxing, mixed martial arts, and elimination event shows and exhibitions.

Section 1. General Provisions. The administration of or use of any item listed in this section that has not been approved by the commission, including the drugs or injections or methods listed in Section 2 of this administrative regulation, in any part of the body, either before or during a bout or exhibition, to or by any person who holds a license in boxing, kickboxing, mixed martial artist, or elimination event, shall be prohibited:

- (1) Alcohol;
- (2) Stimulant; or
- (3) Drug or injection or methodology.

Section 2. Prohibited Substances. (1) The following types of drugs, injections, stimulants, and methods shall be prohibited pursuant to Section 1 of this administrative regulation:

- (a) Afrinol or any other product that is pharmaceutically similar to Afrinol;
- (b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol;
- (c) A decongestant other than a decongestant identified in Section 4 of this administrative regulation; and
- (d) Any over-the-counter drug for colds, coughs, or sinuses other than those drugs listed in Section 4 of this administrative regulation, including Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(2) With the exception of stimulants listed in section S-5 and S-6 of the World Anti-Doping Agency's Prohibited List, 2015, which are prohibited at all times, any prohibited substance or method drug identified on the World Anti-Doping Agency's Prohibited List, 2015.

(3) The World Anti-Doping Agency's definitions, prohibited lists, prohibited methodologies, and tolerance levels shall be used in interpreting violations of this administrative regulation.

Section 3. Non-prohibited but Discouraged Substances. The following types of drugs or injections are not prohibited pursuant to Section 1 of this administrative regulation, but their use is

discouraged:

- (1) Aspirin and products containing aspirin; or
- (2) Nonsteroidal anti-inflammatories.

Section 4. Approved Substances. The following types of drugs or injections are approved:

- (1) Antacids, such as Maalox;
- (2) Antibiotics, antifungals, or antivirals that have been prescribed by a physician;
- (3) Antidiarrheals, such as Imodium, Kaopectate, or Pepto-Bismol;
- (4) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1, or Teldrin;
- (5) Antinauseants, such as Dramamine or Tigan;
- (6) Antipyretics, such as Tylenol;
- (7) Antitussives, such as Robitussin, if the antitussive does not contain codeine;
- (8) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet, or Zantac;
- (9) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent), or Salbutamol (Albuterol, Proventil, or Ventolin);
- (10) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide, or Vanceril;
- (11) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox, or Vosol;
- (12) Hemorrhoid products, such as Anusol-HC, Preparation H, or Nupercainal;
- (13) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane, or Milk of Magnesia;
- (14) Nasal products, such as AYR Saline, HuMist Saline, Ocean, or Salinex; and
- (15) The following decongestants and any decongestant that is pharmaceutically similar:
 - (a) Afrin; or
 - (b) Oxymetazoline HCL Nasal Spray.

Section 5. Testing Requirement. A boxer, kickboxer, professional mixed martial artist, amateur mixed martial artist, or elimination event contestant shall submit to a blood test, urinalysis, or chemical test at any time, in or out of competition, if the commission or a representative of the commission directs him or her to do so.

Section 6. Disciplinary Action. (1) A licensee who violates any provision of this administrative regulation shall be subject to disciplinary action by the commission.

(2) In addition to any other disciplinary action taken by the commission, if a contestant who won or drew a bout is found to have violated the provisions of this administrative regulation, the commission may change the result of that bout to a no decision loss if the commission finds that the drug used may have affected the result. A note shall be placed on the contestant's record that the change in decision was the result of testing positive for a banned substance or prohibited method.

Section 7. Penalty Guidelines. Each alleged violation of the commission's anti-doping policies shall be examined on a case-by-case basis and the penalties imposed shall be based upon the totality of the circumstances. The ultimate penalty may be lesser than or greater than the following penalty guidelines:

- (1) For sedatives, muscle relaxants, sleep aids, anxiolytics, or opiates cannabis:
 - (a) 1st offense: eighteen (18) month suspension and a \$100 fine;
 - (b) 2nd offense: twenty-four (24) month suspension and a \$250 fine;
 - (c) 3rd offense: thirty-six (36) month suspension and a \$500 fine; or
 - (d) 4th offense: lifetime ban and a \$1,000 fine;
- (2) For diuretics being used to cut weight:
 - (a) 1st offense: twenty-four (24) month suspension and a \$250

- fine;
- (b) 2nd offense: thirty-six (36) month suspension and a \$500 fine; or
 - (c) 3rd offense: lifetime ban and a \$1,000 fine;
- (3) For stimulants:
- (a) 1st offense: twenty-four (24) month suspension and a \$250 fine;
 - (b) 2nd offense: thirty-six (36) month suspension and a \$500 fine; or
 - (c) 3rd offense: lifetime ban and a \$1,000 fine;
- (4) For anabolic steroids:
- (a) 1st offense: thirty-six (36) month suspension and a \$500 fine;
 - (b) 2nd offense: forty-eight (48) month suspension and a \$750 fine; or
 - (c) 3rd offense: lifetime ban and a \$1,000 fine; or
- (5) For avoiding or refusing testing or detection, altering or adulterating a urine or blood sample, providing a urine or blood sample not from the contestant, or using any masking agent:
- (a) 1st offense: forty-eight (48) month suspension and a \$750 fine; or
 - (b) 2nd offense: lifetime ban and a \$1,000 fine.

Section 8. Incorporation by Reference. (1) "World Anti-Doping Agency Prohibited List", 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 911 Leewood Dr., Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at <https://wada-main-prod.s3.amazonaws.com/resources/files/wada-2015-prohibited-list-en.pdf>.

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the drug testing policy for boxers, kickboxers, mixed martial artists, and elimination event contestants.
 - (b) The necessity of this administrative regulation: This regulation is necessary to establish the Kentucky Boxing and Wrestling Commission's ("KBWC") drug testing policy.
 - (c) How this administrative regulation conforms to the content

of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the KBWC authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend, or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions as provided in KRS Chapter 229.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation will enforce statutory requirements by requiring drug testing to ensure the health and safety of athletes and the sanctity of competition.

(2) If 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 administrative of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the KBWC and participants in boxing, mixed martial arts, and elimination events. This drug policy applies to around 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) 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: Contestants may be subject to a drug test at any time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Contestants will be responsible for paying for the cost of a drug test.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation ensures a safe and fair contest for those participants in the sports impacted by this regulation.

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

(a) Initially: No Cost

(b) On a continuing basis: No Cost

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: There is no additional net cost associated with the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation establishes guidelines for fines for violations of the commission's drug testing regulations. It also requires contestants to pay for any drug test they are required to take.

(9) TIERING: Is tiering applied? Tiering is not applied because this policy applies equally to all.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation KRS 229.071, 229.081, 229.091, 229.111, 229.171, 229.180,

229.200, 229.991

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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. Fines from drug testing generate about \$1,000 a year. However the Commission does not anticipate a net change in revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Fines from drug testing generate about \$1,000 a year. However the Commission does not anticipate a net change in 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? Fines from drug testing generate about \$1,000 a year. However the Commission does not anticipate a net change in revenue.

(c) How much will it cost to administer this program for the first year? The KWBC does not anticipate any net change in the cost to administer this program in the first year because licensees are required to pay for the cost of testing.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer this program in subsequent years because licensees are required to pay for the cost of testing.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Repealer)**

201 KAR 27:036. Repeal of 201 KAR 27:035, 201 KAR 27:045, 201 KAR 27:050, 201 KAR 27:055, 201 KAR 27:060, 201 KAR 27:065, 201 KAR 27:070, 201 KAR 27:090, and 201 KAR 27:100.

RELATES TO: KRS 229.021, 229.071, 229.081, 229.091, 229.171, 229.180

STATUTORY AUTHORITY: KRS 229.171, 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. This administrative regulation repeals 201 KAR 27:035, 201 KAR 27:045, 201 KAR 27:050, 201 KAR 27:055, 201 KAR 27:060, 201 KAR 27:065, 201 KAR 27:070, 201 KAR 27:090, and 201 KAR 27:100, all of which are unneeded because the content has been moved to show-specific administrative regulations.

Section 1. The following regulations are hereby repealed:

- (1) 201 KAR 27:035, Seconds;
- (2) 201 KAR 27:045, Judges;
- (3) 201 KAR 27:050, Announcers;
- (4) 201 KAR 27:055, Physicians;
- (5) 201 KAR 27:060, Referees;
- (6) 201 KAR 27:065, Promoters;
- (7) 201 KAR 27:070, Timekeeper;
- (8) 201 KAR 27:090, Trainers; and
- (9) 201 KAR 27:100, General requirements for amateur mixed martial arts shows.

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 27:035, Seconds; 27:045, Judges; 27:050, Announcers; 27:055, Physicians; 27:060, Referees; 27:065, Promoters; 27:070, Timekeeper; 27:090, Trainers; and 27:100, General requirements for amateur mixed martial arts shows.

(b) The necessity of this administrative regulation: This regulation is necessary to avoid current duplication and to state plainly the requirements of persons acting as seconds, judges, announcers, physicians, referees, promoters, timekeepers or trainers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.171 grants the Commission authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the Commission to adopt and promulgate, amend or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions provided in KRS 229.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will repeal the referenced regulations, and contemporaneously filed amendments will more plainly state the requirements of persons acting as seconds, judges, announcers, physicians, referees, promoters, timekeepers or trainers. Specific duties of each will be listed in the requirements for specific types of show. Moreover, the requirements for professional mixed martial arts shows and amateur mixed martial arts shows are being combined into one regulation due to the significant overlap between them.

(2) If 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 administrative of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the KBWC, amateur mixed martial artists, and other licensees such as promoters, physicians, judges, officials, seconds, timekeepers, trainers, and anyone else who participated in amateur mixed martial arts. The Commission licenses around 1,250 people a year. Approximately 135 are amateur mixed martial artists, fifty are referees, three are physicians, thirty-five are promoters, fifteen are

judges, 100 are seconds, and twenty are 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 individuals identified will not have to take any additional steps to comply with the repeal of these regulations.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KWBC intends that the repeal and reinsertion of these regulations will provide clarity to licensees relating to the duties of persons acting as seconds, judges, announcers, physicians, referees, promoters, timekeepers, trainers, and amateur mixed martial artists.

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

(a) Initially: No Cost.

(b) On a continuing basis: Cost.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: There is no additional net cost associated with the implementation and enforcement of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied due to the fact this is a repeal.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is KRS 229.171 and KRS 229.180.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 repeal will have no fiscal impact.

(a) How much 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 repeal will generate no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This repeal will generate no revenue.

(c) How much will it cost to administer this program for the first year? The KWBC does not anticipate any net change in the cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer this program in subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(New Administrative Regulation)**

201 KAR 27:105. Disciplinary action.

RELATES TO: KRS 229.021, 229.031, 229.071, 229.091, 229.155, 229.171, 229.180, 229.190, 229.200, 229.991, EO 2016-270

STATUTORY AUTHORITY: KRS 229.071, 229.091, 229.155, 229.171, 229.180, 229.190, 229.200, 229.991

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. This administrative regulation provides the policies and procedures that govern disciplinary actions that result from a violation of KRS Chapter 229 or 201 KAR Chapter 27.

Section 1. Violations. (1) A person shall be guilty of a violation for any of the following actions:

(a) Violating any provision of KRS Chapter 229;

(b) Violating any provision of 201 KAR Chapter 27;

(c) Being found guilty of, pleading guilty to, pleading no contest to, or entering an Alford plea to a crime, other than a traffic violation, in any jurisdiction;

(d) Being found liable in a civil action for any claim that involves fraud or dishonesty in any jurisdiction;

(e) Violating a law related to boxing, kickboxing, mixed martial arts, elimination events, or wrestling in any jurisdiction;

(f) Placing a bet or wager on any bout or match in which the person participates or works;

(g) Serving as, or consorting or associating with any person who is, a bookmaker or illegal gambler;

(h) Participating in an unlicensed event; or

(i) Declaring bankruptcy if the person is a licensed promoter, manager, referee, or judge.

(2) A non-natural person shall be guilty of a violation if it authorizes or ratifies any of the actions in subsection (1) of this section by its agent, employee, shareholder, member, officer, or director.

Section 2. Disciplinary Action. (1) If the commission has reason to believe that a person has committed a violation, the commission may:

(a) Issue a cease and desist order;

(b) Issue a notice of violation;

(c) Declare a contestant ineligible to compete or disqualify the contestant;

(d) Eject the person from the premises at which the show or exhibition is taking place;

(e) Issue a fine;

(f) Suspend, reprimand, revoke, probate, or refuse to renew or issue a license; and

(g) Refer the person for criminal prosecution.

(2) In taking disciplinary action pursuant to subsection (1) of this section, the commission shall consider:

(a) The severity of the violation;

(b) The licensee's disciplinary history; and

(c) The violation's potential impact on health, safety, and the outcome of a contest:

(3) The commission delegates to its inspectors the authority to take disciplinary action, subject to the appeal rights in Section 4 of this administrative regulation.

(4) A person whose license is suspended or revoked shall be prohibited from attending an event sanctioned by the commission during the term of the suspension or revocation.

Section 3. Reciprocity of Discipline. (1) A licensee who is

subjected to discipline in any jurisdiction shall report to the commission within ten (10) days the date, type, and reason for the discipline given and the name of the regulatory body that ordered the discipline.

(2) The commission shall enforce the disciplinary action taken by any other regulatory body unless the licensee shows good cause why the commission should not reciprocally enforce the discipline.

Section 4. Appeals. (1) Any person subjected to disciplinary action may appeal the discipline to the full commission.

(2) An appeal shall be filed within twenty (20) days of the date the discipline was issued.

(3) The provisions of KRS Chapter 13B shall govern all administrative appeals.

Section 5. Effect of Expiration of License on Jurisdiction of the Commission. The expiration of a license shall not deprive the commission of jurisdiction to:

(1) Proceed with an investigation of the former licensee; or

(2) Issue disciplinary action against the former licensee.

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 2016, at 4:00 p.m., at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 if received at or before 11:59 p.m. on August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Barry.Dunn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Barry Dunn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the rules and standards applicable to disciplinary actions and punishments for violations.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth for disciplinary actions and punishments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.171, which grants the Kentucky Boxing and Wrestling Commission ("KBWC"), the authority to control and manage shows and exhibitions. KRS 229.180 also authorizes the KBWC to adopt and promulgate, amend, or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions as provided in KRS Chapter 229. This regulation also conforms to KRS 229.071, 229.091, 229.190, 229.200, and 229.991 by clearly setting forth the disciplinary action imposed by the KBWC for specific penalties.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation identifies actions that are considered violations and the penalties

associated with violations.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts the KBWC, participants in unarmed combat, and other licensees such as promoters, physicians, judges, officials, and anyone else licensed or seeking licensure with the Kentucky Boxing and Wrestling Commission. The Commission licenses around 1,250 people a year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action will need to be taken to comply with this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will allow the commission to act consistently when issuing violations and will hopefully lessen the number of violations by establishing clear rules.

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

(a) Initially: Not net change anticipated.

(b) On a continuing basis: Not net change anticipated.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation: Funding for the implementation and enforcement of this regulation will be provided by restricted funds obtained through the licensing and fees set forth in 201 KAR 27:008, fines assessed in 201 KAR 27:021 and this regulation, and the tax on shows required by KRS 229.031.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation allows the KBWC to issue fines as penalties to unarmad combatants that violate statutory and regulatory provisions.

(9) TIERING: Is tiering applied? Tiering is not applied because the disciplinary action and policies in this regulation apply to all licensees the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.071, 229.081, 229.091, 229.111, 229.155, 229.171, 229.180, 229.190, 229.200, and 229.991 provide the statutory authority for this administrative regulation.

3. Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The KWBC does not anticipate any net change in expenditures or revenue in the first year.

(a) How much 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 KWBC does not anticipate any net change in revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The KWBC does not anticipate any net change in revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The KWBC does not anticipate any net change in the cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer this program in subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: None.

MOREHEAD STATE UNIVERSITY
Board of Regents
(New Administrative Regulation)

755 KAR 1:080. Capital construction procedures.

RELATES TO: KRS 164A.560, 164A.565, 164A.575, 164A.580, 164A.585, 164A.590, 164A.595, 164A.600

STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.560 authorizes governing boards of each public institution of higher education to promulgate an administrative regulation to elect to perform financial management functions in accordance with KRS 164A.550 to 164A.630 and to delegate these functions to an official of the institution. This administrative regulation delegates the responsibilities of KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595, and 164A.600 to the President of Morehead State University.

Section 1. (1) The Board of Regents of Morehead State University shall elect to perform in accordance with KRS 164A.550 to 164A.630 regarding capital construction.

(2) In accordance with the authority established in KRS 164A.560, the board shall delegate the responsibilities listed in subsection (1) of this section to the president of Morehead State University.

(3) The president or a designee shall approve and execute all contracts relating to capital construction.

MR. PAUL GOODPASTER, Chair

MS. SHARON REYNOLDS, Secretary

APPROVED BY AGENCY: June 10, 2016

FILED WITH LRC: July 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2016, at 6:00 p.m., at Morehead State University, Combs Building, Room 413. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until

the end of the calendar day on August 31, 2016. 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: Mr. Richard T. Linio, Assistant Vice President, Office of Facilities Management, Morehead State University, 150 Martindale Drive, Morehead, Kentucky 40351, phone 606-783-2066, fax 606-783-2213, email r.linio@moreheadstate.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard T. Linio

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation allows Morehead State 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 Morehead State 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 regulation 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 Morehead State University in effective administration of KRS 164A.575, 164A.580, 164A.585, 164A.590, 164A.595 and 164A.600 allowing 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: This is a new administrative regulation

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected by this administrative regulation are Morehead State 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 Morehead State University, this regulation will affect the Assistant Vice President Office of Facilities Management, University Architect and Planning Department 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 will be shifted from the Cabinet to the University. Cabinet staff who currently serve multiple agencies will be relieved of their responsibilities to service Morehead State 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: Morehead State 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 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, Morehead State University has adopted a Capital Construction Procedures Manual based on the procedures manual developed by the Finance Cabinet. Additionally 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. Morehead State University has project management staff in place and through some restructuring of current responsibilities minimal staff will be necessary. Additional salary costs for project administration will be less than \$100,000 per year. Initial costs for software and equipment will be less than \$15,000. The department for Facilities and Support Services may see a reduction in staff requirement as a result of this regulation. As a result of this regulation Morehead State 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 Morehead State University.

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

(a) Initially: The cost to implement the regulation will be minimal and will be limited to office equipment expense of less than \$15,000.

(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. Cost associated with the additional staff primarily will 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 accounting staff and purchasing staff may be necessary. The total additional cost for staffing should be \$100,00 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? Morehead State University's Office of Procurement Services, Accounting & Fiscal Services divisions, and the Finance Cabinet's Department for Facilities and Support Services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 154A.560

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 should not exceed \$100,000.00. These costs relate to administration of the program and additional personnel

(d) How much will it cost to administer this program for subsequent years should not exceed \$100,000.00. These costs relate to administration of the program and additional personnel.

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

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

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Repealer)**

804 KAR 4:381. Repeal of 804 KAR 4:380.

RELATES TO: KRS 243.155

STATUTORY AUTHORITY: KRS 241.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations regarding control of the trafficking of alcoholic beverages. 804 KAR 4:380 appears to be duplicative of KRS 243.155 and is therefore unnecessary. This administrative regulation repeals 804 KAR 4:380.

Section 1. 804 KAR 4:380, Small farm winery license, is hereby repealed.

STEVEN A. EDWARDS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 14, 2016

FILED WITH LRC: July 15, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2016 at 1:00 pm 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 at least five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the day on August 31, 2016. 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, Staff Attorney, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-7906, fax (502) 564-

7479, email Melissa.McQueen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melissa McQueen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 804 KAR 4:380.

(b) The necessity of this administrative regulation: The existing regulation appears to duplicate KRS 243.155 and is therefore unnecessary. This administrative regulation repeals it.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this administrative regulation will eliminate duplicative reference to a statute.

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

(a) How the amendment will change this existing administrative regulation: 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: Because it is duplicative of KRS 243.155, no individuals, businesses, organizations, or state and local governments are affected by the repeal of 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: No entities will be affected by this repealer.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no financial benefit to repeal this administrative regulation.

(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 repeal 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 repeal 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 repeal this administrative regulation.

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

(9) TIERING: Is tiering applied? No tiering is applied because this amendment repeals an earlier regulation so it applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control 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 241.060(1) authorizes the board to promulgate administrative regulations.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No expenditures or revenue will be generated by this administrative regulation.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? There are no costs expected to repeal this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs expected to repeal 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: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Depository Institutions
(Repealer)**

808 KAR 1:081. Repeal of 808 KAR 1:080 and 808 KAR 1:100.

RELATES TO: KRS 286.3-065, 286.3-100

STATUTORY AUTHORITY: KRS 286.1-020(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner of the department to repeal any administrative regulation necessary to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.3-065 was amended to remove language requiring the commissioner to determine by administrative regulation the publications and banking laws that must be furnished to directors by banks. KRS 286.3-100(8) was amended to authorize banks to purchase and hold shares of a bank service corporation. This administrative regulation repeals 808 KAR 1:080 and 808 KAR 1:100, which were rendered obsolete upon the amendments of KRS 286.3-065 and 286.3-100.

Section 1. The following administrative regulations are repealed:

(1) 808 KAR 1:080, Investments in bank service corporations by state-chartered banks; and

(2) 808 KAR 1:100, Information to be furnished and maintained by banks.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 13, 2016

FILED WITH LRC: July 14, 2016 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2016, at 10:00 a.m., at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 through the end of the calendar day, 11:59 p.m., August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Taylor Payne, Staff Attorney, or Jessica Sharpe, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787; email Taylor.Payne2@ky.gov or Jessica.Sharpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Payne or Jessica Sharpe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 1:080 and 808 KAR 1:100.

(b) The necessity of this administrative regulation: This regulation is necessary because 808 KAR 1:080 and 808 KAR 1:100 were rendered obsolete by legislative amendments made to KRS 286.3-065 and 286.3-100(8).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) provides that the commissioner may repeal any administrative regulation to carry out the provisions and intent of KRS Chapter 286. Due to the amendments to KRS 286.3-065 and 286.3-100(8), 808 KAR 1:080 and 808 KAR 1:100 are no longer necessary.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation will repeal obsolete regulations.

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

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

(b) The necessity of the amendment to this administrative regulation: n/a

(c) How the amendment conforms to the content of the authorizing statutes: n/a

(d) How the amendment will assist in the effective administrative of the statutes: n/a

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 134 banks chartered in Kentucky by the Department of Financial Institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will not require compliance from regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since this regulation will not require compliance by regulated entities, there are no costs associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Since this regulation will not require compliance by regulated entities, no benefits will accrue as a result of compliance.

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

(a) Initially: No cost anticipated.

(b) On a continuing basis: No cost anticipated.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions 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. The statutory authority for this administrative regulation is KRS 286.1-020(1).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost 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 (+/-): None.

Expenditures (+/-): No cost.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Depository Institutions
(New Administrative Regulation)

808 KAR 1:160. Fees for services rendered to banks and trust companies.

RELATES TO: KRS 286.3-010, 286.3-020, 286.3-050, 286.3-095, 286.3-135, 286.3-140, 286.3-145, 286.3-146, 286.3-170, 286.3-172, 286.3-174, 286.3-180, 286.3-185, 286.3-450, 286.3-480, 286.3-530, 286.3-820, 286.3-920

STATUTORY AUTHORITY: KRS 286.1-020(1), 286.3-145, 286.3-146, 286.3-480

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-

VOLUME 43, NUMBER 2 – AUGUST 1, 2016

020(1) authorizes the commissioner to promulgate administrative regulations to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.3-145 and 286.3-146 provide for fees that shall be paid to establish or acquire and maintain a trust office or trust representative office. KRS 286.3-480 provides for fees that shall be paid for various services that are rendered by the commissioner. This administrative regulation establishes the fees for these services.

Section 1. Definitions. (1) "Applicant" means a person or institution submitting a written application, plan, or notice pursuant to KRS Chapter 286.3.

(2) "Commissioner" is defined by KRS 286.3-010(7).

(3) "Department" is defined by KRS 286.3-010(8).

(4) "Extraordinary services performed" means:

(a) Review of a request for approval of a change of control made pursuant to KRS 286.3-095(1) unless the request was made concurrently with an application made pursuant to KRS 286.3-905; or

(b) A special examination.

(5) "Institution" means an institution that is subject to examination pursuant to KRS 286.3-450 or KRS 286.3-530.

(6) "Special examination" means:

(a) An abbreviated on-site review conducted in conjunction with a formal or informal enforcement action to determine an institution's progress in achieving compliance with laws or administrative regulations or to address unsafe and unsound banking practices;

(b) An off-site review of progress reports submitted by an institution to the commissioner in conjunction with a formal or informal enforcement action; or

(c) A second examination conducted within the twenty-four (24) month timeframe set forth in KRS 286.3-450(1) that results from an institution failing to comply with laws or administrative regulations relating to banks or trust companies or from an institution engaging in unsafe and unsound banking practices.

Section 2. Fees. An applicant or institution shall pay the department a fee for the services identified in the following table:

Service	Fee
Review of application submitted pursuant to KRS 286.3-020	\$5,000, plus the hourly fee established in Section 3 of this administrative regulation for each examiner that conducts an investigation of the applicant.
Review of application submitted pursuant to KRS 286.3-135	\$5,000, plus the hourly fee established in Section 3 of this administrative regulation for each examiner that conducts an investigation of the applicant.
Review of plan submitted pursuant to KRS 286.3-172	\$5,000, plus the hourly fee established in Section 3 of this administrative regulation for each examiner that conducts an investigation of the applicant.
Review of amendments submitted pursuant to KRS 286.3-050(4) if at least one (1) amendment is being made pursuant to KRS 286.3-140(1)	\$1,000
Review of amendments submitted pursuant to KRS 286.3-050(4) unless at least one (1) amendment is being made pursuant to KRS 286.3-140(1)	\$250
Review of application required pursuant to KRS 286.3-180 unless the application is being made concurrently with an application required pursuant to KRS 286.3-920(2)	\$500
Review of application required	\$500

pursuant to KRS 286.3-820	
Review of application required pursuant to KRS 286.3-920(2) or 286.3-920(3) unless the application is being made concurrently with an application required pursuant to KRS 286.3-905	\$2,500
Review of notice required pursuant to KRS 286.3-145(4)	\$500
Review of notice required pursuant to KRS 286.3-145(5) or 286.3-146(4)	\$1,000
Review of application required pursuant to KRS 286.3-185	\$500
Examination conducted pursuant to KRS 286.3-480(1)(c)	The hourly fee established in Section 3 of this administrative regulation for each examiner that conducts the examination.
Extraordinary services performed	The hourly fee established in Section 3 of this administrative regulation for each examiner that conducts the review or special examination.

Section 3. Hourly Fee. The hourly fee shall be fifty-five (55) dollars per hour.

Section 4. Payment Terms. (1) Except for hourly fees, a fee shall be paid by the applicant at the time a written application, plan, or notice is made.

(2) An hourly fee shall be paid within thirty (30) days of the date a fee invoice is mailed to the applicant or institution.

(3) Except for clerical errors, a fee paid pursuant to this administrative regulation shall be nonrefundable.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 13, 2016

FILED WITH LRC: July 14, 2016 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2016, at 10:00 a.m., in the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 through the end of the calendar day, 11:59 p.m., August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Jessica R. Sharpe, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email Jessica.Sharpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica R. Sharpe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees for services rendered by the Department of Financial Institutions to banks and trust companies.

(b) The necessity of this administrative regulation: This

regulation is needed to comply with the statutes directing the commissioner to be paid fees for services rendered to banks and trust companies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) provides that the commissioner may promulgate administrative regulations as are necessary to interpret and carry out the provisions and intent of Chapter 286. KRS 286.3-145(4)(c) and KRS 286.3-145(5)(c) provide that a Kentucky state trust company shall pay a filing fee prescribed by the commissioner to establish or acquire and maintain a trust office or trust representative office in Kentucky or in a state other than Kentucky. KRS 286.3-146(4)(a)(3) provides that an out-of-state trust company shall pay a filing fee prescribed by the commissioner to establish or acquire and maintain a trust office or trust representative office in Kentucky. KRS 286.3-480(1)(a) provides that the commissioner shall be paid a fee by banks and trust companies for the investigation incident to the approval of articles of incorporation, applications for branch banks and loan production offices, and applications to relocate a main or branch office which is sufficient to cover the cost of investigation based upon fair compensation for time and actual expense. KRS 286.3-480(1)(c) provides that the commissioner shall be paid a fee by an institution for the examination of the assets held by the institution in a fiduciary capacity which is sufficient to cover the cost of the examination based upon fair compensation for time and actual expense. KRS 286.3-480(1)(d) provides that the commissioner shall be paid for extraordinary services performed for an institution upon the basis of fair compensation for time and actual expense.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by providing fees to offset the cost to the Department of rendering services to banks and trust companies.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect trust companies and banks that are chartered in Kentucky. There are approximately five (5) trust companies that are chartered in Kentucky, and approximately 134 banks that are chartered in Kentucky. This regulation will affect applicants making an application for a Kentucky charter. There has been one (1) applicant for a Kentucky charter in the past two years. This regulation will also affect in-state and out-of-state banks seeking to establish or operate branches pursuant to an interstate merger transaction. The Department reviewed approximately one interstate merger transaction in each of the past two years. This regulation will affect out-of-state trust companies seeking to establish or acquire a trust office or trust representative office in Kentucky. There are approximately four (4) out-of-state trust companies that have established a trust office or trust representative office in Kentucky. Finally, this regulation could affect out-of-state bank branches and trust company offices that are subject to examination by the commissioner. There have been no examinations of such branches or offices in the past two years.

(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 new regulation will require these entities to pay the fee established for services rendered by the Department pursuant to KRS 286.3-145, 286.3-146, and 286.3-

480.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The entities will have to pay the fee established by this regulation each time the entity is rendered the services specified by KRS 286.3-145, 286.3-146, and 286.3-480.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation will ensure that the Department is vested with sufficient resources and expertise to provide the services specified by KRS 286.3-145, 286.3-146, and 286.3-480 to banks and trust companies.

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

(a) Initially: No cost anticipated.

(b) On a continuing basis: No cost anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds generated from the fees prescribed by this regulation are anticipated to cover the cost of services provided.

(7) Provide an assessment of whether an 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 is anticipated that an increase in fees or funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation establishes fees for services that are provided to banks and trust companies pursuant to KRS 286.3-145, 286.3-146, and 286.3-480.

(9) TIERING: Is tiering applied? Yes. The filing fee for both in-state and out-of-state trust companies to obtain an office in a state other than the trust company's chartering state is \$1,000, while the filing fee for in-state trust companies to obtain an office in Kentucky is \$500. These fees are tiered because the Department is required by KRS 286.3-146 and most out-of-state trust laws to engage in additional reciprocity analysis to approve requests for trust companies to obtain an office in a state other than the trust company's chartering state. Tiering is also applied to the review of branch applications. A fee of \$500 applies to requests to approve branches not established in accordance with an interstate merger transaction and a fee of \$2,500 applies to applications to approve branches established pursuant to an interstate merger transaction. A higher fee is assessed for branches established pursuant to an interstate merger transaction because the Department is required by KRS 286.3-920 to engage in the additional review of an application and accompanying documentation and to ensure that additional statutory requirements are met. Tiering is also applied to the review of requests for approval to amend a bank's articles of incorporation. A fee of \$1,000 applies to a request for approval to amend a bank's articles of incorporation pursuant to KRS 286.3-140(1) and a fee of \$250 applies to a request for approval to amend a bank's articles of incorporation for any other purpose. A higher fee is established for the amendment of articles pursuant to KRS 286.3-140(1) because the Department is required to engage in additional evaluation of factors set forth in KRS 286.3-020, which is generally not required for requests made for any other purpose.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Financial Institutions 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. The statutory authority for this administrative regulation is found in KRS 286.1-020(1), KRS 286.3-145, KRS 286.3-146, and KRS 286.3-480.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 is estimated to generate revenue in the first full year of approximately \$187,190 to \$407,840.

(b) How 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 from this administrative regulation are expected to remain within the range of \$187,190 to \$407,840 in subsequent years.

(c) How much will it cost to administer this program for the first year? For the first year, it is estimated that the cost of the services provided pursuant to KRS 286.3-145, 286.3-146, and 286.3-480 is within the range of \$187,190 to \$407,840.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that the cost to administer this program in subsequent years will remain within the range of \$187,190 to \$407,840.

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

Revenues (+/-): See above.

Expenditures (+/-): See above.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Nondepository Institutions
(Repealer)**

808 KAR 4:021. Repeal of 808 KAR 4:020.

RELATES TO: KRS 360.210-360.265

STATUTORY AUTHORITY: KRS 286.1-020(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner of the department to repeal any administrative regulation necessary to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 360.210 to KRS 360.265 have been repealed. This administrative regulation repeals 808 KAR 4:020, which was rendered obsolete upon the repeal of KRS 360.210 to KRS 360.265.

Section 1. 808 KAR 4:020, Compliance with Federal Consumer Credit Protection Act, is repealed.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 13, 2016

FILED WITH LRC: July 14, 2016 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2016, at 10:00 a.m., at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 through the end of the calendar day, 11:59 p.m., August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Taylor Payne, Staff Attorney, or Jessica Sharpe, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601,

phone (502) 573-3390, fax (502) 573-8787, email Taylor.Payne2@ky.gov or Jessica.Sharpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Payne or Jessica Sharpe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 4:020.

(b) The necessity of this administrative regulation: This regulation is necessary because 808 KAR 4:020 was rendered obsolete by the repeal of KRS 360.210 to KRS 360.265.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020 provides that the commissioner may repeal administrative regulations to carry out the provisions and intent of KRS Chapter 286. Due to the repeal of KRS 360.210 to KRS 360.265, 808 KAR 4:020 no longer carries out the provisions and intent of KRS Chapter 286.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation will repeal an obsolete 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: 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 administrative 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: Because the statutes upon which the regulation is based were repealed, there are no individuals, businesses, organizations, or state and local governments 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: This regulation will not require compliance from regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since this regulation will not require compliance by regulated entities, there are no costs associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Since this regulation will not require compliance by regulated entities, no benefits will accrue as a result of compliance.

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

(a) Initially: No cost anticipated.

(b) On a continuing basis: No cost anticipated.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions 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. The statutory authority for this administrative regulation is found in KRS 286.1-020(1).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost 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 (+/-): None.

Expenditures (+/-): No cost.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Depository Institutions
(Repealer)**

808 KAR 11:011. Repeal of 808 KAR 11:010.

RELATES TO: KRS 286.3-900

STATUTORY AUTHORITY: KRS 286.1-020(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner of the department to repeal any administrative regulation necessary to interpret and carry out the provisions and intent of KRS Chapter 286. KRS 286.3-900 was amended to remove a limitation on the number of bank acquisitions that can be made in a five (5) year period, to provide that the limitations therein do not apply to emergency acquisitions as determined by the commissioner, and to require use of the June 30 quarterly report made by banks to determine whether the acquisition will exceed the fifteen (15) percent deposit account limitation. This administrative regulation repeals 808 KAR 11:010, which was rendered obsolete upon the amendment of KRS 286.3-900.

Section 1. 808 KAR 11:010, Acquisitions, is repealed.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: July 13, 2016

FILED WITH LRC: July 14, 2016 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2016, at 10:00 a.m., at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 through the end of the calendar day, 11:59 p.m., August 31, 2016. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Taylor Payne, Staff Attorney, or Jessica Sharpe, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email Taylor.Payne2@ky.gov or Jessica.Sharpe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Payne or Jessica Sharpe

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 11:010, Acquisitions.

(b) The necessity of this administrative regulation: This regulation is necessary because 808 KAR 11:010 was rendered obsolete by legislative amendments made to KRS 286.3-900 that removed a limitation on the number of bank acquisitions that can be made in a five-year period, provided that the limitations therein do not apply to emergency acquisitions as determined by the commissioner, and required that the department use the June 30 quarterly report made by banks to determine whether the acquisition will exceed the fifteen percent deposit account limitation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) provides that the commissioner may repeal any administrative regulation to carry out the provisions and intent of KRS Chapter 286. Due to the amendments to KRS 286.3-900, 808 KAR 11:010 no longer carries out the provisions and intent of KRS 286.3-900.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation will repeal an obsolete 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: 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 administrative 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: Because the statute upon which the regulation is based was amended, there are no individuals, businesses, organizations, or state and local governments 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: This regulation will not require compliance from regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since this regulation will not require compliance by regulated entities, there are no costs associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue as a result of compliance because compliance is not required.

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

- (a) Initially: No cost anticipated.
- (b) On a continuing basis: No cost anticipated.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to similarly situated parties in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions 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. The statutory authority for this administrative regulation is found in KRS 286.1-020(1).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost 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 (+/-): None.
- Expenditures (+/-): No cost.
- Other Explanation: None.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Repealer)

922 KAR 1:151. Repeal of 922 KAR 1:150, 922 KAR 1:170, 922 KAR 1:210, and 922 KAR 1:230.

RELATES TO: KRS Chapters 194A, 199, 620
STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. This administrative regulation repeals 922 KAR 1:150, 922 KAR 1:170, 922 KAR 1:210, and 922 KAR 1:230. These administrative regulations are obsolete and have been

superseded.

Section 1. The following administrative regulations are hereby repealed:

- (1) 922 KAR 1:150, "Baby Doe" administrative regulation;
- (2) 922 KAR 1:170, Child abuse self-help groups;
- (3) 922 KAR 1:210, Alternative to detention: court resource home; and
- (4) 922 KAR 1:230, Emergency protective services.

ADRIA JOHNSON, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 17, 2016

FILED WITH LRC: July 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 2016, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 15, 2016, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until end of day, August 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact: Elizabeth Caywood, Elizabeth.caywood@ky.gov, (502) 564-3703

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 922 KAR 1:150, 1:170, 1:210, and 1:230.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as a result of 922 KAR 1:150, 1:170, 1:210, and 1:230 being obsolete and superseded.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The only purpose of this administrative regulation is to repeal 922 KAR 1:150, 1:170, 1:210, and 1:230.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The only purpose of this administrative regulation is to repeal 922 KAR 1:150, 1:170, 1:210, and 1:230.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The only purpose of this administrative regulation is to repeal 922 KAR 1:150, 1:170, 1:210, and 1:230 due to their being obsolete and superseded.

(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 only purpose of this administrative regulation is to repeal 922 KAR 1:150, 1:170, 1:210, and 1:230.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only purpose of this administrative regulation is to repeal 922 KAR 1:150, 1:170, 1:210, and 1:230.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The only purpose of this administrative regulation is to repeal 922 KAR 1:150, 1:170, 1:210, and 1:230.

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

(a) Initially: There is no cost associated with the repeal of 922 KAR 1:150, 1:170, 1:210, and 1:230.

(b) On a continuing basis: There is no ongoing cost associated with the repeal of 922 KAR 1:150, 1:170, 1:210, and 1:230.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding associated with the repeal of 922 KAR 1:150, 1:170, 1:210, and 1:230.

(7) Provide an assessment of whether an 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 only purpose of this administrative regulation is to repeal 922 KAR 1:150, 1:170, 1:210, and 1:230. There is no fee or funding impact.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no fee associated with the repeal of 922 KAR 1:150, 1:170, 1:210, and 1:230.

(9) TIERING: Is tiering applied? There is no tiering applied in the repeal of 922 KAR 1:150, 1:170, 1:210, and 1:230.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services will no longer have these obsolete administrative regulations under its purview.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The only purpose of this administrative regulation is to repeal 922 KAR 1:150, 1:170, 1:210, and 1:230.

3. Estimate the effect of this administrative regulation on the expenditures and revenues 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 only purpose of this administrative regulation is to repeal 922 KAR 1:150, 1:170, 1:210, and 1:230. This repealer will generate no new revenue in its 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 repealer creates no new revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This repealer will create no new costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This repealer will create no new costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of July 14, 2016

Members: Senators Perry Clark, Alice Forgy Kerr, Ernie Harris; and Representatives, Will Coursey and Mary Lou Marzian.

LRC Staff: Sarah Amburgey, Ange Bertholf, Betsy Cupp, Emily Harkenrider, Carrie Klaber, and Donna Little.

Guests: Leanne Diakov, Board of Medical Licensure; Brian Judy, Sonja Minch, Board of Barbering; John Marcus Jones, Tamara McDaniel, Peggy Lacy Moore, Kathleen Schell, Board of Respiratory Care; Sheryl Abercrombie, Elizabeth Morgan, Board of Medical Imaging and Radiation Therapy; Karen Waldrop, David Wicker, Department of Fish and Wildlife Resources; Tony Hatton, Department for Environmental Protection; Chase Bannister, Matt Chaliff, Jennifer Fraker, Department of Education; Mike Pettit, Kristi Redmon, Chuck Stribling, Michael Swansburg, Labor Cabinet, Steven Edwards, Stephen Humphress, Department of Alcoholic Beverage Control; Laura Begin, Paula Goff, Matt McKinley, Curt Pendergrass, Department for Public Health; Elizabeth Caywood, Darlene Hoover, Department of Community Based Services; Heather Richardson, Department for Community Based Services; Charles Cole, Janet Wilson, City of Somerset, Chris Daniels, Jason Nemes, Vinay Patel, Somerset license holders.

The Administrative Regulation Review Subcommittee met on Thursday, July 14, 2016, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Medical Licensure: Board

201 KAR 9:250. Registration and oversight of pain management facilities. Leanne Diakov, general counsel, represented the board.

In response to questions by Co-Chair Harris, Ms. Diakov stated that physician-present supervision requirements may have been established by KRS Chapter 218A, as well as this administrative regulation. Supervising physician presence was required at least fifty (50) percent of the time patients were present. Since amendment of KRS Chapter 218A, the board reported drastically fewer cases of inappropriate prescribing by these facilities. Co-Chair Marzian stated that nurse practitioners were authorized to prescribe scheduled substances on a very limited basis. A physical was required before prescribing, and the amendments to KRS Chapter 218A were having a positive impact on the problem of prescription abuse.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, 5, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Barbering: Board

201 KAR 14:015. Retaking of examination. Brian Judy, assistant attorney general, and Sonja Minch, administrator, represented the board.

In response to questions by Senator Kerr, Ms. Minch stated that after 1,500 hours of formal education, a student may take the probationary examination. If the student failed the examination once, the student may retake the probationary examination; however, if the student failed the examination twice, the student was required to acquire eighty (80) additional clock hours of formal education at a Kentucky-licensed barber school. Typically, if a student failed the probationary exam after formal education at an out-of-state barber school, the failed portion was related to Kentucky's sanitation laws, which would not be taught at an out-of-state school. Thus, a student who failed the probationary examination twice was required to acquire eighty (80) additional clock hours of formal education at a Kentucky-licensed barber school.

In response to a question by Co-Chair Harris, Ms. Minch stated that the 1,500 hours of formal education included both classroom and clinical training.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 3 to change the terminology from "instructor" to "teacher" for consistency with KRS 317.440 and 317.450 and 201 KAR 14:125. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:030. Five (5) year expiration of license.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to: (1) make a technical correction; and (2) clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:045. Notification of new locations.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to clarify that this administrative regulation applies to a new barber shop, which requires an inspection; (2) to amend the STATUTORY AUTHORITY paragraph to correct a citation; (3) 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 (4) to amend Section 3 to cross reference 201 KAR 14:040, which also regulates the inspections of shops and schools. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:090. School curriculum.

In response to questions by Senator Clark, Ms. Minch stated that this administrative regulation addressed concerns regarding lack of experience for barber school teachers. 201 KAR 14:125 was recently filed to more fully address this issue, but this administrative regulation required a minimum of three (3) years of experience for a head teacher.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 2 to correct citations; (2) to amend Section 1 to: (a) comply with the drafting requirements of KRS Chapter 13A; and (b) change the terminology from "instructor" to "teacher" for consistency with KRS Chapter 317; and (3) to amend Section 4 to delete the reference to "teacher assistant" and instead state that a teacher licensed for less than twelve (12) months who has not completed 600 hours of instructional experience obtained while under the supervision of a board-licensed teacher with a minimum of three (3) years of experience and in a barber school licensed by the board shall not be counted as a teacher for the purposes of compliance with the ratio requirement. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:110. School equipment; plant layout.

In response to a question by Co-Chair Harris, Ms. Minch stated that shampoo bowls with hot and cold running water were required to be in the room where barbering was done so that the client could witness the barber washing his or her hands before providing barbering services. It was a measure to ensure sanitation.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3, 4, 5, 8, 10, and 11: (a) for clarity; and (b) to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 12 to

clarify that the exemption applies to only the shampoo bowls with hot and cold running water established in Section 10 of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:150. School records.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 3 to change references from "instructor" to "teacher"; and (2) to amend Section 6 to: (a) require the board to produce records immediately during hours the school is scheduled to be open and providing services; and (b) clarify that, if the request is made when the school is closed and not providing services, the school shall produce the record within two (2) hours of the next normal day of business. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:180. License fees, examination fees, renewal fees, and expiration fees.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4 to delete references to "teacher assistants" to conform with statutory authority; and (2) to add a new Section 7 to clarify the purpose of and what an individual shall be allowed to do in relation to certification and demonstration fees. Without objection, and with agreement of the agency, the amendments were approved.

Board of Respiratory Care: Board

201 KAR 29:015. Fees. John Marcus Jones, assistant attorney general; Tamara McDaniel, vice-chair; and Kathleen Schell, board member, represented the board.

In response to questions by Co-Chair Harris, Ms. McDaniel stated that it had been approximately ten (10) years since the board had raised fees. The board had experienced many cost increases, including retirement factor increases and significant rent increases. The fee increases in this administrative regulation would allow the board to meet its current budgetary needs. The board was very fiscally responsible.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (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. Without objection, and with agreement of the agency, the amendments were approved.

Board of Medical Imaging and Radiation Therapy: Board

201 KAR 46:020. Fees. Sheryl Abercrombie, chair; Brian Judy, assistant attorney general; and Elizabeth Morgan, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 14 to correct citations. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 46:070. Violations and enforcement.

A motion was made and seconded to approve the following amendments: to amend Section 3 to: (1) clarify that the penalty applies to an individual who performed a procedure without valid licensure; and (b) delete a cross-reference. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:176. Deer control tags, deer destruction permits, and landowner designees. Karen Waldrop, deputy commissioner, and David Wicker, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete the definition for "damage"; and (2) to amend Sections 1 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments

were approved.

301 KAR 2:221 & E. Waterfowl seasons and limits.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:222 & E. Waterfowl hunting requirements on public lands.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

Licensing

301 KAR 5:040. Migratory Bird Harvest Information Program.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Waste Management: Identification and Listing of Hazardous Waste

401 KAR 31:040 & E. Lists of hazardous wastes. Tony Hatton, executive director, represented the division.

In response to a question by Co-Chair Harris, Mr. Hatton stated that this administrative regulation was being amended to address HB 106 of the 2016 Regular Session of the General Assembly, which provided for the destruction of chemical munitions at Bluegrass Army Depot. This administrative regulation also reclassified aluminum processing wastewater from the automotive industry as a nonhazardous, solid waste under specific circumstances, including that the waste shall not be placed on the land.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to make technical corrections; and (2) to amend Sections 1 through 4 to insert citation replacements that were inadvertently omitted from the initial filing. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Instruction

704 KAR 3:471. Repeal of 704 KAR 3:470. Chase Bannister, attorney; Matt Chaliff, executive director; and Jennifer Fraker, policy advisor, represented the board.

Department for Technical Education: Instructional Programs

780 KAR 4:031. Repeal of 780 KAR 4:030.

Facilities and Equipment of the Kentucky TECH System

780 KAR 7:060. Equipment inventory and insurance.

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 define terms; and (4) to amend Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

780 KAR 7:071. Repeal of 780 KAR 7:070.

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

803 KAR 2:300. General. Mike Pettit, safety standards interpretation; Kristi Redmon, occupational safety and health specialist; and Michael Swansburg, general counsel, represented the department.

In response to questions by Co-Chair Harris, Ms. Redmon stated that these administrative regulations were being amended pursuant to federal OSHA requirements. Kentucky was not required to adopt all of these requirements; however, the division adopted all of these requirements in order to be as protective as the federal program. Several administrative regulations in this package related to federally mandated protection from respirable silica particles. The new exposure limit was twenty (20) percent lower than the previous limit. Silica was a recognized carcinogen.

Co-Chair Marzian stated that, as a healthcare professional in a transplant office, there were workers with silica exposure who presented at her facility with cancer.

803 KAR 2:307. Hazardous materials.

A motion was made and seconded to approve the following amendments: to amend Section 2 to correct a citation. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:308. Personal protective equipment.

In response to a question by Co-Chair Harris, Ms. Redmon stated that face and eye protection requirements were updated commensurate with federal consensus standards. There were no new compliance requirements, rather there were new equipment options that may be chosen in lieu of previous standards.

803 KAR 2:317. Special industries.

803 KAR 2:318. Electrical.

803 KAR 2:320. Toxic and hazardous substances.

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

A motion was made and seconded to approve the following amendments: to amend 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. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:403. Occupational health and environmental controls.

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

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

803 KAR 2:425. Toxic and hazardous substances.

803 KAR 2:500. Maritime employment.

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

804 KAR 9:040. Quota retail package licenses. Steven Edwards, commissioner; Stephen Humphress, general counsel; and Carol Beth Martin, malt beverage administrator, represented the department. Chris Daniels, Somerset retail package store owner; Jason Nemes, attorney; and Vinay Patel, Somerset retail package store owner, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Marzian, Mr. Edwards stated that the court directed the department to change the number of quota retail package licenses issued to City of Somerset. The department, in exercising the discretion directed by the court,

issued ten (10) quota retail package licenses to City of Somerset based on market size.

In response to questions by Senator Clark, Mr. Humphress stated that at the time Somerset voted "wet," the board was authorized to establish a specific quota for the city. At that time, this administrative regulation required the quota to be population based (one (1) per 2,300 people), which would have resulted in five (5) licenses. Because numerous cities within "dry" counties had been voting "wet," this administrative regulation was then amended to still be population based, but with exceptions for cities that demonstrated a market size that warranted more licenses than the population calculation established. After that amendment, City of Somerset petitioned the board to present data to establish that more than five (5) licenses were warranted.

Mr. Nemes stated that this administrative regulation required quota retail package licenses to be issued based on population unless a city demonstrated changes that warranted additional licenses. Somerset had recently experienced a population decrease, not an increase. The court's decision did not require the board to issue ten (10) licenses, but required the board to use its discretion to determine the appropriate number of licenses to be issued. Many other areas near Somerset recently also voted "wet;" therefore, there was more supply available than previously. There were already too many licenses available in Somerset that more than met the demand. The most Somerset should have been issued was five (5) licenses. This administrative regulation violated existing law, in that it allowed more than one (1) additional license per 1,500 people. A city requesting additional licenses was required to submit an economic impact study that demonstrated the necessity for more licenses, that there had been a change in circumstances, and that the current license quota was inadequate. Somerset failed to demonstrate that current license holders were failing to meet the demand. The issuance of ten (10) licenses was an arbitrary number, without basis from the economic data. Mr. Nemes supported free markets; however, alcohol sales was not a free market because of various forms of restraint, such as limited advertising, mandated pricing, restricted employees, and restricted sales. Normal, free-market competition was inappropriate for this industry. Three (3) years ago, when the citizens of Somerset voted "wet," they did so with the understanding that there would be a maximum of five (5) licenses based on this administrative regulation. Current license holders who had made significant investments based on this administrative regulation had already been harmed by the increased competition. Sales were down thirty (30) percent in the last two (2) years. The new licenses would further reduce demand and sales. This administrative regulation should be found deficient or deferred until Somerset demonstrated the necessity for these licenses, as required by the statute and this administrative regulation.

Senator Clark stated that Mr. Nemes' testimony regarding support of the free market seemed contradictory because Mr. Nemes did not support the free market as it pertained to Somerset's licenses and this administrative regulation. Alcoholic beverage control statutes and administrative regulations were unusual because the law approached the subject from the view of prohibition, rather than from the view of the free market. Senator Clark stated that these requirements were too limited even with ten (10) licenses and that the free market should prevail in this industry. The significant sales in Somerset was at least partly the result of successful local tourism.

Mr. Edwards stated that the argument that the board was limited to the population ratio of one (1) license per 2,300 people was technically incorrect, as shown by a comparison of other cities with similar or larger populations. The economic data presented on behalf of additional licenses for Somerset was striking, in that Somerset was shown to have demand far greater than similarly populated cities and even some cities with larger populations. Somerset had annual sales of \$673,739, which was more than Richmond, which was three (3) times as large in population; Ashland, which was twice as large in population; Nicholasville, which was nearly three (3) times as large in population; and other similarly large cities. Somerset had been ranked as one (1) of the top ten (10) performing micropolitan areas out of 536 micropolitan

areas. Based on the economic data, Somerset seemed to deserve the opportunity to grow and have these additional licenses. Mr. Humphress stated that the court order specifically directed the board to use the requirements established in the previous 2013 version of this administrative regulation; therefore, the economic demonstration was not necessary because that was not a component of this administrative regulation in that previous version.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Maternal and Child Health: Maternal and Child Health

902 KAR 4:120. Health Access Nurturing Development Services (HANDS) Program. Laura Begin, regulation coordinator, and Paula Goff, branch manager, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to specify a form and for clarity; and (2) to amend Sections 2 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Radiology

902 KAR 100:030. Quantities of radioactive material requiring labeling. Laura Begin, regulation coordinator, and Dr. Curt Pendergrass, radioactive material specialist, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 100:080. Exempt quantities.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 100:085. Exempt concentrations.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 3:035 & E. Certification process. Elizabeth Caywood, policy analyst, represented the department.

In response to questions by Co-Chair Harris, Ms. Caywood stated that the SNAP program was extending review to the maximum federally allowable review period, which was twelve (12) months; however, there was an interim review requirement to review income and contact information. SNAP recipients were also required to inform the cabinet of changes that may affect eligibility or benefits, such as income fluctuations or employment status.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to delete language suggesting that the time periods for household certification were minimums, in order to comply with 7 C.F.R. 273.10(f), which indicated that these were maximum time periods; and (2) to amend Section 5 for clarification. Without objection, and with agreement of the agency, the amendments were approved.

Division of Protection and Permanency: Child Welfare

922 KAR 1:320 & E. Service appeals for Title 922 KAR Chapters 1, 3, and 5.

Division of Child Care: Day Care

922 KAR 2:020 & E. Child Care Assistance Program (CCAP)

improper payments, claims, and penalties.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 6, 7, 8, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:160 & E. Child Care Assistance Program.

In response to questions by Co-Chair Marzian, Ms. Caywood stated that Kentucky was awarded a Race to the Top Early Learning Challenge Grant. The cabinet was implementing in phases a new All Stars Quality Rating System, which was in addition to the existing Stars for Kids Now Rating System. The new system would begin as a pilot phase, then be subject to modification and a determination of the system's viability. Initially, the All Stars program was voluntary.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 9, 15, 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.

922 KAR 2:260 & E. Child care service appeals.

The following administrative regulations were deferred to the August 4, 2016, meeting of the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission: Commission

9 KAR 1:040 & E. Registration and expenditure statements; financial transactions and termination forms; and enforcement.

PUBLIC PROTECTION CABINET: Office of Occupations and Professions: Athlete Agents

200 KAR 30:010. Definitions for 200 KAR Chapter 30.

200 KAR 30:020. Complaint review.

200 KAR 30:030. Procedure for registration.

200 KAR 30:040. Fees.

200 KAR 30:051. Repeal of 200 KAR 30:050 and 200 KAR 30:060.

200 KAR 30:070. Records retention.

GENERAL GOVERNMENT CABINET: Board of Licensed Diabetes Educators: Board

201 KAR 45:110. Supervision and work experience.

LABOR CABINET: Department of Workers' Claims: Department

803 KAR 25:010. Procedure for adjustments of claims.

803 KAR 25:014. Repeal of 803 KAR 25:009.

The Subcommittee adjourned at 12:20 p.m. until August 4, 2016, at 11 a.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of July 20, 2016**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of July 20, 2016, having been referred to the Committee on July 6, 2016, pursuant to KRS 13A.290(6):

- 201 KAR 9:016
- 201 KAR 9:025
- 201 KAR 9:081
- 201 KAR 9:240
- 201 KAR 13:040
- 201 KAR 13:050
- 201 KAR 20:520

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 20, 2016 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

B - 2

The Locator Index lists all administrative regulations published in VOLUME 43 of the *Administrative Register of Kentucky* from July 2016 through June 2017. 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 that may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 42 are those administrative regulations that were originally published in VOLUME 42 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2016 Kentucky Administrative Regulations Service* was published.

KRS Index

B - 6

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 43 of the *Administrative Register of Kentucky*.

Technical Amendment Index

B - 9

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2016 Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 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

B - 11

The Subject Index is a general index of administrative regulations published in VOLUME 43 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
VOLUME 42					
The administrative regulations listed under VOLUME 42 are those administrative regulations that were originally published in Volume 42 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2016 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:					
* Statement of Consideration not filed by deadline			Amended	2621	
** Withdrawn before being printed in Register			AmComments	2906	See 43 Ky.R.
**** Emergency expired after 180 days			201 KAR 13:050		
‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))			Amended	2624	See 43 Ky.R.
(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.			201 KAR 14:015		
			Amended	2920	
			201 KAR 14:030		
			Amended	2922	
			201 KAR 14:045		
			Amended	2923	
			201 KAR 14:090		
			Amended	2924	
			201 KAR 14:110		
			Amended	2926	
			201 KAR 14:125		
			Amended	2927	
			Withdrawn	**	7-12-16
9 KAR 1:040E	2866	5-13-16	201 KAR 14:150		
301 KAR 2:221E	1699	11-3-15	Amended	2929	
Resubmitted	2868	5-11-16	201 KAR 14:180		
301 KAR 2:222E	1701	11-3-15	Amended	2930	
Resubmitted	2870	5-11-16	201 KAR 18:020		
301 KAR 2:225E	1111	8-21-15	Amended	2810	
Resubmitted	2875	5-11-16	201 KAR 20:240		
401 KAR 31:040E	2877	4-26-16	Amended	2626	
601 KAR 2:030E	1114	9-1-15	As Amended	2887	
Resubmitted	2702	3-29-16	201 KAR 20:520	2684	See 43 Ky.R.
921 KAR 3:035E	2708	4-1-16	201 KAR 23:055	2845	
922 KAR 1:320E	2530		201 KAR 23:070		
922 KAR 2:020E	2534		Amended	2251	
922 KAR 2:160E	2540		AmComments	2591	
922 KAR 2:260E	2550		As Amended	2888	
			201 KAR 23:075		
			Amended	2812	
			201 KAR 29:015		
			Amended	2628	
			201 KAR 32:030		
			Amended	2817	
			201 KAR 44:021(r)	2685	7-1-16
			201 KAR 46:020		
			Amended	2932	
			201 KAR 46:070		
			Amended	2933	
			301 KAR 2:095		
			Amended	2819	
			301 KAR 2:122		
			Amended	2820	See 43 Ky.R.
			301 KAR 2:176		
			Amended	2935	
			301 KAR 2:221		
			Amended	2937	
			301 KAR 2:222		
			Amended	2940	
			301 KAR 2:225		
			Amended	2944	
			301 KAR 2:226		
			Amended	2822	See 43 Ky.R.
			301 KAR 5:040		
			Amended	2947	
			401 KAR 31:040		
			Amended	2949	
			401 KAR 51:010		
			Amended	2824	
			401 KAR 53:010		
			Amended	2830	See 43 Ky.R.
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:					
9 KAR 1:040					
Amended	2911				
11 KAR 4:080					
Amended	2611	7-1-2016			
11 KAR 5:145					
Amended	2612	7-1-2016			
103 KAR 3:050					
Amended	2614				
As Amended	2881				
200 KAR 30:010					
Amended	2913				
200 KAR 30:020					
Amended	2914				See 43 Ky.R.
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Amended	2916				
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Amended	2918				
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Amended	2919				
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Amended	2796				
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Amended	2798	See 43 Ky.R.			
201 KAR 9:081					
Amended	2800	See 43 Ky.R.			
201 KAR 9:240					
Amended	2804	See 43 Ky.R.			
201 KAR 9:250					
Amended	2807				
201 KAR 13:040					

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501 KAR 6:020			808 KAR 9:050	2852	See 43 Ky.R.
Amended	2630		815 KAR 6:010		
AmComments	2908	See 43 Ky.R.	Amended	2265	
501 KAR 6:170			AmComments	2596	7-1-16
Amended	2632		As Amended	2891	
As Amended	2890	7-1-16	815 KAR 6:040		
600 KAR 1:031(r)	2846		Amended	2269	
600 KAR 2:011(r)	2847		As Amended	2894	7-1-16
601 KAR 1:032(r)	2849		815 KAR 6:080		
601 KAR 2:030			Amended	2270	
Amended	2833		As Amended	2895	7-1-16
601 KAR 9:056(r)	2850		815 KAR 6:090		
601 KAR 15:030(r)	2851		Amended	2272	
704 KAR 3:471	2998		AmComments	2600	
780 KAR 4:031	2999		As Amended	2895	7-1-16
780 KAR 7:060			815 KAR 7:120		
Amended	2951		Amended	2650	6-22-16
780 KAR 7:071	3000		815 KAR 7:125		
803 KAR 2:300			Amended	2653	6-22-16
Amended	2953		815 KAR 8:095	2687	
803 KAR 2:307			As Amended	2897	6-22-16
Amended	2955		815 KAR 20:084	2688	
803 KAR 2:308			As Amended	2898	6-22-16
Amended	2957		815 KAR 20:191		
803 KAR 2:317			Amended	2655	
Amended	2958		As Amended	2899	6-22-16
803 KAR 2:318			815 KAR 20:195		
Amended	2960		Amended	2661	
803 KAR 2:320			As Amended	2904	6-22-16
Amended	2962		902 KAR 4:120		
803 KAR 2:400			Amended	2982	
Amended	2968		902 KAR 100:030		
803 KAR 2:403			Amended	2985	
Amended	2970		902 KAR 100:080		
803 KAR 2:404			Amended	2990	
Amended	2972		902 KAR 100:085		
803 KAR 2:421			Amended	2993	
Amended	2974		921 KAR 3:035		
803 KAR 2:425			Amended	2841	See 43 Ky.R.
Amended	2976		922 KAR 1:320		
803 KAR 2:500			Amended	2663	See 43 Ky.R.
Amended	2978		922 KAR 2:020		
803 KAR 25:010			Amended	2668	See 43 Ky.R.
Amended	2634	See 43 Ky.R.	922 KAR 2:160		
803 KAR 25:014	2686		Amended	2673	See 43 Ky.R.
803 KAR 25:089			922 KAR 2:260	2690	See 43 Ky.R.
Amended	2980				
804 KAR 4:400					
Amended	2839				
Withdrawn	**	7-13-16			
804 KAR 9:040					
Amended	2648				

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Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
VOLUME 43					
SYMBOL KEY:			201 KAR 14:030		
* Statement of Consideration not filed by deadline			AsAmended	195	
** Withdrawn before being printed in Register			201 KAR 14:045		
**** Emergency expired after 180 days			AsAmended	195	
(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.			201 KAR 14:090		
			AsAmended	195	
			201 KAR 14:110		
			AsAmended	196	
			201 KAR 14:125		
			Amended	269	
			201 KAR 14:150		
			AsAmended	197	
			201 KAR 14:180		
			AsAmended	198	
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804 KAR 4:400E	171	7-15-16	AsAmended	19	
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804 KAR 11:010E	174	7-15-16	Amended	270	
902 KAR 2:020E	5	6-15-16	201 KAR 23:055		
907 KAR 7:010E	176	6-30-16	AmComments	234	
907 KAR 7:015E	187	6-30-16	201 KAR 23:075		
			AmComments	235	
			201 KAR 27:005		
			Amended	273	
			201 KAR 27:007		
			Amended	275	
			201 KAR 27:008		
			Amended	276	
			201 KAR 27:011		
			Amended	280	
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			AsAmended	198	
			201 KAR 27:016		
			Amended	294	
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			Amended	311	
			201 KAR 27:105	367	
			201 KAR 30:030		
			Amended	312	
			201 KAR 32:030		
			AmComments	240	
			201 KAR 43:110	149	
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			Amended	78	
			202 KAR 7:520		
			Amended	94	
			301 KAR 1:015		
			Amended	315	
			301 KAR 1:201		
			Amended	317	
			301 KAR 2:122		See 42 Ky.R.
			AsAmended	20	
			301 KAR 2:132		
			Amended	322	
			301 KAR 2:176		
			AsAmended	200	
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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Amended	73				
30 KAR 7:010					
Amended	250				
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AsAmended	203		AsAmended	217	
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AsAmended	21		Amended	339	
301 KAR 5:040			907 KAR 7:015		
AsAmended	206		Amended	351	
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AsAmended	207		Amended	136	
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AsAmended	22		Amended	354	
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AsAmended	24		AsAmended	218	
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Amended	99		922 KAR 1:151(r)	377	
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Amended	102		Amended	142	
703 KAR 4:041(r)	150		922 KAR 2:020		See 42 Ky.R.
704 KAR 3:342(r)	152		AmComments	50	
739 KAR 2:040			AsAmended	221	
Amended	327		922 KAR 2:160		See 42 Ky.R.
739 KAR 2:140	153		AmComments	55	
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780 KAR 7:060			922 KAR 2:260		See 42 Ky.R.
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803 KAR 2:307					
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Amended	129				
902 KAR 100:030					
AsAmended	212				

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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6.686	2 KAR 2:050	160.380	702 KAR 7:065
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6.787	2 KAR 2:020	161.220	102 KAR 1:320
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6.827	2 KAR 2:010	164.7871	11 KAR 15:090
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	2 KAR 2:040	164.7879	11 KAR 15:090
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	922 KAR 2:020	164A.565	755 KAR 1:080
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	922 KAR 2:020	164A.595	755 KAR 1:080
	922 KAR 2:260	164A.600	755 KAR 1:080
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61.805-61.850	702 KAR 7:065		922 KAR 2:260
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136.330	103 KAR 15:180		501 KAR 6:160
136.340	103 KAR 15:180	199	922 KAR 1:151
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	301 KAR 2:132	205.635	907 KAR 7:010
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‡ - Pursuant to KRS 13A.320(1)(e), this symbol indicates a technical change was made to this administrative regulation during the promulgation process.

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