

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 43, NUMBER 5
TUESDAY, NOVEMBER 1, 2016

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, October 14, 2016.

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet November 7, 2016, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **653-655** 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, NOVEMBER 7, 2016, at 1:00 p.m., Room 149 Capitol Annex**

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board**

General Administration

16 KAR 1:030. Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial.

Assessment

16 KAR 6:010. Examination prerequisites for teacher certification.

Internship

16 KAR 7:010. Kentucky Teacher Internship Program.

**PERSONNEL CABINET
Office of the Secretary**

Personnel Cabinet, Classified

101 KAR 2:210 & E. 2017 Plan year handbook for the public employee health insurance program. ("E" Expires 3/14/2017)

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue**

Sales and Use Tax; Miscellaneous Retail Transactions

103 KAR 28:041. Repeal of 103 KAR 28:040.

Selective Excise Tax; Cigarettes

103 KAR 41:021. Repeal of 103 KAR 41:020.

Selective Excise Tax; Motor Vehicle Usage

103 KAR 44:131. Repeal of 103 KAR 44:130.

Office of the Secretary

Purchasing

200 KAR 5:355. Public-private partnership delivery method. (Amended After Comments)

**GENERAL GOVERNMENT CABINET
Board of Accountancy**

Board

201 KAR 1:015. Per diem compensation.

201 KAR 1:065. Individual license renewal and fee.

201 KAR 1:100. Continuing professional education requirements.

Board of Pharmacy

Board

201 KAR 2:045. Technicians.

201 KAR 2:050. Licenses and permits; fees.

201 KAR 2:076. Compounding.

201 KAR 2:351. Repeal of 201 KAR 2:350.

Board for Licensure for Professional Engineers and Land Surveyors

Board

201 KAR 18:051. Repeal of 201 KAR 18:050.

**PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission**

Commission

201 KAR 27:005. Definitions for 201 KAR Chapter 27. (Amended After Comments)

201 KAR 27:007. Powers and duties of inspector. (Amended After Comments)

201 KAR 27:008. License requirements and fees. (Amended After Comments)

201 KAR 27:011. General requirements for boxing and kickboxing shows. (Amended After Comments)

201 KAR 27:012. General requirements for wrestling shows. (Amended After Comments)

201 KAR 27:016. General requirements for all mixed martial arts matches, shows, or exhibitions. (Amended After Comments)

201 KAR 27:017. Requirements for elimination events. (Amended After Comments)

201 KAR 27:020. Tickets. (Amended After Comments)

201 KAR 27:021. Drug testing for boxing, kickboxing, mixed martial arts, and elimination event shows. (Amended After Comments)

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 7:090, and 201 KAR 27:100. (Not Amended After Comments)

201 KAR 27:040. Managers. (Amended After Comments)

201 KAR 27:105. Disciplinary action. (Amended After Comments)

**GENERAL GOVERNMENT CABINET
Board of Durable Medical Equipment Suppliers**

Board

201 KAR 47:010 & E. Home medical equipment and supplier licenses, requirements, and fees. ("E" Expires 2/21/2017)

201 KAR 47:020 & E. Inspections, discipline, reinstatement, and administrative appeals. ("E" Expires 2/21/2017)

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

Game

- 301 KAR 2:049. Small game and furbearer hunting and trapping on public areas. (Deferred from October)
- 301 KAR 2:251. Hunting and trapping seasons and limits for furbearers. (Deferred from October)

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

Office of the Secretary

- 501 KAR 6:020. Corrections policies and procedures. (Amended After Comments)
- 501 KAR 6:999. Corrections secured policies and procedures.

**TRANSPORTATION CABINET
Department of Aviation**

Airport Development

- 602 KAR 15:011. Repeal of 602 KAR 15:010. (Deferred from October)

Department of Highways

Division of Planning

- 603 KAR 9:021. Repeal of 603 KAR 9:020. (Deferred from October)

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

School Administration and Finance

- 702 KAR 3:171. Repeal of 702 KAR 3:170. (Deferred from October)

Instructional Programs

- 705 KAR 4:231. General program standards for secondary career and technical education programs. (Deferred from October)

**COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Fire Commission**

Commission on Fire Protection Personnel Standards and Education

- 739 KAR 2:040. Survivor benefits for death of a firefighter. (Not Amended After Comments)

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

Instructional Programs

- 780 KAR 4:012. Repeal of 780 KAR 4:010. (Deferred from October)

**Department of Workforce Investment
Office of Employment and Training**

Unemployment Insurance

- 787 KAR 1:070. Reasonable time for protesting claim.

Office of Assistive Technology

Kentucky Assistive Technology Loan Corporation

- 789 KAR 1:010. General eligibility criteria for assistive technology loans.

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

Occupational Safety and Health

- 803 KAR 2:412. Fall protection. (Deferred from August)

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

Malt Beverage Equipment, Supplies, and Service

- 804 KAR 11:010 & E. Equipment and supplies. (Amended After Comments)

**Department of Housing Buildings and Construction
Division of Plumbing**

Plumbing

- 815 KAR 20:010. Definitions for 815 KAR Chapter 20.
- 815 KAR 20:060. Quality and weight of materials.
- 815 KAR 20:130. House sewers and storm water piping; methods of installation.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Inspector General
Division of Audits and Investigations**

Controlled Substances

- 902 KAR 55:035. Schedule V substances.

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**Department for Income Support
Child Support Enforcement**

Family Support

921 KAR 1:410. Child support collection and enforcement.

REMOVED FROM NOVEMBER'S AGENDA

TRANSPORTATION CABINET

Department of Vehicle Regulation

Administration

~~601 KAR 2:030 & E. Ignition interlock. ("E" expired 10/25/2016) (Not Amended After Comments) (Deferred from August) (Withdrawn 10/27/2016)~~

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

Advertising Distilled Spirits and Wine

804 KAR 1:071. Repeal of 804 KAR 1:070, 804 KAR 1:090, and 804 KAR 1:120. (Comments Received; SOC ext.)

ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on proposed administrative regulations, which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, 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
13 KAR 4:010E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the above cited administrative regulation should be promulgated on an emergency basis in order to prevent the loss of federal or state funds by Kentucky's public postsecondary institutions and their students. On April 8, 2016, SB 140 was enacted, amending KRS 164.540 to allow the Council on Postsecondary Education (CPE) to enter into the State Authorization Reciprocity Agreement (SARA). SARA establishes uniform national standards for interstate offerings of postsecondary distance education at the Associate's level and above and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states without meeting each specific states' requirements for licensure. Along with distance education delivered online, activities such as advertising through any medium, faculty residence, proctored exams, and limited field experiences may also be conducted. Currently SARA is comprised of 40 member states and the District of Columbia. SARA is coordinated by the National Council for State Authorization Reciprocity Agreements (NC-SARA) and is administered by the four regional education compacts, including the Southern Regional Education Board (SREB). Kentucky is a member of SREB per KRS 164.530. KRS 164.540(3) designates CPE as the SARA portal agency and gives it the authority to promulgate administrative regulations to establish procedures for participation by Kentucky postsecondary institution in SARA. An emergency administrative regulation provides CPE with the ability to begin accepting institutional applications for participation in SARA before the ordinary regulation process can be completed if Kentucky's SARA application is approved by the SREB SARA Steering Committee at its October 27th meeting. This will prevent the loss of state funds used for licensure fees in SARA member states where public institutions are currently operating, which exceed the expense of SARA participation fees. It will also allow institutions to begin generating tuition revenue (including federal financial aid) in new markets more quickly. Furthermore, newly proposed federal financial aid eligibility regulations will require that institutions offering distance education or correspondence courses to be authorized by each state in which the institution enrolls students, if such authorization is required by the state. The new regulations, which are planned to be finalized by the end of the calendar year, specifically acknowledge that a state reciprocity agreement including the requirements outlined in SARA would suffice for purposes of meeting the new requirements. Participating in SARA would help to ensure that institutions are authorized in SARA member states in which they are operating and prevent the loss of access to federal financial aid by students and the institutions they attend.

This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
GLENN DENTON, Chair

COUNCIL ON POSTSECONDARY EDUCATION
(New Emergency Administrative Regulation)

13 KAR 4:010E. State Authorization Reciprocity Agreement.

RELATES TO: KRS 164.020(23), 164.945, 164.946, 164.947, 164.992, 165A.320-165A.450

STATUTORY AUTHORITY: KRS 164.540(3)(c)

EFFECTIVE: October 14, 2016

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.540(3) authorizes the Council on Postsecondary Education to

promulgate an administrative regulation to enter into the State Authorization Reciprocity Agreement, which establishes uniform national standards for interstate offerings of postsecondary distance education and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states. KRS 164.540(3) also authorizes the council to serve as the lead or portal agency on behalf of the commonwealth's public and private postsecondary institutions seeking to offer distance education in member states. This administrative regulation establishes the mechanism by which Kentucky institutions may join the State Authorization Reciprocity Agreement and sets forth the process by which non-resident students can file complaints against Kentucky member institutions.

Section 1. Definitions. (1) "Accredited" means holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education.

(2) "Commission" means the Kentucky Commission on Proprietary Education.

(3) "Council" means the Kentucky Council on Postsecondary Education.

(4) "Degree" means an award conferred at the associate level or higher by an institution as official recognition for the successful completion of a program of studies.

(5) "Institution" means a Kentucky degree-granting postsecondary entity.

(6) "NC-SARA" means the National Council for State Authorization Reciprocity Agreements.

(7) "President" means the President of the Kentucky Council on Postsecondary Education.

(8) "SACSCOC" means the Southern Association of Colleges and Schools Commission on Colleges.

(9) "State Authorization Reciprocity Agreement," or "SARA," means the agreement among member states, districts, and U.S. territories that establishes comparable national standards for interstate offering of degrees through distance education and authorizes institutions meeting those standards located in member states or territories to provide distance education to residents of other member states.

Section 2. Initial Application Procedures. In order to participate in SARA, an institution shall submit the following items to the president for review and action:

(1) The current NC-SARA Application and Approval Form for Institutional Participation in SARA, in electronic format; and

(2) The fees due to the council, in accordance with Section 6 of this administrative regulation.

Section 3. Renewal Application Procedures. In order to continue participating in SARA, an institution shall submit the following items to the president for review and action at least sixty (60) days before the anniversary date of the institution's initial approval:

(1) The current NC-SARA Application for Institutional Renewal to Participate in SARA, in electronic format; and

(2) The fees due to the council, in accordance with Section 6 of this administrative regulation.

Section 4. Standards for Approval. In order to participate in SARA, an institution shall comply with the following:

(1) Maintain authorization to operate in Kentucky through one of the following:

(a) Creation by Kentucky Revised Statutes;

(b) Licensure by the council; or

(c) Licensure by the commission; and

(2) Meet the current minimum requirements to participate in SARA.

Section 5. Consumer Complaints. (1) After first exhausting the institution's internal procedure for complaint resolution, a non-

resident student may file a complaint against the institution for failure to comply with any SARA standard within two (2) years of the incident about which the complaint is made.

(2) In order to be considered, a complaint shall be submitted by the student in writing and include the following information:

- (a) Name, address, email address, and phone number of student;
- (b) Name of institution;
- (c) Location of institution;
- (d) Dates of attendance;
- (e) An explanation of the steps taken to exhaust the institution's grievance process;
- (f) A full description of the issue and any relevant documentation supporting the complaint; and
- (g) The desired resolution of the complaint.

(3) Complaints regarding student grades or student conduct violations shall not be considered.

(4) The president shall forward the complaint to the institution and require a written response no later than thirty (30) days from the date of transmittal.

(5) After review of information and materials provided by the student and the institution, the president may request additional information from either party.

(6) After review of all relevant information and materials, the president shall facilitate a resolution of the complaint. The relief provided the student, if any, shall be commensurate with the circumstances.

(7) Resolution of a complaint by the president shall be final, except in instances where the subject matter of the complaint may violate any other applicable laws.

(8) The president shall provide to the executive director of the commission, for reference purposes, a copy of:

- (a) Any complaint initiated against an institution licensed by the commission;
- (b) The resolution; and
- (c) Any related materials.

Section 6. Fees. The council shall charge an initial and annual renewal fee to institutions based on all enrolled FTE students, which shall be due at time of application. Applications shall not be reviewed without receipt of fee payment. Failure to pay a fee on or before the date of application shall be sufficient grounds for denial of an application. Fees shall be in addition to any fees charged by NC-SARA and shall be in accordance with the following schedule:

- (1) Under 2,500 - \$3,000;
- (2) 2,500 – 9,999 - \$5,000; or
- (3) 10,000 or more - \$7,000.

GLENN DENTON, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 11 a.m.

CONTACT PERSON: Sarah Levy, Director of Postsecondary Licensing, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 350, fax 502.573.1535, email sarah.levy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for participation by Kentucky postsecondary institutions in the State Authorization Reciprocity Agreement (SARA), which establishes uniform national standards for interstate offerings of postsecondary distance education and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states.

(b) The necessity of this administrative regulation: KRS 164.540(3) provides the Council with the authority to enter into

SARA on behalf of the Commonwealth and promulgate regulations to establish procedures for Kentucky postsecondary institutions to participate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets out the procedures for Kentucky postsecondary institutions to participate in SARA as required by KRS 164.540(3)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The procedures set forth in this regulation are in conformance with SARA requirements which must be met in order for Kentucky to be a member as authorized by KRS 164.540(3).

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public and private colleges and universities offering Associate's degrees or higher.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky public and private colleges must complete the initial and annual renewal applications and pay the requisite fees in order to participate in SARA. Participating institutions in other states will no longer be required to comply with the standard licensing requirements of the Commission on Proprietary Education or the Council, as applicable, in order to offer distance education and conduct related activities, including but not limited to, advertising and providing limited clinical placements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cost of compliance will be minimal for regulated entities, particularly considering the alternative costs of complying with state authorization laws in individual states.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SARA member institutions will be able to offer distance education and conduct related activities in other member states under one set of uniform rules at a much lower cost.

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

(a) Initially: We estimate that there will be cost in implementing the proposed regulation. The Council staff will complete and submit the initial state application to SREB for approval, will review and approve initial institution applications from Kentucky postsecondary institutions, and will facilitate non-resident student complaints against Kentucky postsecondary institutions that become members of SARA.

(b) On a continuing basis: We estimate that there will be costs on a continuing basis to implement the proposed regulation. The Council staff will complete and submit the state application for renewal to SREB for approval, will review and approve annual renewal applications as well as initial institution applications from Kentucky postsecondary institutions, and will facilitate non-resident student complaints against Kentucky postsecondary institutions that become members of SARA.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SARA fees and General Fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

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regulation, if new, or by the change if it is an amendment: Yes. Implementation of this proposed regulation does require fees for initial and annual renewal applications.

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

(9) TIERING: Is tiering applied? Yes, tiering is applied, but only as to the fee which is based upon total enrolled FTE students at an institution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Council is responsible for implementation, and this regulation applies to Kentucky public institutions and private colleges and universities that seek to become members of SARA.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.540(3)(c).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? We estimate initial revenue from Kentucky university and college applications to be roughly \$62,000. Revenue likely lost to the Council from out of state institutions now covered under SARA would be \$63,500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a). We estimate annual revenue from Kentucky university and college applications to be roughly \$62,000 but should increase over time as more institutions join. The Council will continue to lose fee revenue from licensed out of state institutions over and above the \$63,500 listed above as those institutions join SARA and as additional states join.

(c) How much will it cost to administer this program for the first year? Approximately \$87,500.

(d) How much will it cost to administer this program for subsequent years? Approximately \$175,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

STATEMENT OF EMERGENCY 200 KAR 2:006E

This emergency administrative regulation is being promulgated in order to update state government employee travel expense forms and requirements referenced in 200 KAR 2:006 from the 2006 revision of this regulation to the current forms used. The amendment of this regulation also clarifies what authority is required to authorize travel, updates the reference resources used to calculate mileage, and allows the Secretary of the Finance and Administration Cabinet to update meal reimbursement rates as appropriate. An ordinary administrative regulation is not sufficient, because KRS 45.101(2) requires that travel expenses submitted to the Finance Cabinet be submitted on cabinet prescribed forms prior to payment. The forms referenced in the current regulation are no longer in use. Disruption of state employee travel in the course of ordinary job duties could have an immediate impact on public health, safety and welfare. 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
WILLIAM M. LANDRUM III, Secretary

FINANCE AND ADMINISTRATION CABINET Office of the Secretary (Emergency Amendment)

200 KAR 2:006E. Employees' reimbursement for travel.

RELATES TO: KRS 44.060, 45.101

STATUTORY AUTHORITY: KRS 44.060, 45.101

EFFECTIVE: September 15, 2016

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. KRS 44.060 requires the secretary to promulgate administrative regulations fixing the amount allowed for the expense of traveling in a motor vehicle in the discharge of official state duties. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.

(2) "Agency head" means the elected or appointed head of a budget unit.

(3) "Approval" means approval granted in either written or electronic format.

(4) "Budget unit" is defined by KRS 48.010(9).

(5) "Cabinet" means the Finance and Administration Cabinet.

~~[(5) "Division" means the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet.]~~

(6) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area listed on the Office of the Controller's Web site at <http://finance.ky.gov/services/statewideacct/Pages/travel.aspx> and included in the cabinet's policies and procedures manual incorporated by reference in 200 KAR 5:021.

(7) "Incidental expense" means unexpected minor expenses arising from travel situations, or minor expenses authorized by an agency head to be reimbursed to an employee as a matter of efficiency or convenience.

(8) "Lodging receipt" means any preprinted invoice, from a hotel or motel or type of lodging, showing the date of service, the amount charged for the service, the location where the service was performed, and a description of the expenditure.

(9) "Office" means the Office of the Controller, Finance and Administration Cabinet.

(10) "Others in the official service of the commonwealth" means individuals who:

(a) Are not state employees as defined in KRS Chapter 18A;

(b)1. Are traveling on official business for the commonwealth; or

2. Officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request; and

(c) Are not contractors who are entitled to reimbursement for travel and related expenses only as provided in their contracts with the commonwealth.

(11)~~[(44)]~~ "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(12)~~[(44)]~~ "Residence" means address of the employee designated in the official records of the Personnel Cabinet.

(13)~~[(42)]~~ "Secretary" means the Secretary of the Finance and

Administration Cabinet.

~~(14)~~~~(13)~~ "Subsistence" means amounts expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, such as tax and tips, while traveling on official state business, except for any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.

~~(15)~~~~(14)~~ "Subsistence or incidental receipt" means an itemized receipt for meals or incidental expenses showing the date of service, amount charged, and the name of the establishment.

~~(16)~~~~(15)~~ "Travel software" means the software used by the commonwealth to process travel authorizations and travel reimbursement documents.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.

(2) Enforcement.

(a) Each agency head shall be responsible for ensuring that travel reimbursement conforms to the provisions of this administrative regulation and that all travel expense from that agency is as economical as is feasible.

(b) A person who travels on official state business shall:

1. Identify if reimbursement is being requested based on Section 7 or 8 of this administrative regulation;

2. Prior to trip, submit, if applicable, a:

a. Request for Authorization of Out-of-State Travel document;
or

b. Request for Authorization of Out-of-Country Travel document~~(create a Travel Authorization (TE, TEI, TEO, or TEC), if required);~~

3. After travel, submit a Travel Voucher~~(create a Travel Payment Voucher (TP or TPI))~~ document for reimbursement of official state business related expenses;

4. Maintain records and receipts to support the claim; and

5. Take sufficient personal funds to defray the travel expense.

(c) The secretary or designee may:

1. Disallow or reduce the amount of a claim that violates the provisions of this administrative regulation; or

2. Require written justification for amounts claimed by an agency for its employee.

(d) The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or designee, submits a written determination that establishes the reimbursement is:

1. Required to avoid an undue economic hardship on the employee; or

2. Economically advantageous for the commonwealth.

(3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the commonwealth. Only necessary expenses of official travel authorized by an agency head or designee shall be reimbursed.

(4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determinations shall be the final and conclusive interpretation adopted by the agency.

Section 3. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the commonwealth.

(3) If an employee is permanently reassigned or is stationed at a new location two (2) months, the new location shall become that employee's official work station.

Section 4. Authorizations. (1) For travel within~~in~~ Kentucky,~~or outside Kentucky, but within the United States or its possessions, or Canada;~~ the person requesting reimbursement shall obtain authorization from the agency head or a designated representative~~(as authorized by Secretary's Order S97-451).~~

(2) Travel to a bordering state that does not require airfare or an overnight stay shall be authorized in the same manner as travel in Kentucky.

~~(3) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (4), (5), and (6) of this section.~~

~~(4) If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE or TEI) document.~~

~~(5) For travel outside of Kentucky, but within the United States, possessions of the United States, or Canada, the person requesting reimbursement shall obtain authorization from:~~

~~(a) The agency head or a designated representative; and~~

~~(b) The secretary or a designated representative~~~~(authorization shall be requested on Travel Authorization (TEO) document).~~

~~(4)~~~~(6)~~ For travel outside the United States, possessions of the United States,~~its possessions~~ or Canada, the person requesting reimbursement shall have obtained authorization from:

(a) The agency head or a designated representative;

(b) The secretary or a designated representative; and

(c) The governor or a designated representative.

(5) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (6), (7), and (8) of this section.

(6) For travel inside Kentucky, authorization shall be requested in the manner prescribed by the agency head or a designated representative.

(7) For travel outside Kentucky, but within the United States, possessions of the United States, or Canada, authorizations shall be requested by submitting a Request for Authorization of Out-of-State Travel document.

(8) For travel outside the United States, possessions of the United States, or Canada, authorization shall be requested by submitting a Request for Authorization of Out-of-Country Travel document.

(9) If direct billing is to be utilized for state park expenses, a State Park Travel Authorization form shall be submitted.

(10)~~(7)~~ A travel request for travel specified in subsections ~~(7), (8), and (9)~~~~(4) and (5)~~ of this section shall be received by the agency or cabinet at least five (5) working days before the start of travel, except when a shorter prior submission period is necessitated by an emergency.

Section 5. Transportation. (1) Economy shall be required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) 1. Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

2.a. Tickets prepaid by the commonwealth shall be purchased through agency business travel accounts provided by a major charge card company or commercial travel agencies.

b. Tickets purchased through the Internet shall be paid by the traveler and reimbursed on a Travel~~Payment~~ Voucher, Other Expenses document~~(TP or TPI))~~.

3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.

4. Agencies shall be billed monthly by the charge card company.

5. Related payments shall be processed via a Travel Voucher, Other Expenses~~(on Vendor Payment Voucher (P4))~~ document.

(2) State vehicles. State-owned vehicles with their credit cards shall be used for state business travel if available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed if more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Payment shall be made in accordance with subsection (1)(b) of this section.

(6) Special transportation.

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

(c) An employee may submit a written request for approval from the state controller for an increased reimbursement rate greater than that calculated in Section 7, if the employee drives a personal vehicle modified to:

1. Facilitate operation by altering controls for the brakes, accelerator, or steering wheel; or
2. Allow a driver to enter the vehicle by installing a wheelchair lift, hoist, or ramp.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.

(2) Facilities providing special government rates or commercial rates shall be used if feasible.

(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.

(4) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home shall be reimbursed if:

- (a) In attendance at a conference; and
- (b) The lodging is a necessary expense of official travel, in accordance with Section 2(2)(d) of this administrative regulation.

(5) Group lodging, by contract.

(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.

(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.

(c) The traveler shall not claim reimbursement or subsistence for room and meals paid direct to an establishment providing these services.

(d) A request for payment shall be made on a Travel Voucher [Vendor Payment Voucher (P1)] document and shall not include personal charges of employees or others in the official service of the commonwealth.

(e) Payment shall be made to the hotel, motel, or other establishment.

(f) Contracted group meeting rooms and lodging and meal charges shall be exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Department of Revenue shall be specified on the payment document.

(g) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on a Travel [Payment] Voucher (TP or TPI) document.

(6) State parks. A state agency or institution using state park facilities may pay for rooms and meals by an Internal Travel Voucher (LET) [(ITT)] document to transfer funds, within the limits of this administrative regulation.

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:

- (a) Governor;
- (b) Governor's staff;
- (c) Lieutenant governor;

(d) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(e) Elected constitutional officers;

(f) Cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the commonwealth.

(2) Lodging.

(a) Except as provided in paragraph (b) of this subsection, a state officer or employee shall be reimbursed for the actual cost of lodging if the:

1. Lodging is determined to be the most economical; and

2. State officer or employee has provided the hotel, motel, or other establishment's receipt to be reimbursed for the travel expenses.

(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half (1/2) the double rate.

(3) Subsistence and incidentals.

(a) Breakfast and lunch. A state officer or employee shall be eligible for reimbursement for subsistence for breakfast and lunch expenses while traveling in Kentucky, if authorized work requires an overnight stay and absence during the mealtime hours established by paragraph [(d) or] (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(b) Dinner expenses. A state officer, or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if authorized work requires an absence:

1. At a destination more than forty (40) miles from the individual's work station and home; and
2. During the mealtime hours established by paragraph [(d) or] (e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraph (d) of this subsection [paragraphs (d) and (e) of this subsection]. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals].

(d) The secretary shall specify the meal reimbursement rates via secretary order as appropriate in the following manner:

1. The order shall be posted on the Web site of the Office of the Controller;

2. The order shall specify the reimbursement rate for high rate areas and non-high rate areas; and

3. The order shall designate reimbursement rates for breakfast, lunch, and dinner.

(e) To be eligible for meal reimbursement, an employee shall be in travel status for the entire duration of the following time periods:

1. Breakfast: authorized travel is 6:30 a.m. through 9 a.m.;

2. Lunch: authorized travel is 11 a.m. through 2 p.m.; or

3. Dinner: authorized travel is 5 p.m. through 9 p.m. [Reimbursement for non-high rate areas.

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. -- seven (7) dollars.

2. Lunch: authorized travel 11 a.m. through 2 p.m. -- eight (8) dollars.

3. Dinner: authorized travel 5 p.m. through 9 p.m. -- fifteen (15) dollars.

(e) Reimbursement for high rate areas.

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. -- eight (8) dollars.

2. Lunch: authorized travel 11 a.m. through 2 p.m. -- nine (9) dollars.

3. Dinner: authorized travel 5 p.m. through 9 p.m., nineteen (19) dollars.]

(f) A state officer or employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.

(g) A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if the individual is assigned to attend meetings and training sessions.

(h) Gratuities may be reimbursed if:

1. The total payment of the meal and gratuity do not exceed the limits established in paragraph (d) [paragraphs (d) or (e)] of this subsection; and

2. The gratuity does not exceed twenty (20) percent of the cost of the meal.

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel [Payment] Voucher [TP or TPI].

(4) Transportation expenses.

(a) Reimbursement for authorized use of a privately-owned vehicle shall be:

1. At a rate designated on the Office of the Controller's Web site [At the rate of thirty-eight (38) cents per mile until October 1, 2005];

2. The reimbursement rate shall be set and adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents (\$1.499), the employee shall be reimbursed thirty-six (36) cents per mile;

b. If the fuel cost is between one dollar fifty cents (\$1.50) and one dollar sixty-nine and nine-tenths cents (\$1.699), the employee shall be reimbursed thirty-seven (37) cents per mile;

c. If the fuel cost is between one dollar seventy cents (\$1.70) and one dollar eighty-nine and nine-tenths cents (\$1.899), the employee shall be reimbursed thirty-eight (38) cents per mile;

d. If the fuel cost is between one dollar ninety cents (\$1.90) and two dollars nine and nine-tenths cents (\$2.099), the employee shall be reimbursed thirty-nine (39) cents per mile;

e. If the fuel cost is between two dollars ten cents (\$2.10) and two dollars twenty-nine and nine-tenths cents (\$2.299), the employee shall be reimbursed forty (40) cents per mile; or

f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents (\$2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate; and

3. Not exceed the cost of commercial coach round-trip airfare.

(b) Mileage for in-state travel shall be based on the ["Kentucky Official Highway Map"], MapQuest Web site, Google Maps Web site, or similar web mapping service [mileage software or MapQuest website]. Out-of-state mileage shall be based on the most recent edition of the ["Rand McNally Road Atlas"], MapQuest Web site, Google Maps Web site, or similar web mapping service [mileage software or MapQuest Web site].

(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel [Payment] Voucher [TP or TPI].

(d) Reimbursement for use of privately-owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head, or a designated representative.

(e) [A maximum of twenty (20) dollars per night for parking or camping charges for camping vehicles shall be reimbursed.

(f) 1. Actual parking, bridge and highway toll charges shall be reimbursed.

2. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(f) [(g)] Reimbursement shall be made for reasonable incidental expenses for:

1. Baggage handling;

2. Delivery of baggage to or from a common carrier, lodging or

storage; and

3. Overweight baggage charges, if the charges relate to official business.

(5)(a) Registration fees required for admittance to meetings shall be reimbursed.

(b) If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.

(6) [(a)] Telephone [and telegraph] costs for necessary official business shall be reimbursed.

[(b)] Telephone calls to agency central offices shall be made through:

1. Agency 800 and 888 numbers, if available;

2. A state government telephone credit card; or

3. Lowest available service.]

(7) Other incidental expenses may be allowed by the agency head or designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons shall be eligible for actual and necessary expenses:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) Elected constitutional officers;

(e) Cabinet secretaries;

(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the commonwealth.

(2)(a) Actual and necessary expenses of official business travel shall be reimbursed upon submission of receipts for items over ten (10) dollars. The secretary may reduce the amount of any actual expense to be reimbursed if the secretary determines that the expense is unreasonably excessive.

(b) Actual and necessary expenses for official business travel shall include:

1. Lodging;

2. Meals;

3. Commercial transportation;

4. Taxes related to actual and necessary expenses; and

5. Reasonable gratuities.

(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.

(d) Reimbursement for official use of a privately-owned vehicle shall be:

1. At the rate designated on the Office of the Controller's Web site listed in Section 1(6) of this administrative regulation [of thirty-eight (38) cents per mile until October 1, 2005];

2. Adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents (\$1.499), the employee shall be reimbursed thirty-six (36) cents per mile;

b. If the fuel cost is between one dollar fifty cents (\$1.50) and one dollar sixty-nine and nine-tenths cents (\$1.699), the employee shall be reimbursed thirty-seven (37) cents per mile;

c. If the fuel cost is between one dollar seventy cents (\$1.70) and one dollar eighty-nine and nine-tenths cents (\$1.899), the employee shall be reimbursed thirty-eight (38) cents per mile;

d. If the fuel cost is between one dollar ninety cents (\$1.90) and two dollars nine and nine-tenths cents (\$2.099), the employee shall be reimbursed thirty-nine (39) cents per mile;

e. If the fuel cost is between two dollars ten cents (\$2.10) and two dollars twenty-nine and nine-tenths cents (\$2.299), the employee shall be reimbursed forty (40) cents per mile; or

f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents (\$2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate; and

3. Not exceed the cost of commercial coach round-trip airfare.

(e)1. The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or designee.

2. The secretary or the secretary's designee may:

a. Question a claim for reimbursement; and

b. Reduce the amount to be reimbursed, if the secretary determines that it is unreasonably excessive.

(f) An employee of the Cabinet for Economic Development[Cabinet] or the Tourism, Arts and Heritage[Commerce] Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the commonwealth if the costs were:

1. Related to the promotion of industry, travel, or economic development;

2. Substantiated by receipts; and

3. Certified by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between residence[home] and work station shall not be paid. If an employee's residence is the employee's work station, the employee's work station shall also include the location where the employee obtains a state vehicle for use during the workday.

(2)(a) If an employee's point of origin for travel is the employee's residence, mileage shall be paid for the shorter of mileage between:

1. Residence and travel destination; or

2. Work station and travel destination.

(b) If an employee's point of origin for travel is the employee's work station[workstation], and after proceeding to a travel destination, the employee's final destination is the employee's residence, mileage shall be paid for the shorter of mileage between:

1. Residence and travel destination; or

2. Work station[workstation] and travel destination.

(3) Vicinity travel, and authorized travel within a claimant's work station shall be listed on separate lines on the Travel[Payment] Voucher[(TP or TPI)] document.

Section 10. Travel Documents. (1) A person shall use the following forms to request prior authorization or reimbursement for travel:

(a) For in-state travel, any forms required by the person's agency head or designee;

(b) For out-of-state travel, a Request for Authorization of Out-of-State Travel document; and

(c) For out-of-country travel, a Request for Authorization of Out-of-Country Travel document.

(2) When applicable, a traveler shall attach the following to a Travel Voucher document:

(a) If a state park facility will be used, a State Park Travel Authorization document.

(b) If a rental vehicle, registration fee, or similar expense requires advance payment: a Pre-paid Registration document;

(c) If reimbursement relates to out-of-state or out-of-country travel: the appropriate completed authorization form required by subsection (1) of this section; and

(d) For any expense that cannot be listed on a Travel Voucher document: a Travel Voucher, Other Expenses document[Travel software shall have three (3) types of authorizations:

(a) TE or TEI for in-state travel;

(b) TEO for out-of-state travel; and

(c) TEC for out-of-country foreign travel.

(2) A traveler shall create a:

(a) Travel authorization (TE or TEI) document if a state park facility or a motor pool vehicle will be used or if a registration fee is to be paid in advance.

(b) Travel authorization (TEO) document for an out-of-state

trip.

(c) Travel authorization (TEC) document for an out-of-country trip].

(3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services.

(4) Authorization for reimbursement of others in the official service of the commonwealth shall be requested on a Travel Voucher document[-:

(a) A Vendor Payment Voucher (P1) document; or

(b) A Travel Payment Voucher (TP or TPI) document.

(5) A Travel Payment Voucher (TP or TPI) document shall be used to claim reimbursement for travel expenses].

(5) [(6)] The Travel[Payment] Voucher[(TP or TPI)] document shall be limited to the expenses made by one (1) person for the:

(a) Traveler; and

(b) If applicable, another person:

1. Who is a ward of the commonwealth; or

2. For whom the traveler is officially responsible.

(6) [(7)] A Travel[Payment] Voucher[(TP or TPI)] document for expenses made for a person specified in subsection (5)(b) [(6)(b)] of this section shall include the person's:

(a) Name; and

(b) Status or official relationship to the claimant's agency.

(7) [(8)] (a) A Travel[Payment] Voucher[(TP or TPI)] document shall be submitted:

1. For one (1) major trip; or

2. Every two (2) weeks for employees that are in travel status for an extended period.

(b) A Travel[Payment] Voucher[(TP or TPI)] document shall include:

1. Employee ID Number (KHRIS)[Social Security number] of the claimant; and

2. Purpose of each trip.

(c) A Travel[Payment] Voucher[(TP or TPI)] document shall be signed and dated, or entered electronically and approved by the:

1. Claimant; and

2. Agency head or authorized representative.

(d) If monthly expenses total less than ten (10) dollars, a Travel[Payment] Voucher[(TP or TPI)] may include expenses for six (6) months of a fiscal year.

(e) A Travel[Payment] Voucher[(TP or TPI)] document shall be:

1. Legibly printed in ink or typed; or

2. Processed electronically through travel software.

(f) A receipt shall provide the following information for each expense:

1. Amount;

2. Date;

3. Location; and

4. Type.

(g) Receipts shall be maintained at the agency if documents are processed electronically.

(h) If leave interrupts official travel, the dates of leave shall be stated on the Travel[Payment] Voucher[(TP or TPI)].

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel[Payment] Voucher[(TP or TPI)].

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Pre-paid Registration" document, Form eMARS-37;

(b) "Request for Authorization of Out-of-State Travel" document, Form DOA-28;

(c) "Request for Authorization of Out-of-Country Travel" document, Form DOA-28A;

(d) "State Park Travel Authorization" document;

(e) "Travel Voucher" document, Form eMARS-34.

(f) "Travel Voucher Prepaid Registration Fees: Multiple Cost Distribution" document, Form eMARS-36;

(g) "Travel Voucher, Other Expenses" document, Form eMARS-34B;

(h) "Travel Payment Voucher (TP or TPI) document (1999)";

(b) "Travel Authorization (TE or TEI) document for in-state travel (1999)";

(c) "Travel Authorization (TEO) for out-of-state travel (1999)";

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(d) "~~Travel Authorization (TEC) document for out-of-country travel (1999)~~";

(e) "~~Vendor Payment Voucher (P1) (1999)~~";

(f) "~~Internal Travel Voucher (IT) document (1999)~~";

(g) "~~Kentucky Official Highway Map, 2016; and (2004)~~";

(i) "~~(2004)~~";

(h) "~~Rand McNally Road Atlas, 2017 (2004)~~"; and

(i) "~~Secretary's Order S97-451, November 1, 1996~~".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the ~~Division of Statewide Accounting Services,~~ Office of the Controller, Finance and Administration Cabinet, Capitol Annex Building, Room 484, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and online at the Office of the Controller's Web site at <http://finance.ky.gov/services/statewideacct/Pages/travel.aspx>.

WILLIAM M. LANDRUM III, Secretary

APPROVED BY AGENCY: September 15, 2016

FILED WITH LRC: September 15, 2016 at 2 p.m.

CONTACT PERSON: Judy Piazza, Executive Director, Office of Legislative and Intergovernmental Affairs, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785, email Judith.Piazza@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Judy Piazza

(1) Provide a brief summary of:

(a) What this administrative regulation does: Updates regulatory language to account for current cabinet travel policies and reimbursement rates.

(b) The necessity of this administrative regulation: To provide state employees with the most up to date information regarding travel requirements and restrictions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See response for 1(c).

(2) If 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 provide updated information on the proper forms to use for travel and reimbursement for state government employees.

(b) The necessity of the amendment to this administrative regulation: To update the regulation from the 2006 revision.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c).

(d) How the amendment will assist in the effective administration of the statutes: See 1(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All agencies under the purview of the Executive Branch of the Commonwealth of Kentucky and its employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proper approval and submission of forms to the appropriate office to receive reimbursement of travel expenses in a timely fashion.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budgetary 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: None.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied in this amendment because all employees requesting travel and reimbursement will be approved and reimbursed for travel in the exact same manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All agencies under the purview of the Executive Branch of the Commonwealth of Kentucky and its employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 44.060 and 45.101.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
900 KAR 5:020E

This emergency administrative regulation is being promulgated in accordance with KRS 13A.190 to correct a finding of deficiency issued on September 8, 2015 by the Administrative Regulation Review Subcommittee. This action must be taken on an emergency basis to protect public health and safety. This emergency administrative regulation amends the State Health Plan regarding the need for ambulatory surgical centers in the Commonwealth of Kentucky. Pursuant to KRS 216B.040(2)(a)2.a, the Cabinet for Health and Family Services is charged with responsibility for promulgating regulations to establish criteria for the issuance and denial of certificates of need. The Cabinet must take this action to amend the State Health Plan regarding ambulatory surgical centers to assure that there will not be a proliferation of unnecessary ambulatory surgical centers that have the potential to negatively impact the viability of our full-service safety-net hospitals, thereby protecting human health and safety. This concern was raised by legislators and stakeholders when the current version of the ambulatory surgical center review criteria were unanimously found deficient by the Administrative Regulation Review Subcommittee on September 8, 2015. This immediate amendment would revise the ambulatory surgical center review criteria and allow the administration and General Assembly to further study and consider the impact of potential changes to ambulatory surgical center review criteria without the potential to inflict unnecessary and irreversible damage to the viability of safety-net hospitals. Failure to enact this administrative regulation on an emergency basis in accordance with KRS 13A.190(1)(a) will compromise the Cabinet's ability to act quickly in its efforts to address the ambulatory surgical center needs of the Commonwealth. 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
VICKIE YATES BROWN GLISSON, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Emergency Amendment)

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

RELATES TO: KRS 216B.010-216B.130
STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.
EFFECTIVE: September 27, 2016
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2016 Update to the 2015-2017 State Health Plan shall be used to:

- (1) Review a certificate of need application pursuant to KRS 216B.040; and
- (2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2016 Update to the 2015-2017 State Health Plan", September 2016[August 2015], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Health Policy,

275 East Main Street, 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

~~[Section 3. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on September 8, 2015.]~~

VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: September 26, 2016
FILED WITH LRC: September 27, 2016 at noon
CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Diona Mullins (502-564-9592, Diona.mullins@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2016 Update to the 2015-2017 State Health Plan which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation revises the 2013-2015 State Health Plan to address the ambulatory surgical center review criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment of the State Health Plan will assist in the effective administration of KRS 216B.040(2)(a)2.a. The plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

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

(a)How the amendment will change this existing administrative regulation: The amendment will revise the ambulatory surgical center review criteria in the State Health Plan.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to comply with the content of the authorizing statutes as the present and future needs of the population are to be addressed in the State Health Plan. The amendment is necessary to assure that there is not a proliferation of unnecessary ambulatory surgical centers.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the revised criteria of the 2016 Update to the 2015-2017 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the ambulatory surgical center review criteria of the State Health Plan will address the needs of the population and assist in the effective administration of KRS 216B.040(2)(a)2.a.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually, approximately five (5) ambulatory surgical center certificate of need applications are filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities which submit certificate of need applications for ambulatory surgical centers will be subject to the revised criteria set forth in the 2016 Update to the 2015-2017 State Health Plan.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities which submit certificate of need applications for ambulatory surgical centers will be subject to the revised criteria set forth in the 2016 Update to the 2015-2017 State Health Plan, which addresses the need for expansion of ambulatory surgical centers in the Commonwealth.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed ambulatory surgical centers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No impact to revenues.

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

STATEMENT OF EMERGENCY 922 KAR 1:360E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)1 to preserve the health and welfare of vulnerable children in the custody of the Cabinet for Health and Family Services. The administrative regulation implements a payment rate increase for residential child-caring facilities to better reflect their actual costs serving children in state custody who are assessed as needing levels of care IV and V. Without the payment rate increase, placement capacities would be diminished and would result in children being placed in more costly, restrictive care or care that is not safe and not suitable to the children's needs. Additionally, in accordance with KRS 13A.190(1)(a)2, this emergency administrative regulation protects federal funding that supports the provision of child welfare services by better ensuring adequate service array for children in out-of-home care. An ordinary administrative regulation would not allow the agency sufficient time to increase payment rates for residential child-caring facilities to better meet their actual costs in providing care, thereby jeopardizing placement capacity and service provision to vulnerable children in state custody. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 28, 2016

FILED WITH LRC: September 28, 2016 at 4 p.m.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Emergency Amendment)

922 KAR 1:360E. Private child care placement, levels of care, and payment.

RELATES TO: KRS 13B, 199.011, 199.640-199.680, 199.801, 600.020(25)[(24)], 605.090(1)(b), (d), 610.110,[2014 Ky. Acts ch. 117 Part 1, G-9(7)], 42 U.S.C. 622, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

EFFECTIVE: September 28, 2016

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-caring facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations prescribing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2).

(2) "Child-caring facility" or "facility" is defined by KRS 199.641(1)(b).

(3) "Department" means the Department for Community Based

Services or the department's agent.

(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(5) "Emergency shelter" is defined by KRS 600.020(25)(24).

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;
2. Placement;
3. Performance measurement; and
4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care in accordance with Section 2(2) of this administrative regulation.

(11) "Model program cost analysis" is defined by KRS 199.641(1)(d).

(12) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(13) "Time study" is defined by KRS 199.641(1)(e).

(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age when:

(a) The child enters the level of care system;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the DPP-886, Private Child Care Client Inter-agency Referral Form, and the following child-specific information:

(a) Identifying data;

(b) Individual strengths and limitations;

(c) Daily living skills;

(d) Physical health needs;

(e) Mental health needs including:

1. Behavioral health; and

2. Diagnosis and treatment;

(f) Medications;

(g) History of substance abuse, high risk, or other significant behavior including:

1. Sexual acting out; and

2. Legal history, status, or delinquency behavior patterns;

(h) ~~Out-of-home~~[~~Out of home~~] care placement information including:

1. Reason for entering ~~out-of-home~~[~~out of home~~] care;

2. History of abuse, neglect, or dependency;

3. Current custody status;

4. Current and previous placements; and

5. Permanency goal;

(i) Social supports;

(j) Educational functioning, grade level, and any special educational need;

(k) Religious background and practices; and

(l) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach);

2. Child Behavior Checklist For Ages 6-18 (Achenbach); or

3. Another tool[~~identified and piloted~~] pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A).

(3)(a) If a child needs placement within the level of care system, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator.

(b) The district placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

(a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;

(b) Arrange transportation for the child to the placement; and

(c) Notify the district placement coordinator of the selected placement.

(5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:

(a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and

(b) Inform the district placement coordinator of the location and date of placement.

(6) The district placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and

(b) For an initial or reassigned level of care;

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, to the department; or

2. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, to the department and the child-caring facility or the child-placing agency;

(3) Conduct a utilization review for a child:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b) 1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the previous level has expired;

(5) Monitor each child-caring facility and child-placing agency;

(6) Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes; and
 (7) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the private child-caring facility or private child-placing agency and the cabinet after a level is conducted or reassigned.

Section 4. Levels of Care. A level of care shall be assigned in accordance with this section.

(1) A Level I child shall be a child who requires a routine home environment that:

- (a) Provides maintenance;
- (b) Provides guidance;
- (c) Provides supervision to meet the needs of the child; and
- (d) Ensures the emotional and physical well-being of the child.

(2) A Level II child shall be a child who:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

1. Counseling available from professional or paraprofessional staff;

2. Educational support; and

3. Services designed to improve development of normalized social skills.

(3) A Level III child shall be a child who:

- (a) May engage in an occasional violent act;
- (b) May have superficial or fragile interpersonal relationships;
- (c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;

(d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and
 (e) Requires a program flexible enough to allow:

- 1. Extended trials of independence if the child is capable;
- 2. A period of corrective and protective structure during relapse; and

3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child shall be a child who:

(a) Has behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others; and

(b) Requires a structured supportive setting with:

1. Therapeutic counseling available by professional staff; and
 2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child shall be a child who:

(a) Has a severe impairment, disability, or need;
 (b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

1. Highly structured program with twenty-four (24) hour supervision; or

2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the model program cost analysis defined at KRS 199.641(1)(d).

(b) Each private, nonprofit child caring facility shall report to the cabinet annually, on the DPP-888, Cost Report and Time Study and Instructions.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined as follows:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and

b. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet.

(b)1. For children whose level is determined, the median level of care shall be represented by an index factor of one (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

- a. Board;
- b. Care; and
- c. Treatment components; or

2. For an emergency shelter without a treatment license:

- a. Board; and
- b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period;

6. Increased achievement of permanency goals; and

7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes described in paragraph (a) of this subsection; and

2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) When the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

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(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

- (a) Reduced length of stay in out-of-home placement;
- (b) Increased safety from child abuse or neglect;
- (c) Increased number of children moving into and remaining in permanent placement;
- (d) Increased number of children and their families cared for in close proximity to their home communities;
- (e) Increased number of children reunified with their families;
- (f) Increased accountability for success in after care; or
- (g) Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care system shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:

- (a) Level I – \$51.19~~[fifty-one (51) dollars and nineteen (19) cents];~~
- (b) Level II – \$61.52~~[sixty-one (61) dollars and fifty-two (52) cents];~~
- (c) Level III – \$109.71;
- (d) Level IV:
 - 1. \$151.03; or 2. \$175.87; or
 - 2. \$183.00 on or after October 1, 2016~~[on or after August 4, 2014];~~ and
- (e) Level V:
 - 1. \$210.64; or 2. \$218.99; or
 - 2. \$236.60 on or after October 1, 2016~~[on or after August 4, 2014].~~

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

- (a) \$115.31 per day for a child-caring facility with a treatment license; or
- (b) \$101.41 per day for a child-caring facility without a treatment license.

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

- (a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review;
- (b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and

(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

- 1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;
- 2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and
- 3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be \$44.82;

(a) ~~Forty-three (43) dollars; or~~

(b) ~~Forty-four (44) dollars and eighty-two (82) cents on or after August 4, 2014].~~

(2) The daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher – \$76.10;

1. ~~Seventy-three (73) dollars; or~~

2. ~~Seventy-six (76) dollars and ten (10) cents on or after August 4, 2014.]~~

(b) Level III – \$83.16;

1. ~~Seventy-nine (79) dollars and seventy-eight (78) cents; or~~

2. ~~Eighty-three (83) dollars and sixteen (16) cents on or after August 4, 2014.]~~

(c) Level IV –:

1. ~~Ninety-seven (97) dollars and eleven (11) cents; or~~

2. \$101.23; and~~[on or after August 4, 2014.]~~

(d) Level V –:

1. ~~\$134.26; or~~

2. \$139.96~~[on or after August 4, 2014].~~

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount specified in Section 8(1) of this administrative regulation for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. (1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the disability or distress;

c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. For a child who has an IQ seventy (70) or above, a behavior inventory appropriate to the child's developmental level consisting of completed forms specified in Section 2(2)(l) of this administrative regulation; and

2. For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level:

a. Consisting of:

(i) A completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); or

(ii) Another completed tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A); and

b. By the first utilization review due date and every twelve (12) months thereafter; and

3. To the gatekeeper and designated cabinet staff, a copy of

the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):

- a. On a quarterly basis, for a private child care residential placement; or
- b. On a semiannual basis for a foster care placement;
- (d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

- 1. The Council on Accreditation; or
- 2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 11. Utilization Review and Authorization of Payment.

(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day, the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-

placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, for an initial or reassigned level;

2. CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;

3. CRP-4, Children's Review Program Notice of Level of Care Redetermination;

4. CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or

5. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child;

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. Material as specified in Section 2(2)(l) of this administrative regulation.

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the contract agent.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", 7/00;

(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", 6/01;

(c) "CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", 11/14;

(d) "CRP-4, Children's Review Program Notice of Level of Care Redetermination", 11/14;

(e) "CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 11/14;

(f) "CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment", 11/14;

(g) "CRP-7, Children's Review Program Application of Level of Care Payment (ALP)", 11/14;

(h) "DPP-114, Level of Care Schedule", 8/14;

(i) "DPP-886, Private Child Care Client Inter-agency Referral Form", 10/04;

(j) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities", 10/04; and

(k) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", 1990.

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

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 28, 2016

FILED WITH LRC: September 28, 2016 at 4 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood (502-564-3703, elizabeth.caywood@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes five levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and procedures for placement of a child in the custody of the cabinet with a private child care provider, levels of care and related payments, responsibilities and requirements of the gatekeeper and private provider, and rate setting methodology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the levels of care and associated payments for a private child care placement.

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

administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child in the custody of the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases the payment rates for children who are assessed as having levels of care IV and V, and who are placed with a private residential child-caring facility. In addition, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adjust reimbursement for children placed in residential child-caring facilities to better reflect actual costs of providers. The rate increase is anticipated to assist with provider capacity, thereby better assuring placement options and quality care for children in state custody. Without these placement options, children risk placement in more costly, restrictive settings or, conversely, in settings that do not otherwise meet the needs of the children. The health and welfare of said children are jeopardized without the payment rate increase, in addition to threats to federal child welfare funding due to an inadequate service array for children needing out-of-home care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adjusting residential child-caring facility payment rates to better reflect actual costs realized by the provider type.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by enhancing provider payment rates so that they are more consistent with actual provider costs, thereby better facilitating placement options and preserving the health and welfare of children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet maintains a monthly average of 1,100 children who are assessed as needing levels of care IV or V in residential child-caring facility placements. As of August 18, 2016, there are 44 licensed child-caring facilities in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation requires no new action on the part of regulated entities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Residential child-caring facilities will benefit from the payment rate increase implemented through the amendment to this administrative regulation. The effect of the regulatory amendment will preserve the health and welfare of children in the custody of the cabinet.

rate increase for children who are assessed as needing levels of care IV and V. The cabinet has identified approximately \$5.4 million, a combination of federal, general, agency, and restricted funds, within its existing appropriations to support the rate increase.

(b) On a continuing basis: The cabinet projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

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

implementation and enforcement of this administrative regulation: The sources of funding include federal Title IV-E (of the Social Security Act) foster care maintenance, general funds, and agency and restricted funds derived from the Temporary Assistance for Needy Family (TANF) block grant and Medicaid.

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

An increase in fees or funding will not be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be implemented in a like manner statewide.

available funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672

2. State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.090(1)(d), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1), 42 U.S.C. 622, 672

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are within appropriations. The cabinet has identified approximately \$5.4 million, a combination of federal, general, agency, and restricted funds to support the rate increase.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, October 11, 2016)

12 KAR 1:155. Schedule of charges for samples submitted for testing.

RELATES TO: KRS 250.021 to 250.111

STATUTORY AUTHORITY: KRS 250.081(1)(c)6

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)6 requires the director of the Agricultural Experiment Station to promulgate administrative regulations establishing charges for tests of samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory for testing. This administrative regulation establishes a schedule of charges for service tests, analysis, and examination of seed samples in the Kentucky Agricultural Experiment Station Seed Laboratory.

Section 1. Definition. "Free test" means:

(1) A complete test consisting of a purity analysis, a noxious weed seed examination for Kentucky, and a germination test; or

(2) A test with a cost equivalent to a complete test.

Section 2. Except as provided by KRS 250.091, which authorizes one (1) free test per year [which will consist of a complete test which includes purity, noxious weed seed examination for Kentucky, and a germination test or the equivalent cost to a complete test], the service charges established in this section shall be assessed for samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory. (1)[Until January 1, 2014, the charges established in this subsection shall apply. (a) Basic charge list:

Kind of Seed	Complete Test	Purity and Noxious Weed Test	Germination Only
Alfalfa	\$14.00	\$7.00	\$8.00
Bentgrass	16.00	12.00	8.00
Bermudagrass	16.00	12.00	8.00
Bluegrass	16.00	12.00	10.00
Bromegrass	16.00	12.00	8.00
Cereals	11.00	5.00	7.00
Clovers	14.00	7.00	8.00
Corn	14.00	7.00	8.00
Crownvetch	14.00	7.00	8.00
Fescue	15.00	8.00	8.00
Lespedeza	14.00	8.00	7.00
Lovegrass	16.00	12.00	8.00
Millet	11.00	5.00	7.00
Orchardgrass	18.00	11.00	8.00
Redtop	16.00	12.00	8.00
Ryegrass	18.00	6.00	8.00
Sorghum-Sudangrass	11.00	5.00	7.00
Soybean	12.00	6.00	7.00
Sudangrass	11.00	5.00	7.00
Timothy	14.00	7.00	8.00
Tobacco	16.00	12.00	8.00
Vegetables	14.00	10.00	7.00
Vetch	11.00	5.00	7.00

(b) Nonresidents shall be assessed an additional charge of two (2) dollars per sample.

(c) A complete test shall include a purity analysis, a noxious weed seed examination (for Kentucky only), and a germination

test.

(d) A purity and noxious weed test shall include a purity analysis and a noxious weed seed examination (for only those seed designated as noxious in Kentucky).

(e) In ryegrass samples, a complete test shall include a fluorescence test which distinguishes perennial ryegrass seed and annual ryegrass seed.

(f) Mixtures, difficult, or dirty samples may be charged an additional eight (8) dollars per hour for extra separation time. Each component over five (5) percent of the total in mixtures shall be charged individually for germination testing.

(g) Rush service may be provided upon request at an additional charge of fifteen (15) dollars per sample.

(h) The schedule of charges for special tests shall be:

1. Noxious weed seed examination for Kentucky only: eight (8) dollars;

2. Noxious weed seed examination for any other or for all states: ten (10) dollars;

3. Moisture test: four (4) dollars;

4. Seed count per pound: four (4) dollars;

5. Soybean hypocotyl color test: twelve (12) dollars;

6. Vigor test (accelerated aging): nine (9) dollars;

7. Tetrazolium test: twelve (12) dollars;

8. Phenol test of wheat: twelve (12) dollars;

9. Peroxidase test of soybeans: twelve (12) dollars;

10. Seed or plant tall fescue endophyte:

a. One (1) to fifty (50) specimens of same seed lot or uniquely identified group of plants: thirty-five (35) dollars;

b. Fifty-one (51) to 100 specimens of same seed lot or uniquely identified group of plants: sixty (60) dollars; and

c. 101 to 150 specimens of same seed lot or uniquely identified group of plants: eighty-five (85) dollars; and

11. Reexamination of a sample to secure information not requested initially, or any analysis or test to obtain information not specifically required by the Kentucky Seed Law, KRS 250.021 to 250.111 and 12 KAR Chapter 1, shall be assessed eight (8) dollars per hour for analytical time.

(i) Charges for kinds not listed in this subsection shall be in accord with charges made for other kinds of seed of similar size.

(2) Beginning January 1, 2014, The charges established in this subsection shall apply:

(a) Basic charge list:

Kind of Seed	Complete Test	Purity and Noxious Weed Seed Test	Germination Only
Group 1 Corn and soybeans	\$18.00	\$9.00	\$11.00
Group 2 Small grains	\$14.00	\$7.00	\$9.00
Group 3 Tobacco	\$21.00	\$16.00	\$11.00
Group 4 Clovers, alfalfas, and lespedezas	\$18.00	\$9.00	\$11.00
Group 5 Lawn and forage grasses	\$20.00	\$14.00	\$12.00
Group 6 Native grasses, flowers, and forbs	\$40.00	\$30.00	\$30.00
Group 7 Vegetables	\$18.00	\$13.00	\$12.00

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Group 8 Ornamentals (trees, shrubs, and flowers) and herbs	\$30.00	\$18.00	\$20.00
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(2)(b) Nonresidents shall be assessed an additional charge of fifteen (15) dollars per sample.

(3)(e) A complete test shall include a purity analysis, a noxious weed seed examination (for Kentucky only), and a germination test.

(4)(d) A purity and noxious weed test shall include a purity analysis and a noxious weed seed examination (for only those seed designated as noxious in Kentucky).

(5)(e) In ryegrass samples, a complete test shall be assessed a charge of twenty-five (25) dollars and shall include a fluorescence test which distinguishes perennial ryegrass seed and annual ryegrass seed.

(6)(f) Mixtures, difficult, or dirty samples may be charged an additional forty (40) dollars per hour for extra separation time.

(7)(g) Mixtures submitted for germination testing shall be charged a fifteen (15) dollar separation fee. Each component over five (5) percent of the total in mixtures shall be charged individually for germination testing.

(8)(h) Rush service may be provided upon request at an additional charge of twenty-five (25) dollars per sample.

(9)(i) Samples of coated, encrusted, pelleted, film-coated, or treated seed shall be charged an additional fifteen (15)~~ten (10)~~ dollars for hand washing and disposal of toxic substances.

(10)(j) The schedule of charges for special tests shall be:

(a)[4-] Noxious weed seed examinations:

1.[a-] Kentucky only: ten (10) dollars;

2.[b-] Other states: fifteen (15) dollars per state; and

3.[c-] All states: fifty (50) dollars;

(b)[2-] Moisture test: eight (8) dollars;

(c)[3-] Seed count per pound: ten (10) dollars;

(d)[4-] Varietal identification:

1.[a-] Soybean hypocotyl color test: fifteen (15) dollars;

2.[b-] Phenol test of wheat: eighteen (18) dollars; and

3.[c-] Peroxidase test of soybean: eighteen (18) dollars;

(e)[5-] Vigor tests:

1.[a-] Accelerated aging: eighteen (18) dollars;

2.[b-] Cold test: eighteen (18) dollars; and

3.[c-] Conductivity: eighteen (18) dollars;

(f)[6-] Tetrazolium test:

1.[a-] Groups 1 and 2: eighteen (18) dollars;

2.[b-] Groups 4, 5, and 7: thirty (30) dollars; and

3.[c-] Groups 3, 6, and 8: forty (40) dollars;

(g)[7-] Seed or plant tall fescue endophyte. One (1) to 100 specimens: \$115~~\$100~~;

(h)[8-] Biotechnology trait identification. Herbicide bioassay: thirty (30)~~twenty-five (25)~~ dollars; and

(i)[9-] Reexamination of a sample to secure information not requested initially, or any analysis or test to obtain information not specifically required by the Kentucky Seed Law, KRS 250.021 to 250.111 and 12 KAR Chapter 1, shall be assessed forty (40) dollars per hour for analytical time.

(11)(k) Testing performed in compliance with International Seed Testing Association (ISTA) rules shall be charged fifteen (15) dollars in addition to test fees.

(12)(l) Testing performed in compliance with Canadian Methods and Procedures (M & P) for Testing Seed shall be charged eighteen (18) dollars in addition to test fees.

(13)(m) Charges for kinds not listed in this subsection shall be in accord with charges made for other kinds of seed of similar size.

DR. RICK BENNETT, Director

APPROVED BY AGENCY: August 9, 2016

FILED WITH LRC: August 10, 2016 at 8 a.m.

CONTACT PERSON: Stephen McMurtry, Director of Fertilizer and Seed Programs, Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, phone (859) 257-2785, fax (859) 257-7351, email smcmurtry@uky.edu.

**OFFICE OF THE ATTORNEY GENERAL
Office of Consumer Protection
(As Amended at ARRS, October 11, 2016)**

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, 10/16/07-16, 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.

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.

**OFFICE OF THE ATTORNEY GENERAL
Office of Consumer Protection
(As Amended at ARRS, October 11, 2016)**

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 forms related to cremation as required by KRS 367.97501, 367.97504, and 367.97514[~~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 declarant or 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 to be performed by the state regarding the [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, date of birth, and gender of the declarant or decedent [deceased], and the place and date of death;

(6) [(5)] Whether or not the declarant's or 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 declarant's or decedent's remains contain any devices, including mechanical, prosthetic, implants or materials, which may have been implanted in or attached to the declarant or 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)] A description of any devices, including mechanical, prosthetic, implants, or materials, which may have been implanted in or attached to the declarant or decedent, or any other device that may become hazardous during the cremation process [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 declarant or decedent:

(a) Kentucky law requires the individual's [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 a declarant or [the] decedent is the authorizing agent; and

(b) The right to control the disposition of the remains of a declarant or decedent [authorize the cremation of the decedent's body] 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 declarant's or decedent's body, in the following order of authority:

(a) The individual executing [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, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3, and that the original Preneed Cremation Authorization, Form CR-3 shall be attached;

(e) The surviving spouse of the declarant or decedent;

(f) The surviving adult child of the declarant or decedent, or a majority of the adult children if more than one (1) adult child is surviving, or less than a majority of the surviving adult children by attesting in writing showing the reasonable efforts to notify the other adult surviving children of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children. The number of surviving adult children shall be written in the completed Cremation Authorization, Form CR-1 [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 declarant or decedent, or if one (1) parent is absent, the parent who is present has the right to control the disposition by attesting in writing showing the reasonable efforts to notify the absent parent. The number of surviving parents shall be written in the completed Cremation Authorization, Form CR-1 [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 of the declarant or decedent, or a majority of the adult grandchildren if more than one (1) adult grandchild is surviving, or less than a majority of the surviving adult grandchildren by attesting in writing showing the reasonable efforts to notify the other adult surviving grandchildren of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult grandchildren. The number of surviving adult grandchildren shall be written in the completed Cremation Authorization, Form CR-1 [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 of the decedent or decedent, or a majority of the adult siblings if more than one (1) adult sibling is surviving, or less than a majority of the surviving adult siblings by attesting in writing showing the reasonable efforts to notify the other adult surviving siblings of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult siblings. The number of surviving adult siblings shall be written in the completed Cremation Authorization, Form CR-1 [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 or decedent, or a majority of those in the same degree of kinship if more than one (1) individual of the same degree is surviving, or less than a majority of the surviving individuals of the same degree of kinship by attesting in writing showing the reasonable efforts to notify the other individuals of the same degree of kinship of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the individuals of the same degree of kinship. The number of surviving individuals of the same degree of kinship, and a description of the relationship to the decedent or decedent, shall be written in the completed Cremation Authorization, Form CR-1 [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 or decedent, including a funeral home, that has a valid prepaid funeral plan that makes arrangements for the disposition of the decedent or decedent, by attesting in writing showing the good-faith effort made to contact any living individuals in an order of authority class described in paragraphs (a) to (j) of this subsection [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 declarant or 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 declarant or authorizing agent shall direct the crematory authority on the final disposition of the cremated remains;

(c)[(b)] 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) The original form shall be attached to the Cremation Authorization, Form CR-1[(e)] if;

1. The cremation is being performed pursuant to a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145.1;[or]

2. A Preneed Cremation Authorization, Form CR-3 that was completed and executed before July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3 [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) All[(14)] 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)[(14)] 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 declarant or 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 declarant or 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 **declarant or** 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 **declarant or** 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)[(42)]~~ 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)[(43)]~~ The date the **remains were**~~[body was]~~ received by the crematory authority, the cremation number, the date of cremation, **and** 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 **declarant or** 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, **or as declarant, designee, or alternate designee if using a Funeral Planning Declaration, Form FPD-1,** grants consent to the cremation of the decedent;~~and]~~

(b) Executing the Cremation Authorization, Form CR-1 as authorizing agent, **or as declarant, designee, or alternate designee if using a Funeral Planning Declaration, Form FPD-1,** 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 **declarant or** 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; **and**

(c) If a written attestation is required, the authorizing agent shall select and complete an attestation:

1. For authorizing agent or agents listed in subsection (13)(f), (h), (i), or (j) of this section, an attestation that **reasonable efforts have been made to notify the other members of the authorizing class and the authorizing agent or agents are not aware of any opposition to the final instructions, and stating the number of individuals in the authorizing class, the number of authorizing agents authorizing the cremation, the name of the decedent, a description of the reasonable efforts, and the number of other members of the authorizing class;**

2. For an authorizing agent listed in subsection (13)(g) of this section, an attestation that **reasonable efforts have been made to notify the other parent, and a description of the reasonable efforts; or**

3. For authorizing agent or agents listed in subsection (13)(k) of this section, an attestation that **a good-faith effort has been made to contact any living individual described in subsection (13)(a) through (k) of this section, and a description of the good-faith effort;**

~~(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 **declarant or** 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 ~~["Crematory Annual Report"]~~, 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 ~~["Preneed Cremation Authorization"]~~, 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, **which was the effective date of the amendments to KRS**

367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3.

(2) A Preneed Cremation Authorization, Form CR-3, completed and executed prior to July 15, 2016, **which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3,** shall contain the following information:

(a)[(4)] 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)[(8)] 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;

~~(v)(25)~~ The name of the funeral director or other individual acting as witness for the authorizing agent;

~~(2)(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;

(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)(f)~~ 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)~~(44)~~ The name, address, including city, state, and zip code, and account number, if applicable, of one (1)~~(three–(3))~~ financial reference~~[references]~~. Suitable financial references shall include financial institutions and industry suppliers. Personal references shall not be acceptable;

(13)~~(42)~~ The name and address, including city, state, and zip code, of the financial institution at which the applicant has its

business bank account;

~~(14)(43)~~ The account number of the business bank account;

~~(15)(44)~~ 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)(45)~~ 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)(46)~~ 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)(47) That the applicant is authorized to complete the application~~[this form]~~ on behalf of the applicant crematory; and

~~(18)(47)~~ 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) For all cremations occurring within the last ten (10) years;

(a) 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, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3; or

(b) 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, ~~10-16[07-16]~~[11-02];
 - (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~~[11-02];
- (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: September 14, 2016

FILED WITH LRC: September 15, 2016 at noon

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 kevin.winstead@ky.gov.

**GENERAL GOVERNMENT CABINET
Board of Barbering
(As Amended at ARRS, October 11, 2016)**

201 KAR 14:125. Teacher~~Teachers'~~ and ~~instructors'~~ requirements.

RELATES TO: KRS 317.440, 317.450

STATUTORY AUTHORITY: KRS 317.440, 317.450(4), (7)

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 written examination required under subsection (1) of this section, and the oral and practical examinations required under Section 2(1)(b) and (c) of this administrative regulation[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 shall satisfy the following before the second renewal date as established in KRS 317.450(7)(a):

(a) Complete twelve (12) months and 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;

(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.

(2) A teacher may request a one (1) time extension of time to complete the requirements of subsection (1) of this section. The extension may be granted by the board to the next renewal date. An extension of time request shall be filed, in writing, with the board no later than July 31 following the second renewal date.

(3) A teaching license shall not be renewed if a teacher fails to achieve a passing score on the oral teacher's examination and practical teacher's examination by the second renewal period or upon the expiration of the extension of time.

(4) An individual whose teaching license is not renewed for failing to achieve a passing score on the oral teacher's examination and practical teacher's examination within the time period set out in subsection (3) of this section may reapply for a teaching license only after achieving a passing score on the oral teacher's examination and practical teacher's examination.

Section 3. (1) A teacher[An instructor] shall be present in the ~~[study and]~~ classroom of a school during the one (1) hour of classroom instruction required, [all class] and in the study of a school during study hours for the practical learning aspects, 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.

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Section ~~4.[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 ~~5.[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 ~~6.[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 ~~7.[6.]~~ All services rendered in a school on patrons ~~shall[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 ~~8.[7.]~~ A teacher~~[instructors]~~ in attendance shall~~[must at all times]~~ wear a clean, washable outer garment such as a coat or smock.

Section ~~9.[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 ~~10.[9.]~~ A teacher who has not completed twelve (12) months and 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 2(1)(b) and (c)[4(2)] of this administrative regulation.

Section ~~11.[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 twelve (12) months and 600 hours of instructional experience.

Section ~~12.[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 2(1)(b) and (c)[4(2)] of this administrative regulation.

Section ~~13.[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 and Section 2(1)(b) and (c) of this administrative regulation.

Section ~~14.[13.]~~ A teacher in a school shall hold both a barber and barber teacher's license issued by the board.

Section 15. A teacher who has not satisfied the requirements of Section 2(1) of this administrative regulation shall not be considered a teacher for purposes of KRS 317.540(5).

SONJA MINCH, Administrator

APPROVED BY AGENCY: September 15, 2016

FILED WITH LRC: September 15, 2016 at 9 a.m.

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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (As Amended at ARRS, October 11, 2016)

503 KAR 5:090. Participation: requirements; application; withdrawal.

RELATES TO: KRS 15.440, 15.450

STATUTORY AUTHORITY: KRS 15.450(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.450(1) authorizes the Secretary of the Justice and Public Safety Cabinet or his designated representative to promulgate administrative regulations necessary to the administration of the Kentucky Law Enforcement Foundation Program Fund. This administrative regulation establishes the requirements for application to, participation in, and withdrawal from the fund.

Section 1. Education Requirements. (1) To demonstrate that an officer has completed the education requirement found in KRS 15.440(1)(c), the local unit shall send to the fund administrator:

(a) A copy of the high school diploma issued or recognized by the state department of education; or

(b) A copy of a General Educational Development (GED) certificate[general education diploma] issued by a state department of education.

(2) A police officer who was "grandfathered" into the fund without having to meet the educational requirement found in KRS 15.440(1)(c), who subsequently experiences a separation of employment as a police officer, may regain eligibility to participate in the fund:

(a) Upon reemployment as a police officer by a local unit which is participating in the fund, and completion of the educational requirement found in KRS 15.440(1)(c), if the separation was a result of resignation or dismissal; or

(b) Without completion of the educational requirement found in KRS 15.440(1)(c) if the police officer:

1. Retired pursuant to KRS 61.637; and

2. Is reemployed as a police officer with the same agency no later than twelve (12) months from the initial retirement date.

Section 2. Basic Training Requirement. (1) Time limit.

(a) A local unit that elects to participate in the fund shall require all police officers employed as of the date of the initial participation to demonstrate compliance with the basic training requirement within one (1) year of the date of initial participation. An officer employed after the date of the initial participation shall demonstrate compliance by completing[with] the basic training requirement within one (1) year of the date of employment.

(b) If extenuating circumstances occur that are beyond the control of an officer, including serious injury or illness, personal tragedy, or agency emergency, the local unit may request an extension of time in which the officer shall complete basic training. The agency shall request an extension, in writing, not less than thirty (30) days prior to expiration of the one (1) year time limit as established in subsection (1)(a) of this section. The extension of time to be granted shall not exceed 180 days.

(c) The local unit shall be in violation of this subsection if:

1. An officer fails to complete training during the one (1) year period and has not experienced an extenuating circumstance; or

2. An officer fails to complete training prior to expiration of a time extension based upon an extenuating circumstance.

(2) Compliance. A police officer shall demonstrate completion off[compliance with] the basic training requirement by:

(a) If the officer has never completed basic training, the officer

shall successfully complete:

1. The Department of Criminal Justice Training 928[640] hour basic training course; or

2. A basic training course approved and recognized by the council which consists of a minimum of 928[640] hours with a course content equivalent to the Department of Criminal Justice Training 928[640] hour basic training course;

(b) If the officer has successfully completed a Department of Criminal Justice Training basic training course, or another council-approved and recognized basic training course, additional basic training shall not be required if he has:

1. Been continuously employed as a police officer since the completion of that basic training; or

2. Experienced a separation of employment as a police officer for no more than twelve (12) months prior to his present eligibility to participate in the fund;

(c) If the officer has successfully completed a Department of Criminal Justice Training basic training course, or another council-approved and recognized basic training course; and has experienced a separation of employment as a police officer for more than twelve (12) months but less than thirty-six (36) months prior to his present eligibility to participate in the fund, he shall successfully complete the following Department of Criminal Justice Training courses:

1. The twenty-four (24) hour legal update: Penal Code course; and

2. The sixteen (16) hour legal update: Constitutional Procedure course; or

(d) If the officer has successfully completed a Department of Criminal Justice Training basic training course, or another council-approved and recognized basic training course, and experienced a separation of employment as a police officer for more than thirty-six (36) months prior to his present eligibility to participate in the fund, he shall successfully complete the following Department of Criminal Justice Training courses:

1. The twenty-four (24) hour legal update: Penal Code course;

2. The sixteen (16) hour legal update: Constitutional Procedure course; and

3. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment as determined by the fund administrator:

a. Basic officer skills; or

b. Orientation for new police chiefs[; or

c. Mandatory duties of the sheriff].

(3) If calculating the total number of months of separation and service described in subsection (2)(c) and (d) of this section:

(a) Calculation shall begin effective the first date employed as a police officer and shall include all subsequent months.

(b) For the first or last month of a continuous period of employment or separation:

1. If the number of days of service for a specific month is less than the maximum possible number of regular service days for that month, the officer shall receive credit for a full month of service;

2. If the number of days of separation for a specific month is less than the maximum possible number of regular service days for that month, the month shall not be calculated as a month of separation.

(4) A police officer that is required to meet the requirements of subsection (2)(c) or (d) of this section, shall not be:

(a) Eligible to participate in the fund until meeting those requirements; or

(b) Entitled to back payment[backpayment] of funds from their original hire date.

(5) A police officer who has never completed basic training and is not eligible to be "grandfathered" into the fund shall not be:

(a) Eligible to participate in the fund until completing the basic training requirement in subsection (2)(a) of this section; or

(b) Entitled to back payment[backpayment] of funds from their original hire date.

(6) A police officer who was "grandfathered" into the fund without having to meet the basic training requirement found in KRS 15.440(1)(d), shall not be required to demonstrate compliance with the basic training requirement to regain eligibility to participate in

the fund if the police officer:

(a) Retired pursuant to KRS 61.637; and

(b) Is reemployed as a police officer with the same agency no later than twelve (12) months from the initial retirement date.

Section 3. In-service Training Requirement. (1) A local unit that elects to participate in the fund shall:

(a) Require all police officers employed as of the date of initial participation, and all officers employed after the date of initial participation, to successfully complete the forty (40) hour in-service training requirement each calendar year; and

(b) Not be considered to be in violation of this paragraph if an officer's failure to meet the in-service training requirement in a calendar year is due to an extenuating circumstance including serious injury or illness, personal tragedy, or agency emergency.

(2) An officer meeting the requirements of subsection (1)(b) of this section shall be required to meet the in-service training requirement within a reasonable time as determined by the fund administrator or his designee. The reasonable time shall not exceed 180 days from the termination of the extenuating circumstance.

(3) If an officer, under circumstances that are not extenuating, fails to successfully complete forty (40) hours of in-service training in a calendar year:

(a) The fund administrator or his designee shall notify the local unit that the officer must complete the in-service training for the year of delinquency within a reasonable time, but not to exceed 180 days, as determined by the fund administrator or his designee, or else the local unit, if it continues to employ the officer full time, shall be in violation of this paragraph and shall lose its eligibility to participate in the fund; and[.]

(b) He shall not:

1. Receive a salary supplement until he makes up the in-service training for the year of delinquency; and

2. Be entitled to receive back pay supplement for the period of nonpayment caused by the delinquency in training.

(4)(a) A police officer who successfully completes a basic training course approved and recognized by the council shall be considered to have fulfilled the in-service training requirement for the calendar year in which the basic training is completed when that completion occurs in the calendar year of the present application for participation in the fund.

(b) An officer who demonstrates compliance with the basic training requirement by completion of a course approved and recognized by the council prior to the calendar year of the present application for participation in the fund, shall complete a forty (40) hour in-service training course for that calendar year in order to remain eligible to participate in the fund.

(c) Earned in-service training hours in excess of the mandatory forty (40) hours per year shall not be carried forward to subsequent calendar years.

(5) If a police officer who is qualified to participate in the fund has his police service terminated due to resignation or dismissal before he meets his in-service training requirement for the calendar year, he shall still be eligible to participate in the fund for that part of the calendar year during which he was employed as a police officer.

(6)(a) Except for courses as authorized in paragraph (b) of this subsection, a police officer shall not, for fund eligibility purposes, take the same in-service training course that he has successfully completed in a previous year for fund eligibility purposes unless at least three (3) years have passed since the earlier course was completed.

(b) A police officer may repeat in-service training courses providing instruction in diminishable skills that the officer has successfully completed in the previous year up to a maximum of sixteen (16) hours as specified in each of the following training areas:

1. Four (4) hours of a course or courses in driver training, including techniques, operational principles, and legal considerations necessary for enhancement of driving skills for law enforcement officers;

2. Four (4) hours of a course or courses in firearms training,

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including tactical situations, marksmanship, and legal considerations necessary to enhance the skills of law enforcement officers in firearms use;

3. At least one (1) hour, but no more than eight (8) hours, in a course or courses in law enforcement legal update training that shall include training on recent federal and state legislation and regulations, issuance and development of recent case law, and basic legal consideration impacting law enforcement officers in the exercise of their peace officer powers; and

4. No more than seven (7) hours in a course or courses in tactical law enforcement training that may include self-defense techniques, administration of first aid, active shooter tactics and techniques, and de-escalation techniques.

Section 4. Local Ordinance Requirement. (1) To be eligible to participate in the fund, a local unit shall enact an ordinance or resolution requiring the local unit and police department to comply with KRS 15.410 to 15.510 and with 503 KAR Chapter 5.

(2) A certified copy of this local ordinance or resolution shall be submitted by the local unit to the fund administrator along with the application for participation in the fund.

(3) If the local unit has withdrawn from, or lost eligibility to participate in the fund, the previously enacted local ordinance or resolution shall no longer be recognized by the fund administrator, and a new ordinance or resolution shall be submitted with a new application for participation in the fund.

Section 5. Application. A local unit desiring to apply for admission to the fund shall submit an Application for Police Training Incentive form to the fund administrator.

Section 6. Withdrawal. (1) To withdraw from the fund, a local unit shall send a written notice of withdrawal to the fund administrator.

(2) The fund administrator or his designee shall acknowledge in writing the receipt of the withdrawal notice.

(3) The withdrawal shall be effective as of the date the withdrawal notice is received by the fund administrator.

(4) Upon withdrawal, a local unit shall return all salary supplement funds received from the fund for which its police officers have not yet become qualified.

Section 7. Audits. (1) A participating agency shall comply with audits if requested by the fund administrator's designee, to demonstrate compliance with 503 KAR Chapter 5.

(2) The audit shall include examination of records of police officer training attendance, and payroll and KLEFPF records.

Section 8. Incorporation by Reference. (1) The "Application for Police Training Incentive", Form KLEFPF-1, 10/16, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN TILLEY, Secretary

APPROVED BY AGENCY: August 11, 2016

FILED WITH LRC: August 12, 2016 at 2 p.m.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
(As Amended at ARRS, October 11, 2016)

601 KAR 1:231. Repeal of ~~601 KAR 1:025,~~ 601 KAR 1:029, 601 KAR 1:060, 601 KAR 1:075, 601 KAR 1:095, 601 KAR 1:101, 601 KAR 1:110, 601 KAR 1:145, 601 KAR 1:190, and 601 KAR 1:230.

RELATES TO: KRS 138.455–138.470, 154.45-096, 174.400-174.425, 186.281, Chapter 281, 281.626 281.655, 281.656, 281.900, 281.905, 29 C.F.R. 1910, 49 C.F.R. 37, 40.1- 40.413, 100-185, 382.101-382.605, 383.1–155, 390.1–46, 367, 387, 399.201–211

STATUTORY AUTHORITY: KRS 174.410, 186.281, 281.600, 281.610, 281.655, 281.900, 281.907, 49 C.F.R. 37, 130, 171-73, 175, 177, 178, 180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.080 authorizes the secretary to promulgate administrative regulations related to the operations of the Transportation Cabinet. This administrative regulation repeals ~~601 KAR 1:025,~~ 601 KAR 1:029, 601 KAR 1:060, 601 KAR 1:075, 601 KAR 1:095, 601 KAR 1:101, 601 KAR 1:110, 601 KAR 1:145, 601 KAR 1:190, and 601 KAR 1:230. Those administrative regulations are outdated or obsolete and are no longer necessary to the operations of the Department of Vehicle Regulation.

Section 1. The following administrative regulations are hereby repealed:

(1) ~~601 KAR 1:025, Transporting hazardous materials by air or highway;~~

(2) 601 KAR 1:029, Definitions relating to 601 KAR 1:030 through 601 KAR 1:145;

(3) 601 KAR 1:060, Tariffs;

(4) 601 KAR 1:075, Claims;

(5) 601 KAR 1:095, Complaints;

(6) 601 KAR 1:101, Proof of liability and cargo insurance;

(7) 601 KAR 1:110, Leasing services;

(8) 601 KAR 1:145, Reporting and paying of usage tax pursuant to a U-drive-it permit;

(9) 601 KAR 1:190, Paratransit as a complement to fixed route bus service; and

(10) 601 KAR 1:230, Education and safety training for motor carrier operations.

GREG THOMAS, Secretary

JOHN-MARK HACK, Commissioner

D. ANN DANVELO, Office of Legal Services

APPROVED BY AGENCY: August 10, 2016

FILED WITH LRC: August 10, 2016 at 4 p.m.

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

TRANSPORTATION CABINET
Department of Highways
(As Amended at ARRS, October 11, 2016)

603 KAR 5:311. Repeal of 603 KAR 5:020, 603 KAR 5:030, 603 KAR 5:080, 603 KAR 5:090, ~~603 KAR 5:240,~~ and 603 KAR 5:301.

RELATES TO: KRS 177.220-177.240, 189.221, 189.222, 189.231, 189.338

STATUTORY AUTHORITY: KRS 174.080, 189.222, 189.338.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.080 authorizes the secretary to promulgate administrative regulations related to the operations of the Transportation Cabinet. This administrative regulation repeals 603 KAR 5:020, 603 KAR 5:030, 603 KAR 5:080, 603 KAR 5:090, ~~603 KAR 5:240,~~ and 603 KAR 5:301. Those administrative regulations are obsolete and no longer

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necessary to the operations of the Department of Highways.

Section 1. The following administrative regulations are hereby repealed:

- (1) 603 KAR 5:020, Pedestrian traffic on limited access facilities;
- (2) 603 KAR 5:030, Right or left turn on red signal prohibitions;
- (3) 603 KAR 5:080, Truck detours;
- (4) 603 KAR 5:090, Truck spacing on bridges; **and**
- (5) ~~603 KAR 5:240, Naming of roads and bridges; and~~
- ~~(6) 603 KAR 5:301, Weight (mass) classification of the state-maintained system of highways.~~

GREG THOMAS, Secretary

PATTY DUNAWAY, State Highway Engineer

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: August 10, 2016

FILED WITH LRC: August 10, 2016 at 4 p.m.

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

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, October 11, 2016)

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; **and** 2014; **and**

(2) Beginning January 1, 2017:

(a) The amendments to 29 C.F.R. Part 1904 as published in the May 12, 2016 Federal Register, Volume 81, Number 92; and

(b) 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

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction

Division of Plumbing

(As Amended at ARRS, October 11, 2016)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1. Definitions. (1) "ABS" means acrylonitrile-butadiene-styrene pipe.

(2) "APML" means the "Approved Parts or Materials List".

(3) "ASTM" means American Society for Testing Materials.

(4) "Code" is defined by KRS 318.010(11).

(5) "Committee" means the State Plumbing Code Committee.

(6) "Department" means Department of Housing, Buildings, and Construction.

(7) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable

water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(8) "Person" is defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Frankfort, Kentucky 40601-5405.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been reviewed by the Kentucky Plumbing Code Committee and approved by the department and shall be allowed for installation in Kentucky:

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032;

(2)(a) Flushmate water closet tank;

(b) Microphor company. Two (2) quart flush toilets;

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush;

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems;

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock;

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products; and

(g) Dual flush water closets by Caroma, USA. The water closets shall use eight-tenths (.8) gallons for the short flush cycle and one and six-tenths (1.6) gallons for the full flush cycle;

(3) Tubular traps with gasket in trap seal;

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover;

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household

usage;

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage;

(d) Little Giant Pump Company, Drainsaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units because[since] it has a one and one-half (1 1/2) inch drain;

(e) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates;

(f) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use; and

(g) Electric Drain System as manufactured by Myers for light commercial and household usage;

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves;

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket;

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation;

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only;

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation;

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.;

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company; and

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.;

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe;

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.; and

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.;

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand grillage and shall be:

(a) Backfilled by hand and tamped six (6) inches around piping; and

(b) Surrounded by six (6) inches of sand grillage;

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.;

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation;

(10)(a) Water heaters. Heat pump water heaters as manufactured by:

1. Dec International, Inc., Therma-Stor Products Group; or

2. Steibel Eltron Accelera 300. If the water heater is shipped with a 100 PSI Pressure and Temperature Relief Valve, it shall be replaced with a 150 PSI Pressure and Temperature Relief Valve; and

(b) Water heaters, point of use or instantaneous;

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154;

2. Eemax Electric Tankless water heaters.

a. Nonpressure type without the requirement of a temperature and pressure relief valve; or

b. The pressure type with the requirements that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and be installed with the product;

3. Vitacclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater, which shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge;

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP;

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130, REU-V2520 FFU-US, REU-V2520 FFUC-US, REU-V2020W-US, REU-V2020WC-US, and REU-V1616W-US pressure type, which shall be equipped with an approved ~~temperature and~~ pressure relief valve;

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve;

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater, which shall be equipped with an approved ~~temperature and~~ pressure relief valve;

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve;

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet;

10. Chronomite Laboratories, Inc. - instantaneous water heater, which shall be equipped with an approved ~~temperature and~~ pressure relief valve;

11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve;

12. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc;

13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP, which shall be equipped with an approved ~~temperature and~~ pressure relief valve;

14. Ariston electric water heaters, model numbers P-15S and P-10S, which shall be equipped with an approved ~~temperature and~~ pressure relief valve;

15. Vaillant Corporation gas fired point of use water heater.

16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens;

17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters;

18. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480;

19. Hot Aqua Instantaneous Tankless Electric Water Heaters, Model Numbers, 18/125PC, 24/125PC, 24/120, 32/120, 24/240, 36/240, 48/240, 59/240, 70/240, 24/208, 35/208, 46/208, 60/208, 28/277, 42/277, 55/277, 69/277, 24/120-P, 59/240-P, 46/208-P, 55/277-P, 18/125PC and 24/125PC. This product shall not be approved for supplying hot water for showers.

20. Stiebel Eltron Tankless Water Heater ~~;~~ ;

a. Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks;

b. Models Temptra/DHC-E 8/10 and DHC-E 12;

c. Models Mini 2, Mini 3, Mini 4, and Mini 6 Point of Use tankless electric water heaters; and

d. Models 12/2 Plus, 15/15 Plus, 20/20 Plus, 24/24 Plus, 29 Plus, and 36 Plus;

21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125BS, 125FX and 38B. All models shall be installed with ~~temperature and~~ pressure relief valves;

22. Controlled Energy Corporations "Powerstream" tankless water heater;

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gallon models;

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with ~~temperature and~~ pressure relief valves;

25. Aquastar AQ240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation,

to be installed with ~~temperature and~~ pressure relief valve;

26. S.E.T.S. Tankless Water Heater Models: #220, #180, #165 and #145 to be installed with temperature and pressure relief valve.

27. Rinnai Continuous Flow Water Heaters: Models 2532FFU(-C), 2532W(-C), 2532FFU and 2424W(-C) all requiring an approved pressure ~~and temperature~~ relief valve;

28. Noritz American Corporation Tankless, Instantaneous Water Heater Models: N-042, N-063 to be installed with ~~temperature and~~ pressure relief valve;

29. Takagi Industrial Company USA, Inc., Instantaneous Water Heaters, Models: T-KLS; T-K JR; T-K2; T-KD20 to be installed with ~~temperature and~~ pressure relief valve;

30. Envirotech Systems ESI 2000 Series Tankless Water Heaters, all requiring an approved pressure ~~and temperature~~ relief valve;

31. Quieside Instantaneous Water Heater Models: QVW8 - 100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees;

32. Seisco ~~Residential~~ Tankless Water Heaters Model:

a. Point-of-Use Single Chamber Models: POU24, POU30, POU35, POU40, POU45, POU55, POU60, POU70, POU73, POU78, POU80, POU90, POU140, SC90, and SC140. These models shall not require the installation of a temperature and pressure relief valve;

b. Residential Single Phase Models: RA14, RA16, RA18, RA22, RA24, RA28, and RA32. These models shall not require the installation of a temperature and pressure relief valve;

c. Commercial Single Phase Models: CA14, CA16, CA18, CA22, CA24, CA28, and CA32. These models shall not require the installation of a temperature and pressure relief valve;

d. Commercial Three (3) Phase Models: CA9-3, CA10-3, CA12-3, and CA14-3. These models shall not require the installation of a temperature and pressure relief valve; ~~and/or~~

e. Electric Mini-Tank Models: SMT2.5, SMT4, and SMT6. These models require the installation of a temperature and pressure relief valve supplied by the manufacturer ~~RA-05, RA-07, RA-09, RA-11, RA-14, RA-18, RA-22 and RA-28. All models shall be equipped with an approved temperature and pressure relief valve;~~

(11) Compression joints. Fail-safe hot and cold water systems;

(12) Orion fittings for acid waste piping systems for above and below ground;

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping;

(14) Johns Manville Flex I drain roof drain system;

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick;

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping;

(17) Elkay Aqua-chill water dispensers ~~;~~ ;

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum;

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only;

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only; ~~and/or~~

(c) Red White Valve Corporation. Reduced port polypropylene ball valves designed for installation on fusion welded polypropylene piping systems compliant with NSF standards 61 and 14 and ASTM F2389;

(20) Interceptors:

(a) Town and Country plastic interceptors to be used as a grease trap;

(b) Grease recovery unit (GRU) as manufactured by Lowe

Engineering, Lincoln Park, NJ;

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections;

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code;

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL;

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute;

(g) Schier Grease Interceptors Trapper II Series meeting ASME 112.14.3 Model numbers 1820, 2025, 2635 and 3050;

(h) Schier Grease Interceptors Great Basin Series meeting ASME 112.14.3 Model numbers GB-75 and GB-250 approved only with the installation of two-directional, accessible cleanouts on the inlet and the outlet. The discharge of garbage disposals shall not be permitted; and

(i) Thermaco Inc. models TZ600 (150 GPM), TZ 400 (75 GPM), and the TZ 160 (35 GPM). These interceptors shall be installed with a full size vent (three (3) or four (4) inches as applicable per manufacturer's instructions to the model being installed), located on the outlet side of the interceptor and returned to the vent stack or located so that it terminates a minimum of twelve (12) inches above the ground;

(21) Plastic Oddities Srv (sewer relief vent) clean-out;

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-06 except dimensions at the time of manufacture;

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kentune, Inc.;

(24) Eljer plumbing ware - Elgers ultra one/G water closet;

(25)(a) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company, which shall have a three (3) inch vent and alternate additional waste openings shall be located in the pump chamber above the top of the base chamber; and

(b) Hydromantic JB-1 System as manufactured by Hydromantic Pumps, Inc.;

(26) Exemplar Energy garden solar water heater;

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. Proset E-Z flex coupling shall be approved for similar or dissimilar materials;

(28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries;

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-Croix; and

(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.;

(29) Clamp-All Corporation Pipe Coupling Systems shall be approved size for size on dissimilar materials on new or existing installations. The use of Snap-All Increaser/Reducer transition bushings shall be included in this approval;

(30) Mission Rubber Company "Band-Seal Specialty Coupling" shall be approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35;

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safin material for floors and walls in showers, bathtubs and floor drain pans;

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material;

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers;

(33)(a) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these

materials in soil waste and vent systems above or below grade; and

(b) Fernco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch;

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe shall have been tested for the tensile strength, durability, of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials;

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes;

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes;

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building;

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer;

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line;

(40)(a) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations; and

(b) Flo-Bowl Waxless Leakless Toilet System as manufactured by Flo-Bowl Systems Inc.;

(41)(a) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion; and

(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion;

(42) Plastic Productions PVC "Quick Stub" approved as a solvent weld transition between tubular PVC and schedule 40 PVC;

(43) HubSett In Line Test Coupling: PVC and ABS test couplings produced by HubSett Manufacturing Inc. for testing soil waste and vent systems;

(44) Viega/Ridgid ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint;

(a) The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturer's installation requirements; and

(b) This system shall be approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only;

(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes;

(a) A video camera tape of the existing sewer shall be made to determine proper alignment and reviewed by the plumbing inspector;

(b) After the installation is complete, another tape shall be reviewed by the plumbing inspector to ensure that the installation was successful;

(c) The sewer shall be tested according to 815 KAR 20:150;

and

(d) The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction;

(46) Envirovac Inc.: Evac Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only;

(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The sump shall be air tight and provided with a minimum one and one-fourth (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer's recommendations and shall

not be used as a primary means of waste disposal;

(48) Rhino Wet Waste Interceptor manufactured by Ecosystems Inc. to be used as a prefiltration of wet wastes before discharging to a grease trap or interceptor;

(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products, Inc.;

(50) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange;

(51) Service Weight and No-Hub Cast Iron Pipe and Fittings furnished by DWV Casting Company complying with ASTM A74, A888 and CIP1 301-00;

(52) American Pipe Lining, Inc. APL 2000, which is an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the following conditions established in paragraphs (a) through (d) of this subsection.;

(a) A plumbing construction permit shall be required.;

(b) Installation shall be by a licensed plumber.;

(c) Water quality shall be tested before and after each project.;

(d) A water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM";

(53) Base Products Corporation;

(a) Water powered pump: basepump. Each model shall:

1. Be installed with a reduced pressure principle backflow preventer with copper piping only;

2. Be approved for groundwater removal only; and

3. Require incoming water pressure of 50 psi to operate; and

(b) Battery back-up pump: hydropump;

(54) Perma-Liner Industries, Inc. Lateral Lining System.:

(a) This system shall be approved for pipe sizes three (3) inches through eight (8) inches for interior and exterior installations;

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required by 815 KAR 20:150, Section 4(2) or (3);

(c) Exterior applications shall be videoed before and after and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6); and

(d) A permit shall be obtained prior to an exterior or interior application;

(55) Stainless steel piping system for potable water applications manufactured by Victaulic for above ground applications only;

(56) Wallgate Classic Model CME recessed and molded handwasher/dryer;

(57) MaxLiner.

(a) This system shall be approved for pipe sizes three (3) inch through ten (10) inch for interior and exterior installations;

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3);

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6); and

(d) Permits shall be required for both interior and exterior applications;

(58) Nuflow Technologies Inc., Nuflow System;

(a) This system shall be approved for pipe sizes one and one-half (1 1/2) inch through twelve (12) inch for interior and exterior installations;

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3);

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6); and

(d) Permits shall be required for both interior and exterior applications;

(59) Schluter Shower System for waterproofing tiled shower installations installed per manufacturer recommendations;

(60) WATCO Manufacturing Watco Flex and Watco Flex 900 Innovator tub waste and overflow;

(61) J.R. Smith MFG. CO. THE BOSS TEE Series 4505 cleanout tee;[and]

(62) Pipe Patch NO-Dig Repair System by Source One Environmental.;

(a) The repair shall require a plumbing installation permit issued by the department; and;

(b) After the repair has been completed, the building sewer shall be inspected, tested with either a water or a smoke test, and approved by the department;

(63) PHIX Cartridge Systems. The PHIX cartridge system shall be approved for use as a point-source or in-line acid neutralization system;

(64) SharkBite Evopex polymer fittings meeting ASSE Standard 1061. The use of SharkBite Evopex polymer fittings shall be approved for underground burial except the fitting shall not be buried;

(a) Under or encased in concrete, or

(b) Underground beneath a building; and

(65) SharkBite Universal DZR brass fittings or SharkBite EvoPEX DZR brass transition fittings meeting ASSE Standard 1061. The use of these fittings shall be approved for underground burial if the fitting is:

(a) Wrapped with self-fusing, formaldehyde and chloride-free, fully cured silicone tape with a minimum thickness of 0.020 inches;

(b) Not buried under or encased in concrete; and

(c) Not buried underground beneath a building.

STEVEN A. MILBY, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: August 12, 2016

FILED WITH LRC: August 15, 2016 at 9 a.m.

CONTACT PERSON: Jared L. Downs, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email jared.downs@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, October 11, 2016)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS 318.010, 318.130, 318.150, 318.165, 318.200

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes the types of piping and pipe sizes required for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

Section 1. Definitions. (1) "ASSE" means the American Society of Sanitary Engineers.

(2) "ASTM" means the American Society for Testing Materials.

(3) "Critical level" or "CL" means the level to which the vacuum breaker may be submerged before backflow will occur, and if the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "NSF" means the National Sanitation Foundation.

(6) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations

of the office and the Division of Water. Toxic material shall be kept out of a potable water system.

(a) The pipe conveying, and each surface in contact with, potable water shall be constructed of nontoxic material.

(b) A chemical or other substance that could produce either a toxic condition, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the system.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material that will affect the taste, odor, color, or potability of the water supply if the tank is placed in, or returned to, service.

(2) Potable water shall be accessible to a plumbing fixture that supplies water for drinking, bathing, culinary use or the processing of a medicinal, pharmaceutical, or food product.

(3) The potable water supply system shall be designed, installed, and maintained to prevent contamination from a nonpotable liquid, solid, or gas being introduced into the potable water supply through a cross connection or other piping connection to the system.

(4) A cross connection shall meet the requirements of this administrative regulation.

(5) A cross connection between a private water supply and a public water supply shall not be made.

(6) Closed water systems, protection from excess pressure.

(a) If a single check valve is installed in a water system, a thermal expansion tank sized in accordance with manufacturer's instructions shall be installed in the cold water supply located near the water heater.

(b) If a backflow preventer is installed in a water system, a properly sized thermal expansion tank or other pressure relief device listed in 815 KAR 20:020 shall be installed in the water distribution system.

(c) If a pressure reducing valve not equipped with a bypass is installed in the cold water supply line to a water heater, a thermal expansion tank shall be installed in the cold water line near the water heater.

(7) Backflow and back siphonage protection. Protection against backflow shall be provided as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow shall include both back pressure and back siphonage.

(a) An air gap shall provide the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be:

a. Twice the effective opening of a potable water outlet; or

b. If the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, three (3) times the effective opening of the outlet.

3. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES		
Fixture	Minimum Air Gap	
	When not affected by near wall (inches)	When affected by near wall (inches)
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3

Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps if spaced from the inside edge of the spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap if spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more vertical walls or ribs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b) A reduced pressure principle back pressure backflow preventer. A reduced pressure principle back pressure backflow preventer shall provide the best mechanical protection against backflow available and shall be considered equivalent to an air gap.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions. This device shall be a manufactured assembly consisting of two (2) independently acting check valves and including a shutoff valve at each end, and petcock and test gauge for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions. If applicable, an atmospheric type vacuum breaker shall be installed after the last cutoff valve on the water line. This device may operate under normal atmospheric pressure if the critical level (CL) is installed at the required height in accordance with the table in this paragraph:

CRITICAL LEVEL (CL) SETTINGS FOR ATMOSPHERIC TYPE VACUUM BREAKERS	
Fixture or Equipment	Method of Installation
Aspirators, ejectors, and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
On models without built-in vacuum breakers:	
Dental units	CL at least 6 in. above flood level rim of bowl.
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

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(f) Barometric loop: applicable to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers.

1. A backflow and back siphonage preventer shall be in an accessible location, and accessible from within the same room as the fixture or connection it protects.

2. A backflow device may be installed in a utility or service space.

3. A device or air gap shall not be installed in a location subject to flooding or freezing.

(h) Inspection of devices.

1. A periodic inspection shall be made of each backflow and back siphonage preventer to determine if it is in proper working condition.

2. A reduced pressure principle back pressure backflow preventer shall be tested on at least an annual basis.

3. Records shall be kept on each inspection.

(i) Approval of devices.

1. Before a device for the prevention of backflow or back siphonage is installed, it shall be identified as meeting the applicable specifications as listed in the application chart included in paragraph ~~(k)(4)~~ of this subsection.

2. A device installed in a building potable water supply

distribution system for protection against backflow shall be maintained in good working condition by the person responsible for the maintenance of the system.

~~(j) [Protection of potable water system. A potable water opening, outlet, or connection, except one (1) that serves a residential unit, shall be protected against backflow in accordance with paragraphs (a) through (l) of this subsection.~~

~~(k)~~ Degree of hazard. The protection required at an outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard, if there is potential for contamination by a toxic substance or disease-causing organism;

2. Moderate hazard, if there is potential for contamination by a nontoxic but objectionable substance; or

3. Minor hazard, if there is potential for contamination by a generally nontoxic, nonobjectionable substance, but which may cause the consumer to question the quality of water.

~~(k)(4)~~ Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and flood level rim if possible. The acceptable protection for various types of outlets or connections shall be as shown in the tables in this paragraph:

APPLICATION TABLE					
TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE SPECIFICATIONS	
Reduced pressure principle backflow preventer for high hazard cross connections	Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks.	All cross connections subject to backpressure or back siphonage if there is a high potential health hazard from contamination. Continuous pressure.	Main supply lines, commercial boilers, cooling towers, hospital equipment, processing tanks, laboratory equipment, waste digesters, car wash, sewage treatment, lawn sprinklers	ASSE No. 1013 AWWA C506 FCCCHR of U.S.C. CSA B.64.4 Sizes 3/4" - 10"	
(A) Double check valve assembly for low hazard cross connections	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure if there is a low potential health hazard or nuisance. Continuous pressure.	Main supply lines, food cookers, tanks and vats, commercial pools	NONTOXIC	ASSE No. 1015 AWWA C506 FCCCHR of U.S.C. CSA B.64.5 Sizes 3/4" - 10"
(B) Dual check valve backflow preventer for low hazard applications	Two independent check valves. Checks are removable for testing	Cross connections if there is a low potential health hazard and moderate flow requirements.	Post ground hydrants		ASSE No. 1024 Sizes 3/4" & 1"
(A) Backflow preventer with intermediate atmospheric vent for moderate hazard cross connections in small pipe sizes	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage if there is a moderate health hazard. Continuous pressure.	Boilers (small), cooling towers (small), dairy equipment residential	ASSE No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"	
(B) Backflow preventer for carbonated beverage machine	Two independent check valves with a vent to atmosphere	On potable water distribution lines serving beverage-dispensing equipment to prevent backflow of carbon dioxide gas and carbonated water into the water supply system.	Postmix carbonated beverage machine	ASSE 1022	
(C) Laboratory faucet and double check valve with intermediate vacuum breaker in small pipe sizes for moderate to low hazard	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage if there is a moderate to low health hazard.	Laboratory faucets and pipe lines, barber shop and beauty parlor sinks	ASSE No. 1035 (N-LF9)	

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(A) Atmospheric vacuum breakers for moderate to high hazard cross connections	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process tanks, dishwashers, soap dispensers, washing machines	ASSE No. 1001 ANSI A112.1.1 CSA B.64.1.1 FCCCHR of U.S.C. Sizes 1/4" - 3"
(B) Antisiphon pressure breakers for moderate to high hazard cross connections	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Laboratory equipment, cooling towers, commercial laundry machines, swimming pools, commercial plating tanks, large toilet total & urinal facilities, degreasers, photo tanks, livestock water systems, lawn sprinklers	ASSE No. 1020 CSA B.64.1.2 FCCCHR of U.S.C. Sizes 1/2" - 2"
(C) Hose connection vacuum breakers for residential and industrial hose supply outlets	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose bibs, service sinks, hydrants	ASSE No. 1011 CSA B.64.2 Size 3/4" Hose

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS								
Type of Connection	Degree of Hazard				Acceptable Protection			
	Severe	Moderate	Minor	Air Gap	Reduced Pressure Device	Backflow		Backsiphonage
						Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1. Toxic substance	X			X	X			
2. Nontoxic substance		X		X	X	X		
B. Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C. Gravity due to obvious site conditions subject to:								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic substances		X		X	X	X		
II. Water outlets and connections not subject to back pressure:								
A. Connection to sewer or sewage pump	X			X				
B. Outlet to receptacles containing toxic substances	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances		X		X	X	X	X	X
D. Outlet into domestic water tanks			X	EACH CASE TREATED SEPARATELY				
E. Flush valve toilets	X			X	X		X	X
F. Flush valve urinals		X		X	X		X	X
G. Outlets with hose attachments subject to contamination from:								
1. Toxic substance	X			X	X		X	X
2. Nontoxic substance		X		X	X	X	X	
H. Outlets to recirculating cooling tower								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		

(l) Protection of potable water system. A potable water opening, outlet, or connection, except one (1) that serves a residential unit, shall be protected against backflow in accordance with paragraphs (a) through (k) of this subsection.

Section 3. Water Required. (1) A building equipped with a plumbing fixture and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In a building used as a residence or a building in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to a building shall:

(a) Not be less than three-fourths (3/4) inch nominal pipe size; and

(b) Be of sufficient size to permit a continuous and ample flow of water to each fixture in the building.

(2) Except as provided in this subsection, the underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth. The pipe may be placed in the same trench if:

(a) The bottom of the water service pipe at all points is at least eighteen (18) inches above the top of the sewer at its highest point;

(b) The water service pipe is placed on a solid shelf excavated at one (1) side of the common trench; and

(c) The number of joints in the water service pipe is kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of another piping system.

(2) Piping which has been used for a purpose other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing a water closet or urinal, if the water is piped in an independent system.

(a) If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified.

(b)1. An outlet on the nonpotable water distribution system used for a drinking or domestic purpose shall be permanently posted: DANGER - UNSAFE WATER.

2. Each branch, fitting, or valve shall be identified by the phrase - "NONPOTABLE WATER" either by a sign or brass tag that shall be permanently affixed to the pipe, fitting, or valve.

3. The identification marking shall not be concealed and shall be maintained by the owner.

(4) A backflow device or cross-connection control device shall be approved by the department.

(5) A combination stop and waste valve, cock, or hydrant shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with a public water supply.

(7) Water used for cooling of equipment or in another process shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or used for a nonpotable purpose as referenced in this section.

(8) Hose connections other than those intended for clothes washing machines, frost proof burial hydrants, and water heater drain valves shall be equipped with a vacuum breaker ASSE 1011 for areas not subject to freezing and a vacuum breaker ASSE 1019 for areas subject to freezing.

Section 6. Water Supply to Fixtures. (1) A plumbing fixture shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition.

(2) A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve.

(3) The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of a water closet,

urinal, or similar fixture.

(4) If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valve shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage.

(5) The fixture shall have a vacuum breaker.

(6) A plumbing fixture, device or appurtenance shall be installed in a manner that shall prevent a possibility of a cross connection between the potable water supply system, drainage system, or other water system.

Section 7. Connections to Boilers. (1) A potable water connection to a boiler feed water system in which a boiler water conditioning chemical is introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where a chemical is introduced.

(2) A boiler shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1)(a) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch.

(b)The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch.

(c) More than three (3), one-half (1/2) inch fixture branches shall not be supplied from a one-half (1/2) inch pipe.

(2)(a) The schedule in this subsection shall be used for sizing the water supply piping to a fixture.

(b) The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture.

(c) A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.)	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In a building supply system in which a device or appurtenance is installed utilizing a quick acting valve that causes noise due to water hammer, a protective device, including an air chamber or approved mechanical shock absorber, shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If a mechanical shock absorber is installed, the absorber shall be in an accessible place.

(b) If a mechanical device is used, the manufacturer's specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. (1) Water supply piping for a potable water system shall be as follows:

- (a) Galvanized wrought iron;
- (b) Galvanized steel;
- (c) Brass;
- (d) Types K, L, and M copper;
- (e) Cast iron;
- (f) Types R-K, R-L, and R-M brass tubing;
- (g) Fusion welded copper tubing produced and labeled as ASTM B-447-2002 and ASTM B-251;
- (h) DWV welded brass tubing produced and labeled as ASTM B587;
- (i) Seamless stainless steel tubing, Grade H, produced and labeled as ASTM A268/268M;
- (j) Filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold);
- (k) Polyethylene (PE) plastic pipe produced and labeled as ASTM D2239 or ASTM F-714;
- (l) Cross-linked polyethylene (PEX) pipe produced and labeled as ASTM F-876 for cold water and ASTM F-877 for hot or cold water applications;
- (m) Cross-linked Polyethylene/Aluminum/Cross-linked Polyethylene (Pex-Al-Pex) pipe produced and labeled as ASTM F-1281;
- (n) Polyethylene/Aluminum/Polyethylene (Pe-Al-Pe) pipe produced and labeled as ASTM F-1282;
- (o) Copper tubing size PE produced and labeled as ASTM D-2737 for water service, if installed with compression couplings;
- (p) Polyvinyl chloride (PVC) plastic pipe produced and labeled as ASTM D1785;
- (q) Chlorinated Polyvinyl chloride (CPVC) plastic pipe produced and labeled as ASTM D2846;
- (r) Schedule 80 chlorinated polyvinyl chloride (CPVC) plastic pipe shall meet ASTM F441;
- (s) Schedule 80 chlorinated polyvinyl chloride (CPVC) plastic solvent fittings shall meet ASTM F439;
- (t) Schedule 80 chlorinated polyvinyl chloride (CPVC) plastic threaded fittings shall meet ASTM F437;
- (u) Schedule 80 chlorinated polyvinyl chloride (CPVC) plastic pipe and fittings shall be installed using primer meeting ASTM F656 and solvent cement meeting ASTM F493;
- (v) Polyvinyl chloride (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 pipe produced and labeled as ASTM D-2241-05;
- (w) Fusion welded polypropylene pipe products measuring one-half (1/2) inch to eighteen (18) inches in diameter which meet NSF Standards 61 and 14, and ASTM F2389, shall be approved. These pipe products shall be tested for compliance with the manufacturer's installation instructions;
- (x) Fusion welded high density polyethylene pipe products which meet NSF Standards 61 and 14, and ASTM F3035 and F714, shall be approved for underground use. These pipe products shall be tested for compliance with the manufacturer's installation instructions;
- (y) Push-fit fitting systems which meet the ASSE Standard 1061. Except as established in 815 KAR 20:020, these systems are approved for above-ground use only using pipe sizes up to two (2) inches; or

(z) PE-RT Piping (Polyethylene of Raised Temperature) meeting ASTM F2769.

- (2) A plastic pipe or fitting shall bear the NSF seal of approval.
- (3) Polybutylene pipe utilizing an insert fitting of brass or copper shall use a copper clamping ring.
- (4) A polybutylene hot and cold water connector to a lavatory, sink, or water closet shall be produced and labeled as ASTM D3309, and polybutylene plastic pipe shall be produced and labeled as ASTM 2662 for a cold water application.
- (5) A fitting shall be brass, copper, approved plastic, galvanized cast iron, or galvanized malleable iron. Piping or a fitting that has been used for another purpose shall not be used for the water distribution system.
- (6) Each joint in the water supply system shall be made of a screw, solder, or plastic joint. A cast iron water pipe joint may be

caulked, screwed, or machine drawn.

(7) If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or passes through a concrete floor, it shall be wrapped with an approved material to permit expansion or contraction.

(8) Polyethylene or PVC shall not be used below ground under a house or building. If a chlorinated polyvinyl chloride (CPVC) joint or connection is installed below ground under a house or building, the water distribution system shall be tested to at least 100 pounds per square inch before backfilling. The applicable requirements of 815 KAR 20:060 and 815 KAR 20:073 shall be met.

(9) Joints between copper tubing and galvanized steel pipe. The joint between ferrous piping and copper or copper-alloy piping shall be made with a dielectric fitting or other insulating fitting to prevent electrolysis.

Section 11. Temperature and Pressure Control Devices for Shower Installations. A temperature or pressure balance device to prevent a sudden unanticipated change in water temperature shall be installed to serve each shower compartment and shower-bath combination.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be a full port valve and be accessible from within the occupied space and provided with a drip or drain valve. A pit or similar type installation shall not be used for a potable water supply shutoff valve.

(2) A pressure or gravity tank shall have its supply line valved at or near its source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will permit the unit to be shutoff without interfering with the cold water supply to another family unit or portion of the building.

(4) In a building other than a dwelling, a shutoff valve shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valved and a lawn sprinkler opening shall be valved. In residential construction, each fixture, except a bathtub or shower, shall be valved individually or as a group of fixtures.

(6) A group of fixtures or a fixture group shall include two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and serving this equipment. In residential dwellings, the shutoff valve shall be placed within three (3) feet of the water heater and be accessible from the accessible side of the water heater.

Section 13. Water Supply Protection. A concealed water pipe, storage tank, cistern, or other exposed pipe or tank subject to freezing temperatures shall be protected against freezing. A water service shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. (1) A temperature and pressure relief device shall:

- (a) Be installed on each water heater on the hot water side not more than three (3) inches from the top of the heater;
 - (b) If a marked opening is provided on the water heater by the manufacturer for the temperature and pressure relief device, be installed according to the manufacturer's recommendation; and
 - (c) Be of a type approved by the office in accordance with this administrative regulation and 815 KAR 20:020.
- (2)(a) If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor.
- (b) If a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to

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the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground.

(c) The relief device may discharge through an air gap to a sump basin, service sink, open receptacle or other point of discharge in which equivalent safety shall be provided as approved by the Division of Plumbing.

3) A relief device shall be installed on a pneumatic water system.

Section 15. Protection of a Private Water Supply or Source. A private water supply or source shall be protected from pollution. Approval shall be obtained from the Division of Plumbing prior to using the private water supply or source.

Section 16. Domestic Solar Water Heaters. A domestic solar water heater may have a "single wall heat exchanger" if the following conditions are met:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent;

(2) The heat exchanger is pretested by the manufacturer to 450 pounds per square inch;

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. (1) A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater.

(2) Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided.

(3) The water inlet to the heat exchange vessel shall be provided with a check valve. There shall be provided adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) pounds per square inch above the maximum water pressure at the point of installation, if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device.

(4) Condensate drain water shall be piped in accordance to the State Plumbing Code and it shall not be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in an area subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats below Rim Supply. A tank or vat with potable water supply below the rim shall be subject to the following requirements:

(1) If a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the table in this subsection, the overflow pipe shall be provided with an air gap as close to the tank as possible;

Sizes of Overflow Pipes for Water Supply Tanks			
Maximum capacity of water supply line to tank	Diameter of Overflow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate at a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet, closed; and

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. (1) If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit.

(2) It shall utilize not less than three-fourths (3/4) inch piping and its run shall not exceed 140 feet between the water heater and the heating unit.

(3) The applicable requirements established in 815 KAR 20:070 shall be met.

Section 20. Fire Protection Systems. Except if installing an NFPA 13D fire protection system in a one (1) or two (2) family dwelling, a fire protection system using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home.

(2) All materials, including the pipe or fitting used for a connection, shall conform with the State Plumbing Code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space.

(a) The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control.

(b) The ground surface around the riser pipe shall be graded to divert surface drainage.

(c) The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing.

(d) An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather.

(e) A shutoff valve may be placed below the frost depth on the water service line, but this valve shall not be a stop-and-waste cock.

Section 22. Conservation of water shall comply with the standards established in 815 KAR 20:070.

STEVEN A. MILBY, Chairman
DAVID A. DICKERSON, Secretary

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CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (As Amended at ARRS, October 11, 2016)

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

RELATES TO: KRS 200.503(3), 210.005(2), (3), 216B.010, 216B.015, 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.176, 216B.177, 216B.990, 309.080, 309.130(2), (3), Chapter 311, 314, 319.050, 319.056, 319.064, 335.080, 335.100, 335.300, 335.500, 45 C.F.R. 160, 164, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 1320d-2 – 1320d-8

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires that the Kentucky Cabinet for Health and Family Services regulate health facilities and health services. This administrative regulation establishes licensure requirements for the

operation of and services provided by primary care centers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Licensed professional counselor associate as defined by KRS 335.500(4); or

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

(3) "Center" means a primary care center.

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

(5) "Child with a severe emotional disability" is defined by KRS 200.503(3).

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

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

(8) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

(9) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(5).

(10) "Peer support specialist" means a paraprofessional who meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240.

(11)(2) "Qualified dietitian" or "nutritionist" means a person who:

(a)1. Has a bachelor of science degree in foods and nutrition, food service management, institutional management, or related services;

2. Has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA); and

3. Is a member of the ADA or is registered as a dietitian by ADA;

(b)1. Has a master's degree in nutrition; and

2. Is a member of ADA or is eligible for registration by ADA; or

(c)1. Has a bachelor of science degree in home economics;

and

2. Three (3) years of work experience with a registered dietitian.

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

Section 2. Requirement to Provide Services. (1) A primary care center shall:

(a) Have permanent facilities; and

(b) Provide basic health care services to patients of all ages.

(2) A primary care center shall provide:

(a) A variety of preventive, diagnostic, and therapeutic services by appropriately licensed or certified health professionals to meet usual health care needs in a manner that ensures the continuity of care; and

(b) Appropriate referrals to patients who require services that are above the level of basic health care services and not provided by the center.

Section 3. Administration and Operations. (1) Licensee. The licensee shall be legally responsible for the center and for compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the center.

(2) Administrator.

(a) Each center shall have an administrator who shall be responsible for the operation of the center.

(b) In the absence of the administrator, responsibility shall be delegated to a similarly qualified staff person.

(3) Policies.

(a) Administrative policies. The center shall have written administrative policies established by the licensee covering all aspects of the center's operation, including:

1. A description of organizational structure, staffing, and allocation of responsibility and accountability;

2. A description of referral linkages with inpatient facilities and other providers;

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of services directly provided by the center;

5. A description of the administrative and patient care records and reports;

6. A policy for an expense and accrual-based revenue accounting system following generally accepted accounting procedures; and

7. A policy to specify the provision of emergency medical services.

(b) Patient care policies. Patient care policies shall be developed by the medical director and other professional staff for all medical aspects of the center's program to include:

1. Written protocols, including standing orders, rules of practice, and medical directives that apply to services provided by the center. The protocols shall be signed by the medical director; and

2. Patient care policies for patients held in the center's holding-observation accommodations.

(c) A system shall be established to ensure that, if feasible, the patient shall be always cared for by the same health professional or health team, to assure continuity of care.

(d) Patient rights policies. The center shall adopt written policies regarding the rights and responsibilities of patients. These patient rights policies shall assure that each patient shall be:

1.a. Informed of these rights and of all rules and requirements of 902 KAR Chapter 20 governing patient conduct and responsibilities, including a procedure for allowing the patient to voice a grievance or recommend changes in policies and services.

b. Upon the patient's request, a grievance or recommendation shall be conveyed [within a reasonable time] to a decision making level within the organization with the authority to take corrective action;

2. Informed of services available at the center and of related charges, including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements;

3. Informed of his or her medical condition, unless medically

contraindicated as documented in his or her medical record;

4. Afforded the opportunity to participate in the planning of his or her medical treatment and to refuse to participate in experimental research;

5. Encouraged and assisted to understand and exercise his or her patient rights;

6. Assured confidential treatment of his or her records and shall be afforded the opportunity to approve or refuse release of the records to any individual not involved in the patient's care, except as required by applicable law or third-party payment contract; and

7. Treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in the care of his or her personal health needs.

(4) Personnel.

(a) Primary care provider team. Except for extensions established in Section 4(4) of this administrative regulation, the center shall have a minimum of one (1) or more full-time licensed physician[physicians] and one (1) or more full-time:

1. [One (1) or more full-time] Advanced practice registered nurse[nurses];

2. [One (1) or more full-time] Physician assistant[assistants]; or

3. [One (1) or more full-time] Registered nurse[nurses].

(b) Medical Director. The center shall have a medical director who shall:

1. Be a licensed physician responsible for all medical aspects of the clinic; and

2. Provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311.

(c) Physicians. Each physician employed by or having an agreement with the center to perform direct medical services shall be:

1. Qualified to practice;

a. General medicine, including as a general practitioner, family practitioner, obstetrician – gynecologist, pediatrician, or internist; or

b. [qualified to practice] Psychiatry; and

2. A member of the medical staff or hold courtesy staff privileges at one (1) or more hospitals with which the center has a formal transfer agreement.

(d) Nurse. An advanced practice registered nurse or a registered nurse employed by the center directly or by contract shall provide services within his or her relative scope of practice pursuant to KRS Chapter 314.

(e) Physician's assistant. A physician assistant shall provide services within his or her scope of practice pursuant to KRS Chapter 311.

(f) In-service training.

1. All center personnel shall participate in ongoing in-service training programs relating to their respective job activities.

2. The training programs shall include:

a. Thorough job orientation for new personnel; and

b. Regular in-service training emphasizing professional competence and the human relationship necessary for effective health care.

(5) Medical records.

(a) Ownership.

1. Medical records shall be the property of the center.

2. The original medical record shall not be removed from the center except by court order.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established in this administrative regulation.

(b) Confidentiality and security: use and disclosure.

1. The center shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The center may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C.

1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. This administrative regulation shall not be construed to forbid the center from establishing higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(c) The center shall maintain a medical record for each patient. The medical record shall include:

1. The patient's medical and social history, including data obtained from other providers;

2. A description of each medical visit or contact, including the condition or reason necessitating the visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all laboratory, x-ray, and other test findings; and

4. Documentation of all referrals made, including the reason for the referral, to whom the patient was referred, and any information obtained from the referral source.

(d) Confidentiality of all patient records shall be maintained at all times.

(e) Transfer of records. The center shall:

1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care; and

2. Upon proper release, transfer medical records or an abstract if requested.

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

1. Retained for at least six (6) years; or

2. If a minor, at least three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(6) Linkage agreements.

(a) The center shall have linkages through written agreements with providers of other levels of care that may be medically indicated to supplement the services available in the center. These linkages shall include:

1. Hospitals; and

2. Emergency medical transportation services in the service area.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for:

1. Appropriate referral and acceptance of patients from the center;

2. Appropriate coordination of discharge planning with center staff; and

3. The center to receive a copy of the discharge summary for each patient referred to the center.

(c) The written transfer agreements shall include designation of responsibility for:

1. Transfer of information;

2. Provision of transportation;

3. Sharing of services, equipment, and personnel;

4. Provision of total care or portions thereof in relation to facility and agency capability; and

5. Patient record confidentiality pursuant to all applicable federal and state law.

(d) 1. A linkage agreement shall not be required to transfer medical records to any other treating health care facility or provider.

2. The center may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as expressly established in this administrative regulation.

(7) Quality assurance program. The center shall have an ongoing, written quality assurance program approved by the licensee that:

(a) Includes effective mechanisms for reviewing and evaluating patient care in order to identify problems or opportunities to improve care;

(b) Provides for appropriate responses to findings;

(c) Assigns responsibility for monitoring and evaluating patient care;

(d) Delineates the scope of care provided by the center;

- (e) Identifies the aspects of care that the center provides;
- (f) Identifies indicators and appropriate clinical criteria that can be used to monitor these aspects of care;
- (g) Collects and organizes data for each indicator;
- (h) Contains written procedures for taking appropriate corrective action;
- (i) Assesses the effectiveness of the actions taken to correct problems and documents the improvement in care; and
- (j) Communicates relevant information to other individuals, departments, or services as to the quality assurance program.

Section 4. Provision of Services. (1)(a) Hours of operation and coverage. Scheduled hours of the center's operation shall ~~reasonably~~ accommodate the various segments of the population served.

(b) Provisions shall be made for scheduled evening hours and weekend hours, if needed.

(2) Basic services. The center shall provide directly at least the following services:

(a) Medical diagnostic and treatment services of sufficiently broad scope to accommodate the basic health needs of all age groups, including prenatal and postnatal care;

(b) Emergency services. The center shall:

1. ~~[The center shall]~~ Provide emergency medical services during the regularly-scheduled hours for treatment of injuries and minor trauma; ~~and~~;

2. ~~[The center shall]~~ Post in a conspicuous area at the entrance, visible from the outside of the center:

a. The hours that emergency medical services will be available in the center; and

b. Where emergency medical services not provided by the center can be obtained during and after the center's regular scheduled hours of operation;

(c) Preventive health services of sufficiently broad scope to provide for the usual and expected health needs of persons in all age groups;

(d) Education in the appropriate use of health services and in the contribution each individual can make to the maintenance of his or her own health;

(e) Chronic illness management; and

(f) Laboratory, x-ray, and treatment services provided directly or arranged through other providers.

(3) Supplemental services.

(a) The center shall provide professional services to complement the basic services provided in accordance with subsection (2) of this section.

(b) At least two (2) of the following services shall be provided by the center at some time during the scheduled hours of operation, either directly or by contract on site. The center shall establish linkages with supplemental services that currently exist in the service area and that are not provided directly or by contract by the center, including:

1. Pharmacy: licensed pharmacist;
2. Dentistry: licensed dentist;
3. Optometry: licensed optometrist or ophthalmologist;
4. Midwifery services: certified nurse midwife;
5. Family planning;
6. Nutrition: qualified dietitian or nutritionist;
7. Social service counseling: licensed social worker;
8. Home health: licensed home health agency; and
9. Behavioral health services.

(c) A center that does not have a linkage agreement with the supplemental services pursuant to paragraph (b) of this subsection, but documents a good faith attempt to enter into the linkage agreement, shall be exempt from the linkage agreement requirement.

(4) Extension services.

a1. The center may provide basic primary care services as established/described in subsection (2) of this section, one (1) or more supplemental services as established/described in subsection (3) of this section, or one (1) or more outpatient behavioral health services as established/described in Section 5 of this administrative regulation in locations separate from the

center's/its permanent facility.

2. The extension locations shall be listed on the Form OIG 001, Application for Licensure to Operate a Health Facility or Service/licensure application, incorporated by reference in 902 KAR 20:008.

(b) Except for an extension located at a school, each extension that provides one (1) or more of the basic primary care services established/described in subsection (2) of this section shall be staffed with at least one (1):

1. ~~[One (1)]~~ Full-time advanced practice registered nurse or physician assistant; and

2. ~~[One (1)]~~ Physician who is:

a. Except in extraordinary circumstances, which shall be documented in the extension's records, present no less than once in every two (2) week period to provide medical direction, medical care services, consultation, and supervision; and

b. Available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

(c) Except for an extension located at a school, each extension that provides one (1) or more supplemental services established/described in subsection (3) of this section, or one (1) or more outpatient behavioral health services established/described in Section 5 of this administrative regulation shall maintain a core staff of appropriately licensed or certified health professionals as necessary to carry out the services provided at the extension site.

(d) If a not-for-profit center's extension operates in a school, the extension shall comply with the staffing requirements of KRS 216B.176(3) and (4).

~~(e)[(d)]~~ The center shall have written policies and procedures pertaining to all aspects of the extension service, including:

1. Patient care;
2. Treatment protocols;
3. Patient rights;
4. Provided services;
5. Medical records;
6. Linkage agreements; and
7. Hours of operation and staffing.

~~(f)[(e)]~~ The extension service shall be located within the primary care center's service area.

~~(g)[(f)]~~ The center's utilization review program shall include any extension services.

(5) Outreach activities. The center or extension's health care professionals~~[physician, advanced practice registered nurse, midwife, physician assistant, dentist, or dental hygienist licensed to function with indirect supervision]~~ may engage in outreach activities~~[to provide medical service]~~ within the primary care center's service areas.

(6) Holding-observation accommodations. If holding-observation accommodations are maintained by the center, the center shall comply with the ~~[following]~~ requirements established in paragraphs (a) through (c) of this subsection.;

(a) Use of holding-observation accommodations shall not exceed twenty-four (24) hour medical observation or recuperation in anticipation of transfer to an inpatient facility or to the patient's home.;

(b) The decision to hold a patient shall be the responsibility of a physician employed directly or under contract with the center.;

(c) A physician or a registered nurse shall be on duty at the center while a patient is held in the center's holding-observation accommodations beyond regular scheduled hours.

(7) Plan of care. The center shall establish and periodically update a written plan of care of all patients or family units, reflecting staff discussion of all medical and social information obtained relative to the patient and the patient's family.

(8) Telephone screening and referral. The center shall provide telephone screening and referral services for prospective patients after regularly-scheduled hours of operation.

Section 5. Outpatient Behavioral Health Services. (1) A primary care center may provide one (1) or more of the following for the treatment of individuals with a mental health disorder, substance

abuse disorder, or co-occurring disorder:

(a) Screening, that shall be provided by a behavioral health professional, behavioral health professional under clinical supervision, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice to determine the:

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

2. Need for an assessment;

(b) Assessment that shall:

1. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, a certified alcohol and drug counselor, licensed clinical alcohol and drug counselor, or licensed clinical alcohol and drug counselor associate practicing within his or her scope of practice who gathers information and engages in a process with the client, thereby enabling the professional to:

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

b. Determine the client's readiness for change;

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

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

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

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

4. Not include psychological or psychiatric evaluations or assessments;

(c) Psychological testing that shall:

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

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

(d) Crisis intervention that:

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

2. Shall consist of clinical intervention and support services necessary to provide:

a. Integrated crisis response;

b. Crisis stabilization interventions; or

c. Crisis prevention activities;

3. Shall be provided:

a. On-site at the facility;

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

and

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

4. May include:

a. Verbal de-escalation;

b. Risk assessment; or

c. Cognitive therapy;

5. Shall be provided by one (1) or more of the following practicing within his or her scope of practice:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Certified alcohol and drug counselor;

d. Licensed clinical alcohol and drug counselor; or

e. Licensed clinical alcohol and drug counselor associate;

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

7. May include:

a. Further service prevention planning, including:

(i) Lethal means reduction for suicide risk; or

(ii) Substance use disorder relapse prevention; or

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

(e) Day treatment that shall:

1. Be a nonresidential, intensive treatment program designed

for children who:

a. Have a substance use disorder, mental health disorder, or co-occurring disorder;

b. Are under twenty-one (21) years of age; and

c. Are at high risk of out-of-home placement due to a behavioral health issue;

2. Consist of an organized behavioral health program of treatment and rehabilitative services for substance use disorder, mental health disorder, or a co-occurring disorder;

3. Have unified policies and procedures that address:

a. The organization's philosophy;

b. Admission and discharge criteria;

c. Admission and discharge process;

d. Staff training; and

e. Integrated case planning;

4. Include the following:

a. Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

b. Behavior management and social skill training;

c. Independent living skills that correlate to the age and development stage of the client; and

d. Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;

5. Be provided[as follows]:

a. In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

b. On school days and during scheduled school breaks;

c. In coordination with the child's individual educational plan or Section 504 plan if the child has an individual educational plan or Section 504 plan;

d. By personnel that includes the following practicing within his or her scope of practice:

(i) Behavioral health professional;

(ii) Behavioral health professional under clinical supervision;

(iii) Certified alcohol and drug counselor;

(iv) Licensed clinical alcohol and drug counselor;

(v) Licensed clinical alcohol and drug counselor associate; or

(vi) Peer support specialist; and

e. According to a linkage agreement with the local education authority that **establishes/specifies** the responsibilities of the local education authority and the day treatment provider; and

6. Not include a therapeutic clinical service that is included in a child's individualized education plan;

(f) Individual outpatient therapy that shall:

1. Be provided to promote the:

a. Health and well-being of the client; or

b. Recovery from a substance related disorder;

2. Consist of:

a. A face-to-face encounter with the client; and

b. A behavioral health therapeutic intervention provided in accordance with the client's plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the client;

and

c. Improving functioning;

4. Not exceed three (3) hours per day; and

5. Be provided by the following personnel practicing within his or her scope of practice:

a. Behavioral health professional;

b. Behavioral health professional under clinical supervision;

c. Licensed behavior analyst;

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

e. Certified alcohol and drug counselor;

f. Licensed clinical alcohol and drug counselor; or

g. Licensed clinical alcohol and drug counselor associate;

(g) Group outpatient therapy that shall:

1. Be provided to promote the:

a. Health and well-being of the client; or

b. Recovery from a substance related disorder;

2. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;

3. Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a:

- Spouse;
- Significant other;
- Parent or person with custodial control;
- Child;
- Sibling;
- Stepparent;
- Stepchild;
- Step-brother;
- Step-sister;
- Father-in-law;
- Mother-in-law;
- Son-in-law;
- Daughter-in-law;
- Brother-in-law;
- Sister-in-law;
- Grandparent; or
- Grandchild;

4. Focus on the psychological needs of the client as evidenced in the client's plan of care;

5. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

6. Not include:

- Physical exercise;
- A recreational activity;
- An educational activity; or
- A social activity;

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

8. Ensure that the group has a deliberate focus and defined course of treatment;

9. Ensure that the subject of group outpatient therapy shall be related to each client participating in the group; and

10. Be provided by one (1) or more of the following personnel practicing within his or her scope of practice, and who shall maintain individual notes regarding each client within the group in the client's record:

- Behavioral health professional;
- Behavioral health professional under clinical supervision;
- Licensed behavior analyst;
- Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
- Certified alcohol and drug counselor;
- Licensed clinical alcohol and drug counselor; or
- Licensed clinical alcohol and drug counselor associate;
- Family outpatient therapy that shall:

- Consist of a face-to-face behavioral health therapeutic intervention provided through scheduled therapeutic visits between the therapist, at least one (1) member of the client's family, and the client unless the client's presence is not required in his or her plan of care;
- Address issues interfering with the relational functioning of the family;
- Seek to improve interpersonal relationships within the client's home environment;
- Be provided to promote the health and well-being of the client or recovery from a substance use disorder;
- Not exceed three (3) hours per day per client unless additional time is medically necessary in accordance with 907 KAR 3:130; and
- Be provided by one (1) or more of the following personnel practicing within his or her scope of practice:

- Behavioral health professional;
- Behavioral health professional under clinical supervision;
- Certified alcohol and drug counselor;

- Licensed clinical alcohol and drug counselor; or
- Licensed clinical alcohol and drug counselor associate;

(i) Collateral outpatient therapy that shall consist of a face-to-face behavioral health consultation on behalf of a client under the age of twenty-one (21):

- With a:
 - Parent;
 - Caregiver;
 - Person who has custodial control;
 - Household member;
 - Legal representative;
 - School staff person; or
 - Treating professional;
- Provided by one (1) or more of the following personnel practicing within his or her scope of practice:
 - Behavioral health professional;
 - Behavioral health professional under clinical supervision;
 - Licensed behavior analyst;
 - Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
 - Certified alcohol and drug counselor;
 - Licensed clinical alcohol and drug counselor; or
 - Licensed clinical alcohol and drug counselor associate; and
- Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

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

- Assist a client in creating an individualized plan for services needed for maximum reduction of the effects of a mental health disorder;
- Restore a client's functional level to the client's best possible functional level; and
- Develop a service plan that:
 - Shall be directed by the client; and
 - May include:
 - A mental health advance directive being filed with a local hospital;
 - A crisis plan; or
 - A relapse prevention strategy or plan;

(k) Substance use disorder screening, brief intervention, and referral to treatment [for substance use disorders] that shall:

- Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;
- Consist of:
 - Using a standardized screening tool to assess the individual for risky substance use behavior;
 - Engaging a client who demonstrates risky substance use behavior in a short conversation that includes feedback and advice; and
 - Referring the client to therapy or other services that address substance use if **it is determined that** the client **needs/is determined to need** additional services; and
- Be provided by one (1) or more of the following personnel practicing within his or her scope of practice:
 - Behavioral health professional;
 - Behavioral health professional under clinical supervision;
 - Certified alcohol and drug counselor;
 - Licensed clinical alcohol and drug counselor; or
 - Licensed clinical alcohol and drug counselor associate;

(l) Comprehensive community support services that shall:

- Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;
- Consist of using a variety of psychiatric rehabilitation techniques to:
 - Improve daily living skills;

b. Improve self-monitoring of symptoms and side effects;
c. Improve emotional regulation skills;
d. Improve crisis coping skills; and
e. Develop and enhance interpersonal skills; and
3. Be provided by one (1) or more of the following personnel practicing within his or her scope of practice:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision;
c. Community support associate;
d. Licensed behavior analyst; or
e. Licensed assistant behavior analyst; or
(m) A therapeutic rehabilitation program for an adult with a severe mental illness or child with a severe emotional disability that shall:
1. Include services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;
2. Establish the client's own rehabilitative goals within the person-centered plan of care;
3. Be delivered using a variety of psychiatric rehabilitation techniques focused on:
a. Improving daily living skills;
b. Self-monitoring of symptoms and side effects;
c. Emotional regulation skills;
d. Crisis coping skills; and
e. Interpersonal skills; and
4. Be provided individually or in a group by a:
a. Behavioral health professional;
b. Behavioral health professional under clinical supervision; or
c. Peer support specialist.
(2) Plan of care.
(a) Each client receiving outpatient behavioral health services from a primary care center shall have an individual plan of care signed by a behavioral health professional.
(b) A plan of care shall:
1. Describe the services to be provided to the client, including the frequency of services;
2. Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;
3. Describe the client's functional abilities and limitations or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;
4. Specify each staff member assigned to work with the client;
5. Identify methods to involve the client's family or significant others if indicated;
6. Specify criteria to be met for termination of treatment;
7. Include any referrals necessary for services not provided directly by the primary care center; and
8. State the date scheduled for review of the plan.
(c) The client shall participate to the maximum extent feasible in the development of his or her plan of care, and the participation shall be documented in the client's record.
(d)1. The initial plan of care shall be developed through multidisciplinary team conferences at least thirty (30) days following the first ten (10) days of treatment.
2. The plan of care for individuals receiving intensive outpatient program services shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.
3. Except for intensive outpatient program services, the plan of care for individuals receiving any other outpatient behavioral health service described in subsection (1) of this section shall be reviewed and updated every six (6) months or earlier if clinically indicated.
4. The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.
(3) Client Records.
(a) A client record shall be maintained for each individual receiving outpatient behavioral health services.
(b) Each entry shall be:
1. Current;
2. Dated;

3. Signed; and
4. Indexed according to the service received.
(c) Each client record shall contain:
1. An identification sheet, including the client's:
a. Name;
b. Address;
c. Age;
d. Gender;
e. Marital status;
f. Expected source of payment; and
g. Referral source;
2. Information on the purpose for seeking a service;
3. If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;
4. Screening information pertaining to the mental health or substance use disorder;
5. If applicable, a psychosocial history;
6. If applicable, staff notes on services provided;
7. If applicable, the client's plan of care;
8. If applicable, disposition;
9. If applicable, assigned status;
10. If applicable, assigned therapists; and
11. If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

ROBERT S. SILVERTHORN, JR., Inspector General
 VICKIE YATES BROWN GLISSON, Secretary
 APPROVED BY AGENCY: September 13, 2016
 FILED WITH LRC: September 14, 2016 at 3 p.m.
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(As Amended at ARRS, October 11, 2016)

921 KAR 1:380. Child Support Enforcement Program application and intergovernmental process.

RELATES TO: KRS 205.705, 205.710-205.800, 205.992, 213.046(4), 403.211, 405.430(5), 405.520, 405.467, 406.021, 406.025, 407.5101-407.5903[407.5902], 610.170, 45 C.F.R. 301.1, 302.30, 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.15, 303.30-303.31, 303.69, 303.70, 42 U.S.C. 651-654, 657, 663, 666

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 (1), 205.795, and 405.520 authorize the secretary ***of the Cabinet for Health and Family Services*** to promulgate administrative regulations to operate the Child Support Enforcement Program (CSEP) in accordance with federal law and regulations. 45 C.F.R. 303.2 requires the child support application process to be accessible to the public. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an intergovernmental case.

Section 1. Child Support Enforcement Case Types. (1) Kentucky Transitional Assistance Program (K-TAP) or Kinship Care.

(a)1. An applicant for, or recipient of, K-TAP or Kinship Care shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1) and 921 KAR 2:006.

2. The assignment shall:
 a. Include members of the case for whom support rights apply; and
 b. Be completed when applying for K-TAP or Kinship Care

benefits using the application form incorporated by reference in 921 KAR 2:040.

(b) An applicant or recipient shall cooperate in all phases of child support activity that shall, if known, include:

1. The name of the noncustodial parent or obligor;
2. The Social Security number of the noncustodial parent or obligor;
3. Information to assist in the:
 - a. Location of the noncustodial parent or obligor;
 - b. Enforcement of a child support order; or
 - c. Review or modification of a child support order;
4. Establishment of:
 - a. Paternity, if paternity has not been established; and
 - b. An assigned support obligation;
5. Enforcement of:
 - a. An assigned support obligation; and
 - b. A spousal support order if the cabinet is collecting for a child who resides with the spouse or former spouse; and
6. Forwarding any child support payment received to the cabinet's centralized collection unit.

(2) Foster Care.

(a) The CSEP shall collect and disburse child support on behalf of a child for whom:

1. The state is making a foster care maintenance payment as required by 42 U.S.C. 657 and an assignment of rights has been made; or
2. The cabinet has custody, and there is an order for the child's parent or parents to pay child support to the cabinet pursuant to KRS 610.170.

(b) The child's benefit worker with responsibility for the foster care child shall:

1. Cooperate with the CSEP;
2. Review and approve a foster care child support referral;
3. Complete a change of status if a change occurs that relates to the child support process; and
4. Forward to the CSEP a copy of the child support court documents.

(c) If a child with special needs is adopted in accordance with 922 KAR 1:100 and reenters the custody of the cabinet, the cabinet shall:

1. Determine that good cause exists in accordance with Section 2(3) of this administrative regulation; or
2. Establish a child support obligation if:
 - a. A child with special needs adopted in accordance with 922 KAR 1:100 has reentered the custody of the cabinet due to the child's maltreatment or abandonment; and
 - b. The commissioner or designee recommends the establishment of child support.

(3) Medicaid only.

(a) If a Medicaid-only referral is made, the CSEP shall obtain the following information, if available:

1. Medicaid case number;
2. Name of the noncustodial parent or obligor;
3. Social Security number of the noncustodial parent or obligor;
4. Name and Social Security number of the child;
5. Home address of the noncustodial parent or obligor;
6. Name and address of the noncustodial parent or obligor's place of employment; and

7. Whether the noncustodial parent has a health insurance policy and, if so, the policy name, policy number, and name of any person (and number and name(s) of the person(s)) covered.

(b) An application for Medicaid shall include an assignment of rights for medical support, pursuant to 907 KAR 20:005[1:044, Section 9, which shall be completed by using the application form incorporated by reference in 921 KAR 3:030].

(c) Except for a custodial parent who is pregnant or in her postpartum period, pursuant to 907 KAR 20:005[1:044], a custodial parent shall cooperate in all phases of medical support activity.

(d) A Medicaid-only recipient desiring full child support services, in addition to the medical support services, shall complete and submit to the CSEP the CS-140, Assignment of Rights and Authorization to Collect Support.

(4) Nonpublic Assistance.

(a) In accordance with KRS 205.721, the CSEP shall make child support services available to any individual who:

1. Assigns rights for medical support only;
2. Applies for services pursuant to paragraph (c) of this subsection; or
3. Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance.

(b) The CSEP shall notify the family no longer eligible for public assistance, within five (5) working days, that child support services shall continue unless the CSEP is notified to the contrary by the family.

(c) Application Process for a Nonpublic Assistance Individual.

1. Upon the request of a nonpublic assistance applicant, the CSEP shall give an application packet to the applicant.

2. If the request is:

- a. Made in person, the packet shall be provided the same day; or
- b. Not made in person, the packet shall be sent to the applicant within five (5) working days of the request.

3. The application packet shall include the:

- a. CS-33, Application for Child Support Services[Non-K-TAP Application];
- b. CS-202, Authorization for Electronic Deposit of Child Support Payments[CS-168, Application for Direct Deposit]; and
- c. CS-11, Authorization and Acknowledgement of No Legal Representation.

4. In order to receive child support services, the applicant shall complete and return the:

- a. CS-33, Application for Child Support Services[Non-K-TAP Application]; and
- b. CS-11, Authorization and Acknowledgement of No Legal Representation.

(d) Except for a location-only case, services provided to a nonpublic assistance client through the CSEP shall be those services listed in Section 2 of this administrative regulation.

(e) If a case involves a putative father, services provided shall be those identified in Section 2(1) of this administrative regulation.

(f) The CSEP shall obtain the following information from a nonpublic assistance applicant, if available:

1. Name, date of birth, and Social Security number of the child;
2. Name of the custodial and noncustodial parent or obligor;
3. Social Security number of the custodial and noncustodial parent or obligor;
4. Date of birth of the custodial and noncustodial parent or obligor;
5. Home address or last known address of the custodial and noncustodial parent or obligor; and
6. Name and address of the custodial and noncustodial parent's or obligor's employer or last known employer.

Section 2. General Services and Good Cause for All Case Types. (1) The CSEP shall provide child support services for a case type described in this administrative regulation in accordance with 42 U.S.C. 654. The services shall include:

- (a) Location of the noncustodial parent or obligor;
- (b) Location of the custodial parent for establishment of paternity;

(c) Establishment of paternity based upon the receipt of either:

1. A court order; or
2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(d) Establishment of a child support or medical support obligation by:

1. Petitioning the court or administrative authority to establish child support pursuant to the Kentucky Child Support Guidelines; and

2. Petitioning the court or administrative authority to include private health insurance pursuant to 45 C.F.R. 303.31(b)(1) in new or modified court or administrative orders for support; or

3. Petitioning the court or administrative authority to include cash medical support in new or modified orders until such time

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as] health insurance that is accessible and reasonable in cost, as defined in KRS 403.211(8)(a) and (b), becomes available;

(e) Enforcement of a:

1. Child support or medical support obligation; and
2. Spousal support obligation if the:
 - a. Custodial parent[Client] is the spouse or ex-spouse;
 - b. Child lives with the spouse or ex-spouse; and
 - c. Cabinet is collecting support on behalf of the child;

(f) Review and modification of an assigned support obligation in accordance with 921 KAR 1:400;

(g) Collection and disbursement of current and past-due support payments resulting from an assigned support obligation, less an annual twenty-five (25) dollar fee assessed against a custodial parent who has never received assistance, as defined in 42 U.S.C. 654(6)(b)(ii), during each Federal fiscal year in which \$500 has been disbursed for the case; and

(h) Submit application to health plan administrator to enroll the child if the parent ordered to provide health insurance coverage is enrolled through the insurer and has failed to enroll the child.

(2) The CSEP shall open a case and determine needed action and services within twenty (20) calendar days of receipt of a:

- (a) Referral from the public assistance agency;
- (b) Foster care referral; or
- (c) Nonpublic assistance application in accordance with Section 1(4)(c) of this administrative regulation.

(3) Good cause.

(a)1. If an applicant or client states that good cause for noncooperation exists, the applicant or client shall have the opportunity to establish a claim pursuant to 921 KAR 2:006.

2. Evidence for determination of good cause shall be pursuant to 921 KAR 2:006.

3. For a foster care child, good cause for nonenforcement of child support shall be determined to exist if evidence and criteria are met pursuant to 921 KAR 2:006 or 922 KAR 1:530.

(b) If the CSEP has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1), the CSEP shall not attempt location, establishment, modification, or enforcement of an assigned support obligation.

Section 3. Parent Locator Service and Associated Fee for Service. (1) Unless the cabinet has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1) or 921 KAR 2:006, Section 25, location shall be attempted for a:

- (a) Public assistance case referred to the CSEP; or
- (b) Nonpublic assistance case for which child support services are being provided.

(2) The CSEP shall attempt to locate a noncustodial parent or obligor and the noncustodial parent's or obligor's employer, sources of income, assets, property, and debt, if necessary, for a public assistance case or nonpublic assistance case assigned to the CSEP pursuant to KRS 205.712, ~~and~~ 205.730(5), ~~and~~ 45 C.F.R. 303.69 or 303.70.

(3) In accordance with KRS 205.730(4), location services shall be provided in a parental kidnapping case.

(4) The CSEP shall provide location services to a putative father in accordance with KRS 205.730(2) and (4).

Section 4. Intergovernmental Process for Child Support Enforcement Services. In accordance with KRS 205.712, 407.5101-407.5903[407.5902], and 45 C.F.R. ~~303.70~~[303.7], the CSEP shall:

(1) Extend to an intergovernmental IV-D child support case the same services available to an intrastate case; and

(2) Provide a responding state[agency] with sufficient and accurate information and documentation on the appropriate intergovernmental transmittal forms, the:

- (a) CS-98, General Testimony;
- (b) CS-99, Affidavit in Support of Establishing Paternity; and
- (c) CS-100, Uniform Support Petition.

Section 5. Public Awareness. The effort, pursuant to KRS 205.712(2)(g), to publicize the availability of the CSEP's services

and encourage their use may include:

- (1) Public service announcements;
- (2) Posters;
- (3) Press releases;
- (4) Videos;
- (5) Annual reports;
- (6) Newsletters;
- (7) Mail inserts;
- (8) Pamphlets;
- (9) Letters; and
- (10) Internet.

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

(a) "CS-11, Authorization and Acknowledgement of No Legal Representation", [edition] 10/12;

(b) "CS-33, Application for Child Support Services[Non-KTAP Application]", 8/16[~~edition 10/12~~];

(c) "CS-98, General Testimony", [edition] 10/12;

(d) "CS-99, Affidavit in Support of Establishing Paternity", [edition] 1/09;

(e) "CS-100, Uniform Support Petition", [edition] 1/09;

(f) "CS-140, Assignment of Rights and Authorization to Collect Support", [edition] 10/12; and

(g) "CS-202, Authorization for Electronic Deposit of Child Support Payments[CS-168, Application for Direct Deposit]", 8/16[6/14][~~edition 1/09~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENO, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 29, 2016

FILED WITH LRC: August 2, 2016 at 4 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40602, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amended After Comments)

200 KAR 5:355. Public-private partnership delivery method.

RELATES TO: KRS 45A.030, 45A.077, 45A.085, 45A.090, 45A.180, 45A.183, 45A.190, 45A.435, 45A.550-45A.554, 61.878, 65.025, 65.028

STATUTORY AUTHORITY: KRS 45A.035, 45A.077, 45A.085, 45A.180, 45A.183, 65.028

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.077 requires the secretary to promulgate administrative regulations setting forth the criteria to be used in determining when a public-private partnership is to be used for a particular project. KRS 45A.085 authorizes the secretary to promulgate administrative regulations concerning contracts awarded by competitive negotiation. KRS 45A.180 requires the secretary to promulgate administrative regulations for the implementation of as many recognized alternative methods of management of construction contracting as are determined to be feasible. This administrative regulation establishes guidelines pursuant to KRS 45A.077 and KRS 65.028[45A.030] relating to public-private partnerships for entities requesting to utilize this procurement delivery method.

Section 1. Definitions. (1) "Cabinet" means the Finance and Administration Cabinet.

(2) "Capital project" is defined by KRS 45.750(1)(f), except that for purposes of this administrative regulation, capital project shall include all projects regardless of the size or scope of same.

(3) "Contract" is defined by KRS 45A.030(8).

(4) "General fund revenues" means the total combined revenue receipts of the local government or local governments that are a party to the public-private partnership agreement from the imposition of ad valorem taxes, occupational license taxes, insurance premium taxes, and franchise fees.

(5) "Governmental body" is defined by KRS 45A.030(17).

(6) ~~(5)~~ "Kentucky Local Government Public-Private Partnership Board" is established and defined by KRS 65.028(11).

(7) ~~(6)~~ "Local government" is defined by KRS 65.028(1)(c)[65.025(1)(b)].

(8) ~~(7)~~ "Private partner" is defined by KRS 45A.030(21) and KRS 65.025(1)(g).

(9) ~~(8)~~ "Public-private partnership" is defined by KRS 45A.030(23).

[(9) "Purchasing officer" is defined by KRS 45A.030(26).]

(10) "Total contractual value" means the cumulative amount to be paid or reasonably estimated to be paid over the entire term of the public-private partnership agreement between the local government or local governments and the private partner or private partners in consideration of the performance of the private partner or partners.

(11) "Using agency" is defined by KRS 45A.030(30).

Section 2. Use of a Public-Private Partnership. (1) A public-private partnership may be utilized for construction or financing of a capital project or the procurement of services if the head of a governmental body or a local government issues a written determination that due to the nature or circumstances of a capital project or services, a public-private partnership is the most advantageous method of awarding and administering a capital project or other contract.

(2) In determining whether the use of a public-private partnership is the most advantageous method of awarding and

administering a capital project or other contract, the head of a governmental body or local government, or a person authorized in writing as his or her designee, shall undertake an analysis of the proposed capital project or other contract to determine whether a public-private partnership is the procurement method most advantageous to the governmental body or local government that incorporates the ~~following~~ components established in this section.^[3]

(a) Qualitative considerations. The using agency or local government shall evaluate the potential public-private partnership utilizing the following criteria:

1. The ability of the using agency or local government to allocate and control risks, responsibilities, and rewards between itself and a private partner in a way that ultimately benefits the using agency or local government and the citizens it serves;

2. The timeliness of completion and efficiency of delivery of a capital project or other contract via a public-private partnership as compared with other project delivery methods;

3. A determination that the tangible and intangible benefits to be gained by using a public-private partnership equals or exceeds the cost of developing and maintaining a public-private partnership;

4. The ability and expertise of the using agency or local government to measure and monitor performance and operational controls;

5. The ability of the using agency or local government to capture and utilize incentives, efficiencies, and expertise derived from the involvement of a private partner;

6. Whether the capital project or other contract would be developed or entered into in the absence of private sector involvement;

7. Whether the public interest is best served through the use of a public-private partnership; and

8. The urgency of need for the capital project or services by the governmental body or local government.

(b) Quantitative Analysis. The using agency or local government shall conduct a quantitative analysis of using a public-private partnership for a given capital project or other contract. The analysis shall include:

1. Net present value of the cost of the capital project or other contract over its entire useful life, including, if applicable:

a. Financing, planning, design, and construction costs;

b. Operation and management costs;

c. Any payments the using agency or local government may be required to make to the private partner; and

d. Maintenance costs;

2. The allocation of risks and contingencies between the using agency or local government and the private partner;

3. Operating cash flows reasonably expected to provide a return on investment to a private partner;

4. The net present value of payment the using agency or local government would receive from the private partner or third parties over the life of the capital project or other contract; and

5. The anticipated value of the capital project or other contract deliverables at the end of the term of the public-private partnership, if any.

(c) Privatization Analysis. Before award of a contract for a public-private partnership, the using agency and the cabinet shall satisfy all of the requirements of KRS 45A.550-45A.554 and 200 KAR 5:340[the administrative regulations promulgated thereunder] related to privatization of existing governmental services, if applicable.

(d) Local Government Public-Private Partnerships Subject to Review by the Kentucky Local Government Public-Private Partnership Board. If the total contractual value of a proposed public-private partnership between a local government and a private partner equals or exceeds thirty (30) percent of the general fund revenues received by the local government in the immediately preceding fiscal year, the local government shall submit the proposed public-private partnership agreement[contract] to the cabinet and the Department for Local Government for evaluation

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and presentation to the Kentucky Local Government Public-Private Partnership Board in accordance with KRS 65.028(12) or 65.028(16).

Section 3. Submission of Unsolicited Proposals. (1) Persons, businesses, or other entities may submit unsolicited proposals for a capital project or other contract utilizing a public-private partnership to a governmental body with a copy to the Secretary of the Finance and Administration Cabinet.

(2) Persons, businesses, or other entities wishing to submit an unsolicited proposal for a public-private partnership with a local government shall submit the proposals to the local government with a copy to the Department for Local Government. If the total contractual value of the proposed public-private partnership equals or exceeds thirty (30) percent of the general fund revenues received by the local government in the immediately preceding fiscal year, the Department for Local Government with the assistance of the cabinet shall evaluate each proposal and present same to the Kentucky Local Government Public-Private Partnership Board in accordance with KRS 65.028(12) or 65.028(16).

(3) Proposals submitted pursuant to subsection (1) of this section shall be considered in the manner prescribed in KRS 45A.077(12) and evaluated pursuant to the criteria set forth in Section 2 of this administrative regulation.

(4) Proposals submitted pursuant to subsection (2) of this section shall be considered in the manner prescribed in KRS 65.028(17) and evaluated pursuant to the criteria set forth in Section 2 of this administrative regulation.

(5) A valid unsolicited proposal shall:

(a) Be independently originated and developed by the person or persons, business or businesses, or other entities submitting the proposal;

(b) Be prepared without government supervision, endorsement, direction or direct government involvement; and

(c) Include sufficient detail to permit a determination that government support would be worthwhile and that the proposal could benefit the using agency or local government's constituency.

(6) All unsolicited proposals shall be submitted in a sealed envelope marked "unsolicited proposal." If an unsolicited proposal contains trade secrets, financial records, or other information that would be exempt from public disclosure pursuant to KRS 61.878 or other applicable law, persons, businesses, or other entities submitting unsolicited proposals shall:

(a) Include a cover letter with the proposal, notifying the governmental body or local government that exempt information is contained in the proposal;

(b) Mark all portions of the proposal that contain exempt information as "confidential" or "proprietary"; and

(c) Submit a second copy of the proposal from which the trade secrets, financial records, or other information that would be exempt from public disclosure pursuant to KRS 61.878 or other applicable law have been redacted.

~~[(6)]~~ Except for each portion of an unsolicited proposal that contains trade secrets, financial records, or other information that would be exempt from public disclosure pursuant to KRS 61.878 or other applicable law, all unsolicited proposals shall be available for public inspection after the latter of:

(a) The date of the written notification sent by a governmental body or local government that it has rejected the unsolicited proposal;

(b) Sixty (60) days after the end of the notice period provided under KRS 45A.077(12)(b)2. or KRS 65.028(17)(b)2; or

(c) The date of the award of~~After~~ a contract by a~~has been awarded if the~~ governmental body or local government following~~elects to undertake~~ an open, competitive procurement process conducted pursuant to KRS 45A.077(12)(c) or KRS 65.028(17)(c).

Section 4. Other considerations. (1) The using agency and the cabinet or local government shall retain discretion in determining

the relative weight to ascribe to each of the criteria set forth in Section 2 of this administrative regulation, giving due consideration to the size and nature of the capital project or other contract as well as the previous experience of the using agency or local government, if any, in utilizing public-private partnerships under similar circumstances.

(2) All requests for proposals involving the use of a public-private partnership shall comply with KRS 45A.077(4) or 65.028(7) as applicable.

(3) All performance and payment bonding requirements set forth in KRS 45A.190, 45A.435, and any other statute or local ordinance, shall remain in effect for capital projects and other contracts using the public-private partnership project delivery method.

Section 5. Professional Assistance. The using agency and the cabinet are authorized to retain any professional services deemed necessary by the using agency or the cabinet to enable an adequate review and evaluation of a public-private partnership proposal, including those involving local government that shall be approved by the Kentucky Local Government Public-Private Partnership Board in accordance with KRS 65.028(12) or 65.028(16), if the necessary expertise to perform the review or evaluation within the using agency or the cabinet is inadequate or unavailable. The cost of any professional service, including the cost of any study performed, shall be borne by the private partner if possible. If it is deemed necessary by the using agency or local government for the governmental body to bear a portion of the cost of the professional services needed to assist with the evaluation set forth in this administrative regulation, then the cost may[shall] be paid by the using agency or local government.

MARK D. BUNNING, Deputy Secretary

For WILLIAM M. LANDRUM III, Secretary

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 11 a.m.

CONTACT PERSON: Judy Piazza, Executive Director, Office of Legislative & Inter-governmental Affairs, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 782-5701, fax (502) 564-9557, email Judith.Piazza@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Judy Piazza

(1) Provide a brief summary of:

(a) What this administrative regulation does: It provides guidance for the procurement of the public-private partnership delivery method for capital projects for state and local entities.

(b) The necessity of this administrative regulation: KRS 45A.077(3) directs the Finance and Administration cabinet to promulgate an administrative regulation setting forth the criteria to be used in determining when a public private partnership is to be used for a particular capital project on or before December, 31, 2016.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the parameters required by statute for a state or local government entity to submit a proposal to be approved as a public private partnership for capital projects.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the parameters required by statute for a state or local government entity to submit a proposal to be approved as a public private partnership for capital projects.

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

(a) How the amendment will change this existing administrative regulation: Clarifies terms relating to local government participation in public-private partnerships.

(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to correct an oversight in language realized during the public comment period.

(c) How the amendment conforms to the content of the

authorizing statutes: The amendment adds a citation to the authorizing statute for local governments that was previously omitted.

(d) How the amendment will assist in the effective administration of the statutes: Clarifies the statutes that must be referenced when applying the provisions of the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government entities may utilize the procurement provisions of this regulation if they chose.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An additional method of procurement for capital projects.

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

(a) Initially: No additional costs.

(b) On a continuing basis: None.

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

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

(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 was not applied as all state and local government entities will be treated the same during evaluation and approval of a capital project utilizing the public-private partnership method of delivery.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All units, parts or divisions of state or local government who chose to utilize the public-private partnership delivery method for the procurement of capital projects 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 65.028 and 45A.077.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? No additional funds will be required as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent year? 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 (Amended After Comments)

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 authority[commission] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission[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[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 or who oversees 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, **healthcare professional** ~~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 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: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

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 will correct "physician's assistant" to "physician assistant". This amendment will allow those classified as healthcare professional to also be classified as a ring official.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary so that the use of "physician assistant" is consistent with other statutes and regulations. It also allows for more medical personnel to be inside the 6-foot area surrounding the ring promoting safer fighting.

(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 (Amended After Comments)

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, **EO 2016-270**

STATUTORY AUTHORITY: KRS 229.171, 229.180[(+)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the **authority**[**commission**] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and

wrestling shows, exhibitions, and licensees in the commonwealth. **Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission**[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 **violations and penalties**[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 commission[authority] in the manner prescribed in KRS 229.190[229.190].

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

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 adds EO 2016-270 to the "relates to" and "necessary, function, and authority" sections. It also makes a grammatical change, changes a reference from authority to commission, and changes discipline to violations and penalties.

(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: This amendment makes changes to clarify the duties of inspectors given authority 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, 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 to enforce regulations in a consistent and 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
(Amended After Comments)**

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[229.974(3)], 229.081, 229.091, 229.171, Chapter 311, 15 U.S.C. 6305, **EO 2016-270**[(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 authority[commission] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. **Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission.** KRS 229.021, 229.071, and 229.081 require that a person shall not engage in certain activities regulated by the authority[commission] without a license. KRS 229.071(4), 229.081, and 229.091 authorize the authority[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 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 **shall be[is]** subject to administrative regulations promulgated by the authority[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:

(a)[that a person licensed as] A manager may act as a second; and

(b) A contestant 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.

(4)[(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.

(5)[(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.

(6)[(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 **or[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	\$25[30]
Kickboxer	Contestant Application	\$25[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

(b) Mixed martial arts licenses:

Mixed Martial Arts License Type	License Application Required	License Fee
Professional mixed martial artist	Contestant Application	\$25[30]
Amateur mixed martial artist	Contestant Application	\$25[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	\$25[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	\$25[30]
Healthcare Professional	Medical Provider Application	\$25

Section 3. Health Physical and Application Timing 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.

(3) An applicant who is subject to subsection (1) or subsection (2) of this section shall submit his or her license application to the commission no less than fifteen (15) calendar days prior to the applicant's first event.

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 **the applicant has the ability to:**

- (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 a 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. Promoter License. An applicant for licensure as a promoter shall obtain a \$5,000 Surety bond. To obtain a surety the applicant shall complete and have notarized the Promoter Bond Form.

Section 7. 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.

(3) A licensee who seeks to change his or her status from amateur to professional shall submit his or her license application to the commission no less than fifteen (15) calendar days prior to the applicant's first professional event.

Section 8[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 9[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 10[9]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Contestant Application", **October 2016;**
- (b) "Non-Contestant Application", **October 2016;**
- (c) "Promoter Application", **October 2016;**
- (d) "Medical Provider Application", **October 2016;**
- (e) "Physical Report", **October 2016;**
- (f) "Promoter Bond Form", **October 2016;** and
- (g) "Boxer's Federal Identification Card Application", **October 2016.**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at **656 Chamberlin Avenue, Suite B[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> [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: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

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 lowers the contestant licensing fees by \$5, makes some technical changes, incorporates the promoter

bond form and builds in a 15 day rule when applying for licensure.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow the Medical Advisory Panel enough time to meet and consider applicants health and ability to participate. It is also necessary to incorporate the promoter bond form.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 229.051 states that before a promoter license is granted to any person to hold or promote boxing, kickboxing, mixed martial arts, or wrestling shows or exhibitions, the applicant shall file with the authority a bond in the sum of five thousand dollars (\$5,000), to be approved as to form and the sufficiency of the sureties by the authority, conditioned for the payment of the taxes, fines or any fees imposed by the authority. Upon the approval of the bond, the authority shall issue to the applicant a certificate of filing and approval. This amendment incorporates the bond form through which this process is accomplished.

(d) How the amendment will assist in the effective administrative of the statutes: This amendment makes changes that will assist with the administration KRS 229.260 because it allows enough time for the Medical Advisory Panel to meet and consider the health of 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, 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: \$25 (an increase of \$5)
Wrestler: \$25 (an increase of \$5)
Professional Mixed Martial Artist: \$25 (an increase of \$5)
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: \$25 (an increase of \$5)
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 \$6,000 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 \$6,000 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 \$6,000 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 (+/-): + 6,000

Expenditures (+/-): 0

Other Explanation: None.

PUBLIC PROTECTION CABINET Boxing and Wrestling Commission (Amended After Comments)

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), **EO 2016-270**

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 authority[commission] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission[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(4) 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 to the commission 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 be issued a violation[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 contestants'[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 payment[a certified check or money order made payable] to each ring official. The schedule of compensation for a ring official shall be[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) A contestant shall produce one (1) form of picture identification at the weigh-in.

(b) 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) A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector.

(b) 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 within eight (8) hours of the show. 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 comply with instructions[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) A ring shall have a canvas mat or similar material, unless the event is held outdoors in which case only canvas shall be used.

(b) 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 established in this subsection.[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 **as accurate** 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) **If a contestant has long hair, the hair shall be**~~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) **If cosmetics are used,** 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 **per glove**;

4. A minimum of eight (8) ounces **per glove** for a contestant weighing no more than 154 pounds;

5. A minimum of ten (10) ounces **per glove** 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 **or denied in accordance with this administrative regulation** 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; **and**;~~;~~

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 **for medical purposes**. 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 **established in this subsection.**~~[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 **established in this subsection.**~~[follows:]~~

(a) If a bout lasts the scheduled limit, the winner of the bout shall be decided by **a majority vote of the judges**;

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 **established in this paragraph.**~~[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 **the contestant**~~[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 **the contestant[him]** out as if **the contestant[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 **at** the end of the round;
or

(q) Backhand blows except in kickboxing.

(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 **at a show** 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, **except[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 **from the referee** to commence or take time out**[from the referee]**.

(2) The timekeeper shall be **equipped[provided]** with a whistle and a stop watch. **Prior to the first bout, the inspector shall ensure that the whistle and stopwatch function properly[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 shall be established in this subsection.[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 form 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 shall be established in this subsection.[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.

(a) The announcer shall announce the name of contestants, their weight, decisions at the end of each bout, and any other matters as are necessary.

(b) A[Ne] person other than the official announcer shall not 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)(a) The referee shall have the authority to disqualify a

contestant who commits a foul and award the decision to the opponent.

(b) 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 established in this subsection.[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 is:

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 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 subsection[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", October 2016;

(b) "Pre-Fight Medical Questionnaire", October 2016;

(c) "Pre-Fight Examination", October 2016; and

(d) "Post-Fight Examination", October 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 656 Chamberlin Avenue, suite B[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>(1) 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 prefight 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 prefight 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.

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) scheduled 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.

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(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.

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.

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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, 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 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 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;

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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 Vancericl;

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, Efforyllium, 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.
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.

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~~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: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

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 will make technical amendments to increase clarity and ease of use.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide boxers with clarity on certain rules that could have otherwise been misunderstood.

(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. This amendment clarifies boxing regulations that could have otherwise been misunderstood.

(d) How the amendment will assist in the effective administrative of the statutes: To aid licensees in complying with its requirements, this amendment provides clarity and ease of use.

(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 of 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
(Amended After Comments)**

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, EO 2016-270[(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 authority[commission] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission[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 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 the date[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 valid 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 **issuance of a penalty[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. (1) 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.

(2) Male and female contestants shall have separate locker rooms.

Section 5. Drug Testing. (1)(a) The commission may request a licensee to submit to a drug test. **A drug test shall be at the licensee's expense.**

(b) 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, **shall[may] result in a penalty[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 **consent of both contestants[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.

(a) The healthcare professional shall observe the show at all times during a match where bleeding by a wrestler is planned.

(b) 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.

(a) The results of these tests shall be no more than 180 days old.

(b) 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.

(a) The video recording required by Section 10 of this administrative regulation shall be sent to the commission within five (5) business days.

(b) If the commission determines that the bleeding was not accidental, the contestant and promoter **shall be issued a violation[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.

(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

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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 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: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

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 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 requires that males and females have separate locker rooms and eliminates the regulatory burden of getting props approved. This amendment also makes technical corrections that increase clarity and ease of use.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to more clearly set forth the requirements for wrestling shows. This amendment is also necessary so men and women don't have to share locker rooms.

(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: To aid licensees in complying with its requirements, this amendment provides clarity and ease of use.

(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 (Amended After Comments)

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, EO 2016-270[(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 authority[commission] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission[(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 cancellation shall[may] result in a violation[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 ~~contestants'~~**[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 ~~payment~~**[a certified check or money order made payable]** to each ring official. The schedule of compensation for a ring official ~~shall be~~**[is]** at least as ~~established in this section.~~**[follows:]**

(a) ~~A~~**[For a professional mixed martial arts show or a mixed professional and amateur mixed martial arts show:**

1.] judge shall be paid[:] \$150~~[each]~~ unless the show card has twelve (12) or fewer bouts, in which case each judge's pay shall be \$100;

(b) A~~[2.]~~ timekeeper ~~shall be paid[:] \$100~~ unless the show card has twelve (12) or fewer bouts, in which case the timekeeper's pay shall be seventy-five (75) dollars;

(c) A~~[3.]~~ physician ~~shall be paid[:] \$350~~;

(d) A~~[4.]~~ referee ~~shall be paid[:] \$150~~; and

(e) A~~[5.]~~ bout assistant ~~shall be paid[:] 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) A contestant shall produce to the inspector one (1) form of picture identification at the weigh-in.

(b) 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)** A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector.

(b) 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 ~~appearing~~**[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 ~~instructions~~**[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 ~~established in this subsection.~~**[:]**

(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 ~~as accurate~~ 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) If a contestant has long hair, the hair shall be~~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) If cosmetics are used, a contestant shall use a minimum of cosmetics.

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 shall be as established~~(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, 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 for medical purposes. 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 upon finding that the health and safety of the contestants will not be compromised:

(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 established in this section.[]

(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) Once~~When~~ the commission's representative has checked the scores, he or she 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 shall~~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; or~~and~~
- 4. Draw, including:

a. Unanimous draw;

b. Majority draw; or~~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 or she 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 **an intentional**(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 **whether or not**:

(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 **equipped**~~provided~~ with a whistle and a stop watch. **Prior to the first bout, the inspector shall ensure that the whistle and stopwatch function properly**~~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 **shall be established in this subsection**~~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 **shall be as established in this subsection**~~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-Fight(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.

(a) 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.

(b) ~~A[No]~~ person other than the official announcer shall **not** 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 **established in this subsection.[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 **is:**

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 **instructions[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 **subsection[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

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with the thirty (30) day show notice required in Section 1 of this administrative regulation.

~~(5)(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 ~~instructions/orders~~ given by an inspector.

~~(6)(7-No)~~ More than two (2) fifteen (15) minute intermissions shall ~~not~~ 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.

(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.

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(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.

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, Phenylpropanolamine, 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. 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 Vesol;

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. of 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.

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~~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: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

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 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 removes advertising restrictions, allows promoters to pay officials in cash, and makes technical amendments.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to makes technical corrections that increase clarity and ease of use. This amendment is also necessary to easy the regulatory burdens on mixed martial arts licensees.

(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
(Amended After Comments)**

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, **EO 2016-270**

STATUTORY AUTHORITY: KRS 229.151(1), 229.171(1), 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the authority[commission] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. **Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission**[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 **instructions[orders]** given by the inspector.

(2) A contestant shall **submit[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 **established in this subsection.[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 **as accurate** 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) **If a contestant has long hair, the hair shall be [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) **If cosmetics are used,** 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 **shall be as established in this subsection. [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.

(a) The judges shall score the bout until the time the bout was halted and shall determine the winner.

(b) 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.

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(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.

Section 13. Other Provisions. (1) The inspector shall **be present for [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;

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- (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.
- (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: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

CONTACT PERSON: Barry Dunn, Executive Director, Office of Legal Services, Public Protection Cabinet, 500 Mero Street, 5th

VOLUME 43, NUMBER 5 – NOVEMBER 1, 2016

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 makes technical corrections that increase clarity and ease of use.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make technical corrections that provide for increased clarity and ease of use.

(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: This amendment makes technical corrections that increase clarity and ease of use therefore providing a better understanding of the regulation making is administration easier.

(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
(Amended After Comments)

201 KAR 27:020. Tickets.

RELATES TO: KRS 229.031, 229.041, 229.171, 229.180, EO 2016-270(4)

STATUTORY AUTHORITY: KRS 229.031, 229.041, 229.171, 229.180(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the authority[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) requires[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 authority[commission][authority]. KRS 229.041 authorizes[permits] the authority[commission][authority] to inspect a person's books to ensure compliance with the tax.

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Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission[KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229]. This administrative regulation establishes requirements~~[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) A schedule of ticket prices shall be posted conspicuously at the front of the ticket office where the show or exhibition is taking place.

(b) 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 approve an exception to subsection (1) of this section if the complimentary tickets will be 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, emergency responders, 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", October 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 656 Chamberlin Avenue, Suite B[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>.(1) 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: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

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 makes technical corrections that increase clarity and ease of use.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make technical corrections that provide for increased clarity and ease of use.

(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 makes technical corrections that increase clarity of 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 KBWC 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 KBWC 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
(Amended After Comments)**

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, **EO 2016-270**

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 ~~authority~~**[commission]** to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. **Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission.** This administrative regulation establishes the policies, procedures, and penalty guidelines associated with drug testing for participants in boxing, kickboxing, mixed martial arts, wrestling, and elimination event shows and exhibitions.

Section 1. **Definitions.** (1) **"In-competition" means the period commencing twelve (12) hours before the beginning of a bout, match, or exhibition of unarmed combat in which the licensee is scheduled to participate through the end of the bout, match, or exhibition and the sample collection process related to the bout match or exhibition.**

(2) **"Out-of-competition" means any period that is not in-competition.**

(3) **"Prohibited List" means the World Anti-Doping Agency Prohibited List dated January 2016.**

Section 2. Applicability. This administrative regulation shall apply to all contestants, judges, and referees in boxing, kickboxing, mixed martial arts, wrestling, and elimination events.

Section 3. Prohibitions. (1) **The Prohibited List shall be used in conjunction with this administrative regulation.**

(2) **Except as established in Section 4 of this administrative regulation, the substances and methods listed in the following classes of the Prohibited List shall be prohibited in-competition and out-of-competition:**

(a) S0. Non-approved substances;

(b) S1. Anabolic agents;

(c) S2. Peptide hormones, growth factors, related substances and mimetics;

(d) S3. Beta-2 agonists;

(e) S4. Hormone and metabolic modulators;

(f) S5. Diuretics and masking agents;

(g) M1. Manipulation of blood and blood components;

(h) M2. Chemical and physical manipulation; and

(i) M3. Gene Doping.

(3) **Except as established in Section 4 of this administrative regulation, the following substances listed in the Prohibited List shall be prohibited only while a licensee is in-competition:**

(a) S6. Stimulants;

(b) S7. Narcotics;

(c) S8. Cannabinoids;

(d) S9. Glucocorticoids; and

(e) P1. Alcohol~~[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 for which the licensee has a prescription[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. **(1)** A licensed boxer, kickboxer, professional mixed martial artist, amateur mixed martial artist, wrestling, or elimination event contestant, judge, or referee shall submit to a blood test, urinalysis, or chemical test at any time, in-competition[in] or out-of-competition[out-of-competition], if the commission or a representative of the commission directs him or her to do so.

Section 6. **Violations and Penalties[Disciplinary Action]**. (1) A licensee who violates any provision of this administrative regulation shall be subject to a penalty issued[disciplinary action] by the commission.

(2) A blood test shall not be required within seven (7) days of the bout, competition, or exhibition unless directed by the commission upon finding of probable cause that a violation of Section 3 of this administrative regulation has occurred.

(3)(a) In addition to any other penalty issued[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.

(b) 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.

(4) The commission shall investigate each alleged violation of this administrative regulation.

Section 7. Penalty Guidelines. **The guidelines for use in determining a penalty pursuant to 201 KAR 27:105, Section 3 shall be as follows[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 opiates cannabis:

(a) 1st offense: six (6) month suspension and a fine of fifty (50) dollars;

(b) 2nd offense: twelve (12) month suspension and a \$100 fine;

(c) 3rd offense: twenty-four (24) month suspension and a \$250 fine; or

(d) 4th offense: lifetime ban and a \$500 fine;

(2) For sedatives, muscle relaxants, sleep aids, or 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;

(3)[(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;

(4)[(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;

(5)[(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

(6)[(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", January 2016[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 656 Chamberlin Avenue, Suite B[944 Leawood Dr.], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at <http://www.usada.org/wp-content/uploads/wada-2016-prohibited-list-en.pdf> [<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: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

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: This amendment makes changes to clarify and standardize this proposed regulation based on comments received from the Legislative Research Commission.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make this regulation more clear and provide for a more standardized system of testing.

(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: This amendment makes technical corrections that increase clarity and ease of use therefore providing a better understanding of the regulation making is administration easier.

(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

Contact Person: Barry Dunn

1. What 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 (Amended After Comments)

201 KAR 27:040. Managers.

RELATES TO: KRS 229.021, 229.081[(3)], 229.091, 229.171, **EO 2016-270**[(4)], 229.190, 229.200, 229.991]

STATUTORY AUTHORITY: KRS 229.081[(3)], 229.091, 229.171, 229.180[(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the authority[commission] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. **Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission**[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 establishes[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 holds an active license[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 229.991(5)].

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

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 makes technical corrections that increase clarity and ease of use.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make technical corrections that provide for increased clarity and ease of use.

(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 makes technical corrections that increase clarity and ease of use therefore providing a better understanding of the regulation making its administration easier.

(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.

**PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amended After Comments)**

201 KAR 27:105. Violations, penalties, and appeals[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 authority[commission] to exercise sole jurisdiction over all boxing, kickboxing, mixed martial arts, and wrestling shows, exhibitions, and licensees in the commonwealth. Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission. This administrative regulation provides the policies and procedures that govern the finding of[disciplinary actions that result from] a violation of KRS Chapter 229 or 201 KAR Chapter 27, the issuance of a penalty, and the appeal of a penalty.

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, that is detrimental to the interests of boxing, kickboxing, mixed martial arts, or wrestling generally or to the public interest, convenience, or necessity in any jurisdiction;
 - (d) Being found liable in a civil action for any claim that involves fraud or dishonesty in any jurisdiction if the person is a licensed promoter, manager, referee, or judge;
 - (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 the person[it] authorizes or ratifies any of the actions in subsection (1) of this section if the action is taken by the person's[its] agent, employee, shareholder, member, officer, or director.

(3) A person who commits a violation shall be issued a notice of violation.

Section 2. Penalties[Disciplinary Action]. (1) If the commission has reason to believe that a person has committed a violation, the commission may impose one (1) or more of the following actions:

- (a) Issue a cease and desist order;
 - (b) [Issue a notice of violation];
 - (c) [Declare a contestant ineligible to compete or disqualify the contestant;
 - (c) [(d)] Eject the person from the premises at which the show or exhibition is taking place;
 - (d) [(e)] Issue a fine;
 - (e) [(f)] Suspend, reprimand, revoke, probate, or refuse to renew or issue a license; or[and]
 - (f) [(g)] Refer the person for criminal prosecution.
- (2) In issuing a penalty[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 of violations and penalties; and

(c) The violation's potential impact on health, safety, and the outcome of a contest; and

(d) If the penalty is for a violation of 201 KAR 27:021, the penalty guidelines established in 201 KAR 27:021, Section 8.[:]

(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 currently suspended~~[or revoked]~~ shall be prohibited from:

(a) Being present in a locker room that is used during a commission-sanctioned event; and

(b) Being located within the six (6) foot area surrounding the ring or cage at a commission-sanctioned event[attending an event sanctioned by the commission during the term of the suspension or revocation].

Section 3. Inspector's Authority to Issue a Violation and a Penalty. (1) Pursuant to KRS 229.155, the commission shall authorize its inspectors to:

(a) Issue a notice of violation in accordance with Section 1 of this administrative regulation; and

(b) Issue a penalty in accordance with Section 2 of this administrative regulation.

(2) A penalty issued by an inspector shall be subject to appeal pursuant to Section 5 of this administrative regulation.

Section 4. Reciprocity of a Penalty[Discipline]. (1) A licensee who is subjected to a penalty[discipline] in any jurisdiction shall report to the commission within ten (10) days the date, type, and reason for the penalty[discipline] given and the name of the regulatory body that ordered the penalty[discipline].

(2) The commission shall enforce the penalty given[disciplinary action taken] by any other regulatory body unless the licensee shows good cause why the commission should not reciprocally enforce the penalty[discipline].

Section 5[4]. Appeals. (1) Any person issued a penalty[subjected to disciplinary action] may appeal the penalty[discipline] to the full commission.

(2) An appeal shall be filed within twenty (20) days of the date the penalty is[discipline was] issued.

(3) The provisions of KRS Chapter 13B shall govern all administrative appeals.

Section 6[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 a penalty[disciplinary action] against the former licensee.

CHAD E. MILLER, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2016

FILED WITH LRC: October 14, 2016 at 8 a.m.

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 KWBC 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: This amendment makes changes to clarify and standardize this proposed regulation based on comments received from the Legislative Research Commission.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make this regulation more clear and provide for a more standardized system of issuing violations and penalties.

(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: This amendment makes technical corrections that increase clarity and ease of use therefore providing a better understanding of the regulation making is administration easier.

(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 unarmed 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.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amended After Comments)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640, 532.260

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

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," October 14[August 12][June 14], 2016, are incorporated by reference. Department of

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Corrections Policies and Procedures include:

- 1.2 News Media (Amended 6/10/14)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 2/26/16)
- 2.12 Abandoned Inmate Funds (Amended 2/26/16)
- 3.1 Code of Ethics (Amended 12/10/13)
- 3.5 Sexual Harassment and Anti-Harassment (Amended 12/10/13)
- 3.9 Student Intern Placement Program (Amended 8/12/16[Added 9/13/2010])
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
- 3.14 Employee Time and Attendance Requirements (Amended 6/14/16)
- 3.17 Uniformed Employee Dress Code (Amended 2/26/16)
- 3.22 Staff Sexual Offenses (Amended 12/10/13)
- 3.23 Internal Affairs Investigation (Added 8/25/09)
- 5.1 Research and Survey Projects (Amended 12/10/13)
- 5.3 Program Evaluation and Measurement (Amended 6/9/15)
- 6.1 Open Records Law (Amended 5/14/07)
- 6.2 Inmate Record (Added 8/12/16)
- 8.2 Fire Safety (Amended 3/14/14)
- 8.7 Notification of Extraordinary Occurrence (Amended 3/14/14)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 6/9/15)
- 9.6 Contraband (Amended 2/26/16)
- 9.8 Search Policy (Amended 5/13/14)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 10.2 Special Management Inmates (Amended 2/26/16)
- 10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
- 11.2 Dietary Procedures and Compliance (Amended 3/14/14)
- 11.4 Alternative Dietary Patterns (Amended 3/14/14)
- 13.1 Pharmacy Policy and Formulary (Amended 1/15/15)
- 13.2 Health Maintenance Services (Amended 2/26/16)
- 13.3 Medical Alert System (Amended 3/14/14)
- 13.5 Advance Healthcare Directives (Amended 6/14/16)
- 13.6 Sex Offender Treatment Program (Amended 8/12/16[5/15/08])
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
- 13.8 Substance Abuse Program (Amended 10/12/12)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 3/14/14)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 13.13 **Behavioral[Mental]** Health Services (Amended 10/14/16[8/12/16][6/9/15])
- 13.15 Inmate Observer Program (Added 8/12/16)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 8/20/13)
- 14.3 Marriage of Inmates (Amended 2/26/16)
- 14.4 Legal Services Program (Amended 3/14/14)
- 14.5 Board of Claims (Amended 10/14/05)
- 14.6 Inmate Grievance Procedure (Amended 6/14/16)
- 14.7 Sexual Abuse Prevention and Intervention Programs (Amended 6/14/16)
- 15.1 Hair, Grooming and ID Card Standards (Amended 8/12/16[4/15/15])
- 15.2 Rule Violations and Penalties (Amended 8/12/16[6/14/16])
- 15.3 Meritorious Good Time (Amended 8/12/16[12/13/05])
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 2/26/16)
- 15.6 Adjustment Procedures and Programs (Amended 8/12/16[3/14/14])
- 15.7 Inmate Accounts (Amended 10/14/16[1/15/15])
- 15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
- 16.1 Inmate Visits (Amended 10/12/12)
- 16.2 Inmate Correspondence (Amended 10/14/16[8/12/16][4/15/15])
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 8/12/16[1/15/15])
- 16.5 Video Visitation (Added 8/12/16)
- 17.1 Inmate Personal Property (Amended 6/14/16)
- 17.2 Assessment Center Operations (Amended 6/9/15)
- 17.3 Controlled Intake of Inmates (Amended 3/14/14)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 8/12/16[4/10/06])
- 18.1 Classification of the Inmate (Amended 1/15/15)
- 18.2 Central Office Classification Committee (Amended 8/20/13)
- 18.3 Confinement of Youthful Offenders (Added 6/9/15)
- 18.5 Custody and Security Guidelines (Amended 6/14/16)
- 18.7 Transfers (Amended 5/13/16)
- 18.9 Out-of-state Transfers (Amended 2/26/16)
- 18.11 Placement for Mental Health Treatment in CPTU or PCU (Amended 6/14/16)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 2/26/16)
- 18.15 Protective Custody (Amended 2/26/16)
- 18.16 Information to the Parole Board (Effective 3/14/14)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12)
- 19.2 Sentence Credit for Work (Amended 2/26/16)
- 19.3 Inmate Wage/Time Credit Program (Amended 1/15/15)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 21.1 Library Services (Added 3/14/14)
- 22.1 Privilege Trips (Amended 10/14/05)
- 22.2 Recreation and Inmate Activities (Added 3/14/14)
- 23.1 Religious Programs (Amended 8/12/16[8/20/13])
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Prerelease Program (Effective 11/15/06)
- 25.4 Institutional Inmate Furloughs (Amended 07/09/07)
- 25.6 Community Center Program (Amended 8/12/16[07/09/07])
- 25.10 Administrative Release of Inmates (Amended 8/12/16[11/9/10])
- 25.11 Victim Services Notification (Amended 8/25/09)
- 25.12 Home Incarceration Program (Added 8/12/16)
- 26.1 Citizen Involvement and Volunteer Service Program (Amended 10/12/12)

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

RODNEY BALLARD, Commissioner

APPROVED BY AGENCY: October 10, 2016

FILED WITH LRC: October 14, 2016 at 11 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky

Department of Corrections

including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements

of KRS 196.035, 197.020, 439.470, 439.590, 439.640, and 532.260 and to meet American Correctional Association (ACA) standards requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Department of Corrections and its institutions. It provides direction and information to Corrections employees and inmates concerning the operations of the department.

(2) If 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 maintains the Kentucky Department of Corrections compliance with ACA standards and updates practices for the department and its institutions.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and update practices for the department and its institutions.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state correctional institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,992 employees, 24,154 inmates, visitors, volunteers, and others who enter state correctional 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: Staff and inmates will have to follow the changes made in the policies and procedures. The institutional employees and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this regulation. Others who enter correctional institutions will have to comply with policies and procedures concerning entry, search, contraband and others when they enter an institution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the state correctional institutions.

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

(a) Initially: A new notice process for rejected inmate mail is being implemented by the changes to CPP 16.2. Postage costs are expected to increase by approximately \$1,000 given the amount of inmate mail currently being rejected for the first year. No increase in funding is anticipated to cover this cost.

(b) On a continuing basis: Postage costs for the rejected mail notices are expected to be approximately \$500 on an annual basis

after the first year. No increase in funding is anticipated. The decrease in amount is expected due to the fact that DOC will have notified a substantial number of senders and inmates concerning the items that are not allowed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds for the biennium.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation establishes fees for inmates, e.g. health services co-pays. In CPP 15.1, the increase in photo ID fee to \$7.50 for the combined inmate ID and inmate electronic lock proximity key card if an inmate changes his physical appearance is expected to increase revenue during the first year by approximately \$845.00. It is expected to be much smaller in subsequent years as the inmates who use this particular card become acclimated to it and it is in use currently at a single institution.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of the Kentucky Department of Corrections and each state correctional institution.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 439.470, 439.590, 439.640, and 532.260 and to meet American Correctional Association (ACA) standards requirements.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this regulation creates additional revenue for the Kentucky Department of Corrections, but not to any other government entity. In CPP 15.1, the increase in the photo ID fee to \$7.50 for the combined inmate ID and inmate electronic lock proximity key card if an inmate changes his physical appearance is expected to increase revenue on an annual basis by approximately \$845.00.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is expected to be much smaller in after the first year as the inmates who use this particular card become acclimated to it and because it is in use currently at a single institution.

(c) How much will it cost to administer this program for the first year? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendments are not expected to increase costs for the Kentucky Department of Corrections budgeted funds for the biennium. A new notice process for rejected inmate mail is being implemented by the changes to CPP 16.2. Postage costs are expected to increase by approximately \$1,000 given the amount of inmate mail currently being rejected for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendments to this regulation impact how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendment are not expected

to increase costs for the Kentucky Department of Corrections budgeted funds for the biennium. Postage costs for the rejected mail notices are expected to be approximately \$500 on an annual basis after the first year. The decrease in amount is expected due to the fact that DOC will have notified a substantial number of senders and inmates concerning the items that are not allowed.

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
(Amended After Comments)

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 **advertising** [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 **under the conditions established in this subsection.**

(a) [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.~~

~~(b) [(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 providing brewer or distributor to the exclusion of other brewers' or distributors' products.~~

~~(c) [(5)] A brewer or distributor shall not provide the refrigerated cooler to the retailer under terms or conditions intended or designed to:~~

~~1. Restrict the retailer's use of the refrigerated cooler to only the products of the providing brewer or distributor to the exclusion of other brewers' or distributors' products; or~~

~~2. [(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's [brewer] or distributor's products in certain locations in the cooler, or prohibit or direct the placement of other brewers' or distributors' products.~~

~~(d) [(7)] A brewer shall not expressly or implicitly require any distributor of its products to provide, deliver, service, or maintain [delivery of, services to, or maintenance of,] refrigerated coolers provided by the brewer or the distributor, or retaliate against a distributor who refuses to do so. [(however)] This provision shall not prohibit a distributor's voluntary agreement to do so.~~

~~(e) [(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.~~

~~(f) [(9)] Any refrigerated cooler provided by a brewer or distributor to a retailer shall not:~~

~~1. [(a)] Exceed fifteen (15) [twenty-five (25)] cubic feet of interior storage space;~~

~~2. Have tapping or dispensing capabilities or otherwise be capable of use by the retailer in selling draft malt beverages;~~

~~3. [(b)] Be constructed in any manner that limits the type of product that may be displayed in the cooler; and~~

~~4. [(c)] Leave the retailer's licensed premises.~~

~~(g) [(10)] Any refrigerated cooler provided by a brewer or distributor to a retailer shall have:~~

~~1. [(a)] Adjustable temperature controls;~~

~~2. [(b)] Adjustable shelving inside the cooler; and~~

~~3. [(c)] Capability of storing differing product types and brands without the need to physically modify the unit.~~

~~(h) A substantial change shall not be made to a refrigerated cooler that obscures or removes the advertising associated with a particular brand of the providing [(11) A retailer shall not modify or cover any advertising on the sides of a refrigerated cooler provided by a] brewer or distributor such that a reasonable customer cannot readily ascertain the identity of the provider.~~

~~(2) Subsection (1) of this section shall only apply to coolers provided on or after January 6, 2017; [(however a retailer may advertise sale prices and promotions on the front of the cooler)].~~

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 13, 2016

FILED WITH LRC: October 14, 2016 at 10 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 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.

(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 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.

(a) How much 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.

PROPOSED AMENDMENTS

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(Amendment)

9 KAR 1:060. Requirements relating to fundraising activities and charitable nonprofit organizations.

RELATES TO: KRS 11A.010, 11A.045, 11A.055

STATUTORY AUTHORITY: KRS 11A.055, 11A.110(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) authorizes the Executive Branch Ethics Commission to promulgate administrative regulations to implement KRS Chapter 11A. KRS 11A.055 authorizes state agencies or public servants to solicit and accept donations for charitable nonprofit organizations or for programs for crime prevention, drug and alcohol abuse prevention, or traffic safety. This administrative regulation establishes requirements relating to those fundraising activities and provides guidance related to the creation of charitable nonprofit organizations ensuring compliance with KRS 11A.045.

Section 1. Definitions. (1) "Affiliated" means a charitable nonprofit organization that:

- (a) 1. Engages in activities for the benefit of an agency; or
2. Furthers the statutory or regulatory mandates of the agency through the use of contributions solicited from the public; and
- (b) Is not established, created, or controlled by the agency.
- (2) "Agency" is defined by KRS 11A.010(10).
- (3) "Charitable nonprofit organization" means an entity or corporation:

- (a) Granted tax exempt status under 26 U.S.C. 501(c); and
- (b) That may accept charitable contributions as defined by 26 U.S.C. 170(c).

- (4) "Commission" is defined by KRS 11A.010(2).

(5) "Controlled" means that an agency or a public servant maintains control of a charitable nonprofit organization if at least one (1) of the following apply:

(a) The public servant of the agency serves as an officer for or is a voting member of the governing board of the charitable nonprofit organization;

(b) The agency or the public servant selects, elects, appoints, or removes officers or members of the governing board of the charitable nonprofit organization or a portion thereof;

(c) The agency provides on an ongoing basis staff, resources, or office space with no recompense from the charitable nonprofit organization to the agency unless the staff, resources, or office space are provided pursuant to an agreement made in accordance with the provisions of KRS Chapter 45A; or

(d) The public servant directs the use of the funds of the charitable nonprofit organization or has signatory authority of the charitable nonprofit organization's accounts.

(6) "Created" means an agency or a public servant has filed articles of incorporation with the office of the Secretary of State to form the nonprofit charitable organization.

(7) "Established" means an agency or a public servant:

(a) Files documentation with the Internal Revenue Service to create the charitable nonprofit organization pursuant 26 U.S.C. 501(c); or

(b) Drafts bylaws or other governing documents under which a charitable nonprofit organization operates.

(8) "Operating expenses" means the basic costs of an agency to function according to its statutory or regulatory mandates:

(a) Such as costs associated with rental of facilities, utilities, computing services, janitorial, security guard, postage, office supplies, dues, subscriptions, and copier and printing services; and

(b) With the exception of costs associated with programs and services provided to the public or extraordinary costs associated with these programs or services.

(9) "Personnel costs" means the baseline salary costs of an agency as determined through the budgetary process for personnel:

(a) Such as travel expenses, per diem payments, FICA,

retirement, health insurance premiums, life insurance premiums, and worker's compensation payments; and

(b) With the exception of personnel costs associated with programs and services provided to the public or extraordinary costs associated with these programs or services.

(10) "Public servant" is defined by KRS 11A.010(9).

(11) "Recompense" means payment by a charitable nonprofit organization to an agency either through monetary compensation or like-kind exchange for the value of rental or use of state-owned facilities, agency personnel, goods, resources, or services.

Section 2. For the purposes of this administrative regulation, a public servant shall be limited to an individual who is acting on behalf of a state agency in the course and scope of his or her state employment.

Section 3. Category I. (1) A charitable nonprofit organization established, created, and controlled by an agency shall constitute a part of that agency.

(2) A charitable nonprofit organization under subsection (1) of this section shall be subject to the Executive Branch Code of Ethics, pursuant to KRS Chapter 11A.

(3) To ensure compliance with KRS 11A.045, a charitable nonprofit organization under subsection (1) of this section shall not accept confidential contributions.

(4) Public servants of an agency shall not solicit contributions to the charitable nonprofit organization under subsection (1) of this section if the agency is prohibited from accepting these contributions under KRS 11A.045.

Section 4. Category II. (1) A Category II charitable nonprofit organization shall be an entity that:

(a) Is created or established, but not controlled, by an agency; and

(b) Does not have as one (1) of its purposes or functions to serve the agency, the agency's statutory or regulatory mandates, or the agency's programs.

(2) A Category II charitable nonprofit organization may support similar goals of the agency and shall not be subject to the provisions of Section 3 of this administrative regulation if it does not provide funding directly or indirectly to the agency.

Section 5. Category III. (1) A Category III charitable nonprofit organization shall be an entity that is not created, established, or controlled by an agency, but may be affiliated with an agency.

(2) A Category III charitable nonprofit organization shall not be subject to the provisions of Section 3 of this administrative regulation.

Section 6. (1) Pursuant to KRS 11A.055, all funds raised by an agency or a public servant on behalf of a Category II or III charitable nonprofit organization shall be delivered to the charitable nonprofit organization or other statutorily authorized program. An[~~Any~~] agency [~~or other entity~~] involved in the fundraising effort shall not retain any funds.

(2) An[~~Section 2. A state~~] agency or public servant shall not enter into a contract with an entity to raise funds for a Category II or III charitable nonprofit organization or program pursuant to KRS 11A.055 if the contract provides that the[~~l~~]:

(1) The fundraising agency shall:

(a) Be paid out of the funds raised; [~~or~~]

(b) Receive a commission based on funds raised; or

(c) Receive[(2)] any portion of the funds to[~~shall not~~] be delivered to the charitable organization or program.

(3) Except as provided in Section 7 of this administrative regulation, an agency may assign or permit a public servant to work on behalf of a Category II or III charitable nonprofit organization if:

(a) The public servant does not devote more than 100 hours per calendar year working on behalf of a Category II or III charitable nonprofit organization; and

(b) The agency determines in writing that these working hours are necessary to fulfill the statutory, regulatory, or programmatic mandates of the agency.

Section 7. An agency may devote state time and resources to any category charitable nonprofit organization without recompense from the charitable nonprofit organization if:

(1) These activities are conducted for a cooperatively sponsored event; and

(2) The event is conducted to further the statutory, regulatory, or programmatic mandates of the agency.

WILLIAM DAVID DENTON, Chair

APPROVED BY AGENCY: September 19, 2016

FILED WITH LRC: October 12, 2016 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2016, at 10:00 a.m., at Executive Branch Ethics Commission, #3 Fountain Place, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of 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 through November 30, 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: Kathryn H. Gabhart, Executive Director, Executive Branch Ethics Commission, #3 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 564-2686, email Katie.gabhart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance to Executive Branch agencies and public servants concerning fundraising activities related to charitable nonprofit organizations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to interpret the application of KRS 11A.055 to the conduct of Executive Branch agencies that fundraise for charitable purposes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance as dictated by KRS 11A.055 and provides guidance pursuant to KRS 11A.110(3) for the implementation of KRS Chapter 11A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently provides guidance for the implementation of KRS 11A.055 in relation to fundraising activities of Executive Branch agencies.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the administrative regulation to provide guidance to those Executive Branch agencies that have established, created, and control charitable nonprofit organizations to ensure that these agencies are not violating KRS 11A.045.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is required because Executive Branch agencies have been increasingly establishing, creating, and controlling charitable nonprofit organizations under the allowances provided in KRS 11A.055, but without taking into account the necessity of following KRS 11A.045.

(c) How the amendment conforms to the content of the

authorizing statutes: This amendment to the administrative regulation conforms to the provisions established by KRS 11A.055 that allow public servants and agencies to fundraise for charitable purposes and provides guidance for agencies that create such nonprofit charitable organizations with the purpose of supporting the agencies own mandates, but ensuring such agencies do not violate the gift prohibitions provided in KRS 11A.045.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the administration of KRS 11A.055 and ensuring agencies do not violate KRS 11A.045.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Executive Branch Agencies, public servants, and charitable nonprofit organizations.

(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: All Executive Branch Agencies and public servants will have to ensure that they follow the guidance when conducting fundraising activities for charitable purposes or when establishing, creating, and controlling charitable nonprofit organizations.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to follow the guidance when conducting fundraising activities for charitable purposes or when establishing, creating, and controlling charitable nonprofit organizations.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Executive Branch Agencies and public servants will have guidance and clarity to the provisions of KRS 11A.055 and KRS 11A.045 when conducting fundraising activities for charitable purposes or when establishing, creating, and controlling charitable nonprofit organizations.

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

(a) Initially: Minimal costs to the Executive Branch Ethics Commission associated with the publication of training materials and conducting education already provided in the Commission's budget.

(b) On a continuing basis: Minimal costs to the Executive Branch Ethics Commission associated with the ongoing publication of training materials and conducting education already provided in the Commission's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission's existing budget.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 11A.110(3), 11A.045, and 11A.055.

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

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

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

(c) How much will it cost to administer this program for the first year? \$500 for publications and training; funds already included in the Executive Branch Ethics Commission's budget.

(d) How much will it cost to administer this program for subsequent years? \$500 for publication and training; funds already included in the Executive Branch Ethics Commission's budget.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

GOVERNOR'S OFFICE (Amendment)

10 KAR 6:010. Duties of the Early Childhood Advisory Council[Development Authority].

RELATES TO: KRS Chapter 13B, 199.8996, 200.151, 200.700, 200.703, 200.705, 200.707, 200.709, 200.711

STATUTORY AUTHORITY: KRS 200.703(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.703(5) requires the Early Childhood Advisory Council[Development Authority] to promulgate administrative regulations to coordinate and improve early childhood development services, outcomes and policies; establish procedures that relate to its governance; designate services areas of the Commonwealth where the community early childhood councils may be established to identify and address the early childhood development needs of young children and their families for the communities that they serve; establish procedures for the monitoring of grants, services, and activities of the community early childhood councils and their governance; establish procedures for accountability and measurement of success of programs that receive funds from the authority; and establish standards for the payment of funds to a designated service provider and grantee of a community early childhood council. This administrative regulation establishes procedures for the governance of the Early Childhood Advisory Council[Development Authority] and procedures for disbursement of funds, in accordance with KRS 200.700(1), from the Early Childhood Development Fund to programs that support and promote early childhood development.

Section 1. Definition. "Council"["Authority"] means the Early Childhood Advisory Council[Development Authority].

Section 2. Duties of the Council[Authority]. The council[authority] shall:

(1) Fulfill the requirements of KRS 200.700 and 200.703;

(2) Disburse funds, to the extent that funds are available, from the Early Childhood Development Fund established by KRS 200.151, to programs that support and promote early childhood development;

(3) Consult with and request information from the following agencies for the purpose of monitoring services that improve, enhance, or promote early childhood development:

(a) Cabinet for Health and Family Services;
(b) Education and Workforce Development Cabinet;
(c) Kentucky Department of Education;Cabinet for Families and Children;

(b) Cabinet for Health Services;
(c) Education, Arts, and Humanities Cabinet;
(d) Finance and Administration Cabinet;
(e) Kentucky Higher Education Assistance Authority; and
(f)[(e)] Any other agency that contracts with the council[authority] to provide services; and

(4) Collect annual reports from the Cabinet for Health and Family Services pursuant to KRS 199.8996(2), (3), and (4)[the following reports:

(a) An annual report from the Cabinet for Families and Children pursuant to KRS 199.8996(2) and (3);

(b) Ad hoc reports from the Early Childhood Business Council pursuant to KRS 200.709(4); and

(c) Ad hoc reports from the Early Childhood Professional Development Council pursuant to KRS 200.711(3)].

Section 3. Governance. (1) Each meeting of the council[authority] shall:

(a) Be announced and open to the general public;
(b) Be conducted according to Robert's Rules of Order; and
(c) Meet pursuant to KRS 200.700(9).

(2) A quorum of thirteen (13) voting members or their designees, when applicable, at a meeting of the council shall be required for the council to take action[(a) Of seven (7) members at a meeting of the authority shall be required for the authority to take action; and

(b) Shall exclude a representative who attends an authority meeting on behalf of a member].

Section 4. Service Areas and Community Early Childhood Councils. (1) A service area required by KRS 200.703(5)(c) shall be no smaller than a county.

(2) More than one (1) county may form a partnership for the purpose of creating a community early childhood council.

(3) A community early childhood council shall be formed in accordance with KRS 200.707(1) to (3).

Section 5. Eligibility Requirements for Receipt of Funding by a Community Early Childhood Council. (1) A community early childhood council that applies for funds disbursed by the council[authority] shall submit a proposal that complies with KRS 200.707(5) and includes the following:

(a) Service area assessment that describes the area's:
1. Existing resources; and
2. Early care and education program availability, quality, and participation[Child care service needs];

(b) Project overview that describes how a council intends to address the needs of the area served by the council;

(c) Work plan that identifies:
1. Each activity that contributes to successful implementation of the project overview;

2. Individual or group responsible for each activity; and
3. Timeframe for completion of each activity;

(d) Budget and budget justification that demonstrates how the requested funds shall be used to support the proposal; and
(e) Anticipated outcomes that may include:

1. Encouraging partnerships[Maintaining or increasing the number] of licensed child care centers,[or] certified family child care homes, or public preschool[home] providers that provide high quality[safe, stable, and nurturing] learning environments for children who reside in a service area covered by the community early childhood council;

2.[Maintaining or] Increasing the number of child care providers that participate in Kentucky's quality rating and improvement system through program and parent education[promote healthy child development];

3. Providing information, education, and support to families through partnerships with schools and community organizations[child care providers]; and

4. Increasing the number of children, particularly those at risk, participating in high quality early child care and education programs~~[Maintaining or increasing affordable child care options]~~.

(2) A review team established by the council~~[authority]~~ shall:

(a) Prioritize each grant proposal; and

(b) Recommend to the council~~[authority]~~:

1. Which grant proposals shall be funded; and

2. The amount of each award.

(3) The council~~[authority]~~ shall:

(a) Make the final funding determination; or

(b) Refer a grant proposal for further review during subsequent meetings.

(4) A community early childhood council that receives funds from the Early Childhood Advisory Council~~[Development Authority]~~ shall:

(a) Comply with the reporting requirements specified in KRS 200.707(6);

(b) Submit a roster of council members that includes:

1. The geographic area represented by each member; and

2. Place of employment of each member; and

~~[3. Each member's term limit on the council; and]~~

(c) Submit minutes of each council meeting to the council~~[authority]~~.

Section 6. Accountability. (1) The council~~[authority]~~ shall use the eMARS~~[Management Accounting Reporting System]~~ for the purpose of measuring accountability and the success of a program that receives early childhood development funds.

(2) The council~~[authority]~~ may take adverse action, as described in KRS 200.703(6), if a recipient of early childhood development funds fails to meet the council's~~[authority's]~~ requirements for grant participation.

(3) Appeal of an adverse action may be made to the council~~[authority]~~ in accordance with the procedures established in KRS Chapter 13B.

LINDA HAMPTON, Acting Director

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, at 2:00 p.m., at the Kentucky Governor's Office of Early Childhood, 125 Homes Street, Frankfort, Kentucky 40601, Conference Room. Individuals interested in being heard at this hearing shall notify this agency in writing 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing has been 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 November 30, 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: Linda Hampton, Acting Director of the Kentucky Governor's Office of Early Childhood, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502)782-0204, fax (502)564-2410, email Linda.Hampton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Linda Hampton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the duties of the Early Childhood Advisory Council.

(b) The necessity of this administrative regulation: This regulation is necessary to clarify the governance, expectations for community early childhood councils, and update the regulation to reflect current practices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation reflects the directives of the authorizing statute, KRS 200.703, and expounds on the statute in the manner necessary to effectively implement its direction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation contains guidance and direction for the activities of the Early Childhood Advisory Council.

(2) If 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 name of the Early Childhood Advisory Council and also conforms the regulation to reflect with current practice.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary ensure compliance with the authorizing statute, information such as the name of the entity, and practices and expectations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates the regulation to conform to the authorizing statute's requirements and also updates the name of the entity.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies and clearly establishes expectations for community early childhood advisory councils.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Partnering agencies concerning early childhood initiatives include the Cabinet for Health and Family Services, the Kentucky Department of Education, the Education and Workforce Development Cabinet. And the Kentucky Higher Education Authority.

(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 partnering entities will not be required to take any additional actions.

(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 new costs added to other entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The partnering agencies do not have to take any additional steps. However, each agency will benefit from this amendment because it contains clearer provisions.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in this regulation are already undertaken by public agencies. There will be no additional costs.

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

(9) TIERING: Is tiering applied? Tiering is not applied because it is not applicable to the requirements of this regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate:

Quality Rating and Improvement Systems (QRIS) and Data

Systems

§1302.53(b)(2): A program, with the exception of American Indian and Alaska Native programs, must participate in its state or local Quality Rating and Improvement System (QRIS) if:

- Its state or local QRIS accepts Head Start monitoring data to document quality indicators included in the state's tiered system;
- Participation would not impact a program's ability to comply with the Head Start Program Performance Standards; and,
- The program has not provided the Office of Head Start with a compelling reason not to comply with this requirement.

2. State compliance standards: N/A

3. Minimum or uniform standards contained in the federal mandate.

Quality Rating and Improvement Systems (QRIS) and Data Systems

§1302.53(b)(2): A program, with the exception of American Indian and Alaska Native programs, must participate in its state or local Quality Rating and Improvement System (QRIS) if:

- Its state or local QRIS accepts Head Start monitoring data to document quality indicators included in the state's tiered system;
- Participation would not impact a program's ability to comply with the Head Start Program Performance Standards; and,
- The program has not provided the Office of Head Start with a compelling reason not to comply with this requirement.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Governor's Office of Early Childhood, Early Childhood Advisory Council, Education and Workforce Development Cabinet, Cabinet for Health and Family Services, Department of Education, Finance and Administration Cabinet, and Kentucky Higher Education Assistance Authority.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 200.703

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues. Continued good records management results in cost savings for government, and in more efficient agency operations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues generated for the first year because of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues generated for subsequent years because of this regulation.

(c) How much will it cost to administer this program for the first year? There will be no additional costs generated for the first year because of this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs generated for subsequent years because of this regulation.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation:

COUNCIL ON POSTSECONDARY EDUCATION
(Amendment)

13 KAR 2:060. Degree program approval; equal opportunity goals.

RELATES TO: KRS 164.001, 164.020.

STATUTORY AUTHORITY: KRS 164.020(19)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(19) requires the Council on Postsecondary Education to promulgate administrative regulations establishing equal opportunity goals that institutions are required to meet in order to obtain approval of new academic programs. It[postpone the approval of new academic programs for those institutions who fail to meet equal opportunity goals established by the council, and] further requires the council to promulgate administrative regulations establishing requirements for securing[that institutions be able to secure] a temporary waiver, if an institution has made substantial progress toward meeting the goals. This administrative regulation establishes the process for goal setting, measurement of progress, and how to secure a temporary waiver.

Section 1. Definitions. (1)[~~"Continuous progress" means that an institution shows an increase in the number of students or employees over the previous year for a category.~~

(2)] "Council" is defined by KRS 164.001(8).

(2)[(3)] "Diversity Policy" means the Kentucky Public Postsecondary Education Policy for Diversity, Equity, and Inclusion[Diversity Policy and Framework for Institution Diversity].

(3)[(4)] "Institution" means a state-supported postsecondary education institution listed in KRS 164.001(17).

(4)[(5)] "Institution diversity plan" means a plan developed by an institution, in conjunction with the Council on Postsecondary Education, which addresses the goals and strategies outlined in the Diversity Policy and outlines an appropriate plan for assessment[to achieve diversity in student enrollment, to eliminate gaps in retention and graduation rates, and to achieve workforce diversity].

(5) "Rubric" means the Diversity, Equity, and Inclusion Plan Report Evaluation Rubric for a Kentucky Community and Technical College or four (4) year institution, as applicable.

Section 2. Creation of Institution Diversity Plan. (1) The Kentucky Public Postsecondary Education Policy for Diversity, Equity, and Inclusion[Diversity Policy and Framework for Institution Diversity Plan Development] shall provide the[a] framework and guidelines for[to assist an institution in] developing an institution diversity plan to be submitted to the council for approval.

(2) As described in the policy, institution diversity plans shall include annual[Except as provided in subsection (3) of this section, an institution shall develop an institution diversity plan that is consistent with the definition of diversity contained in the diversity policy and as represented by the institution's area of geographic responsibility and includes] goals for the following[these] areas of interest:

(a) Student enrollment:

1. Undergraduate students; and
2. Graduate students at the four (4) year institution;

(b) Student success[including]:

1. First year to second year retention of undergraduate students;
- 2.[Second year to third year retention of undergraduate students;
- 3.] Associate and baccalaureate degrees and credentials conferred; and
- 3.[4.] Graduation rates for undergraduate students; and

(c) The increase and advancement of diverse faculty and staff[Retention for undergraduate students including:

1. First year to second year retention rate;
2. Second year to third year retention rate; and
3. Graduation rate;

(d) A workforce diversity component that:

1. Shall include these employment categories:

a. Executive administrative/managerial;
b. Faculty; and
c. Other professional; and
2. May include these employment categories:
a. Secretarial/clerical;
b. Technical/paraprofessional;
c. Skilled crafts; and
d. Service/maintenance; and
(e) A campus climate component including:
1. Creation of a campus environment team;
2. A comprehensive assessment on strategies and best practices implemented; and
3. A review of the effectiveness of employment, retention, and promotion policies].
(3) Institution diversity plans shall also be designed to address the following goals:
(a) Promoting equity and inclusion on campus in order to create a positive campus climate that embraces diversity; and
(b) Working toward producing culturally competent students, faculty, and staff[A community college shall not be required to include in its institution diversity plan the areas of interest established in subsections (2)(a)2., (2)(b)2., (2)(b)4., and (2)(c)2. of this section].
(4) As described in the policy, institution diversity plans shall identify strategies and initiatives designed to meet the goals set and provide an appropriate plan for assessment[An institution, in developing an institution diversity plan, shall consider the institution's service region or statewide demographic data.
(5) An institution, in developing goals for areas of interest in subsection (2) of this section, shall reference the racial and ethnic groups listed in the U. S. Census, on its Web site at <http://www.census.gov/population/www/socdemo/race/Ombdir15.html>, and the U. S. Department of Education's Integrated Postsecondary Education Database System (IPEDS), on its Web site at <http://nces.ed.gov/ipeds/reic/resource.asp>].

Section 3. Measurement of an Institution's Performance in Demonstrating Continuous Progress, and Automatic Eligibility for New Academic Programs. (1) As described in the policy,[(a) A four (4) year institution shall demonstrate continuous progress or meet the goals established for the eight (8) areas of interest described in Section 2(2)(a)1. and 2., (b)1., 2., and 3., and (d)1. of this administrative regulation.

(b) The Kentucky Community and Technical College System (KCTCS) shall demonstrate continuous progress or meet the goals established for the seven (7) areas of interest described in Section 2(2)(a)1., (b)1., 2., and 3., and (d)1. of this administrative regulation.

(2) an institution shall submit a written report annually to the council or its designee describing the institution's progress in meeting the goals set forth in the institution diversity plan, providing evidence that identified strategies are being implemented, analyzing the effectiveness of the implemented strategies, and identifying lessons learned from that analysis and any related next steps. Reports shall be evaluated in accordance with the applicable rubric.

(2)[and describing whether the institution has demonstrated continuous progress in the areas of interest described in Section 2(2) of this administrative regulation.

(3) To be automatically eligible for new academic programs:

(a) A four (4) year institution shall score twenty-four (24) out of a maximum of thirty-six (36) as outlined in its rubric[meet the goal or demonstrate continuous progress in six (6) of the eight (8) areas of interest or meet the goal listed in Section 2 of this administrative regulation; or]

(b) A community college shall score twenty-two (22) out of a maximum of thirty-six (36) as outlined in its rubric[meet the goal or demonstrate continuous progress in five (5) of the seven (7) areas of interest listed in Section 2 of this administrative regulation and selected by the Kentucky Community and Technical College System.

(4) An institution shall demonstrate continuous progress in campus climate by completing a report as required by Section

2(2)(e)2. and 3. of this administrative regulation].

Section 4. Waivers. (1) As described in the policy, if an institution is not automatically eligible under Section 3 of this administrative regulation, the institution shall submit to the council for approval a performance improvement plan that identifies specific strategies and resources dedicated to addressing its performance deficiencies[may request a one (1) year waiver].

(2) ~~An~~[A waiver request by an institution shall include a resolution submitted to the Council on Postsecondary Education approved by the institution's governing board describing the institution's efforts to achieve the institution's diversity goals.

(3) A four (4) year] institution may request[shall be eligible to receive] a waiver to offer a new academic program if the council has approved the institution's performance improvement plan.

(3) The council shall approve a waiver request if the institution can provide the council with sufficient assurance that offering the new program will not divert resources from its improvement efforts[if:

(a) The institution demonstrates continuous progress or meets the goals in five (5) of the eight (8) areas of interest listed in Section 2(2) of this administrative regulation; or

(b) The institution demonstrates continuous progress or meets the goals in less than five (5) of the areas of interest and shows in a written report that:

1.a. Outstanding efforts to achieve diversity were attempted which have not yet proven to be successful; or

b. Extraordinary circumstances precluded success; and

2. Explains how the institution's revised plans for recruitment and retention of a diverse student body, and workforce diversity show promise of future success.

(4) A community college shall be eligible for a waiver if:

(a) The community college demonstrates continuous progress or meets the goals in four (4) of the seven (7) areas of interest listed in Section 2(2) of this administrative regulation; or

(b) The community college has achieved continuous progress or meets the goals in less than four (4) of the areas of interest, and the community college shows in a written report that:

1.a. Outstanding efforts to achieve diversity were attempted which have not yet proven to be successful; or

b. Extraordinary circumstances precluded success; and

2. Explains how the institution's revised plans for recruitment and retention of a diverse student body, and workforce diversity show promise of future success.

(5) An institution's written request for a waiver shall be reviewed by the Council on Postsecondary Education's Committee on Equal Opportunity which shall make a recommendation to the council on whether to grant a waiver.

(6) An institution shall not be eligible for a waiver in consecutive years.

Section 5. Action Following Receipt of Institution Report. The council, or its designee shall upon receipt of an institution's annual report described in Section 3(2) of this administrative regulation:

(1) Review the report in public session; and

(2)(a) Accept the report as submitted;

(b) Recommend, as appropriate, that an institution modify its diversity plan goals; or

(c) Recommend, as appropriate, that an institution modify strategies and activities to better ensure success in meeting goals].

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

(a) The "Kentucky Public Postsecondary Education Policy for Diversity, Equity, and Inclusion", September 23, 2016;

(b) The "Kentucky Council on Postsecondary Education Diversity Plan Rubric – KCTCS", September 23, 2016; and

(c) The "Kentucky Council on Postsecondary Education Diversity Plan Rubric – Universities", September 23, 2016[The Kentucky Public Postsecondary Education Diversity Policy and Framework for Institution Diversity Plan Development, September 12, 2010, is incorporated by reference].

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

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subject to applicable copyright law, at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GLENN DENTON, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: October 12, 2016

FILED WITH LRC: October 12, 2016 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2016 at 10:00 a.m. EST at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. 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 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 November 30, 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: Travis Powell, General Counsel and Associate Vice President, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 142, fax 502.573.1535, email travis.powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Travis Powell

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets out the requirements for institutions in regard to equal opportunity goals, and establishes the basis for compliance with KRS 164.020(19).

(b) The necessity of this administrative regulation: KRS 164.020(19) requires that the Council on Postsecondary Education postpone the approval of new academic programs for institutions that fail to meet equal opportunity goals. The statute requires implementation to be through an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms explicitly to the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides public postsecondary institutions with the process by which the Council on Postsecondary Education will implement KRS 164.020(19) and how they can continue to be eligible to receive approval to offer new academic programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the process by which institutions will be evaluated on progress toward meeting equal educational opportunity goals for purposes of remaining eligible to offer new academic degree programs. Numerical goals in the areas of enrollment, employment, and student success will remain, but institutions will also be measured on their implementation and analysis of strategies they identify in order to meet those goals.

(b) The necessity of the amendment to this administrative regulation: Since the implementation of the current regulation and Statewide Diversity Policy, the statewide rates of student success for both underrepresented populations and low income students have stayed relatively flat and in some instances have slightly decreased. This new approach seeks to not only set more ambitious targets in these areas, but also highlights the qualitative elements of diversity, equity, and inclusion, such as maintaining a positive and inclusive campus climate and students, faculty, and

staff becoming more culturally competent. These are equally important and progress in these areas can help to maximize the educational benefits of diversity and increase student success.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the requirements of KRS 164.020(19) by continuing to provide the mechanism by which equal educational opportunity goals are set and progress toward meeting those goals is evaluated.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides a more comprehensive and robust mechanism by which equal educational opportunity goals are set and progress toward meeting those goals is evaluated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Eight state-supported postsecondary education institutions and the institutions that are part of the Kentucky Community and Technical College System (KCTCS) are affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Institutions will be required to develop a plan to address the goals and strategies outlined in the Policy and the regulation. The Plan must be adopted by the institutional boards and the Council before the end of August 2017. A preliminary diversity plan report will be due January 15, 2018 and on the 15th of January of each subsequent year, full reports will be due.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A specific cost is unknown, but the planning and implementation of these initiatives will require the expending of resources, mostly in the form of dedicated faculty and staff. However, it would likely not require additional faculty or staff as individuals currently serving in these roles will either continue working toward accomplishing existing or similar initiatives that would fit into an institutional plan or a portion of individuals' time might be dedicated toward these efforts where it might not have been previously. Also, note that the Policy clarifies that economic feasibility will be considering when approving institutional plans.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance is designed to result in greater campus diversity, increased rates of success for all students and particularly underrepresented minority and low income students, a more positive campus climate through the promotion of equity and inclusion, and more culturally competent graduates, faculty, and staff. Furthermore, these initiatives will undoubtedly provide a financial return as well considering that increasing diverse student enrollments and retaining more students will result in increased tuition revenue for institutions.

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

(a) Initially: Implementation cost will vary amongst institutions. See 4(b) above.

(b) On a continuing basis: Implementation cost will vary amongst institutions. See 4(b) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any available sources of funding, including but not limited to, federal, state, and revenue from tuition.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A. This regulation does not assess fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A. This regulation does not assess fees.

(9) TIERING: Is tiering applied? Yes. The community college rubric does not include a metric for graduate students because

those colleges do not offer graduate programs. However, rubrics are identical in all other aspects.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? CPE and all public colleges and universities in Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.020(19)

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? While difficult to estimate with any certainty, the initiatives implemented through the Policy should result in a significant financial return as increasing diverse student enrollments and retaining more students will result in increased tuition revenue for institutions.

(c) How much will it cost to administer this program for the first year? Three to four full time staff with varying degrees of additional duties and responsibilities will be assigned to manage various aspects of this program with others providing leadership throughout.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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: N/A

FINANCE AND ADMINISTRATION CABINET Office of the Secretary (Amendment)

200 KAR 2:006. Employees' reimbursement for travel.

RELATES TO: KRS 44.060, 45.101

STATUTORY AUTHORITY: KRS 44.060, 45.101

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. KRS 44.060 requires the secretary to promulgate administrative regulations fixing the amount allowed for the expense of traveling in a motor vehicle in the discharge of official state duties. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.

(2) "Agency head" means the elected or appointed head of a budget unit.

(3) "Approval" means approval granted in either written or electronic format.

(4) "Budget unit" is defined by KRS 48.010(9).

(5) "Cabinet" means the Finance and Administration Cabinet.

[(5) "Division" means the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet.]

(6) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area listed on the Office of the Controller's Web site at <http://finance.ky.gov/services/statewideacct/Pages/travel.aspx> ~~and included in the cabinet's policies and procedures manual incorporated by reference in 200 KAR 5:024].~~

(7) "Incidental expense" means unexpected minor expenses arising from travel situations, or minor expenses authorized by an agency head to be reimbursed to an employee as a matter of efficiency or convenience.

(8) "Lodging receipt" means any preprinted invoice, from a hotel or motel or type of lodging, showing the date of service, the amount charged for the service, the location where the service was performed, and a description of the expenditure.

(9) "Office" means the Office of the Controller, Finance and Administration Cabinet.

(10) "Others in the official service of the commonwealth" means individuals who:

(a) Are not state employees as defined in KRS Chapter 18A;

(b)1. Are traveling on official business for the commonwealth;

or

2. Officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request; and

(c) Are not contractors who are entitled to reimbursement for travel and related expenses only as provided in their contracts with the commonwealth.

(11)[(40)] "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(12)[(44)] "Residence" means address of the employee designated in the official records of the Personnel Cabinet.

(13)[(42)] "Secretary" means the Secretary of the Finance and Administration Cabinet.

(14)[(43)] "Subsistence" means amounts expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, such as tax and tips, while traveling on official state business, except for any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.

(15)[(44)] "Subsistence or incidental receipt" means an itemized receipt for meals or incidental expenses showing the date of service, amount charged, and the name of the establishment.

(16)[(45)] "Travel software" means the software used by the commonwealth to process travel authorizations and travel reimbursement documents.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.

(2) Enforcement.

(a) Each agency head shall be responsible for ensuring that travel reimbursement conforms to the provisions of this administrative regulation and that all travel expense from that agency is as economical as is feasible.

(b) A person who travels on official state business shall:

1. Identify if reimbursement is being requested based on Section 7 or 8 of this administrative regulation;

2. Prior to trip, submit, if applicable, a:

a. Request for Authorization of Out-of-State Travel document;

or
b. Request for Authorization of Out-of-Country Travel document[create a Travel Authorization (TE, TEI, TEO, or TEC), if required];

3. After travel, submit a Travel Voucher[create a Travel Payment Voucher (TP or TPI)] document for reimbursement of official state business related expenses;

4. Maintain records and receipts to support the claim; and
5. Take sufficient personal funds to defray the travel expense.

(c) The secretary or designee may:

1. Disallow or reduce the amount of a claim that violates the provisions of this administrative regulation; or
2. Require written justification for amounts claimed by an agency for its employee.

(d) The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or designee, submits a written determination that establishes the reimbursement is:

1. Required to avoid an undue economic hardship on the employee; or
2. Economically advantageous for the commonwealth.

(3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the commonwealth. Only necessary expenses of official travel authorized by an agency head or designee shall be reimbursed.

(4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determinations shall be the final and conclusive interpretation adopted by the agency.

Section 3. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the commonwealth.

(3) If an employee is permanently reassigned or is stationed at a new location two (2) months, the new location shall become that employee's official work station.

Section 4. Authorizations. (1) For travel within[in] Kentucky,~~or outside Kentucky, but within the United States or its possessions, or Canada,~~ the person requesting reimbursement shall obtain authorization from the agency head or a designated representative~~[as authorized by Secretary's Order S97-451]~~.

(2) Travel to a bordering state that does not require airfare or an overnight stay shall be authorized in the same manner as travel in Kentucky.

~~(3) [Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (4), (5), and (6) of this section.]~~

~~(4) If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE or TEL) document.~~

~~(5) For travel outside of Kentucky, but within the United States, possessions of the United States, or Canada, the person requesting reimbursement shall obtain authorization from:~~

~~(a) The agency head or a designated representative; and~~

~~(b) The secretary or a designated representative [authorization shall be requested on Travel Authorization (TEO) document].~~

~~(4) [(6)] For travel outside the United States, possessions of the United States, [its possessions] or Canada, the person requesting reimbursement shall have obtained authorization from:~~

~~(a) The agency head or a designated representative;~~

~~(b) The secretary or a designated representative; and~~

~~(c) The governor or a designated representative.~~

~~(5) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (6), (7), and (8) of this section.~~

~~(6) For travel inside Kentucky, authorization shall be requested in the manner prescribed by the agency head or a designated representative.~~

~~(7) For travel outside Kentucky, but within the United States, possessions of the United States, or Canada, authorizations shall be requested by submitting a Request for Authorization of Out-of-State Travel document.~~

(8) For travel outside the United States, possessions of the United States, or Canada, authorization shall be requested by submitting a Request for Authorization of Out-of-Country Travel document.

(9) If direct billing is to be utilized for state park expenses, a State Park Travel Authorization form shall be submitted.

(10) [(7)] A travel request for travel specified in subsections (7), (8), and (9) [(4) and (5)] of this section shall be received by the agency or cabinet at least five (5) working days before the start of travel, except when a shorter prior submission period is necessitated by an emergency.

Section 5. Transportation. (1) Economy shall be required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) 1. Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

2.a. Tickets prepaid by the commonwealth shall be purchased through agency business travel accounts provided by a major charge card company or commercial travel agencies.

b. Tickets purchased through the Internet shall be paid by the traveler and reimbursed on a Travel~~[Payment]~~ Voucher, Other Expenses document~~[(TP or TPI)]~~.

3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.

4. Agencies shall be billed monthly by the charge card company.

5. Related payments shall be processed via a Travel Voucher, Other Expenses~~[on Vendor Payment Voucher (P4)]~~ document.

(2) State vehicles. State-owned vehicles with their credit cards shall be used for state business travel if available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed if more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Payment shall be made in accordance with subsection (1)(b) of this section.

(6) Special transportation.

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

(c) An employee may submit a written request for approval from the state controller for an increased reimbursement rate greater than that calculated in Section 7, if the employee drives a personal vehicle modified to:

1. Facilitate operation by altering controls for the brakes, accelerator, or steering wheel; or
2. Allow a driver to enter the vehicle by installing a wheelchair lift, hoist, or ramp.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.

(2) Facilities providing special government rates or commercial rates shall be used if feasible.

(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.

(4) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home shall be reimbursed if:

- (a) In attendance at a conference; and

(b) The lodging is a necessary expense of official travel, in accordance with Section 2(2)(d) of this administrative regulation.

(5) Group lodging, by contract.

(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.

(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.

(c) The traveler shall not claim reimbursement or subsistence for room and meals paid direct to an establishment providing these services.

(d) A request for payment shall be made on a Travel Voucher[Vendor Payment Voucher (P4)] document and shall not include personal charges of employees or others in the official service of the commonwealth.

(e) Payment shall be made to the hotel, motel, or other establishment.

(f) Contracted group meeting rooms and lodging and meal charges shall be exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Department of Revenue shall be specified on the payment document.

(g) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on a Travel[Payment] Voucher[(TP or TPI)] document.

(6) State parks. A state agency or institution using state park facilities may pay for rooms and meals by an Internal Travel Voucher (IT)[(IT)] document to transfer funds, within the limits of this administrative regulation.

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(e) Elected constitutional officers;

(f) Cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the commonwealth.

(2) Lodging.

(a) Except as provided in paragraph (b) of this subsection, a state officer or employee shall be reimbursed for the actual cost of lodging if the:

1. Lodging is determined to be the most economical; and

2. State officer or employee has provided the hotel, motel, or other establishment's receipt to be reimbursed for the travel expenses.

(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half (1/2) the double rate.

(3) Subsistence and incidentals.

(a) Breakfast and lunch. A state officer or employee shall be eligible for reimbursement for subsistence for breakfast and lunch expenses while traveling in Kentucky, if authorized work requires an overnight stay and absence during the mealtime hours established by paragraph [(d)–or](e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(b) Dinner expenses. A state officer, or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if authorized work requires an absence:

1. At a destination more than forty (40) miles from the individual's work station and home; and

2. During the mealtime hours established by paragraph [(d)–or](e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraph (d) of this subsection[paragraphs (d) and (e) of this subsection]. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(d) The secretary shall specify the meal reimbursement rates via secretary order as appropriate in the following manner:

1. The order shall be posted on the Web site of the Office of the Controller;

2. The order shall specify the reimbursement rate for high rate areas and non-high rate areas; and

3. The order shall designate reimbursement rates for breakfast, lunch, and dinner.

(e) To be eligible for meal reimbursement, an employee shall be in travel status for the entire duration of the following time periods:

1. Breakfast: authorized travel is 6:30 a.m. through 9 a.m.;

2. Lunch: authorized travel is 11 a.m. through 2 p.m.; or

3. Dinner: authorized travel is 5 p.m. through 9 p.m. [Reimbursement for non-high rate areas.

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. – seven (7) dollars.

2. Lunch: authorized travel 11 a.m. through 2 p.m. – eight (8) dollars.

3. Dinner: authorized travel 5 p.m. through 9 p.m. – fifteen (15) dollars.

(e) Reimbursement for high rate areas.

1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. – eight (8) dollars.

2. Lunch: authorized travel 11 a.m. through 2 p.m. – nine (9) dollars.

3. Dinner: authorized travel 5 p.m. through 9 p.m. – nineteen (19) dollars.]

(f) A state officer or employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.

(g) A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if the individual is assigned to attend meetings and training sessions.

(h) Gratuities may be reimbursed if:

1. The total payment of the meal and gratuity do not exceed the limits established in paragraph (d)[paragraphs (d)–or (e)] of this subsection; and

2. The gratuity does not exceed twenty (20) percent of the cost of the meal.

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel[Payment] Voucher[(TP or TPI)].

(4) Transportation expenses.

(a) Reimbursement for authorized use of a privately-owned vehicle shall be:

1. At a rate designated on the Office of the Controller's Web site[At the rate of thirty-eight (38) cents per mile until October 1, 2005];

2. The reimbursement rate shall be set and adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents (\$1.499), the employee shall be reimbursed thirty-six (36) cents per mile;

b. If the fuel cost is between one dollar fifty cents (\$1.50) and one dollar sixty-nine and nine-tenths cents (\$1.699), the employee shall be reimbursed thirty-seven (37) cents per mile;

c. If the fuel cost is between one dollar seventy cents (\$1.70) and one dollar eighty-nine and nine-tenths cents (\$1.899), the employee shall be reimbursed thirty-eight (38) cents per mile;

d. If the fuel cost is between one dollar ninety cents (\$1.90) and two dollars nine and nine-tenths cents (\$2.099), the employee shall be reimbursed thirty-nine (39) cents per mile;

e. If the fuel cost is between two dollars ten cents (\$2.10) and two dollars twenty-nine and nine-tenths cents (\$2.299), the employee shall be reimbursed forty (40) cents per mile; or

f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents (\$2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate; and

3. Not exceed the cost of commercial coach round-trip airfare.

(b) Mileage for in-state travel shall be based on the ["Kentucky Official Highway Map"], MapQuest Web site, Google Maps Web site, or similar web mapping service[mileage software or MapQuest website]. Out-of-state mileage shall be based on the most recent edition of the ["Rand McNally Road Atlas"], MapQuest Web site, Google Maps Web site, or similar web mapping service[mileage software or MapQuest Web site].

(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel[Payment] Voucher[TP or TPI].

(d) Reimbursement for use of privately-owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head, or a designated representative.

(e) ~~A maximum of twenty (20) dollars per night for parking or camping charges for camping vehicles shall be reimbursed.~~

(f) 1. Actual parking, bridge and highway toll charges shall be reimbursed.

2. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(g) Reimbursement shall be made for reasonable incidental expenses for:

1. Baggage handling;

2. Delivery of baggage to or from a common carrier, lodging or storage; and

3. Overweight baggage charges, if the charges relate to official business.

(5)(a) Registration fees required for admittance to meetings shall be reimbursed.

(b) If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.

(6)(a) Telephone[and telegraph] costs for necessary official business shall be reimbursed.

~~(b) Telephone calls to agency central offices shall be made through:~~

~~1. Agency 800 and 888 numbers, if available;~~

~~2. A state government telephone credit card; or~~

~~3. Lowest available service.]~~

(7) Other incidental expenses may be allowed by the agency head or designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons shall be eligible for actual and necessary expenses:

(a) Governor;

(b) Governor's staff;

(c) Lieutenant governor;

(d) Elected constitutional officers;

(e) Cabinet secretaries;

(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the commonwealth.

(2)(a) Actual and necessary expenses of official business travel shall be reimbursed upon submission of receipts for items over ten (10) dollars. The secretary may reduce the amount of any actual expense to be reimbursed if the secretary determines that

the expense is unreasonably excessive.

(b) Actual and necessary expenses for official business travel shall include:

1. Lodging;

2. Meals;

3. Commercial transportation;

4. Taxes related to actual and necessary expenses; and

5. Reasonable gratuities.

(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.

(d) Reimbursement for official use of a privately-owned vehicle shall be:

1. At the rate designated on the Office of the Controller's Web site listed in Section 1(6) of this administrative regulation~~[of thirty-eight (38) cents per mile until October 1, 2005];~~

2. Adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline. The rate shall be adjusted on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents (\$1.499), the employee shall be reimbursed thirty-six (36) cents per mile;

b. If the fuel cost is between one dollar fifty cents (\$1.50) and one dollar sixty-nine and nine-tenths cents (\$1.699), the employee shall be reimbursed thirty-seven (37) cents per mile;

c. If the fuel cost is between one dollar seventy cents (\$1.70) and one dollar eighty-nine and nine-tenths cents (\$1.899), the employee shall be reimbursed thirty-eight (38) cents per mile;

d. If the fuel cost is between one dollar ninety cents (\$1.90) and two dollars nine and nine-tenths cents (\$2.099), the employee shall be reimbursed thirty-nine (39) cents per mile;

e. If the fuel cost is between two dollars ten cents (\$2.10) and two dollars twenty-nine and nine-tenths cents (\$2.299), the employee shall be reimbursed forty (40) cents per mile; or

f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents (\$2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate; and

3. Not exceed the cost of commercial coach round-trip airfare.

(e) 1. The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or designee.

2. The secretary or the secretary's designee may:

a. Question a claim for reimbursement; and

b. Reduce the amount to be reimbursed, if the secretary determines that it is unreasonably excessive.

(f) An employee of the Cabinet for Economic Development~~[Cabinet]~~ or the Tourism, Arts and Heritage~~[Commerce]~~ Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the commonwealth if the costs were:

1. Related to the promotion of industry, travel, or economic development;

2. Substantiated by receipts; and

3. Certified by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between residence~~[home]~~ and work station shall not be paid. If an employee's residence is the employee's work station, the employee's work station shall also include the location where the employee obtains a state vehicle for use during the workday.

(2)(a) If an employee's point of origin for travel is the employee's residence, mileage shall be paid for the shorter of mileage between:

1. Residence and travel destination; or

2. Work station and travel destination.

(b) If an employee's point of origin for travel is the employee's work station~~[workstation]~~, and after proceeding to a travel destination, the employee's final destination is the employee's

residence, mileage shall be paid for the shorter of mileage between:

1. Residence and travel destination; or
2. Work station[workstation] and travel destination.

(3) Vicinity travel, and authorized travel within a claimant's work station shall be listed on separate lines on the Travel[Payment] Voucher[(TP or TPI)] document.

Section 10. Travel Documents. (1) A person shall use the following forms to request prior authorization or reimbursement for travel:

(a) For in-state travel, any forms required by the person's agency head or designee;

(b) For out-of-state travel, a Request for Authorization of Out-of-State Travel document; and

(c) For out-of-country travel, a Request for Authorization of Out-of-Country Travel document.

(2) When applicable, a traveler shall attach the following to a Travel Voucher document:

(a) If a state park facility will be used, a State Park Travel Authorization document.

(b) If a rental vehicle, registration fee, or similar expense requires advance payment: a Pre-paid Registration document;

(c) If reimbursement relates to out-of-state or out-of-country travel: the appropriate completed authorization form required by subsection (1) of this section; and

(d) For any expense that cannot be listed on a Travel Voucher document: a Travel Voucher, Other Expenses document[Travel software shall have three (3) types of authorizations:

- (a) TE or TEI for in-state travel;
- (b) TEO for out-of-state travel; and
- (c) TEC for out-of-country foreign travel.

(2) A traveler shall create a:

(a) Travel authorization (TE or TEI) document if a state park facility or a motor pool vehicle will be used or if a registration fee is to be paid in advance.

(b) Travel authorization (TEO) document for an out-of-state trip;

(c) Travel authorization (TEC) document for an out-of-country trip].

(3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services.

(4) Authorization for reimbursement of others in the official service of the commonwealth shall be requested on a Travel Voucher document]:

(a) A Vendor Payment Voucher (P1) document; or

(b) A Travel Payment Voucher (TP or TPI) document.

(5) A Travel Payment Voucher (TP or TPI) document shall be used to claim reimbursement for travel expenses].

(5) [(6)] The Travel[Payment] Voucher[(TP or TPI)] document shall be limited to the expenses made by one (1) person for the:

- (a) Traveler; and
- (b) If applicable, another person:
 1. Who is a ward of the commonwealth; or
 2. For whom the traveler is officially responsible.

[(6)] [(7)] A Travel[Payment] Voucher[(TP or TPI)] document for expenses made for a person specified in subsection (5) [(b)] [(6)] [(b)] of this section shall include the person's:

- (a) Name; and
- (b) Status or official relationship to the claimant's agency.

[(7)] [(8)] (a) A Travel[Payment] Voucher[(TP or TPI)] document shall be submitted:

1. For one (1) major trip; or
2. Every two (2) weeks for employees that are in travel status for an extended period.

(b) A Travel[Payment] Voucher[(TP or TPI)] document shall include:

1. Employee ID Number (KHRIS)[Social Security number] of the claimant; and

2. Purpose of each trip.

(c) A Travel[Payment] Voucher[(TP or TPI)] document shall be signed and dated, or entered electronically and approved by the:

1. Claimant; and

2. Agency head or authorized representative.

(d) If monthly expenses total less than ten (10) dollars, a Travel[Payment] Voucher[(TP or TPI)] may include expenses for six (6) months of a fiscal year.

(e) A Travel[Payment] Voucher[(TP or TPI)] document shall be:

1. Legibly printed in ink or typed; or
2. Processed electronically through travel software.

(f) A receipt shall provide the following information for each expense:

1. Amount;
2. Date;
3. Location; and
4. Type.

(g) Receipts shall be maintained at the agency if documents are processed electronically.

(h) If leave interrupts official travel, the dates of leave shall be stated on the Travel[Payment] Voucher[(TP or TPI)].

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel[Payment] Voucher[(TP or TPI)].

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Pre-paid Registration" document, Form eMARS-37;

(b) "Request for Authorization of Out-of-State Travel" document, Form DOA-28;

(c) "Request for Authorization of Out-of-Country Travel" document, Form DOA-28A;

(d) "State Park Travel Authorization" document;

(e) "Travel Voucher" document, Form eMARS-34;

(f) "Travel Voucher Prepaid Registration Fees: Multiple Cost Distribution" document, Form eMARS-36;

(g) "Travel Voucher, Other Expenses" document, Form eMARS-34B;

(h) ["Travel Payment Voucher (TP or TPI) document (1999)";

(b) "Travel Authorization (TE or TEI) document for in-state travel (1999)";

(c) "Travel Authorization (TEO) for out-of-state travel (1999)";

(d) "Travel Authorization (TEC) document for out-of-country travel (1999)";

(e) "Vendor Payment Voucher (P1) (1999)";

(f) "Internal Travel Voucher (IT) document (1999)";

(g) "Kentucky Official Highway Map", 2016; and [(2004)];

[(i)] [(2004)];

(h) "Rand McNally Road Atlas", 2017 [(2004)]; and

(i) "Secretary's Order S97-451, November 1, 1996".

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WILLIAM M. LANDRUM III, Secretary

APPROVED BY AGENCY: September 15, 2016

FILED WITH LRC: September 15, 2016 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2016 from 10 a.m. to 12 p.m., in Room 392, 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 November 30, 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: Judy Piazza, Executive Director, Office of Legislative and Intergovernmental Affairs, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785, email Judith.Piazza@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Judy Piazza

(1) Provide a brief summary of:

(a) What this administrative regulation does: Updates regulatory language to account for current cabinet travel policies and reimbursement rates.

(b) The necessity of this administrative regulation: To provide state employees with the most up to date information regarding travel requirements and restrictions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See response for 1(c).

(2) If 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 provide updated information on the proper forms to use for travel and reimbursement for state government employees.

(b) The necessity of the amendment to this administrative regulation: To update the regulation from the 2006 revision.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c).

(d) How the amendment will assist in the effective administration of the statutes: See 1(a).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All agencies under the purview of the Executive Branch of the Commonwealth of Kentucky and its employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proper approval and submission of forms to the appropriate office to receive reimbursement of travel expenses in a timely fashion.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budgetary 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: None.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established in this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied in this amendment because all employees requesting travel and reimbursement will be approved and reimbursed for travel in the exact same manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All agencies under the purview of the Executive Branch of the Commonwealth of Kentucky and its employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 44.060 and 45.101.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are associated with this regulation.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Chiropractic Examiners (Amendment)

201 KAR 21:025. Board; officers, duties.

RELATES TO: KRS 312.019, 312.055

STATUTORY AUTHORITY: KRS 312.019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.055 ~~authorizes[provides for]~~ the election of certain officers by the board. KRS 312.019(6) ~~authorizes[provides that]~~ the board ~~to[may]~~ employ personnel and incur expenses necessary for the performance of its duties. This administrative regulation establishes the duties of the officers, field personnel, and administrative staff, and establishes the terms and procedure for election of officers.

Section 1. The officers of the board shall perform the~~following~~ duties ~~established in this section.~~~~[-]~~

(1) The president shall be the chief executive of the board. The president shall preside over all meetings of the board.

(2) The vice president shall perform the duties of the president during the president's absence or inability to serve. The vice president shall perform other reasonable duties delegated to him by the president or by the board.

(3) The executive secretary shall, if necessary or upon the discretion of the board, perform the following duties:

(a) Record and present the minutes of a meeting to the board at the next scheduled meeting.~~[-]~~

(b) Oversee the administrative functions of the board; ~~and~~~~[-]~~

(c) Perform other reasonable duties delegated to the secretary or executive secretary by the president or the board.

Section 2. The board may employ a field coordinator as a part of the regular staff of the board. The field coordinator shall be paid a salary as the board may determine.~~[The field coordinator shall perform the following duties:]~~

(1) The field coordinator~~[-, who]~~ may be a member of the board,

except that the president or executive secretary, as referenced in KRS 312.055(1), shall not serve as field coordinator.

(2) The field coordinator shall:

(a) Investigate complaints against licensees referred to him by the board for investigation and report his findings to the board;

~~(b) If the field coordinator is a board member, he shall not vote on any matter relative to formal or informal complaints against any licensee if:~~

1. Any of the charges were investigated by him in the capacity of field coordinator; and

2. The field coordinator is a board member; and

~~(c) (b)~~ Perform other reasonable duties as are delegated to him by the president or by the board.

~~(3)(a)(e)4.~~ If the field coordinator is a member of the board, following his appointment as field coordinator, he shall serve until the conclusion of his term of appointment as a member of the board.

~~(b)2.~~ A member who has been appointed to the position of field coordinator, who is reappointed to the board following the expiration of his original term, shall continue in the position of field coordinator until a successor is appointed, and accepts and assumes the duties of the position.

~~(c)3.~~ A person appointed as field coordinator may be reappointed by the board to the position.

~~(4)(2)~~ The administrative staff shall assist the board in the performance of its duties and shall:

(a) Keep an accurate and up-to-date file of all licensees of the board, including:

1. Addresses and telephone numbers;

2. Status as to whether or not they are in active practice or are inactive;

3. Whether a licensee is in practice in this state or out of it;

4. Attendance at educational programs;

5. All fees paid by licensees; and

6. Providing to the board, at least once each year, the names of licensees who are delinquent in the payment of fees or attendance of educational programs.

(b) Transmit notices for renewal of licenses as provided by KRS 312.075(2).

(c) Transmit notices of special meetings of the board; and

(d) Attend to the correspondence and communications of the board.

Section 3. A member elected as president, vice president, secretary, or executive secretary shall serve in office for one (1) year ~~until the conclusion of his term as a member. A member elected to an office who is reappointed to the board shall hold the office until a successor is elected, accepts and assumes the duties of the office.~~ An officer may be reelected by the board. Officer elections shall take place at the last meeting of the calendar year and shall take effect the first meeting of the following calendar year.

Section 4. Salary and Per Diem Compensation. (1) The executive secretary, if elected, shall receive a salary of \$1,100 per month.

(2) Board members shall receive \$100 per day for each day of actual service to the board.

MARK WOODWARD, D.C., President

APPROVED BY AGENCY: September 23, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2016, at 1:00 p.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public

hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on November 30, 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: Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784, email kychiro@glasgow-ky.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Karalee Oldenkamp

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the duties of the officers, field personnel, and administrative staff, and the process for election of officers.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to outline the duties of the officers, field personnel, and administrative staff, and the process for election of officers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to allow the election of certain officers by the board. KRS 312.019(6) provides that the board may employ personnel and incur expenses necessary for the performance of its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the duties of board officers, field personnel, and staff as well as the process for election of officers.

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

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation adds a specific process and timeframe for election of officers.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to outline a specific process and timeframe for election of officers.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by outlining the procedure for election of officers, which is within the board's authority.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly outline the process for election of officers which is currently vague with unlimited terms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation directly impacts the five members of the board.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: The board members will be required to annually elect officers.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the board members will be able to annually assess the officer positions and make any necessary changes through the election process.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as it is not applicable to the election of officers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.019, 312.055

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? N/A

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Kentucky Board of Chiropractic Examiners (Amendment)

201 KAR 21:041. Licensing; standards, fees.

RELATES TO: KRS 312.085, 312.095, 312.145, 312.175

STATUTORY AUTHORITY: KRS 312.019, 312.085, 312.095, 312.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes the procedures relating to application for licensure, license renewal, and fees.

Section 1. Initial Application. An applicant for initial licensure shall submit to the board:

- (1) A completed New Licensee Application; and
- (2) A nonrefundable application fee of \$350.

Section 2. Licenses. Each license by the board shall:

(1) Set forth the:

- (a) Name of the issuing board;
- (b) Name of the licensee;
- (c) Number of license; and
- (d) Date of the license issuance;

(2) Be signed by a minimum of three (3) members of the board; and

(3) Have the seal of the board affixed.

Section 3. License Renewal. (1)(a) Each licensee of the board shall annually renew the license on or before the first day of March.

(b)1. A licensee seeking active status shall:

a. Submit a completed Application for Annual License Renewal; and

b. Pay a renewal fee of \$250.

2. A licensee seeking inactive status shall:

a. Submit a completed Annual Inactive License Renewal Application; and

b. Pay a renewal fee of seventy-five (75) dollars.

(2) The amount of the restoration fee established by KRS 312.175(2) and (4) shall be \$250 per year, or any part of a year.

(3) Continuing education requirements.

(a) Each active licensee shall complete at least twelve (12) hours of board-approved continuing education, with:

1. A minimum of six (6) hours obtained within Kentucky;

2. No more than eight (8) hours completed in a day; and

3. Proof of completion submitted with the Application for Annual License Renewal.

(b) A new licensee shall complete a two (2) hour jurisprudence course, provided by the board, prior to the first license renewal. The course shall account for two (2) of the twelve (12) hours of continuing education required by paragraph (a) of this subsection.

(c) An inactive licensee may renew the inactive license without meeting the continuing education requirements required by this subsection.

Section 4. Activation of an Inactive License. (1) To activate an inactive license, a licensee shall submit:

(a) A completed Application for Activation or Reinstatement of Kentucky License;

(b) The renewal fee required by Section 3(1)(b) of this administrative regulation;

(c) Proof that the licensee has met the continuing education requirements established by Section 3(3) of this administrative regulation; and

(d) License verification from each state or jurisdiction from which the licensee has held a license.

(2) If the licensee was inactive for more than four (4) years, proof of successfully passing the Special Purposes Examination for Chiropractic given by the National Board of Chiropractic Examiners within the past six (6) months shall be submitted to the board.

Section 5. Denial or Refusal of License. The board may deny or refuse to renew a license if an applicant or licensee:

(1) Has a conviction for a felony or violation of any law involving moral turpitude; or

(2) Violates any of the provisions of KRS Chapter 312[.] or 201 KAR Chapter 21.

Section 6. Change of Address. Each licensee shall notify the board within ten (10) days of each change of mailing address or place of business.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "New Licensee Application", 2016[November 2009];

(b) "Application for Annual License Renewal", November 2009;

(c) "Annual Inactive License Renewal Application", 2013; and

(d) "Application for Activation or Reinstatement of Kentucky License", 2013.

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VOLUME 43, NUMBER 5 – NOVEMBER 1, 2016

Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky 42142, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK WOODWARD, D.C., President

APPROVED BY AGENCY: September 23, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2016 at 1:15 p.m. local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 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: Karalee Oldenkamp, D.C., Executive Director, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784, email kychiro@glasgow-ky.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Karalee Oldenkamp, D.C.

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation specifies the procedures relating to application for licensure, license renewal, license activation, and fees for practitioners of chiropractic in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to ensure that applicants are placed on notice as to the proper procedures and fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to promulgate administrative regulations to ensure regulation of applicants for licensure and to set fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the manner in which applicants apply for licensure and licensees renew or activate their licenses.

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

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the version of the New Licensee Application. The new version deletes references to sections of 201 KAR 21:090 that have been removed from that administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the pre-chiropractic education requirements as listed on the New Licensee Application.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by setting forth the procedures for application thereby placing the public on notice.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will place the current applicants for licensure on notice of the updated requirements of pre-chiropractic education as referenced on the New Licensee Application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative directly impacts the

approximately 65 annual licensure applicants in the Commonwealth of Kentucky.

(4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: All licensure applicants will have current administrative regulations referenced on the application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial application fee has not changed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicants for initial licensure will have current administrative regulations referenced on the application.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied since it is not applicable to a form version update.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Board of Chiropractic Examiners

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 312.019, 312.085, 312.095, 312.175

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

VOLUME 43, NUMBER 5 – NOVEMBER 1, 2016

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(Amendment)

201 KAR 36:020. Fees[–renewal date].

RELATES TO: KRS 335.525(6), 335.535(1), (2), (4)

STATUTORY AUTHORITY: KRS 335.515(3), 335.525(6), 335.535(2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3), [and] 335.525(6), and 335.535(2)] require the board to promulgate administrative regulations relating to the establishment of fees. This administrative regulation establishes the application, renewal, and reinstatement fees for a professional counselor and a professional counselor associate and the date a licensure shall[must] be renewed.

Section 1. Application Fee. (1) The application fee for licensure as a professional counselor shall be \$150.

~~(2) If the application is denied, \$125 of the application fee shall be refunded.~~

~~(3) The application fee for licensure as a professional counselor associate shall be fifty (50) dollars.~~

~~[(4) If an applicant for a professional counselor associate is denied, twenty-five (25) dollars of the application fee shall be refunded.]~~

Section 2. Renewal Fees and Penalties. (1)(a) The annual renewal fee for licensure as a professional counselor shall be \$150.];

(b) The annual renewal fee for licensure as a professional counselor associate shall be fifty (50) dollars.

(2) The late renewal fee for late renewal during the sixty (60) day grace period shall be:

(a) Twenty-five (25) dollars for licensure as a professional counselor; and

(b) Ten (10) dollars for licensure as a professional counselor associate.

(3) The reinstatement fee for licensure renewal after the end of the sixty (60) day grace period shall be:

(a) Fifty (50) dollars for licensure as a professional counselor; and

(b) Twenty (20) dollars for licensure as a professional counselor associate.

~~[(4) Renewal and reinstatement fees shall not be refundable.]~~

Section 3. ~~All fees shall be non-refundable~~[Renewal Date. (1) The renewal date for licensure shall be October 31.

~~(2) The renewal fee for the first renewal shall be waived for a person receiving licensure within 120 days prior to the renewal date].~~

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016, at 10:30 a.m. at Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842. email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation established the application, renewal, and reinstatement fees and penalties associated with filing a late renewal application.

(b) The necessity of this administrative regulation: This regulation is necessary to establish fees required by the board.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation informs applicants and licensees the fees required to obtain and maintain a license.

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

(a) How the amendment will change this existing administrative regulation: The amendment makes the fees non-refundable. Presently, the board reimburses all but \$25.00 of an application fee if the application is denied.

(b) The necessity of the amendment to this administrative regulation: The board is receiving numerous applications from unqualified applicants who requests administrative proceeding which increases the board costs to operation.

(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 fees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will hopefully limit the number of unqualified applicants who not faces a minimal cost associated with filing an application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and licensees are informed that the fees are non-refundable.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(7) Provide an assessment of whether an increase in fees or

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(3), 335.525(6), and 335.535.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 refunded \$1,925 for the fiscal year of July 1, 2015 to June 30, 2016.

(a) How much 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: The Board refunded \$1,925 for the fiscal year of July 1, 2015 to June 30, 2016. Many of these refunds was collateral with an expense associated with a KRS Chapter 13B hearing from the denial of an application. Under the amendment, the board would retain those funds under this amendment.

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amendment)

201 KAR 36:030. Continuing education requirements.

RELATES TO: KRS 13B, 194A.540, 210.366, 335.500-335.990

STATUTORY AUTHORITY: KRS 210.366, 335.515(3), (6), 335.535(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.366 requires a board licensee to complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years. KRS 335.515(3), (6), and 335.535(8) require the board to promulgate an administrative regulation requiring a licensee to complete continuing education requirements as a condition of renewal of his licensee. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

~~Section 1.[Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means:~~

~~(a) A professional counseling course, designated by a professional counseling title or content; or~~

~~(b) An academic course, relevant to professional counseling.~~

~~(2) "Approved" means recognized by the Kentucky Board of Licensed Professional Counselors.~~

~~(3) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.~~

~~(4) "Program" means an organized learning experience:~~

~~(a) Planned and evaluated to meet behavioral objectives; and~~

~~(b) Presented in one (1) session or a series.~~

~~(5) "Provider" means an organization approved by the Kentucky Board of Licensed Professional Counselors for providing continuing education programs.~~

~~(6) "Relevant" means having content applicable to the practice of professional counseling.~~

~~Section 2.]~~ Accrual of Continuing Education Hours. (1) A minimum of ten (10) continuing education hours shall be accrued by each person holding a license during the annual period for renewal.

(2) All continuing education hours shall be in or related to the field of professional counseling.

(3) A person holding a license shall complete a minimum of three (3) hours of continuing education in domestic violence within three (3) years of initial licensure, as required by KRS 194A.540.

(4) A person holding a license shall complete a minimum of six (6) hours of continuing education course in suicide assessment, treatment, and management within the first year of licensure and every six (6) years thereafter as required by KRS 210.366.

(a) A person holding a license shall be exempt~~[exempted]~~ from the requirement to complete a continuing education course in suicide assessment, treatment, and management within the first year of licensure if the counselor:

1. Graduated from a Council for Accreditation of Counseling and Related Education Program since 2009; or

2. Completed a three (3) semester hours graduate course in suicide and crisis assessment, prevention, and intervention.

(b) A person holding a license shall be exempt~~[exempted]~~ from the requirement to complete a continuing education course in suicide assessment, treatment, and management if the counselor satisfies one (1) of the following at least once per year during the six (6) year periodic requirement:

1. Is employed in a position that requires at least forty (40) hours of counseling in suicide and crisis assessment, prevention, and intervention;

2. Teaches a graduate-level counseling course in suicide and crisis assessment, prevention, and intervention; or

3. Teaches a continuing education course in suicide and crisis assessment, prevention, and intervention~~[at least once per year during the six (6) year period]~~.

(c) The continuing education course in suicide assessment, treatment, and management shall be board approved in accordance with Section 2~~[3]~~ of this administrative regulation.

(d) An individual asserting an exemption of the suicide assessment, treatment, and management course shall maintain sufficient documentation to establish the exemption. Documentation listed in Section 5~~[6]~~(3) of this administrative regulation shall be sufficient to establish the exemption.

(5) A person holding a license shall complete a minimum of three (3) hours of continuing education on the law for regulating professional counseling, KRS Chapter 335.500 to 335.990 and 201 KAR Chapter 36, every three (3) years. A person holding a license shall be exempt from this requirement if the person:

(a) Teaches a graduate-level course that includes KRS 335.500 to 335.990 and 201 KAR Chapter 36 during the three (3) year period; or

(b) Teaches a continuing education course on KRS 335.500 to 335.990 and 201 KAR Chapter 36 during the three (3) year period.

Section 2~~[3]~~. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the

license shall be directly related to the professional growth and development of the licensee's practice of professional counseling. They may be earned by completing any of the educational activities as established in this section.

(1) Programs not requiring board review and approval.

(a) A continuing[An] educational program from any of the following providers shall be approved without further review by the board if it is:

1.[(a)] Sponsored or approved by:

a.[1-] The American Counseling Association, or any of its affiliated branches or divisions;

b.[2-] The Kentucky Counseling Association, or any of its affiliated chapters or divisions;

c.[3-] The American School Counselor Association or any of its affiliated state chapters; or

d.[4-] The National Board for Certified Counselors; or

2.[(b)] An academic course offered by an accredited post-secondary institution directly related to professional counseling or counseling psychology.

(b) A continuing educational program not requiring board review and approval shall comply with the requirements of subsection (3) of this section and Section 4 of this administrative regulation.

(2) Programs requiring board review and approval. For approval purposes, the board shall review the following types of programs to determine relevancy:

(a) A program, approved by the board, of a service provider, including a home study course or in-service training provided by another organization or educational institution;

(b) A program or academic course presented by the licensee. A presenter of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, except the earned credit shall not exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; or

(c) An article authored by the licensee that was published in a relevant, professionally recognized or juried publication. Credit shall not be granted for an article unless it was published within the one (1) year period immediately preceding the renewal date and a licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal. More than one (1) publication shall not be counted during a renewal period.

(3)[a] [The following continuing education programs shall be presented by an instructor who is licensed by the board:

(a) Domestic violence under Section 2(3) of this administrative regulation;

(b) Supervision training under 201 KAR 36:060, Section 2(3), shall be presented by an instructor who is licensed by the board [3(3); or

(c) Suicide assessment, treatment, and management under Section 2(4) of this administrative regulation].

(b) The continuing education program on the law for regulating professional counseling, KRS Chapter 335.500 to 335.990 and 201 KAR Chapter 36, shall be presented by an instructor who is licensed by the board or an attorney who demonstrates knowledge of KRS Chapter 335.500 to 335.990 and 201 KAR Chapter 36 in the Continuing Education Program Application.

(4) Academic credit equivalency for continuing education hours shall be fifteen (15) continuing education hours for every one (1) academic credit hour.

(5) A general education course, whether elective or used to meet degree requirements, shall not be acceptable as continuing education credit.

Section 3[4]. Procedures for Approval of Continuing Education Programs. In order to submit the course to the board for approval, the following shall be submitted:

(1) A published course or similar description;

(2) Names and qualifications of the instructors;

(3) A copy of the program agenda indicating hours of education, coffee, and lunch breaks. The agenda shall state the specific time when each topic of the program is being presented;

(4) Number of continuing education hours requested;

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

(6) The Continuing Education Program Application; and

(7) If a provider is seeking approval for a continuing education course, an application review fee of twenty (20) dollars.

Section 4[5]. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any entity seeking to obtain approval:

(a) Of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 3[4] of this administrative regulation on an annual basis for each program; or[-]

(b) As a prior-authorized continuing education provider under Section 2(1)[3(4)] of this administrative regulation, shall satisfy the board that the entity seeking this status:

1. Consistently offers programs that[which] meet or exceed all the requirements set forth in Section 1(2)[2(2)] of this administrative regulation; and

2. Does not exclude a licensee from its programs.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters, which integrally relate to the practice of professional counseling;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 5[6]. Responsibilities and Reporting Requirements of a Licensee. (1) During the licensure renewal period, up to fifteen (15) percent of all licensees shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A licensee shall:

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

(b) Identify his own continuing education needs and seek activities that meet[meets] those needs;

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

(d) 1. Select approved activities by which to earn continuing education hours; or

2. Submit to the board a request for approval for continuing education activities not approved as required in Section 2(2)[3(2)] of this administrative regulation;

(e) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(f) Document attendance, participation in, and successful completion of continuing education activity for a period of one (1) year from the date of the renewal; and

(g) Maintain records of continuing education hours.

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

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor; or

(d) Receipt for the fee paid to the sponsor.

(4) Compliance with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.540(1)(b) and shall result in sanctions in accordance with KRS 335.540(1).

(5) Documentation sent to the board prior to renewal shall be returned to the licensee by regular mail.

Section 6[7]. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 5(3)[6(3)] of this

administrative regulation, directly to the licensee.

(2) A sponsor 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 7[8]. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or part, the continuing education course provider or licensee shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 8[9]. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member; and

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding a license; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding a license shall reapply for the waiver or extension.

Section 9[10]. Continuing Education Requirements for Reinstatement or Reactivation of License. (1)(a) Except as provided by paragraph (b) of this subsection, a person requesting reinstatement or reactivation of a license shall submit:

(a) evidence of ten (10) hours of continuing education within the twelve (12) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board; or

(b) Upon request by the applicant, the board may permit the applicant to resume practice; if ten (10) hours of continuing education is obtained within three (3) months of the date on which the applicant is approved to resume practice.

(2) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 1[2] of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 10[11]. Incorporation by Reference. (1) "Continuing Education Program Application, KBLPC 007", June 2015 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016, at 10:30 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their

intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842. email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: The amendment: (i) removes the definitions; (ii) clarifies the exemption period for suicide assessment, treatment, and management continuing education course; (iii) removes the requirement that the suicide assessment, treatment, and management, and domestic violence continuing education courses had to be taught by an individual licensed by the board; and (iv) requires that the time and topic of a continuing education course is clearly stated in the agenda.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify and clean up the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder and KRS 210.366.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies issues regarding the continuing education requirements; allows more opportunities for licensees to obtain continuing education regarding suicide assessment, treatment, and management, and domestic violence.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

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

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: A licensee will have to take no additional action to comply with the amendments.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment allows more opportunities for licensees to obtain continuing education regarding suicide assessment, treatment, and management, and domestic violence; and removes the continuing education requirement of an individual who obtains an initial license within 120 days of the annual renewal date.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 210.366, 335.515(3), (6), 335.535(8).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amendment)

201 KAR 36:040. Code of ethics.

RELATES TO: KRS 335.540(1)(g)

STATUTORY AUTHORITY: KRS 335.515(3), (7), (11)

NECESSITY AND FUNCTION: KRS 335.515(11) requires the board to promulgate a code of ethics for licensed professional counselors and licensed professional counselor associates. This administrative regulation establishes the required code of ethics.

Section 1.[Definitions. (1) "Client" means:

(a) ~~An individual, family, or group for whom the licensee provides services within the context of the licensee's practice of professional counseling;~~

(b) ~~A corporate entity or other organization if the licensee provides a service of benefit directly to the corporate entity or organization; or~~

(c) ~~A legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.~~

(2) ~~"Dual relationship" means a social, business, or personal relationship between a licensee and a client that coexists with the professional-client relationship between the licensee and the client.~~

Section 2.] Responsibility to Clients. (1) A professional counselor shall:

(a) Advance and protect the welfare of his client;

(b) Respect the rights of a person seeking his assistance; and

(c) Make reasonable efforts to ensure that his services are used appropriately.

(2) A professional counselor shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, or national origin;

(b) Exploit the trust and dependency of a client;

(c) 1. Engage in a dual relationship with a client that might:

a. Impair professional judgment;

b. Incur a risk of exploitation of the client; or

c. Otherwise violate a provision of this administrative regulation.

2. If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a professional counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur, which shall include:

a. Written informed consent by the client of the client's understanding of the general prohibitions against dual relationships:

b. Peer consultation by a licensed professional~~[listed in 201 KAR 36:060, Section 3]; and~~

c. Proper documentation of the precautions taken by the professional counselor~~[licensee]~~.

(d) Engage in a sexual, romantic interaction, or an intimate relationship with a current client or with a former client for five (5) years following the termination of counseling. This prohibition shall apply to both in-person and electronic interactions or relationships;

(e) Use his professional relationship with a client to further his own interests;

(f) Continue therapeutic relationships unless it is reasonably clear that the client is benefiting from the relationship;

(g) Fail to assist a person in obtaining other therapeutic services if the professional counselor is unable or unwilling, for appropriate reasons, to provide professional help;

(h) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of counseling sessions without having first obtained written informed consent from the client;

(j) Engage in sexual or other harassment or exploitation of his client, student, trainee, supervisee, employee, colleague, research

subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of his competence.

Section 2. Professional Counselors' Obligations and Duties. (1) A professional counselor shall safeguard and maintain documentation necessary for rendering professional services.

(2) Regardless of the medium, a professional counselor shall include sufficient and timely documentation to facilitate the delivery and continuity of services. The documentation shall accurately reflect client progress and services provided.

(3) If an amendment is made to a record or documentation, a professional counselor shall properly note the amendment in the client's record.

(4) A professional counselor and the client shall work jointly in devising a counseling plan that offers a reasonable promise of success and is consistent with the abilities, temperament, developmental level, and circumstances of the client.

(5) A professional counselor and the client shall regularly review and revise the counseling plans to assess the plan's continued viability and effectiveness, respecting client's freedom of choice.

(6) A professional counselor shall review in writing and verbally with a client the rights and responsibilities of a professional counselor and a client.

(7) A professional counselor shall provide adequate information about the client's freedom of choice, the counseling process, and the professional counselor so a client may make an educated decision whether to enter into or remain in a counseling relationship.

(8) Informed consent shall be an ongoing part of the counseling process, and a professional counselor shall appropriately document discussions of informed consent throughout the counseling relationship.

(9) A professional counselor shall explicitly explain to a client the nature of all services provided. The information shall include the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services; the counselor's qualifications, credentials, relevant experience, and approach to counseling; continuation of services upon the incapacitation or death of the counselor; the role of technology; and other pertinent information.

(10) A professional counselor shall take steps to ensure that clients understand the implications of diagnosis and the intended use of tests and reports.

(11) A professional counselor shall inform a client about fees and billing arrangements, including procedures for nonpayment of fees.

(12) A professional counselor shall communicate information in ways that are both developmentally and culturally appropriate.

(13) A professional counselor shall use clear and understandable language when discussing issues related to informed consent.

(14) When counseling minors, incapacitated adults, or other persons unable to give voluntary consent, a professional counselor shall seek the assent of the client to services and include them in decision making as appropriate.

(15) A professional counselor shall recognize the need to balance the ethical rights of clients to make choices, their capacity to give consent or assent to receive services, and parental or familial legal rights and responsibilities to protect these clients and make decisions on their behalf.

(16) A professional counselor shall discuss the required limitations to confidentiality when working with clients who have been mandated for counseling services.

(17) A professional counselor shall explain what type of information and with whom that information is shared prior to the beginning of counseling. The client may choose to refuse services. In this case, a professional counselor shall, to the best of their ability, discuss with the client the potential consequences of refusing counseling services.

(18) When a professional counselor learns that a client is in a professional relationship with another mental health professional,

the professional counselor shall request release from the client to inform the other mental health professional and strive to establish a positive and collaborative professional relationship.

(19) A professional relationship shall avoid harming a client, supervisee, trainee, and research participant and shall minimize or remedy unavoidable or unanticipated harm.

(20) A professional relationship shall be aware of and avoid imposing the professional counselor's values, attitudes, beliefs, and behaviors on a client.

(21) A professional counselor shall respect the diversity of clients, trainees, and research participants and seek training in areas in which they are at risk of imposing their values onto clients, especially when the professional counselor's values are inconsistent with the client's goals or are discriminatory in nature.

(22) A professional counselor shall refrain from referring prospective and current clients based solely on the counselor's personally held values, attitudes, beliefs, and behaviors.

(23) A professional counselor shall seek training in areas in which a professional counselor is at risk of imposing his or her values onto clients, especially when the professional counselor's values are inconsistent with the client's goals or are discriminatory in nature.

(24) A professional counselor shall not engage in a counseling relationship with a person with whom the professional counselor has had a previous sexual or romantic relationship.

(25) A professional counselor shall not engage in a counseling relationship with friends or family members with whom the professional counselor has an inability to remain objective.

(26) A professional counselor shall consider the risks and benefits of accepting as clients those with whom the professional counselor has had a previous relationship. These potential clients may include individuals with whom the counselor has had a casual, distant, or past relationship. Examples include mutual or past membership in a professional association, organization, or community.

(27) When a professional counselor accepts a client with whom the professional counselor has had a previous relationship, the professional counselor shall take the appropriate professional precautions such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs.

(28) A professional counselor shall consider the risks and benefits of extending current counseling relationships beyond conventional parameters. Examples of extending these boundaries of the counseling relationship include attending a client's wedding or commitment ceremony or graduation; purchasing a service or product provided by a client, excepting unrestricted bartering; and visiting a client's ill family member in the hospital.

(29) A professional counselor shall take appropriate professional precautions such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no harm occurs.

(30) When a professional counselor changes a role from the original or most recent contracted relationship, a professional counselor shall obtain informed consent from the client and explain the client's right to refuse services related to the change.

(31) A professional counselor shall fully inform a client of any anticipated consequences including financial, legal, personal, or therapeutic if the professional counselor role changes. Examples of role changes include changing from:

(a) Individual to relationship or family counseling, or vice versa;

(b) An evaluative role to a therapeutic role, or vice versa; or

(c) A counselor to a mediator role, or vice versa.

(32) A professional counselor shall not enter into non-professional relationships with a former client, the client's romantic partners, or the client's family members when the interaction is potentially harmful to the client. This applies to both in-person and electronic interactions or relationships.

(33) When a professional counselor agrees to provide counseling services to two (2) or more persons who have a relationship, the professional counselor shall clarify at the outset which person or persons are the client or clients and the nature of the relationships the professional counselor shall have with each

involved person. If it becomes apparent that the professional counselor may be called upon to perform potentially conflicting roles, the professional counselor shall clarify, adjust, or withdraw from roles appropriately.

(34) A professional counselor shall screen prospective group counseling or therapy participants.

(35) To the extent possible, a professional counselor shall select members whose needs and goals are compatible with the goals of the group, who will not impede the group process, and whose well-being will not be jeopardized by the group experience.

(36) In a group setting, a professional counselor shall take reasonable precautions to protect clients from physical, emotional, or psychological trauma.

(37) A professional counselor may barter only if the client requests and the bartering does not result in exploitation or harm to the client.

(38) A professional counselor shall consider the cultural implications of bartering and discuss relevant concerns with the client and document any agreed upon bartering agreements in a written contract.

(39) A professional counselor shall understand the challenges of accepting gifts from clients and recognize that in some cultures, small gifts are a token of respect and gratitude. When determining whether to accept a gift from a client, a professional counselor shall take into account the therapeutic relationship, the monetary value of the gift, the client's motivation for giving the gift, and the counselor's motivation for wanting to accept or decline the gift.

(40) If a professional counselor lacks the competence to be of professional assistance to a client, the professional counselor shall not enter or continue a counseling relationship.

(41) A professional counselor shall terminate a counseling relationship when it becomes reasonably apparent that the client no longer needs assistance, is not likely to benefit, or is being harmed by continued counseling.

(42) A professional counselor may terminate counseling when in jeopardy of harm by the client or by another person with whom the client has a relationship, or when clients do not pay fees as agreed upon.

(43) A professional counselor shall provide pretermination counseling and recommend other service providers when necessary.

Section 3. Evaluation, Assessment, and Interpretation. (1) A professional counselor shall not misuse assessment results and interpretations, and a professional counselor shall take reasonable steps to prevent others from misusing the information provided.

(2) A professional counselor shall respect a client's right to know the results, the interpretations made, and the bases for the professional counselor's conclusions and recommendations.

(3) A professional counselor shall use only those testing and assessment services for which the professional counselor has been trained and is competent. A professional counselor using technology-assisted test interpretations shall be trained in the construct being measured and the specific instrument being used prior to using its technology-based application. A professional counselor shall take reasonable measures to ensure the proper use of assessment techniques by persons under their supervision.

(4) A professional counselor shall be responsible for the appropriate application, scoring, interpretation, and use of assessment instruments relevant to the needs of the client, whether they score and interpret the assessments themselves or use technology or other services.

(5) A professional counselor shall be responsible for decisions involving individuals or policies that are based on assessment results and have a thorough understanding of psychometrics.

(6) Prior to an assessment, a professional counselor shall explain the nature and purposes of assessment and the specific use of results by potential recipients. The explanation shall be given in terms and language that the client or other legally authorized person on behalf of the client can understand.

(7) A professional counselor shall consider the client's welfare, explicit understandings, and prior agreements in determining who receives the assessment results.

(8) A professional counselor shall include accurate and appropriate interpretations with any release of individual or group assessment results.

(9) A professional counselor shall release assessment data in which the client is identified only with the consent of the client or the client's legal representative. Data shall be released only to persons recognized by the professional counselor as qualified to interpret the data.

(10) A professional counselor shall take special care to provide proper diagnosis of mental disorders. Assessment techniques, including personal interviews, used to determine client care which includes locus of treatment, type of treatment, recommended follow-up, shall be appropriate for the client and appropriately used.

(11) A professional counselor may refrain from making a diagnosis if the professional counselor believes that the diagnosis would cause harm to the client or others. A professional counselor shall carefully consider both the positive and negative implications of a diagnosis.

(12) If a client is referred to a third party for assessment, the professional counselor shall provide specific referral questions and sufficient objective data about the client to ensure that appropriate assessment instruments are utilized.

(13) When assessments are not administered under standard conditions, as may be necessary to accommodate clients with disabilities, or when unusual behavior or irregularities occur during the administration, those conditions shall be noted in interpretation, and the results may be designated as invalid or of questionable validity.

(14) A professional counselor shall provide an appropriate environment for the administration of assessments. The appropriate environment shall include privacy, comfort, and freedom from distraction.

(15) A professional counselor shall ensure that technologically administered assessments function properly and provide a client with accurate results.

(16) Unless the assessment instrument is designed, intended, and validated for self-administration or scoring, a professional counselor shall not permit unsupervised use.

(17) A professional counselor shall select and use with caution assessment techniques normed on populations other than that of the client. A professional counselor shall recognize the effects of age, color, culture, disability, ethnic group, gender, race, language preference, religion, spirituality, sexual orientation, and socioeconomic status on test administration and interpretation, and place test results in proper perspective with other relevant factors.

(18) A professional counselor shall accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use.

(19) A professional counselor shall maintain the integrity and security of tests and assessments consistent with legal and contractual obligations. A professional counselor shall not appropriate, reproduce, or modify published assessments or parts thereof without acknowledgment and permission from the publisher.

(20) A professional counselor shall use established scientific procedures, relevant standards, and current professional knowledge for assessment design in the development, publication, and utilization of assessment techniques.

(21) When providing forensic evaluations, the primary obligation of a professional counselor shall be unbiased and produce objective findings that can be substantiated based on information and techniques appropriate to the evaluation, which may include examination of the individual or review of records.

(22) A professional counselor shall form his or her professional opinions based on the counselor's professional knowledge and expertise that can be supported by the data gathered in evaluations.

(23) A professional counselor shall define the limits of their reports or testimony, especially when an examination of the individual has not been conducted.

(24)(a) A professional counselor shall inform an individual who is the subject of a forensic evaluation, in writing, that the

relationship:

1. Is for the purposes of an evaluation;
2. Is not therapeutic in nature; and
3. Identifies the entities or individuals who will receive the evaluation report.

(b) A professional counselor who perform forensic evaluations shall obtain written consent from those being evaluated or from their legal representative unless a court orders evaluations to be conducted without the written consent of the individuals being evaluated or the individual's parent or guardian.

(25) A professional counselor shall not evaluate current or former clients, clients' romantic partners, or clients' family members forensically.

Section 4[3]. Confidentiality. (1) A professional counselor shall respect and guard the confidences of each individual client.

(2) A professional counselor shall protect the confidential information of prospective, current, and former clients.

(3) A professional counselor shall disclose information only with appropriate consent or with sound legal or ethical justification.

(4) A professional counselor[counselors] shall not disclose a client confidence except:

(a) Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person;

(c) During the course of a civil, criminal, or disciplinary action arising from the therapy, at which the professional counselor is a defendant; or

(d) In accordance with the terms of a written waiver. If more than one (1) person in a family receives counseling, a professional counselor shall not disclose information from a particular family member unless he has obtained a waiver from that individual family member. If the family member is a minor, a custodial parent or legal guardian may provide a waiver.

(5)[(3)] A professional counselor may use client or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver has been obtained in accordance with subsection (4)(d)[(2)(d)] of this section; or

(b) Appropriate steps have been taken to protect client identity and confidentiality.

(6)[(4)] A professional counselor shall ensure that records and documentation kept in any medium are secure and that only authorized persons have access to them, and[shall store or] dispose of client records so as to maintain confidentiality.

(7)(a) The requirement that a professional counselor shall keep information confidential shall not apply when disclosure is required to protect a client or identified others from serious and foreseeable harm or when legal requirements demand that confidential information shall be revealed.

(b) A professional counselor may consult with other professionals when in doubt as to the validity of an exception.

(8) A professional counselor who provides services to a terminally-ill individual who is considering hastening the individual's death may maintain confidentiality, depending on applicable laws and the specific circumstances of the situation and after seeking consultation or supervision from appropriate professional and legal parties.

(9) When a client discloses that the client has a disease commonly known to be both communicable and life threatening, a professional counselor shall be justified in disclosing information to identifiable third parties, if the parties are known to be at serious and foreseeable risk of contracting the disease. Prior to making a disclosure, a professional counselor shall assess the intent of the client to inform the third party about the client's disease or to engage in any behaviors that may be harmful to an identifiable third party. A professional counselor shall adhere to relevant state laws concerning disclosure about disease status.

(10) A professional counselor shall make every effort to ensure that privacy and confidentiality of a client is maintained by subordinates, including employees, supervisees, students, clerical assistants, and volunteers.

(11) When services provided to a client involve participation by an interdisciplinary or treatment team, a professional counselor

shall inform the client of the team's existence and composition, information being shared, and the purposes of sharing the information.

(12) A professional counselor shall take precautions to ensure the confidentiality of all information transmitted through the use of any medium.

(13) A professional counselor shall protect the confidentiality of a deceased client, consistent with legal requirements and the documented preferences of the client.

(14) In group work, a professional counselor shall clearly explain the importance and parameters of confidentiality for the specific group.

(15) In couples and family counseling, a professional counselor shall clearly define who is considered the client, and discuss expectations and limitations of confidentiality. A professional counselor shall obtain an agreement and document in writing the agreement among all involved parties regarding the confidentiality of information. In the absence of an agreement to the contrary, the couple or family shall be considered to be the client.

(16) When counseling minor clients or adult clients who lack the capacity to give voluntary informed consent, a professional counselor shall protect the confidentiality of information received in the counseling relationship as specified by federal and state laws, written policies, and applicable ethical standards.

(17) A professional counselor shall inform parents and legal guardians about the role of professional counselor and the confidential nature of the counseling relationship, consistent with current legal and custodial arrangements. A professional counselor shall work to establish, as appropriate, collaborative relationships with parents or guardians to best serve the client.

(18) When counseling minor clients or adult clients who lack the capacity to give voluntary consent to release confidential information, a professional counselor shall obtain written permission from an appropriate third party to disclose information. In these instances, a professional counselor shall inform clients consistent with their level of understanding and take appropriate measures to safeguard client confidentiality.

(19) A professional counselor shall obtain written permission from a client prior to allowing any person to observe counseling sessions, review session transcripts, or view recordings of sessions with supervisors, faculty, peers, or others within the training environment.

(20) A professional counselor shall provide reasonable access to records and copies of records when requested by a competent client.

(21) A professional counselor shall limit the access of a client to a client's records, or portions of a client's records, only when there is compelling evidence that the access would cause harm to the client.

(22) A professional counselor shall document the request of a client and the rationale for withholding some or all of the records in the files of clients.

(23) In situations involving multiple clients, a professional counselor shall provide an individual client with only those parts of records that relate directly to that client and do not include confidential information related to any other client.

(24) When clients request access to their records, a professional counselor shall provide assistance and consultation in interpreting counseling records.

(25) Unless exceptions to confidentiality exist, a professional counselor shall obtain written permission from clients to disclose or transfer records to legitimate third parties.

(26) A professional counselor shall store records following termination of services to ensure reasonable future access, maintain records in accordance with federal and state laws and statutes such as licensure laws and policies governing records, and dispose of client records and other sensitive materials in a manner that protects client confidentiality for a period of not less than seven (7) years after the last date that services were rendered.

(27) Information shared in a consulting relationship shall be discussed for professional purposes only. Written and oral reports present only data germane to the purposes of the consultation, and

every effort shall be made to protect client identity and to avoid undue invasion of privacy.

(28) When consulting with colleagues, a professional counselor shall not disclose confidential information that reasonably could lead to the identification of a client or other person or organization with whom the professional counselor has a confidential relationship unless the professional counselor has obtained the prior consent of the person or organization or the disclosure cannot be avoided. A professional counselor shall disclose information only to the extent necessary to achieve the purposes of the consultation.

Section 5[4]. Professional Competence and Integrity. (1) A professional counselor shall maintain standards of professional competence and integrity and shall be subject to disciplinary action in accordance with KRS 335.540:

[(1)](a)1. Upon conviction of a felony, or a misdemeanor related to his practice as a professional counselor; and

2. [(b)] Conviction shall include adjudication based on:

a. [(1-)] A plea of no contest or an "[Alford Plea]"; or

b. [(2-)] The suspension or deferral of a sentence;

[(b)](2) If his license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

[(c)](3) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances ~~that~~[(which)] could reasonably be expected to negatively impact the practice of professional counseling; or

[(d)] If [(4)] he has failed to cooperate with the board by not:

1. [(a)] Furnishing in writing a complete explanation to a complaint filed with the board;

2. [(b)] Appearing before the board at the time and place designated; or

3. [(e)] Properly responding to subpoenas issued by the board.

(2) A professional counselor shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience.

(3) While developing skills in new specialty areas, a professional counselor shall take steps to ensure the competence of their work and protect others from possible harm.

(4) A professional counselor shall monitor oneself for signs of impairment from his or her own physical, mental, or emotional problems and refrain from offering or providing professional services when impaired. A professional counselor shall seek assistance for problems that reach the level of professional impairment, and, if necessary, the professional counselor shall limit, suspend, or terminate his or her professional responsibilities until it is determined that he or she may safely resume professional counseling.

(5) A professional counselor may assist colleagues or supervisors in recognizing their own professional impairment and provide consultation and assistance when warranted with colleagues or supervisors showing signs of impairment and intervene as appropriate to prevent imminent harm to clients.

(6) When advertising or otherwise representing services to the public, a professional counselor shall identify the professional counselor's credentials in an accurate manner that is not false, misleading, deceptive, or fraudulent.

(7) A professional counselor shall accurately represent the professional counselor's qualifications.

(8) A professional counselor shall clearly distinguish between paid and volunteer work experience and accurately describe the professional counselor's continuing education and specialized training.

(9) A professional counselor shall correct any known misrepresentations of his or her qualifications by another.

(10) A professional counselor shall truthfully represent the qualifications of a professional colleague.

(11) A professional counselor shall only claim licenses or certifications that are current and in good standing.

(12) A professional counselor shall clearly differentiate

between earned and honorary degrees.

(13) A professional counselor shall clearly state the professional counselor's highest earned degree in counseling or a closely related field.

(14) A professional counselor shall not imply doctoral-level competence when possessing a master's degree in counseling or a related field by referring to oneself as a doctor in a counseling context when their doctorate is not in counseling or a related field.

(15) A professional counselor shall not use all but dissertation (ABD) or other similar terms to imply competency.

(16) A professional counselor shall not condone or engage in discrimination against prospective or current clients, students, employees, supervisees, or research participants based on age, culture, disability, ethnicity, race, religion, spirituality, gender, gender identity, sexual orientation, marital or partnership status, language preference, socioeconomic status, immigration status, or any basis proscribed by law.

(17) A professional counselor shall not engage in or condone sexual harassment. Sexual harassment may consist of a single intense or severe act, or multiple persistent or pervasive acts.

(18) A professional counselor shall accurately and objectively report the professional counselor's professional activities and judgments to appropriate third parties, including courts, health insurance companies, those who are the recipients of evaluation reports, and others.

(19) When a professional counselor provides advice or comment by means of public lectures, demonstrations, radio or television programs, recordings, technology-based applications, printed articles, mailed material, or other media, the professional counselor shall take reasonable precautions to ensure that:

(a) The statements are based on appropriate professional counseling literature and practice; and

(b) The recipients of the information are not encouraged to infer that a professional counseling relationship has been established.

(20) When providing services, a professional counselor shall only use techniques, procedures, or modalities that are grounded in theory or have an empirical or scientific foundation.

(21) When a professional counselor uses a developing or innovative technique, procedure, or modality, the professional counselor shall explain the potential risks, benefits, and ethical considerations of using the technique, procedure, or modality.

(22) A professional counselor shall minimize any potential risks or harm when using these techniques, procedures, or modalities.

(23) A professional counselor shall not provide a professional counseling service if under the influence of alcohol, another mind-altering or mood-altering drug, or physical or psychological illness that impairs delivery of the services.

(24) A professional counselor shall not possess or distribute the board's examination material without authorization by the board.

(25) A professional counselor shall not interfere with a board investigation of a professional counselor through a willful means including:

(a) Misrepresentation of a fact;

(b) Undue influence of a witness;

(c) A threat toward a person; or

(d) Harassing communication toward a person.

(26) A professional counselor shall not verbally abuse or harass or physically threaten or assault a client, supervisee, employee, board member, or agent of the board.

(27) A professional counselor shall not lack good moral character.

Section 6. Distance Counseling, Technology, and Social Media. (1) A professional counselor who engages in the use of distance counseling, technology, or social media shall develop knowledge and skills regarding related technical, ethical, and legal considerations.

(2) Clients shall have the freedom to choose whether to use distance counseling, social media, or technology within the counseling process.

(3) In addition to the information documented in an informed

consent for face-to-face counseling as required under Sections 1(2)(c)2.a. and 2(8) of this administrative regulation, the following issues unique to the use of distance counseling, technology, or social media shall be discussed, and verification of the discussion shall be documented in the informed consent form:

- (a) Distance counseling credentials, physical location of practice, and contact information;
- (b) Risks and benefits of engaging in the use of distance counseling, technology, or social media;
- (c) Possibility of technology failure and alternate methods of service delivery;
- (d) Anticipated response time;
- (e) Emergency procedures to follow when the counselor is not available;
- (f) Time zone differences;
- (g) Cultural or language differences that may affect delivery of services;
- (h) Possible denial of insurance benefits; and
- (i) Social media policy.

(4) A professional counselor shall inform a client, in writing, of any breach of the confidentiality of electronic records and transmissions within seventy-two (72) hours of knowledge of the breach.

(5) A professional counselor shall inform a client about the inherent limits of confidentiality when using technology.

(6) A professional counselor shall inform a client of authorized or unauthorized access to information disclosed using this medium in the counseling process.

(7) A professional counselor shall use current encryption standards within their Web sites or technology-based communications that meet applicable legal requirements. A professional counselor shall take reasonable precautions to ensure the confidentiality of information transmitted through any electronic means.

(8) A professional counselor who engages in the use of distance counseling, technology, or social media to interact with clients shall take steps to verify the client's identity at the beginning and throughout the therapeutic process. Verification shall include using code words, numbers, graphics, or other nondescript identifiers.

(9) A professional counselor shall inform a client of the benefits and limitations of using technology applications in the provision of counseling services. The technologies may include computer hardware or software, telephones and applications, social media and Internet-based applications and other audio or video communication, or data storage devices or media.

(10) A professional counselor shall discuss and establish professional boundaries with clients regarding the appropriate use or application of technology and the limitations of its use within the counseling relationship, which include the lack of confidentiality and times when not appropriate to use.

(11) When providing technology-assisted services, a professional counselor shall make reasonable efforts to determine that clients are intellectually, emotionally, physically, linguistically, and functionally capable of using the application and that the application is appropriate for the needs of the client. A professional counselor shall verify that clients understand the purpose and operation of technology applications and follow up with clients to correct possible misconceptions, discover appropriate use, and assess subsequent steps.

(12) When distance counseling services are deemed ineffective by the counselor or client, a professional counselor shall consider delivering services face-to-face. If a professional counselor is not able to provide face-to-face services (e.g., lives in another state), the professional counselor shall assist the client in identifying appropriate services.

(13) A professional counselor shall provide information to clients regarding reasonable access to pertinent applications when providing technology-assisted services.

(14) A professional counselor shall consider the differences between face-to-face and electronic communication (nonverbal and verbal cues) and how these may affect the counseling process. A professional counselor shall educate a client on how to

prevent and address potential misunderstandings arising from the lack of visual cues and voice intonations when communicating electronically.

(15) A professional counselor shall inform a client on how records are maintained electronically. This includes the type of encryption and security assigned to the records, and for how long archival storage of transaction records is maintained.

(16) A professional counselor who offers distance counseling services or maintains a professional Web site that provides electronic links to relevant licensure and professional certification boards to protect consumer and client rights and address ethical concerns shall ensure that distance counseling services or electronic links are working and are professionally appropriate.

(17) A professional counselor shall clearly explain to a client, as part of the informed consent procedure, the benefits, limitations, and boundaries of the use of social media.

(18) A professional counselor shall avoid disclosing confidential information through public social media.

Section 7[5]. Responsibility to Supervisor's[His] Student or Supervisee. (1) A professional clinical counselor supervisor shall monitor the services provided by supervisees.

(2) A professional counselor shall:

a)[(4)] Be aware of his influential position with respect to a student or supervisee;

b)[(2)] Avoid exploiting the trust and dependency of a student or supervisee;

c)[(3)] Try to avoid a social, business, personal, or other dual relationship that could:

1.[(a)] Impair professional judgment; and

2.[(b)] Increase the risk of exploitation;

d)[(4)] Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;

e)[(5)] Not provide counseling to a:

1.[(a)] Student;

2.[(b)] Employee; or

3.[(c)] Supervisee;

f)[(6)] Not engage in sexual intimacy or contact with a:

1.[(a)] Student; or

2.[(b)] Supervisee;

g)[(7)] Not permit a student or supervisee to perform or represent himself as competent to perform a professional service beyond his level of:

1.[(a)] Training;

2.[(b)] Experience; or

3.[(c)] Competence; and

h)[(8)] Not disclose the confidence of a student or supervisee unless:

1.[(a)] Pursuant to KRS 202A.400, 620.030, or 645.270 or as otherwise permitted or mandated by law;

2.[(b)] It is necessary to prevent a clear and immediate danger to a person;

3.[(c)] During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the professional counselor is a defendant;

4.[(d)] In an educational or training setting, of which there are multiple supervisors or professional colleagues who share responsibility for the training of the student or supervisee; or

5.[(e)] In accordance with the terms of a written informed consent agreement.

(3) A professional clinical counselor supervisor shall monitor client welfare and supervisee performance and professional development. To fulfill these obligations, a professional clinical counselor supervisor shall meet regularly with supervisees to review the supervisees' work and help them become prepared to serve a range of diverse clients as required by 201 KAR 36:060.

(4) A professional clinical counselor supervisor shall work to ensure that a supervisee communicates the supervisee's qualifications to render services to a client.

(5) A professional clinical counselor supervisor shall make supervisees aware of client rights, including the protection of client privacy and confidentiality in the counseling relationship.

Supervisees shall provide clients with professional disclosure information and inform them of how the supervision process influences the limits of confidentiality. Supervisees shall make clients aware of who will have access to records of the counseling relationship and how these records will be stored, transmitted, or otherwise reviewed.

(6) A professional clinical counselor supervisor shall not engage in a sexual or romantic interaction or relationship with current supervisees. This prohibition shall apply to both in-person and electronic interactions or relationships.

(7) A professional clinical counselor supervisor shall not engage in supervisory relationships with individuals with whom they have an inability to remain objective.

(8) A professional clinical counselor supervisor shall establish and communicate to a supervisee procedures for contacting supervisors or, in their absence, alternative on-call supervisors to assist in handling crises.

(9) A professional clinical counselor supervisor shall make their supervisees aware of professional and ethical standards and legal responsibilities.

(10) A professional clinical counselor supervisor or supervisees shall have the right to terminate the supervisory relationship with adequate notice to the other party. When termination is warranted, supervisors shall make appropriate referrals to possible alternative supervisors.

(11) Before providing counseling services, a supervisee shall disclose their status as a supervisee and explain how this status affects the limits of confidentiality. Supervisors shall ensure that a client is aware of the services rendered and the qualifications of the supervisee rendering those services.

(12) Students and supervisees shall obtain client permission before they use any information concerning the counseling relationship in the training process.

(13) A professional clinical counselor supervisor shall document and provide supervisees with ongoing feedback regarding their performance and schedule periodic formal evaluative sessions throughout the supervisory relationship.

Section 8[6]. Financial Arrangements. A professional counselor shall:

- (1) Not charge an excessive fee for service;
- (2) Disclose his fees to a client and supervisee at the beginning of service;
- (3) Make financial arrangements with a patient, third-party payor, or supervisee that:
 - (a) Are reasonably understandable; and
 - (b) Conform to accepted professional practices;
 - (4) Not offer or accept payment for a referral; and
 - (5) Represent facts truthfully to a client, third-party payor, or supervisee regarding services rendered.

Section 9[7]. Advertising. (1) A professional counselor shall:

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

Section 10[8]. Referral and Termination. (1) A professional counselor shall not abandon or neglect a client in professional counseling.

(2) A professional counselor[A-licensee] shall make a timely and appropriate referral of a client if:

(a) The professional counselor[licensee] is unable to provide the work or service; or

(b) The client's need exceeds the competency of the professional counselor[licensee].

(3)[(2)] A professional counselor[licensee] shall terminate a professional counseling service if a client:

- (a) Has attained his stated goal or objective; or
- (b) Fails to benefit from the counseling service.

(4)[(3)] A professional counselor[licensee] shall communicate the referral or the termination of counseling service to a client.

(5)[(4)] A professional counselor[licensee] shall not terminate counseling service or refer a client for the purpose of entering into a personal relationship with the client, including:

- (a) A sexual or an intimate relationship;
- (b) A financial or business relationship; or
- (c) Other activity that might serve a personal interest of the professional counselor.

(6) A professional counselor shall assist in making appropriate arrangements for the continuation of treatment, when necessary, during interruptions such as vacations, illness, and following termination.

(7) When a professional counselor shall transfer or refer clients to other practitioners, a professional counselor shall ensure that appropriate clinical and administrative processes are completed and open communication is maintained with both clients and practitioners[licensee].

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016, at 10:30 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the code of ethics for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a general code of ethics to govern the behavior of credential holders.

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

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

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment expands the code of ethics to ensure greater protection to the public.

(b) The necessity of the amendment to this administrative regulation: The board has been faced with several complaints where the code of ethics weren't clear on whether a violation occurred. The amendment expands and cures these issues.

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

(d) How the amendment will assist in the effective administration of the statutes: The regulation will allow the Board to better protect the general public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1534 licensed professional clinical counselors, 911 licensed professional clinical counselor associates, and currently 450 supervisors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require any action to be taken to be in compliance.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These individuals have an more definite understanding of their ethical obligations and duties.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(3), (7), (11).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amendment)

201 KAR 36:050. Complaint management process.

RELATES TO: KRS 335.540, 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the procedures for filing, investigating, and addressing a complaint filed against a professional counselor.

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

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (4) of this section, issued by the board alleging a violation of a specified provision of KRS 335.500 to 335.599; the administrative regulations promulgated thereunder; or any other state or federal statute or regulation.

(3) "Complaint" means any written allegation of misconduct by a credentialed individual or other person which might constitute a violation of KRS 335.500 to 335.599, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint screening committee" means a committee consisting of three (3) persons appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. The executive director of the board or another staff member may be appointed to serve on this committee.

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

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

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

Section 2.-] Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;

2. Organization; or

3. Entity[.]

(b) Shall be:

1. In writing; and

2. Signed by the person offering the complaint; and[.]

(c) May be filed by the board based upon information in its possession.

(2)[a] Upon receipt of a complaint[.]

[a] a copy of the complaint shall be sent to the individual

named in the complaint along with a request for that individual's response to the complaint.

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

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

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

Section 2[3]. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available, and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

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

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 3[4]. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint or take action pursuant to KRS 335.540(3); and

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

(3) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint, which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(4) If the board determines that a person may be in violation, it shall:

(a) Order the individual to cease and desist from further violations of KRS 335.505;

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.505 with a request that appropriate action be taken under KRS 335.599; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.505.

Section 4[5]. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

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

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

Section 5. If there is reasonable cause to believe that a license holder or applicant for a license is physically or mentally incapable

of practicing professional counseling with reasonable skill and safety to clients, the board may order the license holder or applicant to submit to an examination by a mental health professional or a physician designated by the board to determine the license holder's or applicant's mental health or physical status to practice professional counseling.

Section 6. Notice and Service Process. A notice required by KRS 335.500 to 335.599 or this administrative regulation shall be issued pursuant to KRS Chapter 13B and 201 KAR 36:090.

Section 7. Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 335.540 with the exception of a written admonishment issued pursuant to KRS 335.540(3); and

(2) An action to restrain or enjoin a violation of KRS 335.505.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016, at 10:30 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of:

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: The amendment authorizes the board to order a mental evaluation if there is a reasonable basis to believe an applicant or licensee may have a mental or physical impairment that affects the practice professional counseling.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to address applicants and licensees who may have a mental or physical impairment that affects the practice professional counseling to ensure the applicant or licensee is competent to practice.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements discipline and investigation by the board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the procedure for the board to require a license holder or applicant to submit to an examination by a mental health professional or a physician designated by the board to determine the license holder's or applicant's mental health or physical status to practice professional counseling.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

(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 or licensee would have to submit to a mental or physical examination if there is a reasonable basis to believe an applicant or licensee may have a mental or physical impairment that affects the practice professional counseling.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An applicant or licensee does not incur the cost of the mental or physical impairment.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

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

regulation: KRS 335.515(3), (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. None

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amendment)

201 KAR 36:060. Qualifying experience under supervision.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

~~Section 1. [Definitions. (1) "Face-to-face" means supervision that may include interactive, simultaneous video and audio media with a minimum of one (1) direct meeting per month that is in person where the supervisor and supervisee are physically present in the same room.~~

~~(2) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.~~

~~(3) "Practice of professional counseling" means professional counseling services within the scope of Section 2 of this administrative regulation and which involve the application of mental health and development principals, methods or procedures, including assessment, evaluation, diagnosis, and treatment of emotional disorders or mental illnesses, to assist individuals to achieve more effective personal, social, educational, or career development and adjustment.~~

~~(4) "Supervisee" means a licensed professional counselor associate who works with clients under supervision.~~

~~(5) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing professional counseling services to meet the requirements of KRS 335.525(1)(e).~~

~~(6) "Supervisor" means a member of a mental health or behavioral services profession listed in Section 3(1) of this~~

administrative regulation who controls, oversees, guides, and takes responsibility for the professional clinical counseling practice of a supervisee in accordance with this administrative regulation.

(7) "Supervisor of record" means the person listed on the supervisory agreement and approved by the board in accordance with Section 4 of this administrative regulation.

Section 2.] Requirements for the Practice of Professional Counseling. (1) The practice of professional counseling shall be based on knowledge of areas including interpersonal, cognitive, cognitive behavioral, psychodynamics, human relations, crisis intervention, psychopathology, group dynamics, and effective methods and strategies necessary to help the client achieve mental, vocational, emotional, physical, social, moral, and spiritual development and adjustment throughout the client's life span.

(2) In providing counseling services, a licensee shall possess and utilize skills in the following areas:

(a) The helping relationship, including counseling theory and practice;

(b) Human growth and development;

(c) Lifestyle and career development;

(d) Group dynamics, process, counseling, and consulting;

(e) Assessment, appraisal, and testing of individuals;

(f) Social and cultural foundation, including multicultural issues;

(g) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

(h) Research and evaluation; and

(i) Professional orientation and ethics.

Section 2[3]. Supervision. (1)[A supervisor shall be properly credentialed under Kentucky law as a member of one (1) of the following professions:

(a) A licensed professional clinical counselor;

(b) A licensed psychologist, licensed psychological practitioner, or a certified psychologist with autonomous functioning;

(c) A licensed clinical social worker;

(d) A licensed psychiatrist;

(e) A nurse with a master's degree and psychiatric certification; or

(f) A licensed marriage and family therapist.

(2) The supervisor shall:

(a) Provide supervision to a person obtaining the experience required under KRS 335.525(1)(e);

(b) Not have:

1. An unresolved citation filed against the supervisor by the board that licenses or certifies that profession;

2. A suspended or probated license or certificate;

3. An order from the board under which the supervisor is licensed or certified prohibiting the supervisor from providing supervision; or

4. A previous or existing dual relationship or other personal relationship with a supervisee;

(c) Have been in the practice of his or her profession for two (2) years following licensure or certification in that profession; and

(d) Have completed the supervisor training required by subsection (3) of this section. Experience acquired under the supervision of an individual who has not completed the supervisor training shall not count toward the requirements of KRS 335.525(1)(e).

(3) In order to obtain board-approved supervisor status, a supervisor shall complete three (3) hours of board-approved supervisor training.

(a) The board-approved supervisor training shall cover Kentucky law governing the practice of professional counseling, both administrative regulations and statutes, theories of supervision, ethical issues involved in supervision, and supervisor responsibilities such as logs, treatment, planning, recording, and proper documentation.

(b) Supervisor training shall be conducted by an instructor who is a Licensed Professional Clinical Counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

(c) To maintain board-approved supervisor status, a supervisor shall retake the board-approved supervisor training every three (3) years.

(4) A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than twelve (12) persons obtaining experience for certification or licensure at the same time.

(5) After January 1, 2016,] A supervisor of record shall be licensed by the board as a licensed professional clinical counselor supervisor, except as established in this section[subsection].

(2) An LPCA Supervision[(a) A supervisory] Agreement that has been approved prior to the effective date[January 1, 2016 that involves other licensees listed in Section 3(4)] of this administrative regulation may continue to be in effect until termination.

(3)[a](b)] An applicant may submit a hardship request for the ability to utilize one (1) of the licensees listed in paragraph (b)[in Section 3(4)] of this subsection[administrative regulation] if the nature of the circumstances shows that the ability to obtain supervision from a licensed professional clinical counselor is prohibited by the difficulty to do so. Circumstances showing difficulty in obtaining supervision may include engaging in the practice of counseling in a rural area where there is not a licensed professional clinical counselor within a fifty (50) mile radius, or active-duty military deployment[working within an agency where no licensed professional clinical counselor is available to supervise]. The submittal for a hardship exemption shall be accompanied by the LPCA Supervision[supervisory] Agreement.

(b) An applicant who demonstrates a hardship may request a supervisor who is properly credentialed under Kentucky law as a member of one (1) of the following professions:

1. A licensed professional clinical counselor that does not qualify as a supervisor under 201 KAR 36:065;

2. A licensed psychologist, licensed psychological practitioner, or a certified psychologist with autonomous functioning;

3. A licensed clinical social worker; or

4. A licensed marriage and family therapist.

Section 3[4]. LPCA Supervision[Supervisory] Agreement. (1) A supervisee shall enter into a written supervision[supervisory] agreement with an approved supervisor. The supervision[supervisory] agreement shall contain:

(a) The name and address of the supervisee;

(b) The name, address, license or certification number, and number of years of practice of the supervisor of record;

(c) The name, address, license or certification number, and number of years of practice of other supervisors;

(d) The agency, institution, or organization where the experience will be received;

(e) A detailed description of the nature of the practice including the type of:

1. Clients that[which] will be seen;

2. Therapies and treatment modalities that[which] will be used including the prospective length of treatment; and

3. Problems that[which] will be treated;

(f) The nature, duration, and frequency of the supervision, including the:

1. Number of hours of supervision per week;

2. Number of hours of individual supervision;

3. Methodology for transmission of case information; and

4. Number of hours of face-to-face supervision that[which] meet the requirements of KRS 335.525(1)(e);

(g) A statement that supervision:

1. Shall occur a minimum of:

a[1. Occur a minimum of] Three (3) times per month and one (1) hour per meeting for a full time practice that[which] consists of twenty-five (25) clock hours or greater per week; or

b[2. Occur a minimum of] One (1) hour for every thirty (30) hours of client contact for a part time practice that[which] consists of less than twenty-five (25) clock hours per week; and

2. May include interactive, simultaneous video and audio media with a minimum of one (1) direct meeting per month that is in person where the supervisor and supervisee are physically present in the same room;

(h) The conditions or procedures for termination of the supervision;

(i) A statement that:

1. The supervisor of record understands that the supervisor shall be held accountable to the board for the care given to the supervisee's clients; and

2. The supervisor of record meets the criteria established in Section 2[3] of this administrative regulation; and

(j) The signatures of both the supervisor and the supervisee. If a supervisee changes his or her supervisor of record as identified in the supervision[supervisory] agreement, the supervisee shall submit a new supervision[supervisory] agreement, which sets forth the information required by this subsection[(1) of this section] and which identifies the new supervisor of record.

(2) The supervision[supervisory] agreement shall be approved by the board before the licensed professional counselor associate begins the practice of professional counseling.

Section 4[5]. Experience Under Supervision. (1) Experience under supervision shall consist of:

(a) Direct responsibility for a specific individual or group of clients; and

(b) Broad exposure and opportunity for skill enhancement with a variety of developmental issues, dysfunctions, diagnoses, acuity levels, and population groups.

(2) The board may, for extenuating circumstances beyond the supervisor's or supervisee's control, grant a limited waiver from the requirement of one (1) monthly direct in person meeting to satisfy the face-to-face supervision requirements upon written request by the supervisor and supervisee. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

Section 5[6]. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying experience and shall focus on:

(a) The appropriate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of professional counseling; and

(e) The development and use of the professional self in the therapeutic process.

(2) A supervisee shall not continue to practice professional counseling if:

(a) The conditions for supervision set forth in the LPCA Supervision[supervisory] Agreement required by Section 3[4] of this administrative regulation are not followed; or

(b) The supervision[supervisory] agreement is terminated for any reason.

(3) If the terms of the supervision[supervisory] agreement are not being met by the supervisee, the supervisor shall immediately notify this board in writing.

(4) The supervisor and supervisee shall sign and file with the board a Counseling Associate Semi-Annual Report Form [with their renewal application and] by April 1st of each year.

Section 6[7]. Evaluation by Board. The period of supervised experience required by KRS 335.525(1)(e) shall be evaluated by the board according to one (1) of the following methods:

(1) A candidate who seeks to obtain experience in the Commonwealth of Kentucky shall submit the supervision[supervisory] agreement required by Section 3[4] of this administrative regulation for the experience prior to beginning to accrue the required experience; or

(2) A candidate who obtained the experience in another state shall submit documentation of the hours of supervision with the Application for Licensed Professional Clinical Counselor and Licensing Via Endorsement for Reciprocity required by 201 KAR 36:070. The documentation shall also:

(a) Provide information that verifies that the requirements for the license or certificate of the supervisor from the state in which the license or certificate was held are substantially equivalent to the requirements for that license or certificate in Kentucky;

(b) Provide information that verifies that the supervisor is in good standing with the certifying or licensing state; and

(c) Demonstrate that the practice and supervision requirements in the state from which the candidate is applying are substantially equivalent to the requirements established under this administrative regulation.

Section 7[8]. Temporary Supervision. (1) In extenuating circumstances, if a licensed professional counselor associate is without supervision, the associate may continue working up to sixty (60) calendar days under the temporary supervision of a qualified mental health provider as defined by KRS 202A.011(12) while an appropriate board-approved supervisor is sought and a new supervision[supervisory] agreement is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2)(a) Within ten (10) days of the occurrence, the supervisee shall notify the board of the extenuating circumstances that[which] have caused the supervisee to require temporary supervision.

(b) The supervisee shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of the change in status of board-approved supervision.

(c) The written plan shall include:

1. The name of the temporary supervisor;

2. Verification of the credential held by the temporary supervisor;

3. An email address and a postal address for the temporary supervisor and the supervisee; and

4. A telephone number for the temporary supervisor.

(d) The temporary supervision arrangement shall expire after sixty (60) days of the establishment of the temporary supervision arrangement with a qualified mental health provider. The temporary supervision arrangement shall not be extended beyond the sixty (60) days.

Section 8[9]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "LPCA Supervision[supervisory] Agreement", September, 2016[2014]; and

(b) "Counseling Associate Semi-Annual Report", October 2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016, at 10:30 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

VOLUME 43, NUMBER 5 – NOVEMBER 1, 2016

CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the supervision requirements to qualify for licensure.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate applications by establishing the supervision experience requirements for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(e) provides that an applicant for a professional counselor license must have acquired 4000 hours of experience in the practice of counseling under the general supervision of an approved supervisor. This administrative regulation establishes the requirements relating to supervision and the requirements for experience under supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of experience that is acceptable for licensure.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies and establishes the parameters for supervision and obtaining a hardship exemption for supervision.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify issues regarding interactive supervision and obtaining a hardship exemption for supervision.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is in conformity with the delegated authority of the board..

(d) How the amendment will assist in the effective administration of the statutes: The regulation clarifies and establishes the parameters for supervision and obtaining a hardship exemption for supervision. The amendment will also allow the board discretion to approve an individual who is not a Licensed Professional Clinical Counselors as a supervisor under extenuating circumstances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1534 licensed professional clinical counselors, 911 licensed professional clinical counselor associates, and currently 450 supervisors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require supervisors or supervisees to take any action to be in compliance.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Supervisees will have the opportunity to have a supervisor who is not a Licensed Professional Counselor under extenuating circumstances.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(1), (3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (Amendment)

201 KAR 36:070. Application, education, and examination requirements.

RELATES TO: KRS 335.500, 335.525(1)(c), (d), (f), 335.527(1)(a)

STATUTORY AUTHORITY: KRS 335.515(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.527(1)(a) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution and sixty (60) graduate hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the board. This administrative regulation establishes the application, education[~~educational~~], and examination requirements

for licensure.

Section 1. (1) Degree in counseling. To qualify as a degree in counseling under KRS 335.525(1)(c) or KRS 335.527(1)(a), a degree shall:

(a) Clearly indicate that it is a degree in counseling from a counseling program as evidenced by the description in the program's catalogues and brochures outlining the intent to educate and train the individual for the practice of professional counseling as defined in KRS 335.500(5);

(b) Include the word "counseling" in the name of the degree, the academic program of study, or the major field of study;

(c) Be from a counseling program that stands as a recognizable organizational entity within the institution and has a counseling faculty who identify with the professional counseling profession; and

(d) Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that[which] has a counseling faculty who identify with the professional counseling profession.

(2) Degree in a related field.

(a) To qualify as a degree in a related field under KRS 335.525(1)(c) or KRS 335.527(1)(a), a degree shall:

1. Be awarded from an academic program of study for the degree that follows an organized sequence of graduate coursework with at least one (1) course in a minimum of seven (7) of the nine (9) content areas established in KRS 335.525(1)(d) or KRS 335.527(1)(a);

2. Include[a] three (3) semester hours or four and one-half (4.5) quarter hours[hour-course], at the minimum, on professional orientation and ethics with the[that has as its] concentration on the American Counseling Association Code of Ethics; and

3. Include practicum or internship experience of at least 600 hours in a counseling program that stands as a recognizable organizational entity within the institution and that[which] has a counseling faculty who identify with the professional counseling profession.

(b) The degree shall be designed to educate and train the individual for the practice of professional counseling as defined by KRS 335.500(5).

(3) Examples of degrees that shall not be accepted as a degree in counseling or a degree in a related field for purposes of licensure include a degree in clinical psychology, forensic psychology, psychology, christian psychology, biblical counseling, pastoral counseling, marriage and family therapy, art or dance therapy, social work, criminal justice, or special education.

(4) If an applicant proffers a degree in a related field, the applicant shall also provide evidence of additional graduate coursework in each area listed in KRS 335.525(1)(d)1-9 or 335.527(1)(a)1-9 that is not included in the applicant's degree. The coursework in the degree program, in addition to the other coursework, shall demonstrate that the applicant has documented coursework in all nine (9) of the content areas listed in KRS 335.525(1)(d) or 335.527(1)(a).

(5) The graduate hour requirement of KRS 335.525(1)(d) and KRS 335.527(1)(a) shall be semester hours. A minimum of ninety (90) quarter hours shall be equivalent to sixty (60) graduate semester hours.

Section 2. Accreditation. (1)(a) All coursework submitted for licensure shall be from a regionally accredited educational institution, which is accredited by any one (1) of the following: Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, or[and] Western Association of Schools and Colleges.

(b) All coursework submitted for licensure from an international educational institution shall be accredited by the International Registry of Counseling Education Programs or reviewed by the World Education Services.

(2) An applicant shall have a degree from a program that is

accredited by the Council on Accreditation of Counseling and Related Programs (CACREP) or its affiliates. This requirement shall not apply to an applicant who:

(a) Is enrolled in a counseling or a related field program on or before January 15, 2015;

(b) Maintains continuous enrollment; and

(c) Receives a degree in the counseling or a related field program no later than May 31, 2020.

Section 3. Examination. An applicant[Applicants] for licensure as a licensed professional clinical counselor shall obtain a passing score on the National Counselor Examination for Licensure and Certification (NCE) or the National Clinical Mental Health Counseling Examination (NCMHCE).

Section 4. Application for Licensure. (1)(a) Each applicant for licensure as a licensed professional clinical counselor shall:

1. Submit an Application for Licensed Professional Clinical Counselor[and Licensing Via Endorsement for Reciprocity] to the board;

2. Pay the fee as established in 201 KAR 36:020[and]

3. Submit proof of passage of one (1) of the examinations required under Section 3 of this administrative regulation;

4. Complete at least three (3) semester hours or four and a half hour (4.5) quarter hours for each of the following curriculum content areas:

a. The helping relationship, including theory and practice, which provides an understanding of counseling and consultation processes, and includes the following:

(i) Counseling and consultation theories including both individual and systems perspectives as well as coverage of relevant research and factors considered in applications;

(ii) Basic interviewing, assessment, and counseling skills;

(iii) Counselor or consultant characteristics and behaviors that influence professional counseling relationships, including age, gender, and ethnic differences; verbal and nonverbal behaviors; and personal characteristics, orientations, and skills;

(iv) Client or consultee characteristics and behaviors that influence professional counseling relationships, including age, gender, ethnic differences, verbal and nonverbal behaviors, and personal characteristics, orientations, and skills; and

(v) Ethical considerations;

b. Human Growth and Development provides an understanding of the nature and needs of individuals at all developmental levels, and includes:

(i) Theories of individual and family development and transitions across the life span;

(ii) Theories of learning and personality development;

(iii) Human behavior, including an understanding of developmental crises, disability, addictive behavior, psychopathology and environmental factors, normal and abnormal behavior;

(iv) Counseling strategies for facilitating development over the life span; and

(v) Ethical considerations;

c. Lifestyle and career development provides an understanding of career counseling, development and related factors. Coursework includes the following:

(i) Career-counseling theories and decision-making models;

(ii) Career, vocational educational and labor market information resources; visual and print media and computer-based career information systems;

(iii) Career-counseling program planning, organization, implementation, administration, and evaluation;

(iv) Interrelationships among work, family, and other life roles and factors, including multicultural and gender issues as related to career counseling;

(v) Career and educational placement counseling, follow-up and evaluation; assessment instruments and techniques relevant to career counseling;

(vi) Computer-based career-development applications and strategies, including computer-assisted career-counseling systems;

(vii) Career-counseling processes, techniques, and resources.

including those applicable to specific populations; and

(viii) Ethical considerations;

d. Group dynamics, process, counseling, and consulting provides an understanding of group development, dynamics, and counseling theories; group counseling methods and skills; and other group work approaches, and includes the following:

(i) Principles of group dynamics, including group counseling components, developmental stage theories, and group members' roles and behaviors;

(ii) Group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;

(iii) Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature;

(iv) Group counseling methods, including group counselor orientations and behaviors, ethical standards, appropriate selection criteria and methods of evaluation of effectiveness;

(v) Approaches used for other types of group work in counseling, including task groups, prevention groups, support groups, and therapy groups; and

(vi) Ethical considerations;

e. Assessment, appraisal, and testing of individuals provides an understanding of individual and group approaches to assessment and evaluation in counseling practice. Coursework includes the following:

(i) Theoretical and historical bases for assessment techniques in counseling;

(ii) Validity, including evidence for establishing content, construct, and empirical validity;

(iii) Reliability, including methods of establishing stability, internal, and equivalence reliability;

(iv) Appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;

(v) Psychometric statistics, including types of assessment scores, measures of central tendency, indices of variability, standard errors, and correlations;

(vi) Age, gender, ethnicity, language, disability, and cultural factors assessment and evaluation in counseling services;

(vii) Strategies for selecting, administering, interpreting, and using assessment and evaluation instruments and techniques in counseling; and

(viii) Ethical considerations;

f. Social and cultural foundations, including multicultural issues that provide an understanding of issues and trends in a multicultural and diverse society that impact professional counselors and the counseling profession, and includes the following:

(i) Multicultural and pluralistic trends, including characteristics and concerns of counseling individuals from diverse groups;

(ii) Attitudes and behavior based on factors such as age, race, religious preferences, physical disability, sexual orientation, ethnicity, culture, family patterns, gender, socioeconomic status, and intellectual ability;

(iii) Individual, family, and group counseling strategies with diverse populations; and

(iv) Ethical considerations;

g. Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior provides an understanding of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior. Coursework includes the following:

(i) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM);

(ii) Established diagnostic criteria for mental and emotional disorders, and treatment modalities and placement criteria within the continuum of care;

(iii) Etiology of addiction and co-occurring disorders and the impact of co-occurring substance use disorders on medical and

psychological disorders;

(iv) Etiology, the diagnostic process and nomenclature, treatment, referral, and prevention of mental and emotional disorders; and

(v) Principles, models, and documentation formats of biopsychosocial case conceptualization and treatment planning;

h. Research and evaluation is a course that provides an understanding of types of research methods, basic statistics, and ethical and legal consideration in research. Coursework includes the following:

(i) Basic types of research methods to include qualitative and quantitative research designs;

(ii) Basic parametric and nonparametric statistics;

(iii) Principles, practices, and applications of needs assessment and program evaluation;

(iv) Uses of computers for data management and analysis; and

(v) Ethical and legal considerations;

i. Professional orientation to counseling is a course that provides an understanding of the professional counselor profession and provides an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards, and credentialing. Coursework includes the following:

(i) History of the counseling profession, including significant factors and events;

(ii) Professional roles and functions of counselors, including similarities and differences with other types of professionals;

(iii) Professional organizations (primarily ACA, its divisions, branches, and affiliates), including membership benefits, activities, services to members, and current emphases;

(iv) Ethical standards of NBCC or ACA and related ethical and legal issues, and their applications to various professional activities (e.g., appraisal, group work);

(v) Professional counselor preparation standards, their evolution and current applications;

(vi) Professional counselor credentialing, including counselor certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues; and

(vii) Public policy processes, including the role of the professional counselor in advocating on behalf of the profession and its clientele; and

j. Practicum or internship experiences shall be for a minimum of two (2) semester courses and provide supervised counseling experience in an appropriate clinical setting, which includes the following:

(i) 600 clock hours of total experience;

(ii) At least 240 clock hours of direct service, including experience leading groups;

(iii) Weekly interaction that averages one (1) hour per week of individual or triadic supervision throughout the internship, usually performed by the onsite supervisor;

(iv) An average of one and one-half (1 ½) hours per week of group supervision provided on a regular schedule throughout the internship and performed by a licensed program faculty member;

(v) The opportunity for the student to become familiar with a variety of professional activities and resources in addition to direct service (e.g., record keeping, assessment instruments, supervision, information and referral, in-service and staff meetings);

(vi) The opportunity for the student to develop program-appropriate audio or video recordings for use in supervision or to receive live supervision of his or her interactions with clients; and

(vii) Evaluation of the student's counseling performance throughout the internship, including documentation of a formal evaluation after the student completes the internship by a program faculty member in consultation with the site supervisor;

5. Submit a background check performed within the last three (3) months by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation; and

6. Submit a copy of the course description or syllabi for the courses taken to satisfy KRS 335.525(1)(d) or KRS 335.527(1)(c) if the degree in counseling or the degree in a related field is not from

a CACREP accredited institution.

(b) If applying for licensure via endorsement for reciprocity, an applicant shall:

1. Meet the requirements in paragraph (a)1₂ and 2₂ of this subsection; and
2. Submit an official transcript.

(2) Each applicant for licensure as a licensed professional counselor associate shall:

(a) Submit a Licensed Professional Counselor Associate Application~~[an Application for Licensed Professional Counselor Associate]~~ to the board;

(b) Pay the fee as established in 201 KAR 36:020;~~[and]~~

(c) Submit an official transcript;

(d) Satisfy the requirements of subsection (1)(a)4. of this section;

(e) Submit a background check performed within the last three (3) months by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation; and

(f) Submit a copy of each syllabi for the courses taken to satisfy KRS 335.525(1)(d) or KRS 335.527(1)(a) if the degree in counseling or degree in a related field is not from a CACREP accredited institution.

Section 5. An applicant for licensure shall be of good moral character. In order to establish good moral character, the applicant or licensee has the duty to provide available evidence relative of rehabilitation.

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

(a) "Application for Licensed Professional Clinical Counselor~~[and Licensing Via Endorsement for Reciprocity]~~", September 2016~~[October 2014]~~; and

(b) "Licensed Professional Counselor Associate Application~~[for Licensed Professional Counselor Associate]~~", September 2016~~[October 2014]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

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CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes the educational and examination requirements to qualify for licensure.

(b) The necessity of this administrative regulation: This administrative regulation enables the board to evaluate an applicant's qualifications by establishing the educational and examination requirements for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.525(1)(c) requires that applicants for licensure shall have received a master's or doctoral degree in counseling or a related field from a regionally-accredited institution. KRS 335.525(1)(d) requires that applicants for licensure shall have sixty (60) graduate semester hours in specified areas. KRS 335.525(1)(f) requires that applicants achieve passing scores on the examination required by the Board. KRS 335.515(3) authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS 335.500 to 335.599.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the types of education and examination that are acceptable for licensure.

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

(a) How the amendment will change this existing administrative regulation: The amendments establishes: (1) the requirements for a degree in counseling and a degree in a related field for KRS 335.527(1)(a); (2) establishes the number of semester and quarter hours to satisfy the professional orientation and ethics requirements to be considered an acceptable degree; (3) the graduate hour requirements of KRS 335.525(1)(d) and KRS 335.527(1)(a) as semester hours; (4) the number of quarter hours that is an equivalent to sixty (60) semester hours; (5) the course descriptions for the nine areas listed in KRS 335.525(1)(d) and KRS 335.527(1)(a); (6) a requirement for a criminal background for new applicants and individuals seeking reinstatement; and (7) the requirement for a new applicant to submit a syllabi for each course if not from a CACREP accredited institution.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the differences between the language in KRS 335.525(1)(d) and KRS 335.527(1)(a); inform applicants the calculations from quarter hours to semester hours; and advise what documents should be provided to the board as part of the application process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is in conformity with KRS 335.515(1), (3), 335.500, 335.525(1)(c), (d), (f), 335.527(1)(a).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will eliminate is uncertainty an questions regarding the differences between the language in KRS 335.525(1)(d) and KRS 335.527(1)(a); inform applicants the calculations from quarter hours to semester hours; and advise what documents should be provided to the board as part of the application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board receives approximately 100 applications for licensure yearly.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An applicant will have to submit a criminal background check and syllabi.

(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 cost of obtaining a criminal background check, which the board understands to be between \$10 and \$50.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit will be expediting application decisions without the need to defer to the next month so the board can obtain additional information.

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(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(1), (3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Office of Occupations and Professions Kentucky Board of Licensure for Massage Therapy (Amendment)

201 KAR 42:020. Fees.

RELATES TO: KRS 309.357, 309.362(2), (3)

STATUTORY AUTHORITY: KRS 309.355(3), 309.357

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357 requires the board to establish reasonable fees for the licensure of massage therapists. KRS 309.362(2) and (3) authorize the issuance of an inactive license and reinstatement. This administrative regulation establishes the fees relating to massage therapy (MT) licensure.

Section 1. Fee Payments. (1) All fees established in Section 2

of this administrative regulation shall be:

(a) Made payable as required by KRS 309.356 to the State Treasury; and

(b) Paid by:

1. Cashier's check;

2. Certified check;

3. Money order;

4. Personal check; or

5. Online payment by credit card, debit card, or electronic check.

(2) A payment for an application fee that is incorrect shall be returned to the applicant and the application shall not be posted until the correct fee is received.

(3) The application fee and the initial licensure fee established in Section 2(1) of this administrative regulation shall be nonrefundable.

(4) If it is determined that a refund of any fee is required, the refund shall be issued to the applicant or licensee.

Section 2. Fees. (1) The fee for an initial massage therapist license shall be \$125.

(2)(a) The biennial renewal fee for a massage therapist license renewed on or before the renewal date shall be \$100.

(b) If the license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late renewal shall be \$150.

(c) If the license is renewed sixty-one (61) to ninety (90) days after the expiration of the license, the late renewal fee shall be \$200.

(d) If a license is not renewed within ninety (90) days of expiration of the license, the applicant shall comply with KRS 309.357(6).

(3) A licensee shall be in good standing with the board at the time the licensee elects inactive status.

(4)(a) The annual renewal date for an inactive license shall remain the original issue date of the license.

(b) The annual renewal fee for an inactive license shall be thirty-five (35) dollars.

(5) If the inactive license is renewed after the renewal date and up to sixty (60) days after expiration of the license, the fee for late inactive renewal shall be \$52.50~~fifty-two (52) dollars and fifty (50) cents~~.

(6) If the inactive license is renewed sixty-one (61) to ninety (90) days after the expiration of the license, the late renewal fee shall be seventy (70) dollars.

(7) The application fee for moving a license from inactive to active status shall be fifty (50) dollars and shall not be prorated.

(8) A licensee who elects inactive status or an inactive licensee electing to activate his or her license shall complete and submit an Application for Inactive or Return to Active Status in addition to the fee referenced in subsection (7) of this section. An applicant shall affix a two (2) inch by two (2) inch or larger passport quality color photograph of the applicant to the Application for Inactive or Return to Active Status.

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

(a) "Application for Inactive or Return to Active Status", October 2016; and

(b) "Voluntary Retirement Non-Renewal", October 2016~~[September 2015, is incorporated by reference]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

DENISE LOGSDON, Board Chair

APPROVED BY AGENCY: October 7, 2016

FILED WITH LRC: October 7, 2016 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, November 23, 2016, at 9:30 a.m., local time, at the Kentucky Board of Licensure for Massage Therapy, 911 Leawood

Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received in writing five (5) workdays prior to the hearing 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 in writing five (5) workdays prior to the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day Wednesday, November 30, 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: John Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601. phone (502) 696-5635, fax (502) 696-3925, email marcus.jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marcus Jones

(1) Provide a brief summary of: Establishes the fees and inactive status requirements for licensed massage therapists.

(a) What this administrative regulation does: This administrative regulation establishes the fees and inactive status requirements for persons licensed as massage therapists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the minimum fees and payment process for massage therapists. The administrative regulation sets the process for a licensee electing inactive status.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 309 requires the board to verify the qualifications of and establish fees for persons who wish to practice in the state as a Licensed Massage Therapists. This administrative regulation establishes the minimum fees and requirements for inactive status.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the fees for licensure and renewal, and establishes the fees and process for 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: The amendment will require applicants to attach a passport quality photograph to the application form.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the form to require applicants to submit a passport quality photograph with the form.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.355(1) requires the board to evaluate the qualifications for applicants for licensure and establish procedures for the renewing of licenses. KRS 309.362(3) sets the process by which licensees go to inactive status and return to active status.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the board to verify the identity of inactive status applicants or applicants returning to practice from inactive status.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 225 persons will seek temporary licensure within the next fiscal year, this regulation will also continue as new applicants seek temporary licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires applicants to complete the current application and affix a color photograph for identification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any cost to the applicants affected by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board will be able to verify that applicants for active status are the same individuals who went to inactive status.

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

(a) Initially: The budget for the Board is \$168,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The budget for the Board is estimated to continue to have a budget of \$168,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees. This amendment will not increase or decrease the fees already stated in statute.

(9) Tiering: Is tiering applied? No. Tiering is not applied because the criteria established in this regulation apply equally to all applicants for inactive or return to active status applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Kentucky Board of Licensure for Massage Therapy is an administrative body created by KRS 309.355.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355, KRS 309.357, and KRS 309.362.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have any effect on the expenditures and revenues of state and local government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated will depend on the number of applicants and renewals for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue will depend on the number of applicants for the subsequent years.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

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

**GENERAL GOVERNMENT CABINET
Office of Occupations and Professions
Board of Licensure for Massage Therapy
(Amendment)**

201 KAR 42:040. Renewal.

RELATES TO: KRS 309.357(3), (4), (5), (6), 309.361, 309.362
STATUTORY AUTHORITY: KRS 309.355(1), (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the board to administer and enforce the provisions of KRS 309.350 to 309.364 and authorizes licensure renewal. KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357(3) requires all licenses to be renewed. This administrative regulation establishes the requirements for renewal of licenses.

Section 1. (1) A license to practice massage therapy shall be renewed upon:

(a) Payment of the biennial renewal fee as established in 201 KAR 42:020, Section 2(2), on or before the anniversary date of issue of license;

(b) Submission to the board of the Application for Renewal form and the following written information:

1. Current complete home address, email address to receive communications from the board, and telephone number;

2. Current complete name, address, and telephone number of each location in which massage therapy service is provided;

3. A list indicating completion of the continuing education units taken during the licensure renewal period as required by 201 KAR 42:110. The list shall:

a. Itemize the number of clock hours credited for each course; and

b. Designate the courses that fulfill the three (3) required hours of ethics training; and

4. Confirmation that, since the license was issued or renewed, the licensee has not:

a. Been convicted of a felony;

b. Had his or her license disciplined and is not currently under disciplinary review in another state; or

c. Defaulted on the repayment obligation of financial aid programs administered by the Kentucky Higher Education Assistance Authority (KHEAA) pursuant to KRS 164.772; and

(c) Submission of a two (2) inch by two (2) inch or larger passport quality color photograph of the applicant to the board affixed to the Application for Renewal form. The photograph submitted with the application shall be taken within the previous six (6) months to reflect the current appearance of the applicant.

(2)(a) A licensee who has been convicted of a crime or who has been disciplined or is currently under disciplinary investigation or review by the board of another jurisdiction during the licensure period immediately preceding the submission of the Application for Renewal shall participate in an in-person interview with the board's Application Committee prior to renewal of the license. The purpose of this interview with the board's application committee shall be to find if the licensee met the requirement of good moral character established in KRS 309.358(3) and 335B.040. The interview shall be conducted pursuant to the board's authority under KRS 309.355(3), 309.362(1)(b), and 309.362(4).

(b) Each applicant for renewal who has been convicted of a crime or who has been disciplined by the board of another jurisdiction during the licensure period immediately preceding the submission of the Application for Renewal shall submit a recent background check performed by the Federal Bureau of Investigation. The required background check shall be applied for within the ninety (90) days preceding the date the Application for Renewal is submitted.

(3) If, upon a preliminary review, the board determines that an Application for Renewal shall be denied, notice of the preliminary decision shall be sent to the licensee and the licensee shall have thirty (30) days from the date of the letter to request a hearing in writing by certified mail with the board. If a request for hearing by the licensee is not received by the board within thirty (30) days of the letter, the licensee shall be found to have voluntarily withdrawn his or her Application for Renewal.

Section 2. A licensee convicted of a felony or disciplined by the board of another jurisdiction in the interim period between issuance and renewal of the license, or between renewal periods, shall submit notice of the conviction or discipline to the board within sixty (60) days of the discipline or conviction.

Section 3. If payment and complete information are not received by the board on or before the anniversary date of the issuance of the license, the license shall expire and the person shall not practice nor represent himself or herself as a massage therapist in Kentucky.

Section 4. (1) An expired license shall be renewed within ninety (90) days of expiration if the applicant submits:

(a)[(1)] A completed Application for Renewal form;

(b)[(2)] Documentation of successful completion of twenty-four (24) hours of continuing professional education, which:

1.[(a)] Includes studies in ethics, business practices, science, and techniques related to massage therapy;

2.[(b)] Have been credited within two (2) years prior to the renewal deadline; and

3.[(c)] Have not been previously used within the same renewal period to satisfy Kentucky license renewal requirements; and

(c)[(3)] The appropriate fee for renewal, as required by 201 KAR 42:020, Section 2(2), (5), or (6).

(2)(a) A written request for an extension of time to file a completed Application for Renewal form shall be submitted to the board no later than ninety (90) days after the expiration of the license.

(b) An applicant submitting an Application for Renewal form later than ninety (90) days after the expiration date shall attach a written explanation for the late filing to the form. An Application for Renewal submitted later than ninety (90) days without a written explanation for the late filing shall be considered incomplete.

(c) The board shall permit late renewal beyond ninety (90) days after the expiration of the license for an applicant submitting documented proof of a medical disability or illness, or active military service that precluded the timely submission of an Application for Renewal form.

(d) The board shall not waive the late renewal fee required by KRS 309.357(6)(a).

Section 5. (1) Upon initial licensing, a licensee shall be furnished a wall certificate which shall be displayed at the primary massage therapy service location.

(2) A licensee shall provide verification of current licensure upon request if he or she is currently engaged in the practice of massage therapy, intends to engage within a reasonable time in the practice of massage therapy, or has engaged in the practice of massage therapy immediately prior to the request.

(3) Official verification of licensure status shall be available on the board's Web site at <http://bmt.ky.gov>.

Section 6. Reactivation Requirement for Inactive Status Massage Therapist. (1)(a) Before the expiration of five (5) years of inactive status, a licensee requesting to return to active status shall:

1. Provide proof to the board of continuing education required by KRS 309.362(3). At least three (3) of the continuing education hours submitted shall be focused on the area of ethics;

2. Complete the Application for Renewal; and

3. Pay the fee prescribed by 201 KAR 42:020, Section 2(7).

(b) The continuing education hours provided pursuant to paragraph (a)1 of this subsection may be used for the next regular renewal period.

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(2) After more than five (5) years of inactive status, a person requesting to return to active status shall reapply as required by KRS 309.362(3).

Section 7. Incorporation by Reference. (1) "Application for Renewal", October 2016~~[September 2015]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, Monday through Friday, 8:00 a.m. to 4:30 p.m.

DENISE LOGSDON, Chair

APPROVED BY AGENCY: October 7, 2016

FILED WITH LRC: October 7, 2016 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, November 23, 2016 at 9:30 a.m. Eastern time, at the Kentucky Board of Licensure for Massage Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received within five days of the hearing date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the calendar day, Wednesday, November 30, 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: J. Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601. phone (502) 696-5635, fax (502) 564-6801, email marcus.jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marcus Jones

(1) Provide a brief summary of: Establishes the requirements for renewal of a license to practice as a Massage Therapist.

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for renewal of a license to practice in the Commonwealth as a Licensed Massage Therapist.

(b) The necessity of this administrative regulation: The regulation is necessary to establish uniform renewal requirements for licenses.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 309 requires the board to verify the qualifications of and establish a procedure for the renewal of licenses persons practicing as a Licensed Massage Therapist. This administrative regulation establishes the minimum qualifications and procedure for renewal of a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the renewal requirements and the appeal process for the denial of a renewal of a license.

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

(a) How the amendment will change this existing administrative regulation: The amendment will allow an extension of time for applicants who miss renewal filing deadlines due to military service obligations or medical issues. This amendment will require renewal applicants to provide a current email address to the board.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow an extension of time for applicants who miss filing deadlines due to military service obligations of medical disabilities. This amendment is necessary to

have applicants provide a current email address to the board for communication.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.355 requires the board to evaluate the qualifications for applicants for renewal of licensure and establish procedures for the issuance of renewals. KRS 309.361 requires the board to set standards and conditions for renewal of licenses.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow renewal applicants an extension of time to submit renewal information when serving military service obligations. The amendment will have applicants provide a current email address to the board for communication.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 50 persons will seek licensure within the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires renewal applicants to submit a current email address with an application. Applicants must submit documented evidence verifying a need for extension of time to renew licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The licensees must pay the appropriate biennial renewal fee listed in administrative regulation 201 KAR 42:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for renewal who are also in military service or suffering medical issues will be able to request additional time to submit renewal information.

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

(a) Initially: The budget for the Board is \$168,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The budget for the Board is estimated to continue to have a budget of \$168,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded solely by fees paid by the licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation does not require an increase in fees to implement the regulation.

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

(9) TIERING: Is tiering applied? No. Tiering is not necessary because the terms and benefits of this regulation will be applied to all applicants for renewal equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Massage Therapy is an administrative body created by KRS 309.355.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), (3); KRS 309.361; KRS 309.362.

3. Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated will depend on the number of applicants and renewals for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue will depend on the number of applicants and renewals for the subsequent years.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 45:010. Definitions for 401 KAR Chapter 45.

RELATES TO: KRS 224.1-010[224.01-040], 224.50-760

STATUTORY AUTHORITY: KRS 224.10-100(30), 224.40-305, 224.50-760(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(30) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.40-305 requires persons who establish, construct, operate, maintain or permit the use of a waste site or facility to obtain a permit, pursuant to administrative regulations adopted by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes definitions for 401 KAR Chapter 45, concerning the management of special wastes and the training and certification of operators of special waste sites or facilities.

Section 1. Definitions. (1) "Beneficial reuse" means the use or reuse of special wastes, other than solids, residues and precipitate separated from or created in sewage from humans, households, or commercial establishments by the processes of a wastewater treatment plant which are subject to the provisions of 401 KAR 45:100, in a manner that complies with the environmental performance standards of 401 KAR 30:031 and all other applicable requirements of 401 KAR Chapter 45.

(2) "Certified operator" means a special waste site or facility operator who holds a valid certificate upon the successful completion of an approved training course and examination. The categories of certified operator shall be: composting operator, interim operator, landfarming operator, and landfill operator.

(3) "Closure" is defined by KRS 224.01-010(4).

(4) "Coal combustion by-products" means special waste including fly ash, bottom ash, and scrubber sludge residues produced by coal-fired electrical generating units. This waste shall[does] not include residues of refuse derived fuels such as municipal waste, tires, and solvents.

(5) "Composting" means the process by which biological decomposition of organic special waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material that can easily and safely be stored, handled, and used in an environmentally acceptable manner. Composting may include a process that creates an anaerobic zone

within the composting material. Composting does not include simple exposure of special waste under uncontrolled conditions resulting in natural decay.

(6) "Composting operator" means a certified operator who is the individual responsible for ensuring compliance with all permit conditions at a composting facility and who is reasonably available to the facility during operations.

(7) "Construction permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to commence site preparation prior to the disposal or management of special waste.

(8) "Construction/operation permit" means a formal permit issued by the cabinet to an owner or operator of a special waste site or facility that authorizes the owner or operator to accept special waste for disposal or management. This permit is issued only after the construction of the site or facility has been certified as complete by the cabinet and the necessary financial assurance has been executed.

(9) "Formal permit" means a permit for special waste landfills, landfarming operations, and composting operations issued by the cabinet after review of the designated application form and completion by the applicant of the requirements of this chapter.

(10) "Horizontal expansion" means any increase in the capacity of a special waste landfill that expands the waste boundary of the landfill beyond the original waste boundaries contained in the approved permit application.

(11) "Interim operator" means a person who assumes the position of a special waste site or facility operator in the absence of a designated certified operator. An interim operator may be a person who has not completed training that is required for a certified operator.

(12) "Landfarming facility" means a special waste site or facility for land application of sludges or other special waste by any method for purposes of disposal. It can be on any piece or pieces of land, subject to approval, and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(13) "Landfarming operator" means a certified operator who is the individual responsible for ensuring compliance with all permit conditions at a landfarming site or facility and who is reasonably available to the site or facility during operations.

(14) "Landfill operator" means a certified operator who is the individual with primary responsibility for management and operation of a special waste landfill to assure compliance with all permit conditions and is reasonably available to the site or facility during operations.

(15) "Postclosure" means the routine care, maintenance, and monitoring of a special waste site or facility following closure of the facility.

(16) "Special waste":

(a) Is defined by KRS 224.50-760(1)(a); and

(b) Shall not include special wastes that are coal combustion residuals governed by 401 KAR Chapter 46.

(17) "Special waste site or facility" means any land, real property, appurtenance, building, structure, or installation where special waste is managed, processed, beneficially reused, or disposed.

Section 2. Acronyms and Abbreviations. The acronyms and abbreviations used in this chapter are listed in Table 1.

Table 1. Acronyms and Abbreviations	
C.F.R.	Code of Federal Regulations
EPA	Environmental Protection Agency
FDIC	Federal Deposit Insurance Corporation
FSLIC	Federal Savings and Loan Insurance Corporation
KAR	Kentucky Administrative Regulations
KPDES	Kentucky Pollutant Discharge Elimination System
KRS	Kentucky Revised Statutes
NCUA	National Credit Union Administration
NPDES	National Pollutant Discharge Elimination System

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PCB	Polychlorinated Biphenyls
POTW	Publicly Owned Treatment Works
U.S.C.	United States Code
USDA	United States Department of Agriculture
USGS	United States Geological Survey

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2016

FILED WITH LRC: October 11, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2016, at 6:00 p.m., at 300 Sower Blvd, 1st Floor, Training Room C. 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 through November 30, 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: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 401 KAR Chapter 45 for the management of special wastes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms necessary to administer the management of special wastes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.50-760 by defining terms for 401 KAR Chapter 45 for the management of special wastes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the management of special wastes as established by KRS 224.50-760(1)(d) by defining the terms necessary to administer the program.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change this existing administrative regulation by excluding special wastes that are coal combustion residuals regulated by 401 KAR Chapter 46.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to exclude special wastes that are coal combustion residuals regulated by 401 KAR Chapter 46 to avoid dual regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing definitions for the management of special wastes and excluding coal combustion residuals as they will be regulated by 401 KAR Chapter 46.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by excluding special wastes that are coal combustion residuals as they will be regulated by 401 KAR Chapter 46.

(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 electric generating utilities that currently manage coal combustion

residuals as a special waste pursuant to 401 KAR Chapter 45. There are currently eight electric generating utilities that will be affected in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation provides definitions of terms and will require no action on the part of regulated entities.

(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 have no costs associated as it only provides definitions of terms for 401 KAR Chapter 45.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation has no compliance benefits as it only provides definitions of terms.

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

(a) Initially: This administrative regulation will not cost the administrative body to implement as it only provides definitions of terms.

(b) On a continuing basis: This administrative regulation will not cause the administrative body to incur any continuing costs as it only provides definitions of terms.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will not require a funding source as it only provides definitions of terms.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in fees or funding to implement as it only provides definitions of terms.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly establish any new fees. Fees for facilities managing coal combustion residuals are established in 401 KAR 46:120.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation defines terms that are applicable to the program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Division of Waste Management as subcategorize the definition of special waste.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.50-760.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have costs associated with the administration of the program as it only provides

definitions of terms.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have costs associated with the administration of the program as it only provides definitions of terms.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have no fiscal impact as it only provides definitions of terms.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)**

401 KAR 45:060. Special waste permit-by-rule.

RELATES TO: KRS ~~224.1~~[224.04], 224.10, 224.40, 224.46, 224.50, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires persons who establish, conduct, operate, maintain or permit the use of a waste site or facility to obtain a permit. This chapter establishes the permitting standards for special waste sites or facilities, and the standards applicable to all special waste sites or facilities. This administrative regulation sets forth the requirements for a special waste permit-by-rule.

Section 1. Permit-by-rule. Notwithstanding any other provision of this chapter, the following special waste sites or facilities shall be deemed to have a permit without the owner or operator having made application or registration with the cabinet, provided the operation is a practice common to the industry, is not in violation of 401 KAR 30:031, and does not present a threat or potential threat to human health or the environment:

(1) Oil production brine pits and gas and oil drilling mud pits, during the active life of the pit, if the pit is subject to 401 KAR 5:090;

(2) Temporary storage of special waste in piles;

(3) Injection wells used for disposal of special waste subject to 401 KAR 5:090 or in compliance with an underground injection control permit issued by the U.S. EPA;

(4)~~[Surface mining impoundments and other]~~ Special waste surface impoundments in substantial compliance with KPDES permits;

(5) Surface impoundments that treat domestic sewage and that do not contain any industrial wastewater, or are publicly owned treatment works for the treatment of domestic sewage, if the facility is in compliance with the KPDES or NPDES permit;

(6)~~[Disposal of coal combustion fly ash, bottom ash, and scrubber sludge in an active mining operation, if the owner or operator of the mining operation:~~

(a) ~~Has a mining permit issued under KRS Chapter 350 that includes the disposal of special waste; and~~

(b) ~~Complies with the conditions of the mining permit; and~~

(7) Beneficial reuse of coal combustion by-products for placement at active or abandoned underground or surface coal mines, including as an ingredient or substitute ingredient in the manufacturing of products, including but not limited to, cement, concrete, paint, and plastics; antiskid material; highway base course; structural fill, backfill, material for contouring, blasting grit, roofing granules; and mine stabilization, and reclamation material, if provided that:

(a) The utilization of coal combustion by-products does not result in the creation of a nuisance condition;

(b) Erosion and sediment control measures consistent with

sound engineering practices are undertaken;

(c) The use is not within 100 feet of existing streams, 300 feet of existing drinking water wells, or floodplains or wetlands, unless permission has been obtained from the appropriate regulatory agency;

(d) The generator characterizes the nonhazardous nature of the coal combustion by-products; and

(e) The generator submits to the cabinet an annual report that identifies the type and amount of coal combustion by-products[waste] released for reuse; the name and address of each recipient of coal combustion by-products[waste]; and the specific use, if known, each recipient made of the coal combustion by-products[waste].

Section 2. Noncompliances. (1) The cabinet may take any appropriate enforcement actions, including corrective action or revocation, if a special waste permit-by-rule site or facility is not operating in substantial compliance with Section 1 of this administrative regulation.

(2) The cabinet may, at its discretion, require the owner or operator of a special waste permit-by-rule site or facility to upgrade the permit to a registered permit-by-rule to ensure that the requirements of this chapter and the environmental performance standards of 401 KAR 30:031 are met.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2016

FILED WITH LRC: October 11, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2016, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room C. 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 through November 30, 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: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a special waste permit-by-rule.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the permitting standards for a permit-by-rule for special waste sites.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.50-760 by establishing requirements for the permit-by-rule in the management of special waste.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in providing requirements for a special waste permit-by-rule.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change this existing administrative regulation by excluding disposal of coal combustion residuals in mining operations from being a permit-by-rule. The amendment also changes this existing administrative regulation by excluding certain beneficial reuses of coal combustion residuals as they will

be regulated by 401 KAR Chapter 46. Beneficial reuse of coal combustion by-products permit-by-rules will no longer include an ingredient or substitute ingredient in the manufacturing of products, including but not limited to, cement, concrete, paint, and plastics, antiskid material, highway base course, blasting grit, and roofing granules. Clarified that generators will only be required to report annually to the cabinet on the coal combustion by-products rather than all waste.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to establish the requirements for a special waste permit-by-rule.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing the requirements for a special waste permit-by-rule.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by excluding coal combustion residuals as they will be regulated by 401 KAR Chapter 46. This administrative regulation will no longer establish a permit-by-rule for beneficial reuse of coal combustion by-products as an ingredient or substitute ingredient in the manufacturing of products, including but not limited to, cement, concrete, paint, and plastics, antiskid material, highway base course, blasting grit, and roofing granules. Beneficial reuse of coal combustion by-products in mining operations will continue to be a permit-by-rule as established in this chapter. Lastly, this administrative regulation will only requiring generators to annually report to the cabinet on coal combustion by-products rather than all waste.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect electric generating utilities that manage coal combustion by-products in mined areas by establishing the requirements for a coal combustion by-product permit-by-rule. There are currently eight electric generating utilities that will be affected in Kentucky. This administrative regulation will affect the Division of Waste Management and the Division of Water as it establishes requirements for entities regulated by the divisions.

(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 owners or operators managing special wastes that are coal combustion residuals previously regulated by this administrative regulation will be required to meet the requirements established in 401 KAR Chapter 46. Owners or operators managing coal combustion by-products at mined areas will continue to be allowed to do so for the purposes of mine stabilization and reclamation. Clarified that generators would only be required to report to the cabinet annually on coal combustion by-products rather than waste.

(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 cost the entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit the regulated entities managing coal combustion residuals by being consistent with the federal regulations in 401 KAR Chapter 46, thereby only having one standard with which they shall comply. In addition, this administrative regulation establishes a permit-by-rule for special waste facilities that comply.

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

(a) Initially: This administrative regulation will not cause any additional costs to the administrative body as it is currently implemented.

(b) On a continuing basis: This administrative regulation will not cause any additional costs to the administrative body on a continuing basis as it is currently implemented.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation is funded by General Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not implement 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 directly or indirectly establish any new fees. Fees are established in 401 KAR 46:120 for electric generating utilities managing coal combustion residuals.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation as all permittees are treated alike.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.50-760.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have additional costs associated with the administration of the program.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have additional costs associated with the administration of this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have no fiscal impact.

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:150. Eastern Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470(2), 439.590, 439.640(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470(2), 439.590, and 439.640(2) authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Eastern Kentucky Correctional Complex.

Section 1. Incorporation by Reference. (1) Eastern Kentucky

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Correctional Complex Policies and Procedures, October 14, 2016~~[November 8, 2005]~~, is incorporated by reference.

Eastern Kentucky Correctional Complex Policies and Procedures include:

~~[EKCC 01-02-01 Public Information and News Media Access
EKCC 01-06-01 Inmate Death (Amended 6/12/02)]~~
EKCC 01-06-02 Crime Scene Camera
EKCC 01-07-01 Institutional Tours of EKCC
~~[EKCC 01-07-02 EKCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive, and Community Agencies]~~
EKCC 01-07-03 Outside Consultation and Research (Amended 10/14/16)
~~[EKCC 01-08-01 Monthly Reports
EKCC 01-09-01 Duty Officer Responsibilities (Amended 6/12/02)
EKCC 01-10-01 Annual Planning Document and Conference]~~
EKCC 01-10-02 Organization and Assignment of Responsibility
EKCC 01-10-03 Institutional Planning
EKCC 01-13-01 Organization of Operations Manual (Amended 8/13/02)
EKCC 01-13-02 Monitoring of Operations, Policies and Procedures
EKCC 01-13-03 Formulation and Revision of EKCC Operating Procedure (Amended 8/13/02)
EKCC 01-13-04 Meetings Conducted and Their Purpose
EKCC 02-01-02 Inmate Canteen (Amended 10/14/16~~[6/12/02]~~)
EKCC 02-02-01 Fiscal Management: Agency Funds (Amended 6/12/02)
EKCC 02-05-01 Fiscal Management: Budget
EKCC 02-08-01 Property Inventory
EKCC 02-08-02 Warehouse Operation and Inventory Control
EKCC 02-08-03 Inventory Control, Nonexpendable Items
EKCC 02-08-04 Warehouse Policy and Procedure
EKCC 02-11-01 Purchase and Supply Requisition
EKCC 02-12-01 Fiscal Management: Audits
~~[EKCC 02-13-01 Fiscal Management: Accounting Procedures (Amended 6/12/02)]~~
EKCC 02-14-01 Screening Disbursements from Inmate Personal Accounts (Amended 6/12/02)
~~[EKCC 04-01-01 Staff Participation in Professional Organizations and Conferences; Provision for Leave and Reimbursement for Expenses
EKCC 04-02-01 Emergency Preparedness Training]~~
EKCC 04-02-02 Advisory Training Committee
~~[EKCC 05-01-01 Inmate Participation in Authorized Research
EKCC 05-02-01 Information System
EKCC 06-01-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers]~~
EKCC 06-03-01 Case Record Management (Amended 10/14/16)
EKCC 10-02-01 Special Management Unit: Operating Procedures and Living Conditions
~~[EKCC 10-02-02 Special Management Inmates: Assignment, Classification, Reviews and Release
EKCC 10-02-03 Grooming Standards for Special Management]~~
EKCC 11-02-01 Meal Planning (Amended 10/14/16)~~[for General Population]~~
EKCC 11-02-02 Food Service: Purchasing, Storage and Farm Products
EKCC 11-03-01 Food Service: Menu, Nutrition and Special Diets]
EKCC 11-04-01 Food Service: Inspections and Sanitation
EKCC 11-04-02 Medical Screening of Food Handlers
EKCC 11-05-01 Food Service: Security (Amended 10/14/16)
~~[EKCC 11-06-01 Food Service: Kitchen and Dining Room Inmate Worker Responsibilities]~~
EKCC 11-07-01 Dining Room Rules (Amended 10/14/16)~~[Guidelines]~~
~~[EKCC 11-08-01 OJT Food Service Training Placement]~~
EKCC 12-01-01 Vermin and Insect Control
EKCC 12-02-01 Inmate Dress and Use of Access Areas (Amended 10/14/16)
EKCC 13-01-01 Pharmacy Policy (Amended 10/14/16~~[9/14/05]~~)

EKCC 13-01-02 Self-Administration of Medication (SAM) Program (Amended 10/14/16)~~[Added 9/14/05]~~
~~[EKCC 13-02-01 Injury Prevention (Amended 9/14/05)
EKCC 13-02-02 Sexual Assault (Added 9/14/05)]~~
EKCC 13-02-03 Consultations (Amended 10/14/16)~~[9/14/05]~~
EKCC 13-02-04 Medical Services (Amended 9/14/05)
EKCC 13-02-05 Health Evaluations (Amended 10/14/16)~~[9/14/05]~~
EKCC 13-02-06 Sick Call, General, and Dental (Amended 9/14/05)
~~[EKCC 13-02-07 First Aid Kits (Amended 9/14/05)]~~
EKCC 13-05-01 Aids and Hepatitis B: Precautions Against Infection (Amended 9/14/05)
EKCC 13-07-01 Serious Illness, Major Injuries, Death (Amended 9/14/05)
EKCC 13-08-01 Psychiatric and Psychological Services (Amended 10/14/16)~~[9/14/05]~~
EKCC 13-08-02 Psychiatric and Psychological Services Team (Amended 10/14/16)~~[9/14/05]~~
EKCC 13-08-03 Suicide Prevention and Intervention Program (Amended 10/14/16)~~[9/14/05]~~
EKCC 13-08-04 Detoxification (Amended 10/14/16)~~[9/14/05]~~
EKCC 13-08-05 Mental Health Services (Added 9/14/05)
EKCC 13-09-01 Dental Services (Amended 9/14/05)
EKCC 13-10-01 Optometric Services (Amended 9/14/05)
EKCC 13-12-02 Resident Transfer/Medical Profiles (Amended 9/14/05)
EKCC 13-13-01 Syringes, Needles and Sharps Control (Amended 9/14/05)
~~[EKCC 13-14-01 Fire and Emergency Evacuation Plan]~~
EKCC 13-15-01 Medical Department - General Housekeeping Decontamination Procedures and Biohazard Waste Procedures (Amended 9/14/05)
EKCC 13-16-01 Medical Records (Amended 11/8/2005)
EKCC 14-02-01 Personal Hygiene Items: Issuance and Replacement Schedule
EKCC 14-04-01 Inmate Legal Services
~~[EKCC 14-06-01 Inmate Grievance Procedure]~~
EKCC 14-07-01 Inmate Rights and Responsibilities
EKCC 15-01-01 Hair and Grooming Standards: Inmate Barber Shop
~~[EKCC 15-02-01 Restricted Wing
EKCC 15-05-01 Restoration of Forfeited Good Time
EKCC 15-06-01 Due Process/Disciplinary Procedure]~~
EKCC 16-01-01 Inmate Visiting
EKCC 16-02-01 Inmate Correspondence
EKCC 16-03-01 Inmate Telephone Procedures
EKCC 16-05-01 Inmate Access to and Communication with EKCC Staff
EKCC 16-05-02 Unit Bulletin Boards
~~[EKCC 17-01-01 Authorized Inmate Personal Property]~~
EKCC 17-01-02 Personal Property Control
EKCC 17-02-01 Assessment/Orientation
EKCC 17-04-01 Inmate Reception Process at the EKCC
EKCC 18-01-01 Inmate Classification
EKCC 18-02-01 Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI)
EKCC 18-10-01 Parole Progress Report
EKCC 18-13-01 Meritorious Housing
~~[EKCC 18-13-02 Restricted Wing - Enhanced Supervision Unit
EKCC 18-13-03 Enhanced Supervision Unit]~~
EKCC 18-13-04 Minimum Security Unit: Operating Procedures and Living Conditions (Added 8/13/02)
EKCC 19-04-01 Inmate Work Program
EKCC 20-01-01 Educational Program
EKCC 21-01-01 Library Services
EKCC 22-02-01 Recreation and Inmate Activities
EKCC 23-01-01 Religious Services
~~[EKCC 23-01-02 Muslim Services - Ramadan]~~
EKCC 24-01-01 Social Services and Counseling Program
~~[EKCC 24-02-01 Pathfinders (Added 6/12/02)]~~
EKCC 25-02-01 Inmate Discharge Procedure
EKCC 25-03-01 Prerelease Preparation

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[EKCC 25-04-01—Inmate Furloughs
EKCC 25-06-01—Community Center Program
EKCC 26-01-01—Citizens Involvement and Volunteers]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601[Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400], Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BALLARD, Commissioner

APPROVED BY AGENCY: October 10, 2016

FILED WITH LRC: October 14, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2016, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 through November 30, 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: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Eastern Kentucky Correctional Complex including the rights and responsibilities of Eastern Kentucky Correctional Complex employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standards requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Eastern Kentucky Correctional Complex

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Eastern Kentucky Correctional Complex. It provides direction and information to EKCC employees and inmates concerning the operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment maintains Eastern Kentucky Correctional Complex compliance with ACA Standards and updates practices for the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and update practices for the institution.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes permit the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Eastern Kentucky Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and

inmates information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 400 employees of the institution, 1700 inmates, and all visitors to the Eastern Kentucky Correctional Complex.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: An exact cost of implementation is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(b) On a continuing basis: An exact cost of implementation is unknown, but it is not anticipated that the amendment to this administrative regulation will increase costs.

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

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

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

(9) TIERING: Is tiering applied? No, Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment to this regulation impacts the operation of the Eastern Kentucky Correctional Complex.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this regulation does not create any revenue for the Kentucky Department of Corrections, the institution, or other government entity.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this regulation does not create any revenue for the Kentucky Department of Corrections, the institution, or other government entity.

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

year? No new programs are created. The amendment to this regulation impacts how the institution operates, but does not increase costs from what was previously budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the institution operates, but is not expected to increase costs from what will be budgeted to the Department of Corrections.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amendment)

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

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2016 Update to the 2015-2017 State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2016 Update to the 2015-2017 State Health Plan", September 2016[August 2015], is incorporated by reference.

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

~~[Section 3. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on September 8, 2015.]~~

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 26, 2016

FILED WITH LRC: September 27, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2016 at 9:00 a.m. in Auditorium A, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation through November 30, 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

Contact Persons: Diona Mullins (502-564-9592, Diona.mullins@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2016 Update to the 2015-2017 State Health Plan which shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation revises the 2013-2015 State Health Plan to address the ambulatory surgical center review criteria.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment of the State Health Plan will assist in the effective administration of KRS 216B.040(2)(a)2.a. The plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a.

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

(a) How the amendment will change this existing administrative regulation: The amendment will revise the ambulatory surgical center review criteria in the State Health Plan.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to comply with the content of the authorizing statutes as the present and future needs of the population are to be addressed in the State Health Plan. The amendment is necessary to assure that there is not a proliferation of unnecessary ambulatory surgical centers.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the revised criteria of the 2016 Update to the 2015-2017 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the ambulatory surgical center review criteria of the State Health Plan will address the needs of the population and assist in the effective administration of KRS 216B.040(2)(a)2.a.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually, approximately five (5) ambulatory surgical center certificate of need applications are filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities which submit certificate of need applications for ambulatory surgical centers will be subject to the revised criteria set forth in the 2016 Update to the 2015-2017 State Health Plan.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities which submit certificate of need applications for ambulatory surgical centers will be subject to the revised criteria set forth in the 2016 Update to the 2015-2017

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State Health Plan, which addresses the need for expansion of ambulatory surgical centers in the Commonwealth.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed ambulatory surgical centers.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No impact to revenues.

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amendment)

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

RELATES TO: KRS 216.2925, 216.530, 216B.010, 216B.015, 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.185, 216B.990

STATUTORY AUTHORITY: KRS 216.530, 216B.042(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper

administration of the licensure function and establish reasonable application fees for licenses. This administrative regulation establishes the fee schedule and requirements for obtaining a license to operate a health facility and establishes the procedure for obtaining a variance.

Section 1. Definitions. (1) "Adverse action" means action taken by the Cabinet for Health and Family Services, Office of Inspector General to deny, suspend, or revoke a health facility's license to operate.

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Change of ownership" means any change in ownership interest of an entity that holds a license as a health facility defined pursuant to subsection (5) of this section, including any change with respect to a:

(a) Person or entity with ownership interest in the facility;

(b) Person who is an officer or director of the entity, if the entity is organized as a corporation; or

(c) Person or entity responsible for the management, if the entity is organized as a limited liability company not managed by the members of the company.

(4) "Deemed hospital" means a hospital that has had its accreditation accepted by the Office of Inspector General pursuant to KRS 216B.185(1) as evidence that the hospital demonstrates compliance with the licensure requirements of KRS Chapter 216B.

(5) "Health facility" is defined by KRS 216B.015(13).

(6) [(4)] "Inspector General" means the Inspector General or designee.

(7) [(5)] "Variance" means the written approval of the Inspector General authorizing a health care facility to depart from a required facility specification, upon meeting the conditions established in Sections 4 and 5 of this administrative regulation.

Section 2. Licenses. (1) Any person or entity, in order to lawfully provide health services as defined by KRS 216B.015(14), shall first obtain a provisional license prior to operating a health facility.

(2) A license required by KRS 216B.105(1), including a provisional license, shall be conspicuously posted in a public area of the facility.

(3) [(2)] An applicant for provisional licensure or annual renewal of licensure as a health facility[or service] shall complete and submit to the Office of the Inspector General the appropriate application[for licensure] as follows:

(a) Application for License to Operate a Health Facility[or Service];

(b) Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility;

(c) Application for License to Operate a Hospital;

(d) Application for License to Operate a Home Health Agency, Non-residential Hospice, or Private Duty Nursing Agency;

(e) Application for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technological Service;

(f) Application for License to Operate a Long Term Care Facility; or

(g) Application for License to Operate a Family Care Home.

(4) Provisional License. Upon receipt of an application for a license and appropriate licensure fee as established in Section 3 of this administrative regulation, the Office of Inspector General shall:

(a) Review the application and any supporting information related to:

1. Ownership;

2. Staffing;

3. Operations;

4. The type of services to be provided; and

5. If appropriate, plans and specifications for construction or renovation; and

(b) Return the application and accompanying licensure fee if:

1. An individual having an ownership interest in the facility has, within the seven (7) year period prior to the application date, had previous ownership interest in a facility or service that was licensed

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or certified by the cabinet, and the license or certificate to operate was denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm; or

2. The cabinet finds that the applicant misrepresented or submitted false information on the application.

(5) If an application and accompanying licensure fee is not returned pursuant to subsection (4) of this section, the Office of Inspector General shall conduct:

(a) An initial, on-site inspection of the health facility; or

(b) A desk review of a practice that is acquired by a hospital licensed under 902 KAR Chapter 20 if the practice:

1. Qualified for the exemption described in KRS 216B.020(5) prior to acquisition; and

2. Is not contiguous to the hospital campus.

(6) If no facility deficiencies are found during the initial on-site inspection or desk review described by subsection (5) of this section, the Office of Inspector General shall issue a provisional license effective for a period not to exceed six (6) months.

(7) Upon receipt of a provisional license, the licensee shall begin providing health services as designated on the licensure application.

(8)(a) Within six (6) months from the effective date of a provisional license, the Office of Inspector General shall conduct an unannounced, on-site inspection of the health facility to verify compliance with each administrative regulation applicable to the license requested.

(b) If the Office of Inspector General identifies a regulatory violation or multiple violations during the provisional licensure period, the health facility may continue to provide services under the provisional license pending completion of the plan of correction process established in subsection (14) of this section.

(9) A provisional license shall expire on the date the Office of Inspector General grants approval of or denies a license following the inspection or desk review described in subsection (5) of this section.

(10) If a provisional licensee receives notice from the Office of Inspector General that a license is denied, the licensee shall cease providing services immediately.

(11) Written notice denying a license shall explain the reason for the denial, including:

(a) Substantial failure, as described by KRS 216B.105(2), to comply with the provisions of KRS Chapter 216B or any administrative regulation applicable to the regular license;

(b) Substandard care that places patients, residents, or clients at risk of death or serious harm; or

(c) Denial of access to the Office of Inspector General as described in subsection (13) of this section.

(12) The effective date of an initial license shall be backdated to the effective date of the provisional license and be subject to annual renewal within one (1) year from the effective date.

(13)(3) An applicant for an initial license shall, as a condition precedent to licensure be in compliance with each administrative regulation applicable to the license requested, which shall be determined through an on-site inspection of the health facility. (4) Licensure inspections.

(a) Except for a health facility subject to KRS 216.530, a licensure inspection may be unannounced.

(b)1. A representative of the Office of Inspector General shall have access to the health facility pursuant to KRS 216B.042(2).

2. An applicant for licensure or a current licensee shall not deny access to a representative of the Office of Inspector General, after proper identification, to make an inspection for determining compliance with the requirements of each applicable administrative regulation for which the facility is licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1.

3.a. Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the Office of Inspector General to enter the facility, or deny access to records relevant to the inspection, unless deemed confidential by 42 U.S.C. 299b-22(a), shall result in disciplinary action, including denial, revocation, modification, or suspension of the facility's license.

b. Denial, revocation, modification, or suspension of a facility's

license shall be subject to appeal pursuant to KRS 216B.105.

(c) An inspection of a health facility[or service] licensed under 902 KAR Chapter 20 or 906 KAR Chapter 1 shall comply as follows:

1. The inspection shall be made at any time during the licensee's hours of operation;

2. The inspection shall be limited to ensure compliance with the standards set forth in 902 KAR Chapter 20, 906 KAR Chapter 1, KRS Chapter 216, or KRS Chapter 216B; and

3. The inspection of a health facility[or service] based on a complaint or a follow-up visit shall not limit the scope of the inspection to the basis of the complaint or the implementation of a plan of correction.

(14)[(5)] Violations.

(a) The Office of Inspector General shall notify a[the] health facility in writing of a regulatory violation identified during an inspection.

(b) The health facility shall submit to the Office of Inspector General, within ten (10) days of the notice, a written plan for the correction of the regulatory violation.

1. The plan shall be signed by the facility's administrator, the licensee, or a person designated by the licensee and shall specify:

a. The date by which the violation shall be corrected;

b. The specific measures utilized to correct the violation; and

c. The specific measures utilized to ensure the violation will not recur.

2. The Office of Inspector General shall review the plan and notify the facility in writing of the decision to:

a. Accept the plan;

b. Not accept the plan; or

c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2).

3. The notice specified in subparagraph 2.b. of this paragraph shall:

a. State the specific reasons the plan is unacceptable; and

b. Require an amended plan of correction within ten (10) days of receipt of the notice.

4. The Office of Inspector General shall review the amended plan of correction and notify the facility in writing of the decision to:

a. Accept the plan;

b. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 216B.105(2); or

c. Require the facility to submit an acceptable plan of correction.

5. A facility that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked in accordance with KRS 216B.105(2).

(15)[(6)] A license shall:

(a) Expire one (1) year from the effective date[of issuance], unless otherwise expressly provided in the license certificate; and

(b) Be renewed in the form of a validation letter if the licensee:

1. Submits a completed licensure application;

2. Pays the prescribed fee;

3. Has no pending adverse action; and

4. Unless exempted, has responded to requests from the cabinet for:

a. Annual utilization surveys; and

b. Requests for information regarding health services provided.

(16)[(7)] Except for a Level I psychiatric residential treatment facility licensed pursuant to the exception established in 902 KAR 20:320, Section 3(2), more than one (1) license shall not be issued or renewed for a particular licensure category at a specific location.

(17) Written notice[(8) A new licensure application] shall be filed with the Office of Inspector General within thirty (30) calendar days of the effective date of a change of ownership defined by Section 1(3) of this administrative regulation[A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing facility or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another].

(18)[(9)] The licensee shall fully disclose to the cabinet the name, mailing address, email address, and phone number, or a change in the name, mailing address, email address, or phone

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number of:

(a) Each person or entity having an ownership interest[~~of twenty-five (25) percent or more~~] in the facility; and

(b)1. Each officer or director of the corporation, if a facility is organized as a corporation; or

2. Each partner, if a facility is organized as a partnership.

~~(19)~~~~(40)~~ An unannounced inspection shall be conducted:

(a) In response to a credible, relevant complaint or allegation; and

(b) According to procedures established in subsection ~~(13)~~~~(4)~~ of this section.

~~(20)~~~~(44)~~ A licensee that does not have a pending adverse action[;] but fails to submit a completed licensure application annually shall cease operating the health facility unless:

(a) The items required under subsection ~~(15)~~~~(6)~~(b) of this section have been tendered; and

(b) The Office of Inspector General has provided the facility with a notice granting temporary authority to operate pending submission of the application.

(21) Credentialing and Re-credentialing. A licensed health facility that is required by KRS 216B.155(2) to assess the credentials of health care professionals applying for privileges shall use Form KAPER-1, Part B, incorporated by reference in 806 KAR 17:480.

Section 3. Fee Schedule. (1)(a) Fees for review of plans and specifications for construction or renovation of health facilities shall be as follows:

License Type	Rate
(a) Hospitals plans and specifications review	\$.10 per sq. ft.
(initial through final)	\$200 minimum
(b) All other health facilities plans and specifications review	\$.10 per sq. ft.
(initial through final)	\$200 minimum

(b) A request for review of plans and specifications shall be submitted on the Program Review Fee – Worksheet Health Facility Identification form, accompanied by payment described in paragraph (a) of this subsection.

(2) Initial and Annual fees. The initial and annual licensure fee for health facilities and services shall be as follows:

License Type	Rate
(a) Freestanding birth center	\$500
(b) Alzheimer's nursing home	For Alzheimer's nursing facilities with 50 beds or less, \$750 + \$25 per bed; For Alzheimer's nursing facilities with 51 or more beds, \$1,000 + \$25 per bed
(c) Ambulatory surgical center	\$750
(d) Chemical dependency treatment service	\$1,000 + \$25 per bed
(e) Community mental health center	\$1,500
(f) Day health care	\$170
(g) Family care home	\$42
(h) Group home for individuals with an intellectual or developmental disability	\$100
(i) Health maintenance organization	\$12 per 100 patients
(j) Home health agency	\$500
(k) Hospice	\$500
(l) Hospital	

1. Deemed hospital	For deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed
2. Non-deemed hospital	For non-deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For non-deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed
(m) Intermediate care facility	For intermediate care facilities with 50 beds or less, \$750 + \$25 per bed; For intermediate care facilities with 51 or more beds, \$1,000 + \$25 per bed
(n) ICF/IID facility	For ICFs/IID with 50 beds or less, \$750 + \$25 per bed; For ICFs/IID with 51 or more beds, \$1,000 + \$25 per bed
(o) Network	\$500
(p) Nursing facility	For nursing facilities with 50 beds or less, \$750 + \$25 per bed; For nursing facilities with 51 or more beds, \$1,000 + \$25 per bed
(q) Nursing home	For nursing homes with 50 beds or less, \$750 + \$25 per bed; For nursing homes with 51 or more beds, \$1,000 + \$25 per bed
(r) Ambulatory care clinic	\$500
(s) Personal care home	\$100 + \$5 per bed
(t) Primary care center	\$500 + \$50 per extension
(u) Psychiatric hospital	
1. Deemed hospital	For deemed psychiatric hospitals with 25 beds or less, \$750 + \$25 per bed; For deemed psychiatric hospitals with 26 or more beds, \$1,000 + \$25 per bed
2. Non-deemed hospital	For non-deemed psychiatric hospitals with 25 beds or less, \$750 + \$25 per bed; For non-deemed psychiatric hospitals with 26 or more beds, \$1,000 + \$25 per bed
(v) Psychiatric residential treatment facility	\$500
(w) Rehabilitation agency	\$300
(x) Renal dialysis facility	\$350 per station
(y) Rural health clinic	\$500
(z) Special health clinic	\$500
(aa) Specialized medical technology service	\$500
(bb) Mobile health service	\$500
(cc) Comprehensive physical rehabilitation hospital	
1. Deemed hospital	For deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed
2. Non-deemed	For non-deemed hospitals with 25 beds or less, \$750 + \$25 per bed; For non-deemed hospitals with 26 or more beds, \$1,000 + \$25 per bed

(dd) Critical access hospital	\$750 + \$25 per bed
(ee) Private duty nursing agency	\$500
(ff) Residential hospice facility	\$500
(gg) Prescribed Pediatric Extended Care Facility	\$500
(hh) Outpatient health care center	\$500

(3) Change in status of a licensed health facility.

(a) Name change or change of facility administrator. If a health facility changes the name of the facility as set forth on its license or the facility administrator changes, the licensee shall notify the Office of Inspector General of the facility's new name or new administrator within ten (10) calendar days of the effective date of the name change or administrator change.

(b) Change of location.

1. If a health facility or one (1) of its extensions or satellites changes location and certificate of need approval is not required prior to relocation, the licensee shall notify the Office of Inspector General of the new location within ten (10) calendar days of the effective date of the change.

2. The Office of Inspector General shall conduct an on-site inspection for a change of location if the facility is one (1) of the following levels of care:

- a. Freestanding birth center;
- b. Alzheimer's nursing home;
- c. Ambulatory surgical center;
- d. Chemical dependency treatment service;
- e. Group home;
- f. Non-deemed hospital;
- g. Intermediate care facility;
- h. Intermediate care facility for individuals with an intellectual or developmental disability (ICF/IID);
- i. Nursing facility;
- j. Nursing home;
- k. Personal care home;
- l. Psychiatric residential treatment facility;
- m. Renal dialysis facility;
- n. Residential hospice facility; or
- o. Outpatient health care clinic.

Section 4. Existing Facilities With Waivers. (1) The Inspector General shall deem an existing health care facility to be in compliance with a facility specification requirement, even though the facility does not meet fully the applicable requirement, if:

- (a) The Inspector General has previously granted, to the facility, a waiver for the requirement;
- (b) The facility is licensed by the cabinet;
- (c) The facility is in good standing as of the effective date of this administrative regulation; and
- (d) The waived requirement does not adversely affect the health, safety, or welfare of a resident or patient.

(2) If the Inspector General determines that the waived requirement has adversely affected patient or resident health, safety or welfare, then:

- (a) The Inspector General shall notify the facility by certified mail or other method of delivery, which may include electronic service, of the findings and the need to comply with the applicable administrative regulations; and
- (b) The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(12)(f)(b) of this administrative regulation.

Section 5. Variances. (1) The Inspector General may grant a health care facility a variance from a facility specification requirement if the facility establishes that the variance will:

- (a) Improve the health, safety, or welfare of a resident or patient; or
- (b) Promote the same degree of health, safety, or welfare of a

resident or patient as would prevail without the variance.

(2) A facility shall submit a request for a variance, in writing, to the Office of Inspector General. The request shall include:

- (a) All pertinent information about the facility;
- (b) The specific provision of the administrative regulation affected;
- (c) The specific reason for the request; and
- (d) Evidence in support of the request.

(3) The Inspector General shall review and approve or deny the request for variance. The Inspector General may request additional information from the facility as is necessary to render a decision. A variance may be granted with or without a stipulation or restriction.

(4) The Inspector General shall revoke a variance previously granted if the Inspector General determines the variance has not:

- (a) Improved the health, safety, or welfare of a patient or resident; or
- (b) Promoted the same degree of health, safety, or welfare of a patient or resident that would prevail without the variance.

1. The Inspector General shall notify the health facility, by certified mail or other method of delivery, which may include electronic service, of a decision to revoke a variance and the need to comply with the applicable regulatory requirement.

2. The health facility shall submit a written plan to ensure compliance, pursuant to Section 2(12)(f)(b) of this administrative regulation.

Section 6. Variance Hearings. (1)(a) A health care facility dissatisfied with a decision to deny, modify, or revoke a variance or a request for a variance may file a written request for a hearing with the Secretary of the Cabinet for Health and Family Services.

(b) The request shall be received by the secretary within twenty (20) days of the date the health care facility receives notice of the decision to deny, modify, or revoke the variance or request for a variance.

(2) An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 7. Adverse Action Procedures. (1) A facility that has received a preliminary order to close or other notice of adverse action:

- (a) Shall receive a duplicate license from the Office of Inspector General indicating that the facility has adverse action pending;
- (b) Shall post the duplicate license in place of the original license;
- (c) Shall be subject to periodic inspections by the inspecting agency to investigate complaints and ensure patient safety; and
- (d) May continue to operate under duplicate license pending completion of the adverse action process, if patients and residents are not subjected to risk of death or serious harm.

(2) Until all appeals pursuant to KRS 216B.105 of the pending adverse action have been exhausted, the facility shall not have its:

- (a) License renewed; or
- (b) Duplicate license replaced.

Section 8. Denial and Revocation. (1) The cabinet shall deny or revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the health facility to comply with the provisions of:

1. KRS Chapter 216B; or
2. The administrative regulations applicable to the health facility's license;

(b) The health facility fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 2(14) of this administrative regulation;

(c) The health facility fails to comply with the annual renewal process described by Section 2(15) of this administrative regulation; or

(d) The health facility denies access to the Office of Inspector General pursuant to Section 2(13)(b) of this administrative

regulation.

(2) The denial or revocation of a health facility's license shall be mailed to the applicant or licensee by certified mail, return receipt requested, or by personal service or other method of delivery in accordance with KRS 216B.105(2).

(3) Notice of the denial or revocation shall set forth the particular reasons for the action.

(4) In accordance with KRS 216B.105(2), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

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

(a) Form OIG 001, "Application for License to Operate a Health Facility[or Service]", September 2016[June 2014];

(b) Form OIG 002, "Application for License to Operate a Chemical Dependency Treatment Service, Group Home, Psychiatric Residential Treatment Facility, or Residential Hospice Facility", September 2016[June 2014];

(c) Form OIG 003, "Application for License to Operate a Hospital", September 2016[June 2014];

(d) Form OIG 004, "Application for License to Operate a Home Health Agency, Non-Residential Hospice, or Private Duty Nursing Agency", September 2016[June 2014];

(e) Form OIG 005, "Application for License to Operate a Renal Dialysis Facility, Mobile Health Service, Special Health Clinic, or Specialized Medical Technology Service", September 2016[June 2014];

(f) Form OIG 006, "Application for License to Operate a Long Term Care Facility", September 2016[June 2014];

(g) Form OIG 007, "Application for License to Operate a Family Care Home", September 2016[June 2014]; and

(h) Form OIG PR-1, "Program Review Fee – Worksheet Health Facility Identification Form", June 2014.

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

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 12, 2016

FILED WITH LRC: October 13, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2016, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 November 30, 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 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes (502-564-2888, stephanie.brammer@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining a license to operate a health facility, the fees for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to establish reasonable application fees for licenses and promulgate administrative regulations necessary for proper administration of the licensure function.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing the requirements for obtaining a license to operate a health facility and fees for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for obtaining a license to operate a health facility, the fee for initial and annual licensure, the procedure for obtaining a variance from a facility specification requirement, and the process for adverse actions.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the process for issuing a provisional license and clarifies the process for denial or revocation of a license pursuant to KRS 216B.042(1)(b).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 216B.042(1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042(1)(b) by establishing a process for provisional licensure and clarifying the process for denial or revocation of a license pursuant to KRS 216B.042(1)(b).

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 216B.042(1)(b) by establishing a process for provisional licensure and clarifying the process for denial or revocation of a license pursuant to KRS 216B.042(1)(b).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts health facilities and health services required by KRS Chapter 216B to be licensed.

(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: New applicants for licensure as a health facility must comply with the requirements for obtaining a provisional license as established by this administrative regulation and authorized by KRS 216B.042(1)(b).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not impose additional costs to entities seeking provisional licensure as a health facility.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment establishes the process for obtaining a provisional license to operate a health facility so that services may be provided.

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

(a) Initially: The Office of Inspector General estimates that the travel and personnel costs of implementing the provisional licensure process will be approximately \$350,000 annually.

(b) On a continuing basis: The Office of Inspector General estimates that the continuing travel and personnel costs of

implementing the provisional licensure process will be approximately \$350,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not increase current health facility licensure fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not increase current health facility licensure fees.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment impacts new applicants for licensure as a health facility that must comply with the requirements for obtaining a provisional license as established by this administrative regulation and as authorized by KRS 216B.042(1)(b).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

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

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

(c) How much will it cost to administer this program for the first year? The Office of Inspector General estimates that the travel and personnel costs of implementing the provisional licensure process will be approximately \$350,000 annually.

(d) How much will it cost to administer this program for subsequent years? The Office of Inspector General estimates that the continuing travel and personnel costs of implementing the provisional licensure process will be approximately \$350,000 annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amendment)

906 KAR 1:190. Kentucky National Background Check[Applicant Registry and Employment Screening] Program.

RELATES TO: KRS Chapter 13B, 42 U.S.C. 1320 a-7I, 42 U.S.C. 5119a(a)(1), 42 U.S.C. 5119c

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 1320a-7I

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. 42 U.S.C. 1320a-7I directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. On May 20, 2011, the Commonwealth of Kentucky was the twelfth state to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1320a-7I. On the date this amendment~~[amended after comments administrative regulation]~~ was filed with the Legislative Research Commission, twenty-six (26)~~[twenty-four]~~ states and territories had received an NBCP grant. The Cabinet for Health and Family Services, Office of Inspector General is charged with responsibility to oversee and coordinate Kentucky's fingerprint-supported NBCP grant initiative~~[- called the KARES "Kentucky Applicant Registry and Employment Screening" Program]~~. This administrative regulation establishes procedures for the implementation of Kentucky's NBCP[KARES] as a voluntary program. A key component of the Kentucky NBCP is a secure, web-based system called the KARES system, which is used to facilitate registry and fingerprint-supported state and national criminal background checks.~~[The Cabinet for Health and Family Services encourages long-term care facilities and providers to participate in KARES as the grant program provides employers with an enhanced pre-employment screening mechanism intended to help protect elderly and vulnerable adults from potential abuse, neglect, and exploitation.]~~ The conditions set forth in this administrative regulation for voluntary KARES system~~[program]~~ participants are in addition to the name-based, state only background check requirements of KRS 216.533, 216.712(2), 216.787, and 216.789.

Section 1. Definitions. (1) "Applicant" means an individual who:
(a) Applies for employment with an employer identified in subsection (6) of this section; or

(b) Is subject to background screening by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Criminal background check" means a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) and includes a comparison of the applicant's fingerprints with any fingerprints that may be on file with KSP or the FBI.

(4) "Disqualifying offense" means:

(a) A conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:

1. A misdemeanor offense related to;

a. Abuse, neglect, or exploitation of an adult as defined by KRS 209.020(4);

b. Abuse, neglect, or exploitation of a[or] child;
c.[,or] A sexual offense;
d. Assault occurring less than seven (7) years from the date of the criminal background check;
e. Stalking occurring less than seven (7) years from the date of the criminal background check;
f. Domestic violence occurring less than seven (7) years from the date of the criminal background check;
g. Theft occurring less than seven (7) years from the date of the criminal background check;
h. Fraud occurring less than seven (7) years from the date of the criminal background check;
i. Possessing or trafficking in a controlled substance occurring less than seven (7) years from the date of the criminal background check; or
j. Any other misdemeanor offense relating to abuse, neglect, or exploitation that is not listed in this subsection and occurred less than seven (7) years from the date of the criminal background check;
 2. A criminal offense against a victim who is a minor, as defined in KRS 17.500;
 3. A felony offense involving a child victim;
 4. A felony offense under:
 a. KRS Chapter 209, protection of adults;
 b. KRS Chapter 218A, controlled substances;
 c. KRS Chapter 434, offenses against property by fraud[507.020];
 d. KRS Chapter 507, criminal homicide[507.030];
 e. KRS Chapter 507A, fetal homicide[507.040];
 f. KRS Chapter 508, assault and related offenses;
 g. KRS Chapter 509, kidnapping and related offenses;
 h. KRS Chapter 510, sexual offenses;
 i. KRS Chapter 511, burglary and related offenses;
 j. KRS Chapter 512, criminal damage to property;
 k. KRS Chapter 513, arson and related offenses;
 l.[k.] KRS Chapter 514, theft and related offenses[514.030];
 m.[l.] KRS Chapter 515, robbery;
 n.[m.] KRS Chapter 516, forgery and related offenses[529.100];
 o. KRS Chapter 517, business and commercial frauds[n. KRS 529.110];
 p. KRS Chapter 520, escape and other offenses related to custody;
 q.[o.] KRS Chapter 525, riot, disorderly conduct, and related offenses;
 r. KRS Chapter 527, offenses relating to firearms and weapons;
 s. KRS Chapter 529, prostitution offenses;
 t. KRS Chapter 530, family offense, excluding KRS 530.050;
 u.[and
 p.] KRS Chapter 531, pornography; or
 v. Any other felony offense relating to abuse, neglect, exploitation, drugs, theft, or fraud not listed in this subsection;
 5. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph; or
 6. A crime described in 42 U.S.C. 1320a-7;
 (b) A substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 U.S.C. 1395i-3 or 1396r;
 (c) Registration as a sex offender under federal law or under the law of any state; or
 (d) Being listed on a registry as defined in subsection (9) of this section.
 (5) "Employee" means an individual who:
 (a)1. Is hired directly or through contract by an employer defined in subsection (6) of this section, and has duties that involve or may involve one-on-one contact with a patient, resident, or client; or
 2. Unless excluded pursuant to Section 2(3)(c) through (e) of this administrative regulation, is a volunteer who has duties that are equivalent to the duties of an employee providing direct services and the duties involve, or may involve, one-on-one

contact with a patient, resident, or client; and
 (b) Has access to the personal belongings or funds of a patient, resident, or client.
 (6) "Employer" means:
 (a) A long-term care facility as defined in KRS 216.510;
 (b) A nursing pool as defined in subsection (8)[(7)] of this section providing staff to a long-term care facility or provider;
 (c) An adult day health care program as defined in KRS 216B.0441;
 (d) An assisted living-community as defined in KRS 194A.700;
 (e) A home health agency as defined in KRS 216.935;
 (f) A provider of hospice care as defined in 42 U.S.C. 1395x(dd)(1) and licensed pursuant to KRS Chapter 216B;
 (g) A personal services agency as defined in KRS 216.710;
 (h) A long-term care hospital as defined in 42 U.S.C. 1395ww(d)(1)(B)(iv);
 (i) A provider of home and community-based services authorized under KRS Chapter 205;
 (j) A staffing agency with a contracted relationship to provide one (1) or more employers as listed in this subsection with staff whose duties are equivalent to duties performed by an employee pursuant to subsection (5) of this section;[or]
 (k) Any other health facility or service licensed pursuant to KRS Chapter 216B that applies to participate voluntarily in the KARES program; or
 (l) Any other provider licensed by the cabinet for which a state and national background check is required as a condition of employment.
 (7) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the Cabinet for Health and Family Services, Office of Inspector General to facilitate registry and fingerprint-supported state and national criminal history background checks conducted by the Department of Kentucky State Police and the Federal Bureau of Investigation for the following:
 (a) Prospective employees of any employer identified in subsection (6)(a) through (k) of this section that participates voluntarily in the Kentucky National Background Check Program;
 (b) Any other individuals required by state law or administrative regulation to submit to a state and national background check as a condition of:
 1. Employment; or
 2. Licensure, certification, or registration by a professional licensing board that enrolls contingent upon approval by the Federal Bureau of Investigation and Department of Kentucky State Police in the Kentucky NBCP; and
 (c) May include individuals seeking approval as a kinship caregiver or foster or adoptive parent.
 (8) "Nursing pool" means a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in or with a long-term care facility or provider for medical personnel, including nurses, nursing assistants, nursing aides, and orderlies.
 (9)[(8)] "Registry" means the:
 (a) Nurse aide abuse registry maintained pursuant to 906 KAR 1:100 and 42 C.F.R. 483.156;
 (b) Child abuse and neglect registry maintained pursuant to 922 KAR 1:470 and required by 42 U.S.C. 671(a)(20);
 (c) List of Excluded Individuals and Entities maintained by the United States Department of Health and Human Services, Office of Inspector General pursuant to 42 U.S.C. 1320a-7;[and]
 (d) Caregiver misconduct registry required by KRS 209.032; and
 (e) Any available abuse registry, including the abuse and neglect registries of another state if an applicant resided or worked in that state.
 (10)[(9)] "State" is defined by KRS 446.010(40).
 (11)[(40)] "Violent offender" is defined by KRS 439.3401(1) [crime" means a conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to a capital offense, Class A felony, or Class B felony involving the death of the victim, rape in the first degree or sodomy in the first degree of the victim, sexual abuse in the first degree, or serious physical injury to a victim].

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Section 2. Applicability and Exceptions. (1) This administrative regulation shall apply to:

(a) Prospective cabinet staff~~[hired on or after the effective date of this administrative regulation]~~ whose duties include conducting inspections of:

1. Health facilities and services licensed pursuant to KRS Chapter 216B; or

2. Services regulated pursuant to KRS 194A.700 through 194A.729, or KRS 216.710 through 216.714;

(b) Prospective employees~~[hired on or after the effective date of this administrative regulation]~~ of state-owned or operated health facilities licensed pursuant to KRS Chapter 216B;

(c) Prospective cabinet staff~~[hired on or after the effective date of this administrative regulation]~~ who have or may have one-on-one contact with a patient or resident of an employer defined by Section 1(6) of this administrative regulation; and

(d) Prospective employees seeking employment with a private employer that participates voluntarily in the Kentucky National Background Check[KARES] Program~~[hired on or after the effective date of this administrative regulation]~~.

(2) This administrative regulation shall not apply to current cabinet staff or current employees of any employer that participates voluntarily in the Kentucky National Background Check[KARES] program~~[that are employed before the effective date of this administrative regulation]~~.

(3) A prospective employee shall not include:

(a) An individual who independently contracts with a KARES-participating employer to provide utility, construction, communications, or other services if the contracted services are not directly related to the provision of services to a resident, patient, or client of the employer;~~[or]~~

(b) A board certified physician, surgeon,~~[or]~~ dentist, psychologist, psychiatrist, podiatrist, audiologist, ophthalmologist, optometrist, dietician, therapist, phlebotomist, or any health care practitioner under contract with a participating employer in which a background check is required as a condition of professional licensure;

(c) A member of a community-based or faith-based organization that provides volunteer services that do not involve unsupervised interaction with a patient or resident;

(d) A student participating in an internship program; or

(e) A family member or friend visiting a patient or resident~~[KARES-participating employer]~~.

Section 3. Continuous Assessment. (1) To ensure that the information remains current in the KARES system, the cabinet shall collaborate with the Department of Kentucky State Police (KSP) to implement a mechanism for continuous assessment in which KSP:

(a) Retains the fingerprints of an individual screened under the Kentucky NBCP:

1. For a minimum period of five (5) years from the date of fingerprint submission; and

2. On a five (5) year renewal basis thereafter; and

(b) Facilitates the retention of the fingerprints by the FBI upon approval to participate in the FBI's Next Generation Identification (NGI) rap back service.

(2) Upon implementation of the process for continuous assessment, the Department of Kentucky State Police may provide notification to the cabinet of triggering events for each applicant after initial processing of the applicant's criminal background check, subject to any applicable administrative regulations of the Department of Kentucky State Police and the FBI.

Section 4. Enrolling in the Kentucky NBCP. To enroll in the Kentucky NBCP, an employer or a participating professional licensing board shall:

(1) Log on to the KARES portal; and

(2) Confirm acceptance of the terms and conditions for using the KARES system~~[Agreement to Participate. An employer that elects to participate in KARES voluntarily shall complete and submit an Agreement to Participate in the KARES Program].~~

Section 5~~4~~. Registry and Criminal Background Checks: Procedures and Payment.

(1) To initiate the process for obtaining a background check on a prospective employee or licensee, the employer or participating professional licensing board shall:

(a) Request that the applicant provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the applicant;

(b) Request that the applicant sign the OIG 1:190-1, Disclosures to be Provided to and Signed by Applicant for Employment or Licensure~~[complete a: 1. Disclosure Form; and 2. Consent and Release Form; and]~~

(c) Request that the applicant complete the OIG 1:190-2, Waiver Agreement and Statement; and

(d) Log on to the KARES portal, which shall be a secure web-based system maintained by the cabinet, and enter the applicant's demographic information for a check of:

1. Each registry as defined by Section 1(9)~~[(8)]~~ of this administrative regulation; and

2. Available databases maintained separately by the Kentucky Board of Medical Licensure, Kentucky Board of Nursing, and Kentucky Board of Physical Therapy, and any other available professional licensing board with oversight of health care professionals, including behavioral health professionals, to validate the applicant's professional licensure status, if applicable.

~~(2) [An applicant who is found on the child abuse and neglect central registry maintained pursuant to 922 KAR 1:470 may request a rehabilitation review pursuant to Section 9 of this administrative regulation.]~~

~~(3)(a)~~ If an applicant is cleared for hire after a check of the registries and databases identified in subsection (1)~~(d)~~~~[(e)]~~ of this section, the participating entity~~[employer]~~ shall submit payment via credit or debit card for the criminal background check.

~~(3)(a)(b)1.~~ Effective until May 19, 2014, or] Until NBCP grant funds are depleted, employers identified in Section 1(6)(a) through (j) of this administrative regulation shall pay a fee of twenty (20) dollars for a fingerprint-supported state and national criminal background check, which includes the cost of the Kentucky NBCP and the fees of the Department of Kentucky State Police and the FBI.

(b) A participating entity enrolled in the Kentucky NBCP and not identified in Section 1(6)(a) through (j) of this administrative regulation shall pay a fee not to exceed twenty-five (25) dollars in addition to any fees charged by the Department of Kentucky State Police and the FBI for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing continuous assessment services as described in Section 3(2) of this administrative regulation.

(c) If an applicant's continuous assessment period identified under Section 3 of this administrative regulation has not expired, a fee of twenty (20) dollars shall be charged to view the applicant's current fitness determination and process a new application, in which case a new fingerprint check is not needed.

(d)1. After NBCP grant funds are depleted, the total cost of a fingerprint-supported state and national criminal background check charged to an employer identified in Section 1(6) of this administrative regulation shall not exceed actual costs of the Kentucky NBCP and the fees charged by the Department of Kentucky State Police and the FBI for the actual cost of processing criminal background checks and for continuous assessments.

2. If an applicant has not been previously fingerprinted under the Kentucky NBCP or if the applicant's continuous assessment period has expired, a fee not to exceed twenty-five (25) dollars shall be charged to the employer to cover the cabinet's administrative cost for facilitating a criminal background check in addition to any fees charged by the Department of Kentucky State Police and the FBI for a fingerprint-supported state and national criminal background check and for continuous assessment services as described in Section 3(2) of this administrative regulation~~[whichever date is later, employers shall pay the twenty (20) dollar fee charged by the Justice and Public Safety Cabinet pursuant to paragraph (d)1. of this subsection.~~

2. Effective until May 19, 2014, or until NBCP grant funds are

depleted, whichever date is later, grant monies shall be used to subsidize:

a. The cost of the national criminal background check charged by the Federal Bureau of Investigation pursuant to paragraph (d)2. of this subsection; and

b. The administrative cost charged by the cabinet pursuant to paragraph (d)3. of this subsection.

(c) Effective until May 19, 2014, or until NBCP grant funds are depleted, whichever date is later, the cabinet shall pay all costs identified in paragraph (d) of this subsection if a criminal background check is conducted on behalf of a prospective provider of home and community-based services authorized under KRS Chapter 205. This exemption for providers of home and community-based services is a condition of the NBCP grant.

(d) After May 19, 2014, or after NBCP grant funds are depleted, whichever date is later, the total cost of a criminal background check charged to employers shall be sixty-three (63) dollars, divided into the following components:

1. A fee of twenty (20) dollars charged by the Justice and Public Safety Cabinet;

2. A fee of sixteen (16) dollars and fifty (50) cents charged by the Federal Bureau of Investigation; and

3. A fee of twenty-six (26) dollars and fifty (50) cents charged by the cabinet to cover the cost of facilitating the criminal background check.

(4)(a) Upon submission of payment pursuant to subsection (3) of this section, the employer or other participating entity shall print a copy of the Live Scan Fingerprinting Form from the KARES portal and provide the form to the applicant.

(b) The applicant shall:

1. Have thirty (30) calendar days from the date of payment pursuant to subsection (2)(3) of this section to submit his or her fingerprints at an authorized collection site; and

2. Present the Live Scan Fingerprinting Form and driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(5) Upon completion of a criminal background check, the cabinet shall:

(a) Shall provide notice to the employer that the applicant is:

1. Eligible for clear to hire; or

2. Not eligible for clear to hire if the applicant is found by the cabinet to have a disqualifying offense as identified in Section 1(4) of this administrative regulation; and

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the employer or entity listed on the OIG 1:190-2, Waiver Agreement and Statement incorporated by reference in Section 14 of this administrative regulation; and

(c) Shall, upon receipt of a written request from an applicant, send a copy if any of a KSP or FBI criminal history report to the applicant by certified mail, restricted delivery service. The applicant shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(6) An employer shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (5)(a) of this section.

Section 6[5]. Provisional Employment. (1) If an applicant is not found on a registry and the individual's license has been validated, if applicable, an employer may hire the applicant for a period of provisional employment pending completion of the criminal background check.

(2) The period of provisional employment shall:

(a) Not commence prior to the date the applicant submitted his or her fingerprints; and

(b) Not exceed sixty (60) calendar days from the date of fingerprint collection.

(3) During the period of provisional employment, the individual shall not have supervisory or disciplinary power or routine contact with patients, residents, or clients without supervision on-site and immediately available to the individual.

Section 7[6]. Individuals Ineligible to be Hired. An employer participating in the KARES program, an agency within the cabinet responsible for conducting inspections of any employer, or a state-owned or operated health facility shall not employ, contract with, or permit to work as an employee any applicant that submits to a background check if one (1) or more of the following are met:

(1) The applicant refuses to provide photo identification or complete the Disclosures[Disclosure] Form or Waiver Agreement and Statement[Consent and Release] Form required by Section 5[4](1)(a) and (b) and (c) of this administrative regulation;

(2) The applicant is found on a registry as defined by Section 1(9)(8) of this administrative regulation;

(3) The applicant's professional license is not in good standing, if applicable;

(4) The applicant fails to submit his or her fingerprints at an authorized collection site within thirty (30) calendar days of payment submitted pursuant to Section 5[4](3) of this administrative regulation; or

(5) Upon completion of the initial criminal background check for an applicant, or subsequent to the initial fingerprint check on a current employee, the employer, cabinet agency, or state-owned or operated health facility receives notice from the cabinet that the applicant is not eligible[clear] for hire based on a cabinet determination that the individual has been found to have a disqualifying offense; or

(6) Final disposition of a criminal charge related to a disqualifying offense is not provided to the cabinet within sixty (60) days of fingerprint submission].

Section 8[7]. Notice of a Disqualifying Offense and Appeals. (1) The cabinet shall notify each applicant or current employee determined to have a disqualifying offense.

(2) In addition to the cabinet's notification required by subsection (1) of this section, an employer that receives notice from the cabinet that an individual has been determined to have a disqualifying offense shall notify the individual of the cabinet's determination within three (3) business days of receipt of the notice.

(3) An applicant or current employee who receives notice of a disqualifying offense may:

(a) Challenge the accuracy of the cabinet's determination regarding a disqualifying offense by submitting a written request for informal review, including any information the applicant wishes to be considered, to the Office of Inspector General, Cabinet for Health and Family Services, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice of the disqualifying offense; or

(b) Request a rehabilitation review pursuant to Section 10(2) of this administrative regulation.

(4) Upon completion of an informal review if requested pursuant to subsection (3)(a) of this section, the Office of Inspector General shall within ten (10) calendar days of receipt of the request provide written notice to the applicant or employee of the cabinet's decision to uphold or rescind the notice of the disqualifying offense.

(5)[Request a rehabilitation review pursuant to Section 9 of this administrative regulation; or

(b) Challenge the accuracy of the cabinet's determination regarding a disqualifying offense by submitting a written request to the cabinet for an informal review of the cabinet's determination or file an appeal under KRS Chapter 13B within ten (10) days of the date of the notice of the disqualifying offense.] An applicant or current employee may appeal the results of an informal review or a rehabilitation review conducted in accordance with Section 10 of this administrative regulation by submitting a written request for an administrative hearing within thirty (30) calendar days from the date to the cabinet for appeal under KRS Chapter 13B within five (5) days of notice of the decision from an informal review or rehabilitation review.

(6)(a) A written request for an administrative hearing shall be mailed to the Office of Ombudsman, Cabinet for Health and Family Services, 275 East Main Street, 1E-B, Frankfort, Kentucky 40621.

(b) The administrative hearing shall be held no later than forty-five (45) calendar days from the date that the request is received

by the Office of Ombudsman unless the applicant or employee agrees to a later date.

(c) The issues considered at the hearing shall be limited to the issues directly raised and considered during the informal review or rehabilitation review.

(d) The administrative hearing shall be conducted pursuant to KRS 13B.080.

(e) The hearing officer shall issue a recommended order pursuant to KRS 13B.110.

(f) The secretary or designee shall issue a final order pursuant to KRS 13B.120.

(7)(4) If an applicant or current employee wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(8)(5) If an applicant or current employee challenges the finding that he or she is the true subject of the results from a registry check, the cabinet shall refer the individual to the agency responsible for maintaining the registry.

Section 9[8]. Termination of an[Provisional] Employee Upon Receipt of Notice of a Disqualifying Offense. (1) If a provisional employee or current employee has not requested an informal review or a rehabilitation review[an appeal] pursuant to Section 8(3)(7)(3)(b) of this administrative regulation, the employer shall:

(a) Terminate the employee no later than fifteen (15) calendar[six (6) business] days after receipt of notice of the disqualifying offense; and

(b) Use the KARES system to provide electronic notification[Submit a written attestation statement] to the cabinet affirming the employee's dismissal within three (3) business days of termination.

(2)(a) If a provisional employee or current employee requests an informal review or a rehabilitation review[an appeal] pursuant to Section 8(3)(7)(3)(b) of this administrative regulation, the employer:

1. May retain the employee pending resolution of the employee's informal review or rehabilitation review; and

2. Shall ensure that[appeal under the following conditions: (a)] the employee is:

a.[shall be] Subject to direct, on-site supervision;[;] or

b. Reassigned to duties that do not involve one-on-one contact with a resident, patient, or client of the employer.

(b) An employer shall terminate the employee if the:

1. Informal review upholds the cabinet's determination of a disqualifying offense or the rehabilitation review committee does not grant a waiver; and

2. The employee does not request an administrative hearing in accordance with Section 8(5) of this administrative regulation, in which case the employer shall terminate the employee no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitation review.

(c) If an employee requests an administrative hearing to appeal the decision from an informal review or rehabilitation review, the employer:

1. May retain the employee pending resolution of the appeal if the employee:

a. Remains subject to direct, on-site supervision; or

b. Is reassigned to duties that do not involve one-on-one contact with a resident, patient, or client; and

2. Shall terminate the employee as soon as practicable upon issuance of a final order if the employee does not prevail.

(d) Using the KARES system, the employer shall provide electronic notification to the cabinet affirming the individual's dismissal within three (3) business days of termination;

(b) The employer shall inform the employee that termination shall be immediate if the informal review upholds the cabinet's determination regarding a disqualifying offense, or the employee does not prevail in an appeal requested pursuant to Section 7(3)(b) of this administrative regulation;

(c) The employer shall immediately terminate an employee if the informal review upholds the accuracy of the cabinet's determination regarding a disqualifying offense or the employee

does not prevail in an appeal requested pursuant to Section 7(3)(b) of this administrative regulation upon completion of the appeal; and

(d) The employer shall submit a written attestation statement to the cabinet affirming the individual's dismissal within three (3) business days of termination].

Section 10[9]. Rehabilitation Review. (1)(a) An applicant or employee found[on the child abuse and neglect central registry maintained pursuant to 922 KAR 1:470, or found] to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying offense under the rehabilitation review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than ten (10)[seven (7)] years prior to the date of the criminal background check;

2. A disqualifying misdemeanor offense related to assault, domestic violence, theft, fraud, or possessing or trafficking in a controlled substance that occurred less than seven (7) years prior to the date of the criminal background check;

3. Any disqualifying felony or misdemeanor offense[A criminal conviction] related to abuse, neglect, or exploitation of an adult defined by KRS 209.020(4) or child, or a sexual offense;

4.[3.] Registration as a sex offender under federal law or under the law of any state; or

5. Any person who is a violent offender as defined by Section 1(11) of this administrative regulation[4. A conviction for a violent crime].

(2)(a) An applicant or employee may submit a written request for a rehabilitation review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 8(7)(1) of this administrative regulation regarding a[finding on the child abuse and neglect central registry or] determination of a disqualifying offense.

(b) If an applicant or employee requests a rehabilitation review, the employee may be retained on staff and shall be subject to termination in accordance with Section 9(2) of this administrative regulation.

(3) The request for a rehabilitation review shall include the following information:

(a) A written explanation of each[finding on the child abuse and neglect central registry or each] disqualifying offense, including:

1. A description of the events related to the[registry finding or] disqualifying offense;

2. The number of years since the occurrence of the[registry finding or] disqualifying offense;

3.[The identification of any other individuals involved in the offense;

4.] The age of the offender at the time of the[registry finding or] disqualifying offense; and

4.[5.] Any other circumstances surrounding the[registry finding or] offense;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(4) A rehabilitation review shall be conducted by a committee of three (3) employees of the cabinet, none of whom:

(a) Is an employee of the Office of Inspector General; or

(b) Was responsible for determining[each of whom was not responsible for determining:

(a) The finding of child abuse or neglect that placed the individual on the central registry; or

(b) that the individual has a disqualifying offense.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider

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mitigating circumstances including:

(a) The amount of time that has elapsed since the[~~child abuse and neglect central registry finding or~~] disqualifying offense[~~, which shall not be less than seven (7) years in the case of a disqualifying offense~~];

(b) The lack of a relationship between the[~~registry finding or~~] disqualifying offense and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the[~~registry finding or~~] disqualifying offense. [~~The committee shall make a recommendation to the secretary or designee, who shall be responsible for making the final decision.~~]

(6)[~~The secretary or designee may grant a waiver from the prohibition against employment of an applicant with a child abuse and neglect finding or a disqualifying offense upon consideration of the information required under subsection (3) of this section and the committee's recommendation of subsection (5) of this section.~~]

(7)[~~No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Inspector General[secretary or designee] shall send the committee's[a written] determination on the rehabilitation waiver to the applicant.~~]

(7)[~~(8)] The decision of the committee[secretary or designee] pursuant to subsection (7) of this section] shall be subject to appeal in accordance with Section 8(5) and (6) of this administrative regulation[under KRS Chapter 13B].~~

(8)[~~(9) An individual with a finding on the child abuse and neglect central registry or a disqualifying offense shall not be employed by an employer until the employer receives notification from the cabinet that the individual has been granted a waiver.~~]

(40)[~~An employer shall[is] not be obligated to employ or offer employment to an individual who is granted a waiver pursuant to this section.~~]

Section 11[40]. Pardons and Expungement. An applicant who has received a pardon for a disqualifying offense or has had the record expunged may be employed.

Section 12[44]. Status of Employment. An employer participating in KARES shall maintain the employment status of each employee who has submitted to a fingerprint-supported criminal background check by reporting the status using the KARES web-based system.

Section 13[42]. Kentucky National Background Check[Applicant Registry and Employment Screening] Fund. (1)(a) The cabinet shall establish a trust and agency fund called the Kentucky National Background Check[Applicant Registry and Employment Screening] fund to be administered by the Finance and Administration Cabinet.

(b) The fund shall be funded with moneys collected under Section 5[4](3) of this administrative regulation.

(2) Moneys in the fund shall be used solely to operate the Kentucky National Background Check[KARES] program.

Section 14[43]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) OIG 1:190-1, "Disclosures to be Provided to and Signed by Applicant for Employment or Licensure", September 2016;

(b) OIG 1:190-2, "Waiver Agreement and Statement", September 2016; [OIG 1:190-A, "Agreement to Participate in the KARES Program", May 2013;

(b) OIG 1:190-B, "Disclosure Form", May 2013;

(c) OIG 1:190-C, "Consent and Release Form", May 2013; and

(c)[(d)] OIG 1:190-D, "Live Scan Fingerprinting Form", May 2013.

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

ROBERT S. SILVERTHORN, JR., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 10, 2016

FILED WITH LRC: October 14, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2016, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 November 30, 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 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes (502-564-2888, stephanie.brammer@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures and requirements for implementation of the Kentucky National Background Check Program (NBCP). Under Kentucky's NBCP, a secure, web-based application called the KARES system is used to facilitate abuse registry and fingerprint-supported State and FBI criminal background checks for authorized users.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures and requirements for implementation of Kentucky's NBCP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: As stated in the Necessity, Function, and Conformity paragraph of this administrative regulation, 42 U.S.C. 1320a-7l directs the secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. KRS 216.789, KRS 216.787, and KRS 216.712 authorize the secretary of the Cabinet for Health and Family Services to establish procedures for criminal background checks for employees of certain entities which provide direct services to the elderly or individuals with disabilities. Therefore, this administrative regulation conforms to the content of the authorizing statutes by establishing procedures and requirements for implementation of a comprehensive, Cabinet-administered state and national background check program called the Kentucky NBCP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures and requirements for implementation of Kentucky's NBCP.

(2) If 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 a new Section 3 to authorize implementation of a mechanism for continuous assessment, often referred to as "rap back". The continuous assessment service, which is a requirement of the federal NBCP grant, is a process in which notification will be sent by the Kentucky State Police (KSP) to the Cabinet of any criminal activity that occurs after an applicant's initial fingerprint check, thereby reducing the need for

duplicative fingerprinting. This amendment further clarifies that the fee charged for facilitating fingerprint checks upon expiration of the federal NBCP grant will be adjusted in an amount not to exceed actual costs. This amendment also clarifies that an applicant or employee may submit a written request for a copy of his or her criminal history report; makes technical changes to the section on appeals under which an applicant or employee may challenge the cabinet's determination of a disqualifying offense; and allows the cabinet to release any record of State criminal history found in the files of the Kentucky centralized criminal history record information system to an employer upon written consent by the prospective or current employee.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary primarily to implement the process for continuous assessment as well as make revisions as described in (2)(a).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing procedures and requirements for implementation of Kentucky's NBCP.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing procedures and requirements to facilitate fingerprint-supported state and national background checks requested under Kentucky's NBCP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment impacts authorized users of the KARES system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: With the exception of using new forms incorporated by reference, authorized users will not be required to take any additional action beyond compliance with the current procedures for requesting fingerprint-supported State and FBI background checks under the KARES system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Authorized users will not incur additional costs at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will benefit participating employers by reducing the need for duplicative fingerprint checks upon implementation of continuous assessment as employees who remain enrolled in the continuous assessment service will not be subject to additional fingerprint checks if they transfer to another employer using the KARES system. In addition, this amendment will allow an applicant or employee who has submitted to a fingerprint check under the KARES system submit a written request to the cabinet for a copy of his or her criminal history report. Additionally, employers using the KARES system are currently provided with a "clear for hire" or "not clear for hire" notice upon cabinet review of a prospective or current employee's criminal history results. This amendment will allow the cabinet to release any record of State criminal history found in the files of the Kentucky centralized criminal history record information system to the employer upon the written consent of the prospective or current employee.

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

(a) Initially: This administrative regulation is funded by monies from the NBCP grant until May 2017.

(b) On a continuing basis: Upon depletion of grant monies currently used to support program operations, Kentucky's NBCP will be sustained by background check fees not to exceed actual costs. After the federal NBCP grant expires in May 2017, administering the program on an ongoing basis is estimated to cost about \$4,183,076 annually. It is important to note that 85% of the program's costs are passed through the Office of Inspector

General to:

KSP and the FBI for the actual cost of processing criminal background checks and continuous assessment;

The Office of Employment and Training and the Department for Community Based Services for rolling applicant fingerprints in designated field offices; and Kentucky Interactive for the payment transaction fee.

The Office of Inspector General's annual costs, which are estimated at approximately \$647,875, will cover personnel including IT support, maintenance and repairs on equipment, and other administrative costs necessary to maintain Kentucky's NBCP.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal NBCP grant funds are currently used to implement this administrative regulation. Upon expiration of the grant, continued funding to support Kentucky's NBCP will be from background check 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: The current cost of the fingerprint-supported State and FBI criminal background checks is subsidized by NBCP grant monies at \$20 per fingerprint check. Upon expiration of the grant, the Cabinet anticipates that the cost of the fingerprint check will increase to \$58.99 per check to support program operations on a continuing basis. It is important to note that if an applicant has been fingerprinted under Kentucky's NBCP and is enrolled in the continuous assessment service implemented in accordance with this amendment, the applicant is not subject to additional fingerprinting. Instead, an employer participating in Kentucky's NBCP may query the KARES system for a \$20 fee to view the applicant's fitness determination and confirm the applicant is eligible for hire, thereby avoiding the cost of a new fingerprint check.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees necessary to sustain program operations.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment impacts authorized users of the KARES system.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. 1320a-7I, 42 U.S.C. 5119a(a)(1), KRS 216.712, KRS 216.787, KRS 216.789

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 current fee for a fingerprint-supported State and FBI criminal background check is \$20 for authorized KARES system users. However, upon depletion of NBCP grant funds, the revenue generated in background check fees is intended to support program operations on a continuing basis.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? During subsequent years, revenue will be based on background check fees collected from authorized KARES system users to support program operations on an ongoing basis.

(c) How much will it cost to administer this program for the first year? This administrative regulation is funded by NBCP grant monies until May 2017.

(d) How much will it cost to administer this program for subsequent years? After expiration of the NBCP grant, the cost to administer this program is about \$4,183,076 annually as described in more detail in the regulatory impact analysis.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1320 a-7l and 42 U.S.C. 5119a(a)(1)

2. State compliance standards. 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 216.789, KRS 216.787, and KRS 216.712 authorizes the secretary of the Cabinet for Health and Family Services to establish procedures for criminal background checks for employees of certain entities which provide direct services to the elderly or individuals with disabilities.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1320 a-7l directs the Secretary of the United States Department of Health and Human Services to establish a program to identify efficient, effective, and economical procedures for long-term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis. As of this date, Kentucky is one of 26 states to receive a National Background Check Program (NBCP) grant awarded by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1320 a-7l. Under 42 U.S.C. 5119a(a)(1), a State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether an individual has been convicted of a crime that bears upon the individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements than those established in federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Behavioral Health, Developmental and Intellectual Disabilities Division of Intellectual and Developmental Disabilities (Amendment)

908 KAR 2:040. Hospital district assignments.

RELATES TO: KRS Chapter 202A, 210.300, Chapter 504

STATUTORY AUTHORITY: KRS Chapter 202A, 210.300[~~EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Behavioral Health, Developmental and Intellectual Disabilities within the cabinet.~~] KRS 210.300 authorizes the secretary for the cabinet to designate hospital districts for the purpose of determining to which of the state institutions for the mentally ill the persons admitted from each county shall initially be sent. KRS Chapter 202A authorizes the transfer of a mentally defective or mentally ill inmate of any penal

~~or~~ and correctional institution to the state hospital service designated by the secretary for that purpose. This administrative regulation establishes hospital district assignments.

Section 1. (1)(a) ~~The~~ following state mental hospital districts ~~shall be the districts established in subsections (2) through (5) of this section~~ are created.

(b) ~~Except as~~ otherwise provided by Sections 2 through 5 of this administrative regulation, an involuntarily or voluntarily hospitalized person ~~shall~~ herein, involuntarily and voluntarily hospitalized persons will be admitted to the state hospital serving the district in which ~~the person resides~~ they reside. In times of high patient count, ~~a state hospital director~~ directors may send ~~a patient to another state hospital or to another hospital~~ patients to other state hospitals or to other hospitals in the district.

(2) District I ~~shall include~~ is Western State Hospital, Hopkinsville, Kentucky, ~~and shall serve the counties of: Allen, Ballard, Barren, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Edmonson, Fulton, Graves, Hancock, Hart, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, McCracken, McLean, Marshall, Metcalfe, Monroe, Muhlenberg, Ohio, Simpson, Todd, Trigg, Union, Warren, and Webster.~~

(3) District II ~~shall include~~ is Central State Hospital, Anchorage, Kentucky, ~~and shall serve the counties of: Bullitt, Breckinridge, Grayson, Hardin, Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Shelby, Spencer, Trimble and Washington.~~

(4) District III ~~shall include~~ is Eastern State Hospital, Lexington, Kentucky, ~~and shall serve the counties of: Adair, Anderson, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Campbell, Carroll, Carter, Casey, Clark, Clinton, Cumberland, Elliott, Estill, Fayette, Fleming, Franklin, Gallatin, Garrard, Grant, Green, Greenup, Harrison, Jessamine, Kenton, Lawrence, Lewis, Lincoln, McCreary, Madison, Mason, Menifee, Mercer, Montgomery, Morgan, Nicholas, Owen, Pendleton, Powell, Pulaski, Robertson, Rowan, Russell, Scott, Taylor, Wayne, and Woodford.~~

(5) District IV ~~shall include~~ is Appalachian Regional Healthcare Regional Medical Center, Hazard, Kentucky, ~~and shall serve the counties of: Bell, Breathitt, Clay, Floyd, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Martin, Owsley, Perry, Pike, Rockcastle, Whitley, and Wolfe.~~

Section 2. ~~An inmate~~ Inmates of ~~a~~ state penal ~~or~~ and correctional institution ~~institutions~~ transferred to the Cabinet for Health and Family Services shall be admitted to the Kentucky Correctional Psychiatric Center in La Grange, Kentucky.

Section 3. (1) Individuals charged with a felony and requiring psychiatric evaluation or treatment ~~pursuant to KRS Chapter 504~~ or both shall be ~~served~~ admitted upon court order ~~by a forensic psychiatric facility. Admission to the forensic psychiatric facility shall be coordinated and scheduled through that facility's admissions department~~ to the Kentucky Correctional Psychiatric Center, La Grange, Kentucky.

(2) Individuals admitted upon court order to the Kentucky Correctional Psychiatric Center, La Grange, Kentucky, may be transferred to other state institutions for the mentally ill or to a psychiatric unit in a local general hospital.

(3) Prompt notification of the court is required by KRS Chapter 202A, and sending of appropriate papers to the hospital is required by KRS Chapter 202A.

Section 4. A person may be admitted to a hospital other than the ~~hospital~~ one in the district of their residence upon verbal or written permission of the Commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities or authorized designee. If verbal, then written confirmation shall follow within five (5) working days of the admission.

Section 5. A person may be admitted to a psychiatric unit in a local general hospital if that unit has had prior approval of the Commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities or authorized designee.

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WENDY MORRIS, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 12, 2016

FILED WITH LRC: October 14, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 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 November 14, 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 November 30, 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

Contact Persons: Justin Dearing (502-787-7212, justin.dearing@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates hospital districts according to counties.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to comply with KRS 210.300 by designating hospitals according to geographic area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 210.300 in that it designates hospital districts.

(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 statute by designating hospital districts.

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

(a) How the amendment will change this existing administrative regulation: This amendment specifies process in accordance with KRS 504 and specifies the admission of patients be done by the facilities admissions department.

(b) The necessity of the amendment to this administrative regulation: The current language is outdated. The amendment clarifies the process and updates the language to show the current process.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies conformation to KRS 504.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the current procedures for admission to be clear and not outdated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment does not change current procedure.

(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: These regulated entities will not have to take any actions to comply with the amendment to this

administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Facilities will have clear and up to date regulations.

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

(a) Initially: No costs will be incurred to implement this amendment to the administrative regulation on an initial basis.

(b) On a continuing basis: No costs will be incurred to implement this amendment to the 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: NA

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment to the administrative regulation does not establish any fees and does not directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering will not be applied as this administrative regulation is applied in a like manner statewide. Compliance with this administrative regulation 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 for Behavioral Health, Developmental and Intellectual Disabilities, Department of Corrections, local jails, and mental health facilities will be positively impacted by this amendment to the administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following statutes authorize the actions taken by this administrative regulation: KRS Chapter 202A, 210.300, 504.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 to the administrative regulation will not generate new revenues for state or local government in the first year.

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs to implement this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this amendment to the administrative regulation on a continuing basis.

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

Revenues: (+/-)

Expenditures: (+/-)

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(Amendment)

921 KAR 1:001 Definitions for 921 KAR Chapter 1.

RELATES TO: KRS 194A.050, 205.710-205.800, 403.210-403.240, 405.440, 405.520, 407.5101-407.5903[407.5902], 45 C.F.R. 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102, 42 U.S.C. 651 et seq.

STATUTORY AUTHORITY: KRS 194A.050, 205.710-205.800, 405.440, 405.520, 42 U.S.C. 651 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050 requires the Cabinet for Health and Family Services to promulgate administrative regulations to administer the Child Support Enforcement Program (CSEP). This administrative regulation establishes definitions of terms used by the cabinet in administrative regulations pertaining to the Child Support Enforcement Program.

Section 1. Definitions of terms utilized in administrative regulations relating to the Child Support Enforcement Program are as follows:

(1) "Administrative hearing" means the process whereby a parent's objections to administrative determinations of the cabinet are heard by an impartial hearing officer upon a timely request.

(2) "Arrearage" means the total unpaid support obligation[established by judicial or administrative order] owed by a noncustodial parent or obligor.

(3) "Assigned support obligation" means any child support, spousal support, or medical support obligation assigned to the state.

(4) "Assignment of rights" means the written transfer of rights to any child support, medical support, or spousal support obligation to the state.

~~(5) "Authority to collect" means the nonpublic assistance custodial parent's authorization for the Cabinet for Health and Family Services to collect child support, medical support, or spousal support owed on behalf of the family for whom the cabinet is providing child support services.~~

~~(6) "Central registry" means a centralized office within the state agency responsible for:~~

~~(a) Receiving and distributing an incoming intergovernmental request; and~~

~~(b) Responding to an inquiry received from another state, tribe, or agency regarding an intergovernmental case.~~

~~(7) "Cold check" means insufficient funds for the check tendered, stop payment order on the check tendered, or closed account.~~

~~(8) "CSEP" means the Child Support Enforcement Program.~~

~~(6) [(9)] "Custodial parent" means either a mother, [or] father, or any other person or entity that may have standing to request services on behalf of a dependent child who is living in the home with the child.~~

~~(7) [(10)] "Default" means the noncustodial parent's [] or obligor's failure to return a financial statement or to keep an appointment, and the noncustodial parent's [] or obligor's [] income and assets cannot be obtained and verified from another source to determine a support obligation based on the Kentucky child support guidelines.~~

~~(8) [(11)] "Distribution" means either a disbursement of a collection to the family or an allotment of various portions of the collection to the state and federal government for the reimbursement of the share of the K-TAP assistance payment to the family, or money expended for a child in the custody of the state.~~

~~(9) [(12)] "Escrow" means the difference between the amount of the assistance payment for the month in which the amount of the collection is used to redetermine eligibility and either the monthly obligation or the amount collected, whichever is less.~~

~~(10) [(13)] "Excess collections" means the amount of the~~

collection which exceeds the monthly obligation amount.

~~(11) [(14)] "Income" means earnings or other periodic entitlements to money from any source and any other property subject to withholding for support as described in KRS 205.710(10), (11), (15) and 403.212(2).~~

~~(12) "Income withholding for support" means an administrative order issued by the cabinet, or a judicial order to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of any arrearage, and if applicable, the employee-paid share of the cost of health insurance coverage for a dependent child.~~

~~(13) [(15)] "Initiating tribunal [agency]" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country [a State or Tribal IV-D agency or an agency in a country, as defined in 45 C.F.R. 303.1, in which an individual has applied for or is receiving IV-D services].~~

~~(14) [(16)] "Intergovernmental IV-D case" means a IV-D case in which the noncustodial parent lives or works in a different jurisdiction than the custodial parent and the child or children that have been referred by an initiating tribunal [agency] to a responding state [agency] for services, including:~~

~~(a) Any combination of referrals between states, tribes and countries; or~~

~~(b) Cases in which a state agency is seeking only to collect support arrearages, whether owed to the family or assigned to the state.~~

~~(15) [(17)] "Kentucky Transitional Assistance Program (K-TAP)" means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for children who are deprived of parental support or care due to:~~

~~(a) Death, continued voluntary or involuntary absence, physical or mental incapacity of a parent; or~~

~~(b) Unemployment of at least one (1) parent if both parents are in the home.~~

~~(16) [(18)] "Location" means the determination of a parent's location, income, assets, property, or debt as provided by KRS 205.730(5).~~

~~(17) [(19)] "Long-arm statutory authority" means a state statute which provides for state jurisdiction over a nonresident.~~

~~(20) "Noncustodial parent" [] or "obligor" means either a mother or father of a dependent child who is not living in the home with the child as well as a description of the alleged father in a paternity case.~~

~~(18) [(21)] "Nonparental custodian" means:~~

~~(a) An adult who has been court appointed as the custodian of a minor child and is living in the home with the child; or~~

~~(b) Any other person or entity that may have standing to request services on behalf of a child.~~

~~(22) "Notice of monthly support obligation" means an administrative order issued by the cabinet as specified in KRS 405.440 notifying the noncustodial parent, or obligor, of the child support and medical support obligation and of the noncustodial parent's, or obligor's right to request an administrative hearing.~~

~~(19) [(23)] "Obligor" means that individual who is ordered to pay child support, spousal support, medical support, or health care coverage.~~

~~(24) "Offset" means to set aside federal or state, or both, income tax refunds or nonexempt federal payments due a noncustodial parent, or obligor, as a means of collecting past-due child support.~~

~~(20) [(25)] Order and notice to withhold income for child support" means an administrative order issued by the cabinet, or a judicial order to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of any arrearage, and if applicable, the employee-paid share of the cost of health insurance coverage for a dependent child.~~

~~(26) "Postreview challenge period" means the thirty (30) days following the date of the notice of adjustment or the notice of no change following the review for modification of the child support order.~~

~~(27) "Preoffset notice" means a letter notifying a noncustodial~~

parent, or obligor, who owes an arrearage that the arrearage has been certified for state and federal tax refund intercept, state tax refund intercept only, passport denial or revocation, administrative offset of nonexempt federal payments, offset of lottery winnings, and to certified consumer credit reporting agencies.

~~(21)[(28)]~~ "Public assistance" means the receipt of K-TAP, including child care or work subsidies and vouchers, Medicaid, or foster care benefits.

~~(22)[(29)]~~ "Responding state[agency]" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or foreign country~~[the agency that is providing IV-D services in response to a referral from an initiating agency in an intergovernmental IV-D case].~~

~~(23)[(30)]~~ "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children of that individual, even if child support is not part of the order.

~~[(31)]~~ "Unassigned arrearage" means ~~any arrearage that accrues that is not assigned to the Cabinet for Health and Family Services.~~

STEVEN P. VENNO, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 26, 2016

FILED WITH LRC: September 29, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 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 November 14, 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 November 30, 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, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Mary W. Sparrow (502-564-2285, ext. 4832, marry.sparrow@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Child Support Enforcement Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as it provides terms and definitions that are used in 921 KAR 1:380, 1:390, 1:400, 1:410, 1:420 and 1:430.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets forth terms and definitions used throughout the regulations cited in (b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides terms and definitions that are beneficial to the general public as well as to CHFS staff.

(2) If 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 updates definitions to be in line with

recent Intergovernmental changes as reflected in KRS 407.5101 through 407.5903. Terms and definitions that are not used in other child support related regulations are being removed.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the terms and definitions used in child support regulations referenced in (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes provide guidance for the Child Support Enforcement (CSE) program; this amended regulation provides terms and definitions that allow the public to gain an understanding of the CSE program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides updated terms and their definitions in accordance with the amendments to the Uniform Interstate Family Support Act (UIFSA) as part of the Preventing Sex Trafficking and Strengthening Families Act, signed by President Obama on September 29, 2014. Terms and definitions that are not used in other child support related regulations are being removed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Participants in the Child Support Enforcement program 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: Participants in the Child Support Program will become familiar with the change in terminology used when a case is an Intergovernmental case. Terms and definitions that are not used in other child support enforcement regulations are being removed, to eliminate any confusion.

(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): Participants in the Child Support Enforcement Program will benefit from updated definitions that are consistent with federal language.

(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? Participants in the Child Support Enforcement Program will be affected by this

amendment.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 45 Code of Federal Regulations 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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.

(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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 3:030. Application process.

RELATES TO: KRS 116.048, 7 C.F.R. 273.2, 273.10, 7 U.S.C. 2020(e)(2)(B)(ii), (iii), (iv), 42 U.S.C. 1973gg-5, 2000d, Pres. EO 13166

STATUTORY AUTHORITY: KRS 116.048(1), 194A.050(1), 7 C.F.R. 271.4, 7 U.S.C. 2020(e)(2)(B), 7 U.S.C. 2011-2029, 42 U.S.C. 1973gg-5

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 U.S.C. 2011 to 2029 and 7 C.F.R. 271.4 authorize the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) and prescribes the manner in which the program shall be implemented. 7 U.S.C. 2020(e)(2)(B) requires the cabinet to develop a uniform application process. KRS 116.048(1) designates the cabinet as a voter registration agency in accordance with 42 U.S.C. 1973gg-5. This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the SNAP.

Section 1. Right to Apply or Reapply. (1) An individual shall have the right to apply or reapply for SNAP benefits on the same day that the household first contacts the Department for Community Based Services (DCBS) office in person during office hours.

(2) The cabinet shall make the application process readily accessible to a household.

(3) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person who is:

(a) Deaf; or

(b) Hard of hearing.

(4) In accordance with 42 U.S.C. 2000d and Presidential EO 13166, interpreter services shall be provided for a person who is Limited English Proficient.

(5) An application shall be considered filed if:

(a) A FS-1, Application for SNAP, containing the name, address, and signature of the applicant is received by a DCBS office; or

(b) Application for benefits and another public assistance program is made in accordance with 921 KAR 2:040 and Section 6 of this administrative regulation.

(6) An application shall be processed after the:

(a) Applicant or representative is interviewed;

(b) Required information and verification for the application is provided to the DCBS office; and

(c) Application and related documents are received by the DCBS office, as specified in Section 3(1) of this administrative regulation.

Section 2. Who May Sign an Application. An application for SNAP shall be signed by:

(1) An adult or emancipated child who is a responsible member of the household; or

(2) The household's authorized representative.

Section 3. Where an Application is Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any DCBS office.

(2) A concurrent application for Supplemental Security Income (SSI) and SNAP shall be filed in the service area office of the Social Security Administration.

Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household that completes the initial SNAP application process an opportunity to participate as soon as possible. The cabinet shall not provide an opportunity to participate later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. The cabinet shall provide expedited services to a household that is eligible in accordance with 7 C.F.R. 273.2(i).

Section 6. Public Assistance Application Process. (1) A household~~[in which every member is]~~ applying for Kentucky Transitional Assistance Program (KTAP) shall be allowed to simultaneously apply for SNAP benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 4 of this administrative regulation shall not apply to a public assistance application. A public assistance application shall be governed by the time standards specified in 921 KAR 2:035, Section 3.

(3) A household in which every member receives, or is authorized to receive, SSI shall be considered categorically eligible unless:

(a) The entire household is institutionalized;

(b) A household member is ineligible due to a drug-related felony conviction;

(c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or

(d) The head of the household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under Temporary Assistance for Needy Families Block Grant (TANF) shall be considered categorically eligible unless:

(a) The entire household is institutionalized;

(b) A household member is ineligible due to a drug-related felony conviction;

(c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or

(d) The head of household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(5) If verified by the program~~[or service-conferring categorical eligibility status]~~, a categorically eligible household shall not be required to verify the following eligibility factors:

- (a) Resources;
- (b) Gross and net income;
- (c) Social Security number;
- (d) Sponsored alien information; and
- (e) Residency.

(6) A household that receives a TANF information sheet at application, which makes the household aware of other programs for which the household may qualify, shall be considered expanded categorically eligible.

(7) If verified by the program, an expanded categorically eligible household shall not be required to verify the following factors:

- (a) Resources;
- (b) Social Security number;
- (c) Sponsored alien information; and
- (e) Residency.

Section 7. Joint SSI and SNAP Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and SNAP as specified in Section 3(2) of this administrative regulation.

Section 8. Voter Registration. (1) In accordance with KRS 116.048 and 42 U.S.C. 1973gg-5, a SNAP applicant or recipient shall be provided the opportunity to complete an application to register to vote or update current voter registration if the applicant or recipient is:

- (a) Age eighteen (18) or over; and
- (b) Not registered to vote or not registered to vote at his current address.

(2) PAFS-706, Voter Registration Rights and Declination, shall be utilized to document a SNAP applicant or recipient's choice to:

- (a) Register to vote;
- (b) Not register to vote; or
- (c) Indicate that they are currently registered to vote.

(3) A voter registration application shall be completed if a SNAP applicant or recipient wants to:

- (a) Register to vote; or
- (b) Update voter registration to provide a new address.

(4) The voter registration process shall not apply to an individual not included in the assistance application, such as an authorized representative.

(5) All information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(6) The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the voter registration applicant.

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

- (a) "FS-1, Application for SNAP", 2/17[4/15]; and
- (b) "PAFS-706, Voter Registration Rights and Declination", 8/10.

(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: October 12, 2016

FILED WITH LRC: October 13, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 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 November 14, 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 November 30, 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

Contact Persons: Elizabeth Caywood (502-564-3703, elizabeth.caywood@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and the voter registration processes used by the Cabinet for Health and Family Services, Department for Community Based Services (DCBS) in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing an application process for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing procedures used in the administration of SNAP.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment to the administrative regulation will change form FS-1, Application for SNAP, to include the latest non-discrimination statement as prescribed by the U.S. Department of Agriculture, Food and Nutrition Service. In addition the amendment distinguishes application for those households deemed as expanded categorically eligible. Technical corrections were also made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to address recent federal review findings, ensure clarity regarding eligibility for those households deemed as expanded categorically eligible, and to avoid federal financial penalty.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its adherence for federal law and guidance, thereby preserving SNAP overall and its federal funding.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes through its incorporation of the latest nondiscrimination statement on incorporated materials and clarification of application requirements for households deemed expanded categorically eligible.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will affect Kentucky families who are applying and participating in SNAP. As of July 2016, there were 620,271 individuals comprising 284,887 families receiving SNAP benefits through the cabinet.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any new action as a result of this 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 to this administrative regulation will create no cost or additional burden on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the latest version concerning their rights to nondiscrimination in SNAP included within program forms and clarity provided regarding households deemed as expanded categorically eligible.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and has no initial cost to implement. Rather, to not undertake the regulatory amendment would subject the state to additional corrective action and possible federal financial penalty.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and has no fiscal impact on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded through the U.S. Department of Agriculture. Administrative costs are 50% federally funded and 50% state funded. Funding has been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

7 C.F.R. 273.2, 7 U.S.C. 2011-2029, and 42 U.S.C. 1973gg-10

2. State compliance standards. KRS 116.048, 194A.050 (1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 273.2, 7 U.S.C. 2011-2029, and 42 U.S.C. 1973gg-10

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 116.048, 194A.050(1), 7 C.F.R. 271.4, and U.S.C.

2011-2029.

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require any additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

921 KAR 3:050. Claims and additional administrative provisions.

RELATES TO: 7 C.F.R. 272.1, 272.5, 272.6, 273.16, 273.17, 273.18, 26 C.F.R. 301.6402-6

STATUTORY AUTHORITY: KRS 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.18

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.18 requires the agency administering SNAP to develop a process to establish and collect claims. This administrative regulation establishes the criteria for recipient claims, collections provisions, and additional provisions used by the cabinet in the administration of SNAP.

Section 1. Responsibility for a Claim. The following individuals shall be responsible for paying a recipient claim as defined in 921 KAR 3:010:

(1) An individual who was an adult member of the household during the time period when the overissuance or trafficking occurred;

(2) A sponsor of an alien household member if the sponsor is at fault; or

(3) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overissuance or trafficking.

Section 2. Claim Category. (1) As specified in 921 KAR 3:010, a recipient claim shall be classified as an:

(a) Inadvertent household error (IHE);

- (b) Agency error (AE); or
- (c) Intentional program violation (IPV).

(2) Until fraud is substantiated, an IPV claim shall be established as an IHE with a Suspected Intentional Program Violation (SIPV), indicator.

Section 3. Acting on a Change. (1) A claim shall be established if a household:

(a) Fails to report a change in circumstance in accordance with the timeframes specified in 921 KAR 3:035; or

(b) Reports a change within the required timeframe, but the cabinet fails to act on the change within ten (10) days of the date the change is reported.

(2) The first month of overissuance, as defined in 921 KAR 3:010, shall:

(a) Be the first month that the change would have been effective had it been timely:

- 1. Reported by the household; or
- 2. Acted upon by the cabinet; and

(b) Not exceed two (2) months from the month the change in circumstance occurred.

Section 4. Calculating the Amount of a Recipient Claim. (1) In accordance with 7 C.F.R. 273.18(c), unless a claim is related to trafficking, the cabinet shall:

(a) Calculate:

1. An IHE or AE claim back to twelve (12) months prior to when the cabinet became aware of the overissuance, unless an IHE has an SIPV indicator; and

2. An IPV claim or an IHE claim with a SIPV indicator back to the month the fraudulent act first occurred, but not more than six (6) years prior to when the cabinet became aware of the overissuance;

(b) Determine the correct amount of SNAP benefits for each month that a household received an overissuance;

(c) Not apply the earned income deduction to the portion of earned income that a household failed to report in a timely manner, as specified in Section 3 of this administrative regulation, if:

- 1. The claim is classified as an IPV or IHE; and
- 2. The IHE or IPV is the basis for the recipient claim;

(d) Subtract the correct amount of SNAP benefits from the benefits actually received and the difference shall be the amount of the overissuance; and

(e) Deduct any SNAP benefits that are designated to be expunged from a household's EBT account from the amount of overissuance:

1. When the recipient claim is initially calculated; and

2. At each subsequent expungement until the balance of the claim is paid in full.

(2) If a claim is related to trafficking, the cabinet shall calculate the value of the trafficked SNAP benefits as determined by:

- (a) An individual's admission;
- (b) Adjudication; or
- (c) The documentation that forms the basis for the trafficking determination.

(3) The amount of a claim may differ from a calculation obtained through the methods outlined in subsections (1) and (2) of this section if a different amount is ordered by:

(a) An administrative hearing officer or agency head in accordance with: 921 KAR 3:060 or 921 KAR 3:070; or

(b) A court.

(4) In accordance with 7 C.F.R. 273.18(e)(2), the cabinet shall not establish a recipient claim if the claim referral is \$125 or less, unless the:

- (a) Household is currently participating in SNAP; or
- (b) Recipient claim was established or discovered through a quality control review.

Section 5. KCD-1. (1) A KCD-1, General Claims Notice shall serve many purposes in the administration of claims collections, including the use as:

- (a) An appointment notice;
- (b) A demand letter;

(c) 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 suspended claim;

(j) Notice of a claim being paid in full; or

(k) Notification that a delinquent claim shall be sent to the U.S. Department of Treasury for collection.

(2) The language on the KCD-1 shall differ according to the purpose of the notice as described in subsection (1) of this section.

Section 6. Notification of a Claim. (1) A household with a suspected claim shall be mailed a KCD-1 notifying the household of an appointment to:

(a) Discuss the potential claim;

(b) Determine the classification of the claim, as specified in Section 2 of this administrative regulation; and

(c) Offer the recipient an opportunity to waive the administrative disqualification hearing if the claim is suspected to be an IPV.

(2) If a household requests to reschedule the appointment within ten (10) days of the date of the notice, the appointment shall be rescheduled.

(3) The cabinet shall determine the classification and the amount of the recipient claim based on the information that is available to the cabinet if the household:

(a) Fails to attend the appointment to discuss the potential claim; and

(b) Does not contact the cabinet to reschedule the appointment.

(4) When the cabinet determines the amount of a recipient claim, in accordance with Section 4 of this administrative regulation, collection shall be initiated and a KCD-1 shall be mailed to notify the household of the claim:

(a) Amount;

(b) Time period;

(c) Reason; and

(d) Category, as specified in Section 2 of this administrative regulation.

(5) The household shall return the KCD-1 within ten (10) days of receipt if the household chooses to:

- (a) Initiate a repayment agreement; or
- (b) Request a hearing on the claim.

Section 7. Collection Methods. (1) Benefit reduction.

(a) A household that is participating in SNAP shall have payments on the claim made by reducing its monthly SNAP benefits through benefit reduction by the following amount:

1. For an IPV claim, the amount reduced shall be the greater of twenty (20) dollars per month or twenty (20) percent of the household's monthly benefits or entitlement, unless the household agrees to a higher amount; or

2. For an IHE or AE claim, the amount reduced shall be the greater of ten (10) dollars per month or ten (10) percent of the household's monthly benefits, unless the household agrees to a higher amount.

(b) The cabinet shall not use additional collection methods against individuals in a household that is already having its benefits reduced unless the:

1. Additional payment is voluntary; or

2. Source of the payment is irregular and unexpected such as a federal or state tax refund or lottery winnings offset.

(2) A household may pay its claim using SNAP benefits from its EBT account if the household gives the cabinet permission:

(a) By completing and returning a KCD-1 or other written statement requesting this option; or

(b) Through an oral request for a one (1) time reduction and the cabinet provides the household with a receipt for the transaction within ten (10) days.

(3) If the cabinet becomes aware of expunged SNAP EBT benefits, the claim balance shall be reduced by an amount equal to

the expunged benefits.

(4) During the claim establishment and collection process, the cabinet shall:

- (a) Deduct the amount of an outstanding recipient claim from SNAP benefits that may be owed to a household; and
- (b) Send the household a KCD-1 as notification of the adjustment.

(5) A lump sum payment on a recipient claim:

- (a) Shall be accepted by the cabinet; and
- (b) May be a full or partial payment.

(6) If a household is not participating in SNAP, the cabinet shall:

- (a) Negotiate a repayment agreement, either orally or in writing, which includes a repayment schedule; and
- (b) Employ additional collection methods if the claim becomes delinquent through the household's failure to submit a payment in accordance with the negotiated repayment agreement.

(7) In accordance with 7 C.F.R. 273.18(g), the cabinet may employ other collection methods to collect a recipient claim, such as:

- (a) Referral to a public or private sector collection agency;
- (b) Lottery offsets;
- (c) Wage garnishment;
- (d) The intercept of unemployment compensation benefits;
- (e) State income tax refund intercept; or
- (f) The intercept of any eligible federal payment owed the debtor through the Treasury Offset Program (TOP).

(8) The cabinet shall:

(a) Refer a recipient claim that is delinquent for 180 or more days to TOP, unless the debtor is a member of a participating household that is undergoing benefit reduction to collect a recipient claim; and

(b) Remove a recipient claim from TOP if the:

- 1. FNS or U.S. Department of the Treasury instructs the cabinet to withdraw a recipient claim;
- 2. Cabinet discovers that the debtor:
 - a. Is a member of a SNAP household undergoing benefit reduction; or
 - b. Has made an arrangement to resume payments; or
- 3. Claim:
 - a. Has been paid off;
 - b. Was disposed of through a hearing, termination, or compromise; or
 - c. Was referred to TOP in error.

Section 8. Delinquent Recipient Claims. (1) In accordance with 7 C.F.R. 273.18(e)(5), a recipient claim shall be considered delinquent if:

- (a) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or
- (b) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(2) The date of delinquency for a claim shall be the due date on the:

- (a) Initial written notification if the claim meets the criteria of subsection (1)(a) of this section; or
- (b) Missed installment payment if the claim meets the criteria of subsection (1)(b) of this section.

(3) Pursuant to 7 C.F.R. 273.18(e)(5)(ii), the claim shall remain delinquent until:

- (a) Payment is received in full;
- (b) Benefit reduction, as described in Section 7 of this administrative regulation, is implemented; or
- (c) A satisfactory payment agreement is negotiated for a claim meeting the criteria of subsection (1)(a) of this section.

(4) A claim shall not be considered delinquent if:

(a) Another claim for the same household is currently being paid either through an installment agreement or benefit reduction; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(5) If the cabinet is unable to determine delinquency status because claim collection is coordinated through the court system, a

claim shall not be subject to the requirements for delinquent debts.

(6) A claim awaiting a fair hearing decision shall not be considered delinquent.

(7) If a hearing official determines that a claim does, in fact, exist against the household, the cabinet shall:

- (a) Renotify the household of the claim; and
- (b) Base delinquency on the due date of the subsequent notice.

(8) If a hearing official determines that a claim does not exist, the cabinet shall:

- (a) Dispose of the recipient claim in accordance with Section 9(2) of this administrative regulation; and
- (b) Send a KCD-1 to notify the household of the terminated claim.

Section 9. Compromising, Terminating, and Writing-off Claims.

(1) Except for a recipient claim that is established by a court of the appropriate jurisdiction, the cabinet may compromise a claim in accordance with 7 C.F.R. 273.18(e)(7).

(2) In accordance with 7 C.F.R. 273.18(e)(8), a claim shall be terminated and written off if:

- (a) The claim:
 - 1. Is invalid, unless it is appropriate to pursue the overissuance as a different type of claim;
 - 2. Balance is twenty-five (25) dollars or less and the claim has been delinquent for ninety (90) days or more, unless other claims exist against the household resulting in an aggregate claim total of greater than twenty-five (25) dollars; or
 - 3. Has been delinquent for at least three (3) years and, in accordance with 7 C.F.R. 273.18(n), cannot be pursued through TOP;
- (b) All adult household members, as specified in Section 1(1) of this administrative regulation, die; or
- (c) The cabinet is unable to locate the household.

Section 10. Restoration of Benefits. (1) Benefits shall be restored to a household if the household has lost benefits:

- (a) Due to an administrative error; or
- (b) By an administrative disqualification for an IPV that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from the date:

- (a) The agency receives a request for restoration; or
- (b) A final order is implemented, if no request for restoration is received.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset any unpaid or suspended claim that the household has.

Section 11. Disclosure of Information. The disclosure or use of information regarding SNAP participants shall be restricted to an individual who meets the criteria specified in 7 C.F.R. 272.1(c).

Section 12. Retention of Records. (1) In accordance with 7 C.F.R. 272.1(f), the cabinet shall retain program records:

- (a) In an orderly fashion, for audit and review purposes; and
- (b) Except for records specified in subsection (2) of this section, for a period of three (3) years from the:

- 1. Month of origin of each record; or
- 2. Date of fiscal or administrative closure for fiscal records and accountable documents, such as claims.

(2) The cabinet shall retain records on IPV disqualifications and work violations indefinitely.

Section 13. Civil Rights Compliance. In accordance with 7 C.F.R. 272.6, the cabinet shall not discriminate in any aspect of program administration on the basis of age, race, color, sex, disability, religion, political beliefs, or national origin.

Section 14. Incorporation by Reference. (1) "KCD-1, General Claims Notice", 1/17[42/45], is incorporated by reference.

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(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: October 12, 2016

FILED WITH LRC: October 13, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 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 November 14, 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 November 30, 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

Contact Persons: Elizabeth Caywood (502-564-3703, elizabeth.caywood@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for recipient claims, collections, and additional administrative provisions used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for establishing and collecting SNAP claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing claims criteria for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the criteria for recipient claims, collections, and additional administrative provisions used by the cabinet in the administration of SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation will revise material incorporated by reference, form KCD-1, General Claims Notice, to comply with federal regulations by updating the nondiscrimination statement as required by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), Office of Civil Rights. Other technical corrections were made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the nondiscrimination statement included on incorporated material conforms to federal requirements. If the incorporated material does not conform, the state risks corrective action up to and including federal penalties and sanctions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its congruency with federal requirements.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by assuring compliance with federal requirements and affording public assistance recipients with adequate notice of their rights regarding nondiscrimination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of July 2016, there were 620,271 individuals comprising 284,887 families receiving SNAP benefits through the cabinet. Additionally, as of June 30, 2016, Kentucky had approximately 32,832 active food stamp related claims.

(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 no new action on the part of SNAP applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not impose a new cost or burden to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, regulated entities will have their rights to nondiscrimination and methods to report suspected discrimination clearly outlined, in accordance with federal requirements, within this administrative regulation's incorporated material.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and has no initial cost to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and has no continuing cost to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted budget.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

7 C.F.R. 271.4, 273.18

2. State compliance standards. KRS 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.18

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those

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required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(2), KRS 194A.050(1), 7 C.F.R. 271.4, 273.18

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

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

(c) How much will it cost to administer this program for the first year? No new or additional costs are necessary to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:140. Foster care and adoption permanency services.

RELATES TO: KRS 2.015, 199.011(2), (4), 199.555, 199.557, 199.801, 387.025, 600.020(6), (8), 610.110, 610.125, 610.127, 620.020(1), (11), 620.060, 620.090, 620.140[(4)(d)], 620.180, 625.040, 625.090, 45 C.F.R. 1355 -1357, 25 U.S.C. 1901-1963[1944], 42 U.S.C. 621-629m, 670-679c[622(b)(9)], 670-679b], 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.467, 620.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.[Pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. Sections 620 to 679,] KRS 199.467 requires the Secretary for Health and Family Services to promulgate administrative regulations establishing specific goals for the cabinet, for each fiscal year, regarding the maximum number of children who will remain in foster care longer than twenty four (24) months, and describing the steps to be taken to achieve the goals. KRS 620.180(2) requires the cabinet to promulgate administrative regulations for status review, ongoing case work, and supportive

services to children in placement. This administrative regulation establishes the maximum number of children remaining in foster care longer than twenty four (24) months, and establishes permanency services available to children in placement.

Section 1. Definitions. (1) "Absent parent search" means cabinet initiated efforts to locate a biological or legal parent, or a relative.

(2) "Cabinet" is defined by KRS 199.011(2) and 600.020(6).

(3) "Case permanency plan" is defined by KRS 620.020(1).

(4) "Child" means:

(a) A child defined by KRS 199.011(4) and 600.020(8);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(5) "Concurrent planning" means the cabinet simultaneously plans for:

(a) The return of a child in the custody of the cabinet to the child's parent; and

(b) Another permanency goal for the child if return to parent is not achieved within fifteen (15) of the last twenty two (22) months, in accordance with 42 U.S.C. 675(5)(E).

(6) [(5)] "Parent" is defined by 42 U.S.C. 675(2).

(7) [(6)] "Reasonable efforts" is defined by KRS 620.020(11).

(8) [(7)] "Relative" means an individual related to a child by blood, marriage, or adoption to a child.

(9) [(8)] "Sufficient progress" means compliance with case permanency plan objectives that support the safe return of the child to the child's parent.

Section 2. Children in Care. Unless the secretary of the cabinet or designee approves an exception based on overall trends in the foster care population, the maximum number of children who receive foster care in excess of twenty four (24) months shall be 3,000 during a state fiscal year.

Section 3. Permanency Planning. (1) In a court permanency hearing held pursuant to KRS 610.125, the cabinet shall demonstrate that reasonable efforts to return the child to the child's parent:

(a) Have been unsuccessful; or

(b) Are not required under the provisions of KRS 610.127.

(2) A child shall be removed from the child's home if:

(a) An emergency custody order has been obtained pursuant to KRS 620.060;

(b) A temporary custody order has been obtained pursuant to KRS 620.090; or

(c) A court orders the removal pursuant to KRS 620.140(1)(c)[(d)].

(3) Upon removal of a child from the child's home, placement shall be:

(a) Selected according to the least restrictive appropriate placement available, as required by KRS 620.090(2); and

(b) Closest in proximity to the child's home, in accordance with KRS 199.801.

(4) In the provision of permanency services, the cabinet shall meet the requirements of the:

(a) Indian Child Welfare Act in accordance with 25 U.S.C. 1901-1963[1944], 42 U.S.C. 671(a)(32), and 42 U.S.C. 1996; or

(b) Multiethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 in accordance with 42 U.S.C. 622(b)(7)[622(b)(9)], 671(a)(18), and 1996b.

(5) An absent parent search shall:

(a) Be conducted within thirty (30) days of a child entering the custody of the cabinet;

(b) Be conducted to gather as much information as possible related to the person and the person's location which may include:

1. Date of birth;

2. Social Security number;

3. Present or previous employers; and

4. Present or most recent address; and

(c) Include a written record of all search attempts, written correspondence, and telephone contacts with any person to assist in locating a parent or relative.

(6) If a relative placement is in the best interest of the child, the cabinet shall:

(a) Use an absent parent search to locate a relative;

(b) Conduct background checks on the relative consistent with a caretaker relative pursuant to 922 KAR 1:490; and

(c) Complete a home evaluation with consideration given to the relative's:

1. Willingness and ability to:

a. Protect the child from abuse or neglect;

b. Participate in the child's case permanency plan;

c. Access:

(i) Transportation;

(ii) Telephone;

(iii) Medical services;

(iv) First aid supplies; and

(v) School;

d. Provide full-time care;

e. Provide for the child's sleeping and eating;

f. Maintain adequate heat and ventilation in the home;

g. Use active smoke detectors in the home; and

h. Assure the child's inaccessibility to:

(i) Medication;

(ii) Alcoholic beverages;

(iii) Poisonous or cleaning materials;

(iv) Firearms or ammunition; and

(v) Unsupervised contact with the birth parent; and

2. Understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family.

(7) If the case conference held in compliance with KRS 620.180(2)(a)1 results in the child being placed in the custody of the cabinet, the cabinet shall develop and document a case permanency plan, using the ~~Form~~ DPP-1281, Family Case Plan.

(8) The case permanency plan shall identify the permanency goal described in Section 4(2) of this administrative regulation.

(9) Concurrent planning shall be considered:

(a) During development of the case permanency plan; and

(b) At the six (6) month case review.

Section 4. Permanency Goals. (1) A permanency goal for a child in the custody of the cabinet shall be established according to the particular needs and best interest of the child.

(2) A permanency goal shall include one (1) of the following:

(a) Return to parent;

(b) Adoption;

(c) Permanent relative placement;

(d) Legal guardianship;

(e) Another planned permanent living arrangement; or

(f) Emancipation.

Section 5. Return to Parent. (1) The cabinet shall recommend to the court that a child in the custody of the cabinet is returned to the parent if the cabinet determines:

(a) A family has made sufficient progress toward completing the case permanency plan; and

(b) Return to the parent is in the best interest of the child.

(2) If the cabinet determines that a family has not made sufficient progress towards achieving the objectives specified in the case permanency plan, the cabinet shall seek a court order for:

(a) A change in the permanency goal; or

(b) Termination of parental rights or civil action.

(3) If the court determines that a circumstance occurs that negates the requirement to make reasonable efforts to reunify the child and family, as described in KRS 610.127, the cabinet shall select a permanency goal other than return to parent.

Section 6. Adoption. (1) The permanency goal for a child in the custody of the cabinet shall be adoption if:

(a) The parent pursues voluntary termination of parental rights pursuant to KRS 625.040; or

(b) The cabinet pursues involuntary termination of parental rights:

1. Pursuant to KRS 625.090; or

2. If the child has been in foster care for fifteen (15) of the most recent twenty-two (22) months pursuant to 42 U.S.C. 675(5)(E).

(2) The cabinet shall request an exception for proceeding with involuntary termination of parental rights pursuant to subsection (1)(b) of this section, if:

(a) A relative placement has been secured;

(b) Termination is not in the best interest of the child, for a compelling reason:

1. Documented in the case permanency plan; and

2. Monitored on a continual basis; or

(c) A service necessary for return to parent has not been provided within the time period specified in the case permanency plan.

(3) Cabinet staff shall consider involuntary termination of parental rights at each permanency hearing held pursuant to KRS 610.125(1).

Section 7. Permanent Relative Placement. The permanency goal for a child in the custody of the cabinet shall be permanent relative placement if:

(1) Return to the parent is not in the child's best interest; and

(2) The cabinet determines that a relative who does not pursue adoption or legal guardianship is able to provide a permanent home for the child.

Section 8. Legal Guardianship. (1) The permanency goal for a child in the custody of the cabinet shall be legal guardianship if the cabinet determines that:

(a) Return to the parent or adoption is not in the child's best interest;

(b) There is an identified adult willing to seek legal guardianship of this child; and

(c) Legal guardianship by the adult identified in subsection (1)(b) of this section is in the child's best interest.

(2) Legal guardianship shall be requested pursuant to KRS ~~387.025[620.140(1)(e)]~~.

Section 9. Another Planned Permanent Living Arrangement. (1) The permanency goal for a child in the custody of the cabinet who is sixteen (16) years of age or older shall be another planned permanent living arrangement if:

(a) An unsuccessful effort has been made to place the child for adoption or with a relative, and the child has been placed on a national adoption register;

(b) Other permanency goal options have been exhausted and are no longer appropriate due to the specific circumstances of the child;

(c) The cabinet has reviewed documentation that a goal of another planned permanent living arrangement is in the best interest of the child;

(d) The court has determined that another planned permanent living arrangement is in the best interest of the child to be placed; and

(e) The child has formed psychological ties with those with whom the child lives, and adoption and guardianship have been discussed with the care provider and are not viable alternatives.

(2) Approval shall be obtained from the commissioner or designee prior to the establishment of another planned permanent living arrangement as a permanency goal for a child[:

~~(a) Under the age of sixteen (16); or~~

~~(b)] placed with a private child caring agency.~~

Section 10. Emancipation. (1) The permanency goal for a child in the custody of the cabinet shall be emancipation when:

(a) An unsuccessful effort has been made to place the child for adoption or with a relative, and the child has been placed on a national adoption register;

~~(b) The child[youth] is age sixteen (16) or older; and~~

~~(c)[(b)] Other permanency options have been considered and are not appropriate due to the specific circumstances of the child.~~

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(2) If emancipation is established as a permanency goal, the child[youth] shall be referred to an independent living program administered by the cabinet.

Section 11. Permanency Services. (1) The cabinet shall provide services for a child in the custody of the cabinet so that permanency is achieved.

(2) Permanency services may include:

(a) Ongoing case work and monitoring of the family to:

1. Maintain the child safely in the child's home; and

2. Ensure safe return of the child if the goal is return to the parent;

(b) Adoption assistance pursuant to 922 KAR 1:050 or 922 KAR 1:060;

(c) Post-finalization~~[Postfinalization]~~ adoption assistance if adoption assistance has not been previously approved pursuant to KRS 199.555 and 199.557;

(d) Post-adoption~~[Postadoption]~~ placement stabilization services as described in 922 KAR 1:530; or

(e) Referral to other cabinet and community resources necessary for the achievement or maintenance of the child's permanency goal. Other cabinet resources for a prospective or existing permanent relative placement may include:

1. The Kentucky Transitional Assistance Program (K-TAP) for a child if an application is made in accordance with 921 KAR 2:006 and 921 KAR 2:016;

2. Health benefits for a child if an application is made in accordance with 907 KAR 20:015~~[4:640]~~, 907 KAR 4:020, or 907 KAR 4:030;

3. Supplemental Nutrition Assistance Program (SNAP) benefits for a household if an application is made in accordance with 921 KAR 3:030; or

4. Relative placement support benefit in accordance with 922 KAR 1:400, to the extent funds are available.

Section 12. Incorporation by Reference. (1) "DPP-1281, Family Case Plan", 11/16~~[9/08]~~, 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: October 12, 2016

FILED WITH LRC: October 13, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 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 November 14, 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 November 30, 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

Contact Persons: Elizabeth Caywood (502-564-3703, elizabeth.caywood@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policies and procedures for foster care and adoption permanency services that are mandated by federal and state laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation concerns to the content of the authorizing statutes through the establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its establishment of the maximum number of children remaining in foster care for longer than twenty-four (24) months and permanency services available to children in placement.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases the age at which youth are permitted to have the permanency goal of another planned permanent living arrangement to sixteen (16) years of age or older and clarifies criteria for the use of emancipation as a permanency goal. In addition, this amendment revises incorporated material, the DPP-1281, Family Case Plan, by specifying the rights of children in the case planning process; language regarding meeting educational, mental health, and physical health needs of children; normalcy standards; and the decision-making rights of youth aged fourteen (14) and older. Lastly, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure compliance with the federal requirements pursuant to Pub. L. 113-183 Preventing Sex Trafficking and Strengthening Families Act and conformity with enabling state law (i.e., 2016 Acts ch. 115). The amendment preserves the state's federal child welfare funding through its alignment with the federal requirements. Additionally, the amendment further limits the use of less optimal permanency goals for children and promotes children's engagement and quality care, thereby better supporting children's welfare.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes through its conformity with newer federal and state laws governing permanency services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in effective administration of the statutes through its conformity and alignment with newer federal and state laws applicable to permanency services offered through the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of July 3, 2016 there were 8,056 children and youth currently in out-of-home care who may be impacted by the changes in 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: There are no new actions that will be required by the impacted entities as a result of this amendment.

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

costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation improves upon existing cabinet permanency services through compliance with recently enacted federal and state laws and preserves federal child welfare funding. The amendment will afford regulated entities greater involvement in their case planning processes and improved services while they are in care. Additionally, the amendment will ensure that another planner permanent living arrangement and emancipation, the two least optimal permanency goal options for children in care, are used in only limited circumstances.

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

(a) Initially: Initial implementation costs to the administering agency will be within existing appropriations. Noncompliance with federal requirements can lead to federal financial penalty.

(b) On a continuing basis: Ongoing implementation of the administrative regulation by the agency will be within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds used for the implementation and enforcement of this administrative regulation include federal Titles IV-B and IV-E of the Social Security Act, federal Temporary Assistance for Needy Families Block Grant (TANF), federal Social Services Block Grant (SSBG), restricted funds derived from Medicaid, and state funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 621-629m, 670-679c

2. State compliance standards. KRS 194A.050(1), 199.467, 620.180

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 621-629m, 670-679c

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 621 to 679b, KRS 194A.050(1), 199.467, 620.180

(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.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues for state or local government 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 administrative regulation will generate no new revenues for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? Initial implementation costs to the administering agency will be within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Ongoing implementation of the administrative regulation by the agency will be within appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amendment)

922 KAR 1:360. Private child care placement, levels of care, and payment.

RELATES TO: KRS 13B, 199.011, 199.640-199.680, 199.801, 600.020(25)[(24)], 605.090(1)(b), (d), 610.110.[2014 Ky. Acts ch. 117 Part 4, G. 9(7).] 42 U.S.C. 622, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-caring facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations prescribing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2).

(2) "Child-caring facility" or "facility" is defined by KRS 199.641(1)(b).

(3) "Department" means the Department for Community Based Services or the department's agent.

(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(5) "Emergency shelter" is defined by KRS 600.020(25)[(24)].

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;
2. Placement;
3. Performance measurement; and
4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

- (a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and
- (b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care in accordance with Section 2(2) of this administrative regulation.

(11) "Model program cost analysis" is defined by KRS 199.641(1)(d).

(12) "Reassigned level of care" means a level of care that is:

- (a) Determined by the gatekeeper after a child's level of care expires; and
- (b) Authorized for a specific period of time.

(13) "Time study" is defined by KRS 199.641(1)(e).

(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

- (a) Identifying the child's current level of functioning; and
- (b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age when:

- (a) The child enters the level of care system;
- (b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age; or
- (c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the DPP-886, Private Child Care Client Inter-agency Referral Form, and the following child-specific information:

- (a) Identifying data;
- (b) Individual strengths and limitations;
- (c) Daily living skills;
- (d) Physical health needs;
- (e) Mental health needs including:
 1. Behavioral health; and
 2. Diagnosis and treatment;
- (f) Medications;
- (g) History of substance abuse, high risk, or other significant behavior including:
 1. Sexual acting out; and
 2. Legal history, status, or delinquency behavior patterns;
- (h) Out-of-home~~[Out of home]~~ care placement information including:
 1. Reason for entering out-of-home~~[out of home]~~ care;
 2. History of abuse, neglect, or dependency;
 3. Current custody status;
 4. Current and previous placements; and
 5. Permanency goal;
 - (i) Social supports;
 - (j) Educational functioning, grade level, and any special educational need;
 - (k) Religious background and practices; and
 - (l) If a child has an IQ of seventy (70) or above:
 1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach);

2. Child Behavior Checklist For Ages 6-18 (Achenbach); or

3. Another tool~~[identified and piloted]~~ pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A).

(3)(a) If a child needs placement within the level of care system, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator.

(b) The district placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

- (a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:
 1. As assigned by the gatekeeper within the previous six (6) months; or
 2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;
- (b) Arrange transportation for the child to the placement; and
- (c) Notify the district placement coordinator of the selected placement.

(5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:

- (a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and
- (b) Inform the district placement coordinator of the location and date of placement.

(6) The district placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

- (1) Evaluate a child forty-eight (48) months of age or older:
 - (a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and
 - (b) For an initial or reassigned level of care;
- (2) Within three (3) working days of receipt of the level of care packet:
 - (a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and
 - (b) Return the completed:
 1. DPP-886, Private Child Care Client Inter-agency Referral Form, to the department; or
 2. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, to the department and the child-caring facility or the child-placing agency;
 - (3) Conduct a utilization review for a child:
 - (a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and
 - (b) 1. Every three (3) months thereafter if the child is in a private child care residential placement; or
 2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;
 - (4) Reassign a child's level of care after the previous level has expired;
 - (5) Monitor each child-caring facility and child-placing agency;
 - (6) Maintain a confidential information system for each child served that shall include:
 - (a) Placement history;
 - (b) Level of care assignments;
 - (c) Length of treatment; and
 - (d) Discharge outcomes; and
 - (7) For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the private child-caring facility or private child-placing agency and the cabinet after a level is conducted or reassigned.

Section 4. Levels of Care. A level of care shall be assigned in accordance with this section.

(1) A Level I child shall be a child who requires a routine home environment that:

- (a) Provides maintenance;
- (b) Provides guidance;
- (c) Provides supervision to meet the needs of the child; and
- (d) Ensures the emotional and physical well-being of the child.

(2) A Level II child shall be a child who:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

- 1. Counseling available from professional or paraprofessional staff;
- 2. Educational support; and
- 3. Services designed to improve development of normalized social skills.

(3) A Level III child shall be a child who:

- (a) May engage in an occasional violent act;
- (b) May have superficial or fragile interpersonal relationships;
- (c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;
- (d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(e) Requires a program flexible enough to allow:

- 1. Extended trials of independence if the child is capable;
- 2. A period of corrective and protective structure during relapse; and
- 3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child shall be a child who:

(a) Has behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others; and

(b) Requires a structured supportive setting with:

- 1. Therapeutic counseling available by professional staff; and
- 2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child shall be a child who:

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

- 1. Highly structured program with twenty-four (24) hour supervision; or
- 2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the model program cost analysis defined at KRS 199.641(1)(d).

(b) Each private, nonprofit child caring facility shall report to the cabinet annually, on the DPP-888, Cost Report and Time Study and Instructions.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined as follows:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and

b. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet.

(b)1. For children whose level is determined, the median level

of care shall be represented by an index factor of one (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

- a. Board;
- b. Care; and
- c. Treatment components; or

2. For an emergency shelter without a treatment license:

- a. Board; and
- b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

- 1. Child safety while in the care of a private child-caring facility or child-placing agency;
- 2. Child safety after reunification with the child's family;
- 3. Adequate educational support;
- 4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;
- 5. Increased placement stability during the service period;
- 6. Increased achievement of permanency goals; and
- 7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

- 1. Indicators used to measure the performance outcomes described in paragraph (a) of this subsection; and
- 2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) When the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency

such as:

- (a) Reduced length of stay in out-of-home placement;
- (b) Increased safety from child abuse or neglect;
- (c) Increased number of children moving into and remaining in permanent placement;
- (d) Increased number of children and their families cared for in close proximity to their home communities;
- (e) Increased number of children reunified with their families;
- (f) Increased accountability for success in after care; or
- (g) Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care system shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be:

- (a) Level I – ~~\$51.19~~[fifty-one (51) dollars and nineteen (19) cents];
- (b) Level II – ~~\$61.52~~[sixty-one (61) dollars and fifty-two (52) cents];
- (c) Level III – \$109.71;
- (d) Level IV:
 - 1. ~~\$151.03; or 2.] \$175.87; or~~
 - 2. ~~\$183.00 on or after October 1, 2016~~[on or after August 4, 2014]; and
- (e) Level V:
 - 1. ~~\$210.64; or 2.] \$218.99; or~~
 - 2. ~~\$236.60 on or after October 1, 2016~~[on or after August 4, 2014].

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

- (a) \$115.31 per day for a child-caring facility with a treatment license; or
- (b) \$101.41 per day for a child-caring facility without a treatment license.

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

- (a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review;
- (b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and
- (c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

- 1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;
- 2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and
- 3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) The basic daily rate for foster care shall be ~~\$44.82~~[:

- (a) ~~Forty-three (43) dollars; or~~
- (b) ~~Forty-four (44) dollars and eighty-two (82) cents on or after August 4, 2014].~~

(2) The daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher – ~~\$76.10~~[:

- 1. ~~Seventy-three (73) dollars; or~~
- 2. ~~Seventy-six (76) dollars and ten (10) cents on or after August 4, 2014.]~~

(b) Level III – ~~\$83.16~~[:

- 1. ~~Seventy-nine (79) dollars and seventy-eight (78) cents; or~~
- 2. ~~Eighty-three (83) dollars and sixteen (16) cents on or after August 4, 2014.]~~

(c) Level IV –[:

- 1. ~~Ninety-seven (97) dollars and eleven (11) cents; or~~
- 2. ~~\$101.23; and on or after August 4, 2014.]~~

(d) Level V –[:

- 1. ~~\$134.26; or~~
- 2. ~~\$139.96 on or after August 4, 2014].~~

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount specified in Section 8(1) of this administrative regulation for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. (1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

- 1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;
- 2. Clinical services including:

a. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

b. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the disability or distress;

c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. For a child who has an IQ seventy (70) or above, a behavior inventory appropriate to the child's developmental level consisting of completed forms specified in Section 2(2)(l) of this administrative regulation; and

2. For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level:

a. Consisting of:

(i) A completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); or

(ii) Another completed tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)(A); and

b. By the first utilization review due date and every twelve (12) months thereafter; and

3. To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):

a. On a quarterly basis, for a private child care residential placement; or

b. On a semiannual basis for a foster care placement;

(d) Provide outcomes data and information as requested by the

gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or
2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 11. Utilization Review and Authorization of Payment.

(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day, the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency Referral Form, for an initial or reassigned level;

2. CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;

3. CRP-4, Children's Review Program Notice of Level of Care Redetermination;

4. CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or

5. CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment, for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child;

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. Material as specified in Section 2(2)(l) of this administrative regulation.

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the contract agent.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring

facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", 7/00;
- (b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", 6/01;
- (c) "CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", 11/14;
- (d) "CRP-4, Children's Review Program Notice of Level of Care Redetermination", 11/14;
- (e) "CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 11/14;
- (f) "CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Reassignment", 11/14;
- (g) "CRP-7, Children's Review Program Application of Level of Care Payment (ALP)", 11/14;
- (h) "DPP-114, Level of Care Schedule", 8/14;
- (i) "DPP-886, Private Child Care Client Inter-agency Referral Form", 10/04;
- (j) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities", 10/04; and
- (k) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", 1990.

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

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 28, 2016

FILED WITH LRC: September 28, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 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 November 14, 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 November 30, 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

Contact Persons: Elizabeth Caywood (502-564-3703, elizabeth.caywood@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes five levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to establish the policy and procedures for placement of a child in the custody of the cabinet with a private child care provider, levels of care and related payments, responsibilities and requirements of the gatekeeper and private provider, and rate setting methodology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the levels of care and associated payments for a private child care placement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child in the custody of the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases the payment rates for children who are assessed as having levels of care IV and V, and who are placed with a private residential child-caring facility. In addition, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adjust reimbursement for children placed in residential child-caring facilities to better reflect actual costs of providers. The rate increase is anticipated to assist with provider capacity, thereby better assuring placement options and quality care for children in state custody. Without these placement options, children risk placement in more costly, restrictive settings or, conversely, in settings that do not otherwise meet the needs of the children. The health and welfare of said children are jeopardized without the payment rate increase, in addition to threats to federal child welfare funding due to an inadequate service array for children needing out-of-home care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adjusting residential child-caring facility payment rates to better reflect actual costs realized by the provider type.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by enhancing provider payment rates so that they are more consistent with actual provider costs, thereby better facilitating placement options and preserving the health and welfare of children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The cabinet maintains a monthly average of 1,100 children who are assessed as needing levels of care IV or V in residential child-caring facility placements. As of August 18, 2016, there are 44 licensed child-caring facilities in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation requires no new action on the part of regulated entities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Residential child-caring facilities will benefit from the payment rate increase implemented through the amendment to this administrative regulation. The effect of the regulatory amendment will preserve the health and welfare of

children in the custody of the cabinet.

rate increase for children who are assessed as needing levels of care IV and V. The cabinet has identified approximately \$5.4 million, a combination of federal, general, agency, and restricted funds, within its existing appropriations to support the rate increase.

(b) On a continuing basis: The cabinet projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include federal Title IV-E (of the Social Security Act) foster care maintenance, general funds, and agency and restricted funds derived from the Temporary Assistance for Needy Family (TANF) block grant and Medicaid.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672

2. State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.090(1)(d), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1), 42 U.S.C. 622, 672

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new

revenues.

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are within appropriations. The cabinet has identified approximately \$5.4 million, a combination of federal, general, agency, and restricted funds to support the rate increase.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

COUNCIL ON POSTSECONDARY EDUCATION
(New Administrative Regulation)

13 KAR 4:010. State Authorization Reciprocity Agreement.

RELATES TO: KRS 164.020(23), 164.945, 164.946, 164.947, 164.992, 165A.320-165A.450

STATUTORY AUTHORITY: KRS 164.540(3)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.540(3) authorizes the Council on Postsecondary Education to promulgate an administrative regulation to enter into the State Authorization Reciprocity Agreement, which establishes uniform national standards for interstate offerings of postsecondary distance education and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states. KRS 164.540(3) also authorizes the council to serve as the lead or portal agency on behalf of the commonwealth's public and private postsecondary institutions seeking to offer distance education in member states. This administrative regulation establishes the mechanism by which Kentucky institutions may join the State Authorization Reciprocity Agreement and sets forth the process by which non-resident students can file complaints against Kentucky member institutions.

Section 1. Definitions. (1) "Accredited" means holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education.

(2) "Commission" means the Kentucky Commission on Proprietary Education.

(3) "Council" means the Kentucky Council on Postsecondary Education.

(4) "Degree" means an award conferred at the associate level or higher by an institution as official recognition for the successful completion of a program of studies.

(5) "Institution" means a Kentucky degree-granting postsecondary entity.

(6) "NC-SARA" means the National Council for State Authorization Reciprocity Agreements.

(7) "President" means the President of the Kentucky Council on Postsecondary Education.

(8) "SACSCOC" means the Southern Association of Colleges and Schools Commission on Colleges.

(9) "State Authorization Reciprocity Agreement," or "SARA," means the agreement among member states, districts, and U.S. territories that establishes comparable national standards for interstate offering of degrees through distance education and authorizes institutions meeting those standards located in member states or territories to provide distance education to residents of other member states.

Section 2. Initial Application Procedures. In order to participate in SARA, an institution shall submit the following items to the president for review and action:

(1) The current NC-SARA Application and Approval Form for Institutional Participation in SARA, in electronic format; and

(2) The fees due to the council, in accordance with Section 6 of this administrative regulation.

Section 3. Renewal Application Procedures. In order to continue participating in SARA, an institution shall submit the following items to the president for review and action at least sixty (60) days before the anniversary date of the institution's initial approval:

(1) The current NC-SARA Application for Institutional Renewal to Participate in SARA, in electronic format; and

(2) The fees due to the council, in accordance with Section 6 of this administrative regulation.

Section 4. Standards for Approval. In order to participate in SARA, an institution shall comply with the following:

(1) Maintain authorization to operate in Kentucky through one (1) of the following:

(a) Creation by Kentucky Revised Statutes;

(b) Licensure by the council; or

(c) Licensure by the commission; and

(2) Meet the current minimum requirements to participate in SARA.

Section 5. Consumer Complaints. (1) After first exhausting the institution's internal procedure for complaint resolution, a non-resident student may file a complaint against the institution for failure to comply with any SARA standard within two (2) years of the incident about which the complaint is made.

(2) In order to be considered, a complaint shall be submitted by the student in writing and include the following information:

(a) Name, address, email address, and phone number of student;

(b) Name of institution;

(c) Location of institution;

(d) Dates of attendance;

(e) An explanation of the steps taken to exhaust the institution's grievance process;

(f) A full description of the issue and any relevant documentation supporting the complaint; and

(g) The desired resolution of the complaint.

(3) Complaints regarding student grades or student conduct violations shall not be considered.

(4) The president shall forward the complaint to the institution and require a written response no later than thirty (30) days from the date of transmittal.

(5) After review of information and materials provided by the student and the institution, the president may request additional information from either party.

(6) After review of all relevant information and materials, the president shall facilitate a resolution of the complaint. The relief provided the student, if any, shall be commensurate with the circumstances.

(7) Resolution of a complaint by the president shall be final, except in instances where the subject matter of the complaint may violate any other applicable laws.

(8) The president shall provide to the executive director of the commission, for reference purposes, a copy of:

(a) Any complaint initiated against an institution licensed by the commission;

(b) The resolution; and

(c) Any related materials.

Section 6. Fees. The council shall charge an initial and annual renewal fee to institutions based on all enrolled FTE students, which shall be due at time of application. Applications shall not be reviewed without receipt of fee payment. Failure to pay a fee on or before the date of application shall be sufficient grounds for denial of an application. Fees shall be in addition to any fees charged by NC-SARA and shall be in accordance with the following schedule:

(1) Under 2,500 - \$3,000;

(2) 2,500 – 9,999 - \$5,000; or

(3) 10,000 or more - \$7,000.

GLENN DENTON, Chair

TRAVIS POWELL, General Counsel

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2016 at 10:00 a.m. EST at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. 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 to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any

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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 November 30, 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: Sarah Levy, Director of Postsecondary Licensing, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555 ext. 350, fax 502.573.1535, email sarah.levy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for participation by Kentucky postsecondary institutions in the State Authorization Reciprocity Agreement (SARA), which establishes uniform national standards for interstate offerings of postsecondary distance education and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states.

(b) The necessity of this administrative regulation: KRS 164.540(3) provides the Council with the authority to enter into SARA on behalf of the Commonwealth and promulgate regulations to establish procedures for Kentucky postsecondary institutions to participate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets out the procedures for Kentucky postsecondary institutions to participate in SARA as required by KRS 164.540(3)(c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The procedures set forth in this regulation are in conformance with SARA requirements which must be met in order for Kentucky to be a member as authorized by KRS 164.540(3).

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public and private colleges and universities offering Associate's degrees or higher.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky public and private colleges must complete the initial and annual renewal applications and pay the requisite fees in order to participate in SARA. Participating institutions in other states will no longer be required to comply with the standard licensing requirements of the Commission on Proprietary Education or the Council, as applicable, in order to offer distance education and conduct related activities, including but not limited to, advertising and providing limited clinical placements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): Cost of compliance will be minimal for regulated entities, particularly considering the alternative costs of complying with state authorization laws in individual states.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SARA member institutions will be able to offer distance education and conduct related activities in other member states under one set of uniform rules at a much lower cost.

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

(a) Initially: We estimate that there will be cost in implementing the proposed regulation. The Council staff will complete and submit the initial state application to SREB for approval, will review and approve initial institution applications from Kentucky postsecondary institutions, and will facilitate non-resident student complaints against Kentucky postsecondary institutions that become members of SARA.

(b) On a continuing basis: We estimate that there will be costs on a continuing basis to implement the proposed regulation. The Council staff will complete and submit the state application for renewal to SREB for approval, will review and approve annual renewal applications as well as initial institution applications from Kentucky postsecondary institutions, and will facilitate non-resident student complaints against Kentucky postsecondary institutions that become members of SARA.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SARA fees and General Fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Yes. Implementation of this proposed regulation does require fees for initial and annual renewal applications.

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

(9) TIERING: Is tiering applied? Yes, tiering is applied, but only as to the fee, which is based upon total enrolled FTE students at an institution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Council is responsible for implementation, and this regulation applies to Kentucky public institutions and private colleges and universities that seek to become members of SARA.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.540(3)(c).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? We estimate initial revenue from Kentucky university and college applications to be roughly \$62,000. Revenue likely lost to the Council from out of state institutions now covered under SARA would be \$63,500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? See 3(a). We estimate annual revenue from Kentucky university and college applications to be roughly \$62,000 but should increase over time as more institutions join. The Council will continue to lose fee revenue from licensed out of state institutions over and above the \$63,500 listed above as those institutions join SARA and as additional states join.

(c) How much will it cost to administer this program for the first year? Approximately \$87,500.

(d) How much will it cost to administer this program for subsequent years? Approximately \$175,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: N/A

**GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(New Administrative Regulation)**

201 KAR 36:005. Definitions for 201 KAR Chapter 36.

RELATES TO: KRS 335.535(1)

STATUTORY AUTHORITY: KRS 335.515(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) authorizes the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the definitions used in 201 KAR Chapter 36.

Section 1. Definitions. (1) "Academic course offered by an accredited postsecondary institution" means:

(a) A professional counseling course designated by a professional counseling title or content; or

(b) An academic course relevant to the practice of professional counseling.

(2) "Approved" means recognized by the Kentucky Board of Licensed Professional Counselors.

(3) "Chairman" means the chairman or vice-chairman of the board.

(4) "Charge" means a specific allegation contained in a formal complaint, as established in 201 KAR 36:050, Section 1, issued by the board alleging a violation of a specified provision of KRS 335.500 to 335.599; the administrative regulations promulgated thereunder; or any other state or federal statute or regulation.

(5) "Client" means:

(a) An individual, family, or group for whom the licensee provides services within the context of the licensee's practice of professional counseling;

(b) A corporate entity or other organization if the licensee provides a service of benefit directly to the corporate entity or organization; or

(c) A legal guardian who is responsible for making decisions relative to the provision of services for a minor or legally incompetent adult.

(6) "Complaint" means any written allegation of misconduct by a credentialed individual or other person, which might constitute a violation of KRS 335.500 to 335.599, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(7) "Complaint screening committee" means a committee that:

(a) Consists of three (3) persons appointed by the chairman of the board and may include the executive director or another staff member; and

(b) Reviews complaints and investigative reports, opens investigations, participates in informal proceedings to resolve a complaint, or requests a court of competent jurisdiction to take criminal or civil action.

(8) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(9) "Distance counseling" means the practice of professional counseling as defined by KRS 335.500(5) between the professional counselor and the patient:

(a) Provided using an electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

(10) "Document" means information in any form or format that is relevant to a review or investigation conducted by the board and may include:

(a) Originals, copies, or drafts;

(b) Written documents;

(c) Papers;

(d) Books;

(e) Computer files;

(f) Photographs;

(g) Audio or video recordings;

(h) Correspondence;

(i) Electronic mail; or

(j) Drawings or blueprints.

(11) "Dual relationship" means a social, business, or personal relationship between a licensee and a client that coexists with the professional-client relationship between the licensee and the client.

(12) "Face-to-face" means supervision that is in person where the supervisor and supervisee are physically present in the same room or through interactive, simultaneous video and audio media.

(13) "Formal complaint" means a formal administrative pleading authorized by the board, which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.

(14) "Good moral character" means a licensee or applicant who has not been:

(a) Convicted, in a court of competent jurisdiction, of any crime involving a substantial misrepresentation of any material fact, including any of the following:

1. Bribery or corrupt influences under KRS Chapter 521;

2. Forgery or related offenses under KRS Chapter 516;

3. Business or commercial frauds under KRS Chapter 517;

4. Perjury or related offenses under KRS Chapter 523;

5. Abuse of a public office under KRS Chapter 522; or

6. Miscellaneous crimes affecting businesses, occupations, and professions;

(b) Convicted, in a court of competent jurisdiction, of criminal homicide under KRS Chapter 507 or 507A;

(c) Convicted, in a court of competent jurisdiction, of any felony or misdemeanor involving the following:

1. Sexual offenses under KRS Chapter 510;

2. Pornography under KRS Chapter 531;

3. Theft and related offenses under KRS Chapter 514;

4. Prostitution offenses under KRS Chapter 529; or

5. Family offenses under KRS Chapter 530;

(d) Convicted, in a court of competent jurisdiction, of any felony involving the following:

1. Assault or related offenses under KRS Chapter 508;

2. Kidnapping or related offenses under KRS Chapter 509;

3. Burglary or related offenses under KRS Chapter 511;

4. Criminal damage to property under KRS Chapter 512; or

5. Arson and related offenses under KRS 513;

(e) Found to have a behavioral or substance abuse problem, which may endanger or impair the health, personal safety, or welfare of a client;

(f) Found to be a delinquent taxpayer as defined by KRS 131.1817(1)(b);

(g) Convicted, in a court of competent jurisdiction, of multiple offenses of driving under the influence or driving while impaired;

(h) Convicted, in a court of competent jurisdiction, of any drug-related felony under KRS Chapter 218A;

(i) Convicted, in a court of competent jurisdiction, of any criminal offense similar to the convictions identified in paragraphs (a) to (h) of this subsection that constitutes a violation of law of the state where the conviction occurred; or

(j) Subject to a fine, disciplinary supervision, probation, revocation, or suspension of a registration, certification, or license issued by the issuing body.

(15) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.

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

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

(18) "Professional counselor" means a licensed professional

clinical counselor as defined by KRS 335.500(3) or licensed professional counselor associate as defined by KRS 335.500(4).

(19) "Program" means an organized learning experience:

- (a) Planned and evaluated to meet behavioral objectives; and
- (b) Presented in one (1) session or a series.

(20) "Relevant" means having content applicable to the practice of professional counseling.

(21) "Respondent" means any person, individual, corporation, business trust, estate, trust partnership, limited liability company, association, organization, joint venture, government or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity who is subject to a charge or formal complaint.

(22) "Scope of practice for professional counseling" means:

(a) The independent practice of counseling encompassing the provision of professional counseling services to individuals, groups, families, couples, and organizations through the application of accepted and established mental health counseling principles, methods, procedures, or ethics;

(b) Counseling to promote mental health wellness, which includes the achievement of social, career, and emotional development across the lifespan, as well as preventing and treating mental disorders and providing crisis intervention;

(c) Counseling that includes psychotherapy, diagnosis, evaluation; administration of assessments, tests and appraisals; referral; or the establishment of counseling plans for the treatment of individuals, couples, groups, and families with emotional, mental, addiction, and physical disorders;

(d) Counseling that encompasses consultation and program evaluation, program administration within and to schools and organizations, and training and supervision of interns, trainees, and pre-licensed professional counselors through accepted and established principles, methods, procedures, and ethics of counselor supervision; or

(e) The functions or practices that are within the professional counselor's training or education.

(23) "Supervisee" means a licensed professional counselor associate who works with clients under supervision.

(24) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing professional counseling services to meet the requirements of KRS 335.525(1)(e).

(25) "Supervisor" means a member of a mental health or behavioral-services profession listed in 201 KAR 36:065 who controls, oversees, guides, and takes responsibility for the professional clinical counseling practice of a supervisee.

(26) "Supervisor of record" means the person listed on the supervisory agreement and approved by the board in accordance with 201 KAR 36:060, Section 2.

(27) "Testing and assessment services" means an educational, mental health, clinical, and career assessment to gather information regarding the client for a variety of purposes, including client decision making, treatment planning, and forensic proceedings. Assessment may include both qualitative and quantitative methodologies.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016, at 10:30 a.m. at Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

comments shall be accepted until the end of the day on November 30, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation defines the terms used in 201 KAR Chapter 36.

(b) The necessity of this administrative regulation: This regulation is necessary to define the terms used in 201 KAR Chapter 36.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the terms used in 201 KAR Chapter 36.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide a definition for terms used in 201 KAR Chapter 36.

(2) If 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 presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

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

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

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

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

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

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(3).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (New Administrative Regulation)

201 KAR 36:045. Distance counseling.

RELATES TO: KRS 335.505, 335.515(1), (3), (11)

STATUTORY AUTHORITY: KRS 335.515(3), (11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) authorizes the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation protects the health and safety of the citizens of Kentucky. It also establishes procedures for preventing abuse and fraud through the use of distance counseling, prevents fee-splitting through the use of distance counseling, and utilizes distance counseling in the provision of professional counseling services and in the provision of continuing education.

Section 1. Client Requirements. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall, upon initial contact with the client:

(1) Make reasonable attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the licensee other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of distance counseling provided by the licensee;

(5) Use secure communications with clients, including

encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications; and

(6) Inform the client in writing about:

(a) The limitations of using technology in the provision of distance counseling;

(b) Potential risks to confidentiality of information due to technology in the provision of distance counseling;

(c) Potential risks of disruption in the use of distance counseling;

(d) When and how the licensee will respond to routine electronic messages;

(e) In what circumstances the licensee will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the licensee;

(g) How communications can be directed to a specific licensee;

(h) How the licensee stores electronic communications from the client; and

(i) The reporting of clients required by 201 KAR 36:040, Sections 2 and 3.

Section 2. Competence, Limits on Practice, Maintenance, and Retention of Records. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

(1) Limit the practice of distance counseling to the area of competence in which proficiency has been gained through education, training, and experience;

(2) Maintain current competency in the practice of distance counseling through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(3) Document the client's presenting problem, purpose, or diagnosis;

(4) Maintain records in accordance with the requirements of 201 KAR 36:040; and

(5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 3. Compliance with Federal, State, and Local Law. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

(1) Comply with the state law where the licensee initiates the distance counseling;

(2) Be licensed to practice counseling where the client is domiciled; and

(3) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.

Section 4. Representation of Services and Code of Conduct. A licensee using distance counseling to deliver counseling services or who practices distance counseling shall:

(1) Not engage in false, misleading, or deceptive advertising of distance counseling; and

(2) Comply with 201 KAR 36:040.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016, at 10:30 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative

regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the requirements for distance counseling.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish inform applicants and licensees of the requirements for distance counseling.

(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 to carry out and enforce the provisions of KRS 335.500 to 335.599.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in informing applicants and licensees of the requirements for distance counseling.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee will have to take no additional action to comply with the amendments.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment allows more opportunities for licensees to obtain continuing education regarding suicide assessment, treatment, and management, and domestic violence; and removes the continuing education requirement of an individual who obtains an initial license within 120 days of the annual renewal date.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential

holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(3) and (11).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (New Administrative Regulation)

201 KAR 36:055. Administrative subpoena.

RELATES TO: KRS 335.515(2)

STATUTORY AUTHORITY: KRS 335.515(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) authorizes the Board of Licensed Professional Counselors to promulgate administrative regulations necessary for the proper performance of its duties. KRS 335.515(2) authorizes the board to issue subpoenas to assist in the investigation of a complaint or a suspected violation of KRS 335.500 to KRS 335.599. This administrative regulation establishes procedures for issuing an administrative subpoena.

Section 1. The Board of Licensed Professional Counselors may issue an administrative subpoena to investigate a complaint or suspected violation of KRS 335.500 to KRS 335.599 or 201 KAR Chapter 36.

Section 2. Administrative Subpoenas. (1) The board shall issue a subpoena in accordance with KRS 335.515(2) to require the

production of books, papers, documents, or other evidence at a specified time and place.

(2) If information requested by the board is encrypted, the respondent shall:

(a) Provide the information in a readable format; and

(b) Provide proof acceptable to the board that the requested information has been translated to a readable format without error or omission.

(3) A person or entity served with a subpoena in accordance with subsection (1) of this section shall not intentionally destroy, alter, or falsify documents requested by the board.

Section 3. Noncompliance. (1) If a person fails without good cause to produce requested documents in accordance with Section 2(1) of this administrative regulation, the board may apply to the circuit court of the county in which compliance is sought for an appropriate order to compel compliance with the provisions of the subpoena.

(2) If a person served with a subpoena issued pursuant to Section 2(1) of this administrative regulation believes that the subpoena seeks to compel the production of documents that are protected, privileged, or not properly the subject of an administrative subpoena, the individual may, prior to the date designated for the production of the documents, apply to the circuit court of the county in which compliance is sought for an appropriate protective order limiting the scope of the subpoena or quashing it entirely.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016, at 10:30 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure to be used in relations to an administrative subpoena being issued by Kentucky Board of Licensed Professional Counselors.

(b) The necessity of this administrative regulation: This administrative regulation establishes the procedures for the administrative subpoena process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.515(2) authorizes the board to issue subpoenas.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will inform the public of the administrative subpoena procedures.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities and individuals will be required to produce books, papers, documents, or other evidence when commanded by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost for each of the entities: The expense should be relatively minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities and individuals will be protected by disclosures to the board or entitled to due process in opposition to the subpoena.

(5) Estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost is anticipated to implement this administrative regulation.

(b) On a continuing basis: No cost is anticipated on a continuing basis.

(6) The source of funding for the implementation and enforcement of this administrative regulation: The board is funded by fees paid by licensees and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees 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. No fees are established directly or indirectly by this administrative regulation.

(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? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(2) 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:

**GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(New Administrative Regulation)**

201 KAR 36:065. Licensed professional clinical counselor supervisor.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to who may provide qualifying supervision.

Section 1. Supervisor Qualifications. (1) To be a supervisor of a licensed professional clinical counselor or licensed professional counselor associate, an applicant shall:

(a) Be licensed by the board as a licensed professional clinical counselor;

(b) Not have:

1. An unresolved citation filed against the applicant by the board that licenses or certifies that profession;

2. A suspended or probated license or certificate; or

3. An order from the board under which the applicant is licensed or certified prohibiting the applicant from providing supervision;

(c) Have been in the practice of his or her profession for at least two (2) years following licensure as a professional clinical counselor or its licensure equivalent issued by another state's regulatory professional counseling board; and

(d) Have taught or completed a three (3) hour graduate level course in counseling supervision or a fifteen (15) hour board-approved supervisor training course required by subsection (3) of this section.

(2) Any supervisor who is a clinical counseling supervisor as a part of a board-approved supervisory agreement or a supervisor of a graduate-level counseling student who is providing services in a mental health setting with five (5) years of experience shall be deemed to satisfy the requirement of subsection (1)(d) of this section.

(3) The board-approved supervisor training course shall:

(a) Cover:

1. Assessment, evaluation, and remediation, which includes initial, formative, and summative assessment of supervisee knowledge, skills, and self-awareness; components of evaluation, e.g. evaluation criteria and expectations, supervisory procedures, methods for monitoring (both direct and indirect observation), supervisee performance, formal and informal feedback mechanisms, and evaluation processes (both summative and formative), and processes and procedures for remediation of supervisee skills, knowledge, and personal effectiveness and self-awareness;

2. Counselor development, which includes models of supervision, learning models, stages of development and transitions in supervisee-supervisor development, knowledge and skills related to supervision intervention options, awareness of individual differences and learning styles of supervisor and supervisee, awareness and acknowledgement of cultural differences and multicultural competencies needed by supervisors, recognition of relational dynamics in the supervisory relationship, and awareness of the developmental process of the supervisory relationship itself;

3. Management and administration, which includes organizational processes and procedures for recordkeeping, reporting, monitoring of supervisee's cases, collaboration, research and evaluation; agency or institutional policies and procedures for handling emergencies, case assignment and case management, roles and responsibilities of supervisors and supervisees, and expectations of supervisory process within the institution or agency; institutional processes for managing multiple roles of supervisors, and summative and formative evaluation processes; and

4. Professional responsibilities, which includes ethical and legal issues in supervision including dual relationships, competence, due process in evaluation, informed consent, types of supervisor liability, privileged communication, and consultation; regulatory issues including Kentucky laws governing the practice of counseling and counseling supervision, professional standards and credentialing processes in counseling, reimbursement eligibility and procedures, and related institutional or agency procedures; and

(b) Be conducted by an instructor who is a licensed professional clinical counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

(4) Licensed professional clinical counselors engaged in training supervision shall be called a "licensed professional clinical counselor supervisor" and may use the acronym "LPCC-S".

Section 2. A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than twelve (12) persons obtaining experience for certification or licensure at the same time.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016, at 10:30 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes the requirements to be a board-approved supervisor.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements to be a board-approved supervisor.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's delegated authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the requirements to be a board-approved supervisor.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1534 licensed professional clinical counselors, 911 licensed professional clinical counselor associates, and currently 450 supervisors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require supervisors or supervisees to take any action to be in compliance.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit is that a supervisor is properly trained and may designate a license with a LPCC-S to clearly designate that the individual is a board-approved supervisor.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(1), (3), and (5).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (New Administrative Regulation)

201 KAR 36:075. Renewal, late renewal, and reinstatement of license.

RELATES TO: KRS 335.535

STATUTORY AUTHORITY: KRS 335.515(1), (3), (6), 335.535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) authorizes the Board of Licensed Professional Counselors to promulgate administrative regulations necessary for the proper performance of its duties. KRS 335.515(6) and KRS 335.535 require the holder of a license to renew that license annually. This administrative regulation establishes the requirements for renewal, late renewal, and reinstatement of a license.

Section 1. (1) A license shall be renewed by October 31 of each year.

(2) A person receiving an initial license within 120 days prior to the renewal date shall not be required to renew until October 31 of the following year.

Section 2. (1) To apply for renewal, a licensed professional clinical counselor shall:

(a) Submit a completed LPCC Renewal Application to the board; and

(b) Pay to the board the appropriate renewal fee established in 201 KAR 36:020, Section 2(1)(a), for the renewal of a license.

(2) After the sixty (60) day grace period, in order to apply for reinstatement, an individual who has a terminated license as a licensed professional clinical counselor shall:

(a) Submit a completed Reinstatement Application for Licensed Professional Clinical Counselors;

(b) Submit proof of completing ten (10) hours of board-approved continuing education within one (1) year of the filing for reinstatement;

(c) Complete three (3) hours of continuing education on the law for regulating professional counseling, KRS Chapter 335.500 to 335.990 and 201 KAR Chapter 36 within one (1) year of the filing for reinstatement;

(d) Submit a background check performed within the last three (3) months by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation;

(e) Pay the renewal fee established in 201 KAR 36:020, Section 2(1)(a); and

(f) Pay the reinstatement fee established in 201 KAR 36:020,

Section 2(3)(a).

Section 3. (1) To apply for renewal, a licensed professional counselor associate shall:

(a) Submit a completed LPCA Renewal Application to the board;

(b) Submit a supervision agreement or a copy of a previously approved supervision agreement; and

(c) Pay to the board the appropriate renewal fee established in 201 KAR 36:020, Section 2(1)(b), for the renewal of a license.

(2)(a) After the sixty (60) day grace period, in order to apply for reinstatement, an individual who has a terminated license as a professional clinical counselor associate shall:

1. Submit a completed Reinstatement Application for Licensed Professional Clinical Counselors;

2. Submit a background check performed within the last three (3) months by the Kentucky State Police and a criminal background check performed by the Federal Bureau of Investigation;

3. Submit proof of completing ten (10) hours of board-approved continuing education within one (1) year of the filing for reinstatement;

4. Complete three (3) hours of continuing education on the law for regulating professional counseling, KRS Chapter 335.500 to 335.990 and 201 KAR Chapter 36, within one (1) year of the filing for reinstatement;

5. Pay the renewal fee established in 201 KAR 36:020, Section 2(1)(b); and

6. Pay the reinstatement fee established in 201 KAR 36:020, Section 2(3)(b).

(b) A person who applies for reinstatement within three (3) years of termination of the license shall be required to meet current licensure requirements established in 201 KAR 36:030.

Section 4. (1) A person shall not engage in the practice of professional counseling after a license has been terminated.

(2) The ten (10) hours of continuing education completed within one (1) year of the filing of reinstatement shall not count towards the applicant's continuing education requirement under 201 KAR 36:030, Section 1(1).

Section 5. (1) A licensee for renewal or applicant for reinstatement shall maintain good moral character.

(2) In order to establish good moral character despite a criminal conviction, the applicant or licensee has the duty to provide available evidence relative of rehabilitation.

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

(a) "LPCC Renewal Application", September, 2016;

(b) "LPCA Renewal Application", September, 2016;

(c) "LPCC Reinstatement Application", September, 2016; and

(d) "LPCA Reinstatement Application", September, 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensed Professional Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016, at 10:30 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish

to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedure and requirements for the renewal, reinstatement, and reactivation of a license.

(b) The necessity of this administrative regulation: The necessity of this regulation is to inform a licensee of the procedure and requirements for the renewal, reinstatement, and reactivation of a license.

(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 renewal, reinstatement, and reactivation of a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing and clarifying the procedure and requirements for the renewal, reinstatement, and reactivation of a license.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee will have to take no additional action to comply with the regulation. The processes were currently being implemented.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation clarifies and notifies licensees of the specific requirements for the renewal, reinstatement, and reactivation of a license.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(1), (3), (6), 335.535.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors (New Administrative Regulation)

201 KAR 36:090. Administrative hearings for denials and revocation of probation.

RELATES TO: KRS 335.515(3), 335.515(4), 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (4), (7)

NECESSITY, FUNCTION AND CONFORMITY: KRS 335.515(3) authorizes the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. KRS 335.515(4) authorizes the board to conduct administrative hearings as necessary pursuant to KRS Chapter 13B. This administrative regulation establishes the procedures for an individual to request an administrative hearing from the denial of or refusal to renew or reinstate a license, or revocation of a probated sanction.

Section 1. Right of Administrative Hearing from a Denial of or Refusal to Renew or Reinstate a License. (1) The board shall issue written notice of the denial informing the applicant:

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

1. The statutory or regulatory violation; and

2. The factual basis on which the denial is based; and

(b) That the applicant may appeal the pending denial to the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

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

(4) The documentary evidence shall be limited to the application and supporting documents submitted to the board during the application process and that was considered as part of the denial of the application.

(5) A renewal applicant may petition the board, in writing, for a stay of the denial of the license until completion of the administrative hearing process.

Section 2. Revocation of Probation. (1) If the board moves to revoke probation, the board shall issue written notice of the revocation and inform the probationee:

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

(b) Of each probation term violated;

(c) Of the sanction to be imposed; and

(d) That the probationee may appeal the revocation to the board within twenty (20) calendar days of the date of notification of revocation. The notification shall be sent to the last known address on file with the board for the certificate holder.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an administrative hearing is not timely filed, the revocation shall be effective upon the expiration date for the certificate holder to request an appeal.

Section 3. A request for an administrative hearing shall be sent to the Kentucky Board of Licensed Professional Counselors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by hand-delivery to 911 Leawood Drive, Frankfort, Kentucky 40601.

Section 4. An administrative hearing shall be governed in accordance with KRS Chapter 13B.

Section 5. If the final order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board, the costs in an amount equal to the cost of stenographic services, the cost of the hearing officer, and the board's attorney fees shall be assessed against the licensee or applicant. In a case of financial hardship, the board may waive all or part of the fee.

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016, at 10:30 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written

comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on November 30, 2016. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Megan Woodson, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8816, fax (502) 696-3842, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Megan Woodson

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the due process procedures for a denial of, refusal to renew, or reinstate a license and revocation of probation. It also sets out the scope of what a hearing officer may consider and imposes costs on an individual who fails to reverse the decision of the board on a denial of, refusal to renew, or reinstate a license and revocation of probation.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish due process procedures.

(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 denial, renewal, reinstatement, and revocation of a probation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing and clarifying the procedure and requirements for the denial, renewal, reinstatement, and revocation of a probation.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. There are presently 1534 licensed professional clinical counselors and 911 licensed professional clinical counselor associates.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee will have to take no additional action to comply with the regulation. The processes were currently being implemented.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation clarifies and notifies licensees of the specific requirements for the renewal, reinstatement, and reactivation of a license.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515 (3), (4), and (7).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. For fiscal year ending June 30, 2016, the board spent approximately \$10,500.00 in costs associated with litigation arising from a denial of application.

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

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: For fiscal year ending June 30, 2016, the board spent approximately \$10,500.00 in costs associated with litigation arising from a denial of application. None of the appellants has been successful on an appeal of denial.

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY (New Administrative Regulation)

202 KAR 10:010. Unsolicited proposals.

RELATES TO: KRS Chapter 45A, 175B.005, 175B.010, 175B.015(12)(d), 175B.020(5)-(9), 175B.030, 175B.035, 175B.037, 175B.040, 175B.095

STATUTORY AUTHORITY: KRS 175B.015(12)(d), 175B.020(5)-(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 175B.015(12)(d) authorizes the state authority to promulgate administrative regulations to fulfill any requirements of KRS Chapter 175B. KRS 175B.020(5) authorizes the state authority to receive unsolicited proposals if certain criteria are met. This administrative regulation establishes the process by which the state authority may receive, evaluate, approve, and reject

unsolicited proposals.

Section 1. Definitions. (1) "Best interest of the commonwealth" means the unsolicited proposal meets goals of the state authority and the cabinet on safety, economic growth, enhancing the state transportation system, and technical and economic feasibility.

(2) "Cabinet" is defined by KRS 175B.010(3).

(3) "Financial plan" means a plan submitted to or proposed by the state authority pursuant to KRS 175B.030 or KRS 175B.035.

(4) "Project" is defined by KRS 175B.010(11).

(5) "Public-private partnership" is defined by KRS 175B.010(14).

(6) "State authority" is defined by KRS 175B.010(16).

(7) "Unsolicited proposal" means a proposal submitted pursuant to KRS 175B.020(5) to (9).

(8) "Unsolicited proposer" means a person, business, or entity submitting an unsolicited proposal.

Section 2. Submission of Unsolicited Proposals. (1) To submit an unsolicited proposal, an unsolicited proposer shall file with the state authority three (3) hard copies in a sealed envelope marked "unsolicited proposal" and one (1) electronic copy to kypria@ky.gov.

(2) The following information shall be included in the unsolicited proposal:

(a) The information required by KRS 175B.020(5);

(b) A cover letter for the executive summary with the following specifications:

1. The cover letter of the executive summary shall be marked "Executive Summary of Unsolicited Proposal for KPTIA" in twelve (12) point type;

2. The cover letter shall notify the state authority if exempt information is contained in the unsolicited proposal; and

3. If the unsolicited proposal contains a trade secret, a financial record, or other information that is exempt from public disclosure pursuant to KRS 61.878, the unsolicited proposer submitting the unsolicited proposal shall:

a. Mark all portions of the proposal that contain exempt information as "confidential" or "proprietary";

b. Submit a second copy of the unsolicited proposal from which the trade secret, financial record, or other information that is exempt from public disclosure pursuant to KRS 61.878 have been redacted; and

c. Indicate in the title of the electronically filed unsolicited proposal which version is a complete version and which version is the redacted version;

(c) A brief description and justification of the proposed project or concept;

(d) Details for the proposed project or concept regarding:

1. The revenue source;

2. The amount of revenue expected to be generated; and

3. The project costs;

(e) Information supporting the unsolicited proposer's position that the unsolicited proposal is in the best interest of the commonwealth; and

(f) Contact information for the unsolicited proposer, including name, address, telephone number, and e-mail address.

(3) The hard copies of the unsolicited proposal shall be sent via certified mail with return receipt requested or hand delivered to the head of the state agency.

Section 3. Unsolicited Proposal Fees. (1) In accordance with KRS 175B.020(5)(c) and (8), an unsolicited proposer shall pay all costs incurred by the state authority and the cabinet for evaluating the unsolicited proposal, including any legal and investigative costs, and the costs of other necessary outside professional and consultant.

(2)(a) As an initial payment for these costs, the applicant shall submit, along with the executive summary, a cashier's check or certified check payable to the state authority in the amount of \$400 for the initial filing fee.

(b) The initial filing fee shall be nonrefundable.

Section 4. Initial Decision by State Authority. After reviewing an unsolicited proposal, the state authority shall make a determination if continuing to review and evaluate the unsolicited proposal is in the best interest of the commonwealth and based on that decision shall:

(1) Approve the unsolicited proposal for further review; or

(2) Reject the unsolicited proposal.

Section 5. Notification to Unsolicited Proposer. After the state authority has made the determination to reject the unsolicited proposal or approve the unsolicited proposal for further review, the state authority shall send a letter to the unsolicited proposer with the state authority's determination.

Section 6. Agreement between the State Authority and Unsolicited Proposer. (1) If the state authority determines it is in the best interest of the commonwealth to continue reviewing and evaluating the concept set forth in the unsolicited proposal, the state authority and the unsolicited proposer shall negotiate the terms of the next phase of the review.

(2) If an agreement is reached between the state authority and the unsolicited proposer on the terms of the next phase, the agreement shall be memorialized and shall contain:

(a) A commitment by the unsolicited proposer to pay in full the costs to be incurred by the state authority and the cabinet in connection with the review and evaluation of the unsolicited proposal;

(b) An estimate of the amount of costs to be incurred in the review and evaluation process;

(c) The payment schedule for the costs;

(d) The agreement by the unsolicited proposer that the costs are nonrefundable even if the unsolicited proposal is rejected;

(e) Provisions for the state authority or the cabinet to use any design, idea, or intellectual property contained in the proposal; and

(f) Other agreed to terms and conditions that may facilitate the evaluation and review process.

Section 7. Additional Information. The state authority and the cabinet may request additional information from an unsolicited proposer, ask for clarification of information, or ask questions, if the additional information may assist the state authority and the cabinet in deciding to approve or reject the unsolicited proposal.

Section 8. Competitive Procurement Process. If a determination has been made by the state authority and the cabinet that the unsolicited proposal is in the best interest of the commonwealth, the state authority, with the assistance of the cabinet, shall begin the competitive procurement process to implement some or all of the concepts contained in the unsolicited proposal. The procurement process established in 603 KAR Chapter 2 shall be utilized.

Section 9. Professional Assistance. The state authority and the cabinet shall retain any professional services necessary to enable an adequate review and evaluation of the unsolicited proposal, where the expertise to perform a review or evaluation within the state authority or the cabinet is inadequate or unavailable. Any procurement shall follow the processes established in KRS Chapter 45A.

Section 10. Public Inspection. Except for each portion of an unsolicited proposal that contains a trade secret, financial record, or other information that is exempt from public disclosure pursuant to KRS 61.878, all unsolicited proposals shall be available for public inspection after the latest of:

(1) The date of the written notification sent by the state authority that the state authority has rejected the unsolicited proposal;

(2) Sixty (60) days after the end of the notice period provided under KRS Chapter 175B; or

(3) After a contract has been awarded, if the state authority elects to undertake an open, competitive procurement process pursuant to KRS Chapter 175B.

VOLUME 43, NUMBER 5 – NOVEMBER 1, 2016

GREG THOMAS, Secretary, Transportation Cabinet; and Chairman,

KPTIA

MAX BRIDGES, Wyatt Tarrant and Combs, KPTIA General Counsel

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2016 at 10:00 a.m. Eastern Time at the Kentucky Transportation Cabinet, Room C-106, 200 Mero Street, 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 you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do 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 November 30, 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: Megan M. McLain, Assistant General Counsel, Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622, phone (859) 940-7763, fax (502) 564-5238, email megan.mclain@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Megan M. McLain

(1) Provide a brief summary of:

(a) What this administrative regulation does: It establishes the process by which the state authority may receive, evaluate, approve, and reject unsolicited proposals.

(b) The necessity of this administrative regulation: KRS 175B.020(5) authorizes the state authority to receive unsolicited proposals if certain criteria are met. This regulation is necessary in order to establish the process by which the state authority may receive, evaluate, approve, and reject unsolicited proposals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the process by which the state authority may receive, evaluate, approve, and reject unsolicited proposals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the process by which the state authority may receive, evaluate, approve, and reject unsolicited proposals.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It affects the Kentucky Public Transportation Infrastructure Authority and potential private partners that submit an unsolicited proposal.

(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 entities identified in

question (3) will have to take to comply with this administrative regulation or amendment: The administrative regulation provides guidance for the state authority to receive, evaluate, approve, and reject unsolicited proposals. The potential private partners will not need to take any action as the result of this administrative regulation.

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

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

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

(a) Initially: No additional costs

(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: N/A

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? No, tiering was not applied because all unsolicited proposals will be evaluated using the same criteria.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The cabinet and the state authority 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 175B.015(12)(d) authorizes the state authority to promulgate regulations to fulfill any requirements of KRS Chapter 175B. KRS 175B.020(5) authorizes the state authority to receive unsolicited proposals if certain criteria are met.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local governmental agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is a \$400 fee for the initial filing. The \$400 initial filing fee will have a neutral affect. The state authority will charge the unsolicited proposer for the cost to be incurred in the review and evaluation process with the estimated amount and payment schedule to be stated in the agreement between the state authority and the unsolicited proposer. The net effect should be no additional expenditure or cost to the state authority.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year. There is a \$400 fee for the initial filing. The \$400 initial filing fee will have a neutral affect. The state authority will charge the unsolicited proposer for the cost to be incurred in the review and evaluation process with the estimated amount and payment schedule to be stated in the agreement between the state authority and the unsolicited proposer. The net effect should be no additional expenditure or cost to the state authority.

(b) How 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 state authority will charge the unsolicited proposer for the cost to be incurred in the review and evaluation process. The net effect should be no additional expenditure or cost to the state authority.

(c) How much will it cost to administer this program for the first year? No additional funds will be required as a result of this administrative regulation.

(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:

**KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE
AUTHORITY
(New Administrative Regulation)**

202 KAR 10:020. Public-private partnerships.

RELATES TO: KRS 45A.085, 154.1-750, 175B.005, 175B.010, 175B.020, 175B.030, 175B.035, 175B.037, 175B.040, 175B.095, 49 C.F.R. Part 26

STATUTORY AUTHORITY: KRS 175B.015(12)(d), 175B.020(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 175B.015(12)(d) authorizes the state authority to promulgate administrative regulations to fulfill any requirements of KRS Chapter 175B. KRS 175B.020(1)(c) authorizes the state authority to request the establishment of a public-private partnership as well as bi-state authorities and project authorities. This administrative regulation establishes the criteria by which the state authority shall determine if the public-private partnership procurement method is appropriate for a project.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 175B.010(3).

(2) "Private Partner" is defined by KRS 175B.010(10).

(3) "Project" is defined by KRS 175B.010(11).

(4) "Public-private partnership" is defined by KRS 175B.010(14).

(5) "State authority" is defined by KRS 175B.010(16).

Section 2. Use of a Public-Private Partnership. (1) A public-private partnership may be used for construction or financing of a project or the procurement of services if the head of the state authority issues a written determination that due to the nature or circumstances of the project or services, a public-private partnership is the most advantageous method of awarding and administering a project.

(2) In determining if the use of a public-private partnership is the most advantageous method of awarding and administering a project, the head of the state authority, or a person authorized in writing as his or her designee, shall undertake an analysis of the proposed project using the criteria established in paragraphs (a) and (b) of this subsection.

(a) Qualitative considerations shall include:

1. The ability of the state authority to allocate and control risks, cost sharing, responsibilities, and rewards between the state authority and a private partner in a way that ultimately benefits the state authority, the cabinet, and the commonwealth;

2. The timeliness of completion, efficiency of delivery, and cost effectiveness of a project via a public-private partnership as compared with other project delivery methods;

3. A determination that the tangible and intangible benefits to be gained by using a public-private partnership equals or exceeds the cost of developing and maintaining a public-private partnership;

4. The ability and expertise of the state authority to measure and monitor performance and operational controls;

5. The ability of the state authority to capture and use incentives, efficiencies, and expertise derived from the involvement of a private partner;

6. If the project or other services are likely to be developed or entered into in the absence of private sector involvement;

7. If a means of financing or innovative approach is likely to be available that is not otherwise available with other project delivery methods;

8. If the project or other services promotes and encourages the use of local labor and resources, as well as disadvantaged, minority and small business enterprises, consistent with 49 C.F.R. Part 26, KRS 154.1-750, 600 KAR 4:010, and other applicable law, including requiring a private partner who has been awarded a project for a public-private partnership to establish a local office within the Commonwealth of Kentucky;

9. If the public interest is best served through the use of a public-private partnership;

10. The impact of the development structure and financing plan on the long term level of project toll rates and the use of any excess toll revenue;

11. The urgency of need for the project or services by the state authority;

12. The allocation of risks and contingencies between the state authority and the private partner;

13. If a public-private partnership is likely to impact the ability to achieve investment grade credit ratings and successfully raise construction funding;

14. An analysis of the impact on procuring financing; and

15. If similar public-private partnership projects have been undertaken successfully.

(b) Quantitative criteria shall include:

1. Net present value of the cost of the project over its entire useful life, including if applicable:

a. Financing, design, and construction costs;

b. Operation and management costs;

c. If the state authority is required to make payments to the private partner or receive payments from the private partner; and

d. Maintenance costs;

2. Operating cash flows expected to provide a return on investment to a private partner;

3. A detailed breakdown of all cash flow on all payments and expenditures, including interest cost associated with utilizing a public-private partnership; and

4. The anticipated value of the project deliverables at the end of the term of the agreement if any.

Section 3. Other Considerations. The state authority may ascribe relative weight to the criteria established in Section 2 of this administrative regulation, based on the size and nature of the project as well as the previous experience of the state authority, if any, in using public-private partnerships under similar circumstances.

GREG THOMAS, Secretary, Transportation Cabinet; and
Chairman,

KPTIA

MAX BRIDGES, Wyatt Tarrant and Combs, KPTIA General
Counsel

APPROVED BY AGENCY: October 14, 2016

FILED WITH LRC: October 14, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 28, 2016 at 10:00 a.m. Eastern Time at the Kentucky Transportation Cabinet, Room C-106, 200 Mero Street, 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 you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do 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 November 30, 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: Megan M. McLain, Assistant General Counsel, Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622, phone (859) 940-7763, fax (502) 564-5238, email me.gan.mclain@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Megan M. McLain

(1) Provide a brief summary of:

(a) What this administrative regulation does: It provides guidance for the state authority to utilize in determining if the public-private partnership procurement method is appropriate for a project.

(b) The necessity of this administrative regulation: KRS 175B.020(1)(c) authorizes the state authority to request the establishment of public-private partnership. This regulation is necessary in order to determine whether a public-private partnership is appropriate for a project.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the criteria by which the state authority shall determine if the public-partnership procurement method is appropriate for a project.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the criteria by which the state authority shall determine if the public-partnership procurement method is appropriate for a project.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It affects the Kentucky Public Transportation Infrastructure Authority and potential private partners that are involved in constructing, operating, managing and financing of projects.

(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 entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The administrative regulation provides guidance for the state authority when it is determining whether to utilize a public-private partnership for a project. The potential private partners will not need to take any action as the result of this administrative regulation.

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

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

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

(a) Initially: No additional costs.

(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: N/A

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? No, tiering was not applied because all potential public-private partnerships will be evaluated

using the same criteria.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The state authority 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 175B.015(12)(d) authorizes the state authority to promulgate administrative regulations to fulfill any requirements of KRS Chapter 175B. KRS 175B.020(1)(c) authorizes the state authority to request the establishment of a three different structures in connection with facilitating the construction, financing, operation and oversight of a project.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local governmental agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

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

(c) How much will it cost to administer this program for the first year? No additional funds will be required as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? None

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(New Administrative Regulation)

401 KAR 4:070. Coal combustion residuals surface impoundments.

RELATES TO: KRS 146.200-146.990, 151.110, 151.125, 151.250, 224.1, 224.10, 224.50, 224.99, 40 C.F.R. 257.73, 257.74, 257.82, 257.83, 16 U.S.C. 661, 1273, 1531, 33 U.S.C. 1261 - 1387
STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.10-100 and 224.70-100 authorize the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide the prevention, abatement, and control of water pollution. This administrative regulation establishes the standards for coal combustion residuals (CCR) surface impoundments pertaining to the permit-by-rule established in 401 KAR Chapter 46.

Section 1. Definition. "Coal combustion residuals surface impoundment" or "CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

Section 2. The structural integrity criteria requirements for an owner or operator of an existing CCR surface impoundment shall be as established in 40 C.F.R. 257.73.

Section 3. The structural integrity criteria requirements for an owner or operator of a new CCR surface impoundment and any lateral expansion of a CCR surface impoundment shall be as established in 40 C.F.R. 257.74.

Section 4. The hydrologic and hydraulic capacity requirements for owners or operators of CCR surface impoundments shall be as established in 40 C.F.R. 257.82.

Section 5. The inspection requirements for owners or operators of CCR surface impoundments shall be as established in 40 C.F.R. 257.83.

Section 6. Except for 40 C.F.R. 257.107, including cross-references to 40 C.F.R. 257.107 within 40 C.F.R. 257.73, 257.74, 257.82, and 257.83, the record keeping and notification requirements for an owner or operator of a CCR surface impoundment shall be as established in 40 C.F.R. 257.105 and 257.106.

CHARLES SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2016

FILED WITH LRC: October 11, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2016 at 6:00 p.m. Eastern Time at 300 Sower Boulevard, 1st Floor, Training Room C, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing 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 November 30, 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: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 300 Sower Boulevard, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 782-6914, fax (502) 564-4245, email water@ky.gov (with a requested subject line of "CCR Surface Impoundments").

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes design criteria and permit-by-rule requirements for new, expanded, and existing coal combustion residual surface impoundments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect public health and safety pertaining to CCR surface impoundments located near waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.70-100 require the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. This administrative regulation establishes the standards for coal combustion residual surface impoundments of the permit-by-rule established in 401 KAR Chapter 46.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by providing specific design and permit application criteria for coal combustion residual surface impoundments to protect waters of the Commonwealth as required by the authorizing statutes.

(2) If 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. This is not applicable because this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable because this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable because this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is 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 will affect electric generating utilities that manage coal combustion residuals by establishing the requirements for CCR surface impoundments. There are currently eight electric generating utilities that will be affected in Kentucky, with approximately 49 CCR surface impoundments. This administrative regulation will affect the Division of Waste Management and the Division of Water because it establishes requirements for entities regulated by the divisions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require no additional action on the part of regulated entities because it only incorporates federal regulation requirements that are already in effect.

(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 have no additional costs to entities as it only references federal regulation requirements that are already effective. The Division of Waste Management and the Division of Water will have personnel costs associated with the implementation of this administrative regulation related to investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Water does not anticipate needing additional personnel to implement this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit the regulated entities by being consistent with the federal regulations, thereby only having one standard with which they must comply. In addition, the criteria for the disposal of coal combustion residuals established in this administrative regulation will increase the protectiveness of human health and the environment.

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

(a) Initially: The Division of Water does not anticipate additional costs to implement this new regulation.

(b) On a continuing basis: The Division of Water does not anticipate additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Division of Water does not anticipate any additional source of funding needed to implement and enforce 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: The Division of Water does not anticipate additional fees to implement this new regulation.

(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 applied in this regulation. Regulatory requirements depend on the hazard classification of surface impoundments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Division of Waste Management and Division of Water.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, 224.70-110, 40 C.F.R. 257.73, 257.74, 257.82, and 257.83.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue because it only incorporates federal regulations that establish CCR surface impoundment standards.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue because it only incorporates federal regulations that establish CCR surface impoundment standards.

(c) How much will it cost to administer this program for the first year? The Division of Water does not anticipate additional costs to administer the regulation.

(d) How much will it cost to administer this program for subsequent years? The Division of Water does not anticipate additional costs to administer the 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: The Division of Water does not anticipate additional costs to administer the regulation because it only requires an evaluation of the established criteria if a regulated entity requests such an evaluation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal regulations constituting the federal mandate are 40 C.F.R. 257.73, 257.74, 257.82, and 257.83.

2. State compliance standards. The state compliance standards are established in KRS 224.10-100, 224.70-100, and 224.70-110.

3. Minimum or uniform standards contained in the federal mandate. Design and siting criteria for coal combustion residual surface impoundments are established in 40 C.F.R. 257.73, 257.74, 257.82, and 257.83.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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

administrative regulation does not impose stricter or additional or different responsibilities or requirements because it incorporates the same requirements and standards as the federal regulation.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 46:101. Definitions for 401 KAR Chapter 46.

RELATES TO: KRS 224.1, 224.10, 224.50, 224.70, 224.99, 16 U.S.C. 1531, 33 U.S.C. 1251, 42 U.S.C. 82, 40 C.F.R. 257.53

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation defines terms used in 401 KAR Chapter 46. Some federal terms have been replaced with the definitions established in KRS Chapter 224. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart and have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 46.

Section 1. Definitions. Except as provided in this section, the definitions shall be as established in 40 C.F.R. 257.53.

(1) "Cabinet" is defined by KRS 224.1-010(9).

(2) "Coal combustion residuals (CCR) permit-by-rule" or "CCR permit-by-rule" means authorization allowing the management, disposal, or beneficial use of CCR, consistent with this chapter, without the submission of an application to the cabinet by:

(a) An owner or operator of a CCR unit; or

(b) A beneficial use of CCR user.

(3) "Disposal" is defined by KRS 224.1-010(10).

(4) "Person" is defined by KRS 224.1-010(17).

(5) "Secretary" is defined by KRS 224.1-010(24).

(6) "Solid waste" is defined by KRS 224.1-010(31)(a).

(7) "Solid waste management" is defined by KRS 224.1-010(39).

(8) "Special waste" is defined by KRS 224.50-760(1)(a).

(9) "State" means the Commonwealth of Kentucky.

(10) "State director" means the secretary as defined by KRS 224.1-010(24).

(11) "User" means the person beneficially using CCR in the Commonwealth of Kentucky.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2016

FILED WITH LRC: October 11, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2016, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room C. 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 through November 30, 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: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines terms used in 401 KAR Chapter 46 for the management coal combustion residuals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the terms necessary to administer the management of coal combustion residuals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.50-760 by defining terms for 401 KAR Chapter 46 for the management of coal combustion residuals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the management of coal combustion residuals as established by KRS 224.50-760 by defining the terms necessary to administer the program.

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

(a) How the amendment will change this existing administrative regulation: This is not applicable as this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect electric generating utilities that manage coal combustion residuals by providing definitions of terms used in 401 KAR Chapter 46. There are currently eight electric generating utilities that will be affected in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation provides definitions of terms and will require no action on the part of regulated entities.

(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 have no costs associated as it only provides definitions of terms for 401 KAR Chapter 46.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation has no compliance benefits as it only provides definitions of terms.

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

(a) Initially: This administrative regulation will not cost the administrative body to implement as it only provides definitions of terms.

(b) On a continuing basis: This administrative regulation will not cause the administrative body to incur any continuing costs as it only provides definitions of terms.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will not require a funding source as it only provides definitions of terms.

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

administrative regulation will not require an increase in fees or funding to implement as it only provides definitions of terms.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly establish any new fees. Fees are established in 401 KAR 46:120.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation defines terms that are applicable to the program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 257.53

2. State compliance standards. KRS 224.50-760

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 257.53

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 defines terms used in 401 KAR Chapter 46. This administrative regulation does not impose stricter or different responsibilities or requirements. Some federal terms have been replaced with the definitions established in KRS Chapter 224. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart and have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 46.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation replaced some federal terms with the definitions established in KRS Chapter 224. Definitions contained in KRS Chapter 224 have been referenced to the appropriate statutory citation. Some terms do not have a federal counterpart and have been added to clarify requirements and provisions of KRS Chapter 224 and 401 KAR Chapter 46.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Division of Waste Management as the definitions established will be used when implementing the administrative regulation in 401 KAR Chapter 46.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.50-760, 40 C.F.R. 257.53

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have costs associated with the administration of the program as it only provides definitions of terms. Costs for administering the program will be addressed in 401 KAR 46:120.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have costs associated with the administration of the program as it only provides definitions of terms. Costs for administering the program in subsequent years will be addressed by a fee in 401 KAR 46:120.

Note: If specific dollar estimates cannot be determined, provide

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have no fiscal impact as it only provides definitions of terms.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Waste Management (New Administrative Regulation)

401 KAR 46:110. Standards for the disposal of coal combustion residuals (CCR) in CCR units.

RELATES TO: KRS 224.1, 224.10, 224.50, 224.70, 224.99, 16 U.S.C. 1531, 33 U.S.C. 1251, 42 U.S.C. 82, 40 C.F.R. 257.50-257.106, 401 KAR 4:070

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-760, 151.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes the requirements for the disposal of CCR in CCR units.

Section 1. Scope and Applicability. (1) Except as provided in this section, the purpose, scope, and applicability of 401 KAR Chapter 46 to CCR units and the beneficial use of CCR shall be as established in 40 C.F.R. 257.50 through 257.52.

(2) 401 KAR Chapter 46 shall not apply to a special waste surface impoundment subject to 401 KAR Chapter 45 containing special waste and liquids at a facility that ceased producing electricity prior to October 19, 2015.

Section 2. Location Restrictions. The location restrictions for a CCR unit shall be as established in 40 C.F.R. 257.60 through 257.64.

Section 3. Design Criteria. The design criteria for a CCR unit shall be as established in 40 C.F.R. 257.70 through 257.72.

Section 4. Structural Integrity Criteria. (1) The structural integrity criteria shall be as established in 401 KAR 4:070, Sections 2 and 3.

(2) The citation to 40 C.F.R. 257.73 within 40 C.F.R. 257.50 through 257.106 shall be replaced with 401 KAR 4:070, Section 2.

(3) The citation to 40 C.F.R. 257.74 within 40 C.F.R. 257.50 through 257.106 shall be replaced with 401 KAR 4:070, Section 3.

Section 5. Operating Criteria. The operating criteria for a CCR unit shall be as established in 40 C.F.R. 257.80, 257.81, and 257.84.

Section 6. Hydrologic and Hydraulic Capacity Requirements for CCR Surface Impoundments. (1) The hydrologic and hydraulic capacity requirements for CCR surface impoundments shall be as established in 401 KAR 4:070, Section 4.

(2) The citation to 40 C.F.R. 257.82 within 40 C.F.R. 257.50 through 257.106 shall be replaced with 401 KAR 4:070, Section 4.

Section 7. Inspection Requirements for CCR Surface Impoundments. (1) The inspection requirements for CCR surface impoundments shall be as established in 401 KAR 4:070, Section 5.

(2) The citation to 40 C.F.R. 257.83 within 40 C.F.R. 257.50 through 257.106 shall be replaced with 401 KAR 4:070, Section 5.

Section 8. Groundwater Monitoring and Corrective Action. The groundwater monitoring and corrective action requirements for a

CCR unit shall be as established in 40 C.F.R. 257.90 through 257.98.

Section 9. Closure and Post-closure Care. The closure and post-closure care requirements for a CCR unit shall be as established in 40 C.F.R. 257.100 through 257.104.

Section 10. Recordkeeping and Notification. Except for 40 C.F.R. 257.107, including cross-references to 40 C.F.R. 257.107 within 40 C.F.R. 257.50 through 257.106, the recordkeeping and notification requirements for an owner or operator of a CCR unit shall be as established in 40 C.F.R. 257.105 and 257.106.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2016

FILED WITH LRC: October 11, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2016, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room C. 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 through November 30, 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: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the disposal of coal combustion residuals (CCR) in CCR units.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for the disposal of coal combustion residuals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.50-760 by establishing procedures for the disposal of coal combustion residuals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the management of coal combustion residuals as established by KRS 224.50-760 by establishing the procedures for the disposal of CCR in a CCR unit.

(2) If 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 not applicable as this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect electric generating utilities that manage coal combustion residuals by establishing the requirements for the disposal of CCR in CCR

units. There are currently eight electric generating utilities that will be affected in Kentucky. This administrative regulation will affect the Division of Waste Management and the Division of Water as it establishes requirements for entities regulated by the divisions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require no action on the part of regulated entities as it only references federal regulation requirements that are already effective.

(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 have no costs to entities as it only references federal regulation requirements that are already effective. The Division of Waste Management and the Division of Water will have personnel costs associated with the implementation of this administrative regulation related to investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit the regulated entities by being consistent with the federal regulations, thereby only having one standard with which they shall comply. In addition, the criteria for the disposal of coal combustion residuals established in this administrative regulation will increase the protectiveness of human health and the environment.

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

(a) Initially: The administrative body will have personnel costs associated with investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000.

(b) On a continuing basis: This administrative regulation will cost \$225,000 on an annual basis to administer.

(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 administrative regulation is established in 401 KAR 46:120 with an annual fee per facility, and a fee for concurrence if requested.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will require an increase in funding to implement. The fees are established in 401 KAR 46:120 to fund the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly establish any new fees. Fees are established in 401 KAR 46:120.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation as all entities are treated alike. All fees are established in 401 KAR 46:120.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 257.50 through 257.106
2. State compliance standards. KRS 224.50-760
3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 257.50 through 257.106
4. Will this administrative regulation impose stricter

requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, or additional or different responsibilities and is consistent with the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, or additional or different responsibilities and is consistent with the federal regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Division of Waste Management and Division of Water.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.50-760, 40 C.F.R. 257.50 through 257.106.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue as it only references federal regulation requirements that are already effective. The revenue generated for the implementation of this administrative regulation is established in 401 KAR 46:120.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue as it only references federal regulation requirements that are already effective. The revenue generated for the implementation of this administrative regulation is established in 401 KAR 46:120.

(c) How much will it cost to administer this program for the first year? This administrative regulation will have personnel costs associated with investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000. Costs for administering the program are established in 401 KAR 46:120.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will have continued personnel costs for subsequent years associated with investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000 on a continued basis. Costs for administering the program are established in 401 KAR 46:120.

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

Revenues (+/-):

Expenditures (+/-): \$225,000 for the implementation of this administrative regulation.

Other Explanation: The revenue generated for the implementation of this administrative regulation is established in 401 KAR 46:120.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)**

401 KAR 46:120. Coal combustion residuals (CCR) permit-by-rule.

RELATES TO: KRS 224.1, 224.10, 224.50, 224.70, 224.99, Chapter 322, Chapter 322A, 16 U.S.C. 1531, 33 U.S.C. 1251, 42 U.S.C. 82, 40 C.F.R. 257.50-257.106

STATUTORY AUTHORITY: KRS 224.10-100, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.50-760(1)(d) authorizes the cabinet to promulgate administrative regulations for the management of special wastes. This administrative regulation establishes the requirements for a CCR permit-by-rule.

Section 1. CCR Permit-by-rule. (1) An owner or operator of a CCR unit shall be deemed to have a permit-by-rule without the owner or operator having made application with the cabinet.

(2) A beneficial use of CCR user shall be deemed to have a permit-by-rule without having made application with the cabinet, if:

- (a) The user is not in violation of 401 KAR Chapter 46 or 401 KAR 30:031;
- (b) The beneficial use of CCR does not present a threat or potential threat to human health or the environment;
- (c) The beneficial use of CCR does not result in a nuisance condition created by the fugitive emissions of CCR;
- (d) The user characterized the nonhazardous nature of the CCR in accordance with 401 KAR 31:030; and
- (e) The user submits an annual report to the cabinet pursuant to Section 5 of this administrative regulation.

Section 2. Notice of Concurrence. (1)(a) A permittee who has a permit-by-rule as established in Section 1 of this administrative regulation may request a Notice of Concurrence from the cabinet.

(b) A person, who does not have a permit-by-rule as established in Section 1(1) of this administrative regulation, and intends to construct a CCR unit, may request a Notice of Concurrence from the cabinet prior to beginning construction.

(c) A person who intends to beneficially use CCR may request a Notice of Concurrence from the cabinet prior to beginning beneficial use.

(2) A person requesting to obtain a Notice of Concurrence shall complete and submit the following information, if applicable:

- (a) CCR Permit-by-rule Notice of Concurrence Request, DWM 4610, incorporated by reference in this administrative regulation;
- (b) For a seismic hazard analysis of a new CCR landfill or lateral expansion of an existing CCR landfill, a site-specific, scenario-based, deterministic, seismic hazard assessment;
- (c) For a stability analysis of a new CCR landfill or lateral expansion of an existing CCR landfill, the landfill design demonstrating the following:

- 1. For subgrade, the factor of safety shall be a minimum of two and zero-tenths (2.0);
- 2. For the liner components, the factor of safety shall be a minimum of one and one-fourth (1.25);
- 3. For the final cover system, the factor of safety shall be a minimum of one and one-half (1.5);
- 4. For the synthetic liner material and structural synthetic materials, a maximum elongation of ten (10) percent; and
- 5. A minimum seismic factor of safety of one and zero-tenths (1.0);

(d) Additional information necessary to enable the cabinet to make a determination on the issuance of the Notice of Concurrence;

(e) 1. If for the unencapsulated beneficial use of CCR involving placement on the land of 12,400 tons or more in non-roadway applications, a check or money order made payable to the Kentucky State Treasurer in the amount of \$2,500; or

2. If for a person, who has not obtained a permit-by-rule as established in Section 1(1) of this administrative regulation, and intends to construct a CCR unit, a check or money order made payable to the Kentucky State Treasurer in the amount of \$5,000; and

(f) A narrative with supporting documentation, a certification statement, and seal, from a professional engineer or professional geologist, licensed in accordance with KRS Chapter 322 or KRS Chapter 322A, that the information prepared by the professional engineer or professional geologist, and submitted with the notice of concurrence request, meets the applicable portions of 401 KAR 46:110 and paragraphs (b) and (c) of this subsection.

(3) The cabinet shall review the submittal request for a Notice of Concurrence within 365 days of receipt and issue in writing to the applicant a:

(a) Notice of Concurrence stating the cabinet concurs that the information submitted in accordance with this section is determined to meet applicable criteria in 401 KAR Chapter 46;

(b) Deficiency letter from the cabinet that the submittal is incomplete or that additional information is necessary to enable the cabinet to issue the Notice of Concurrence; or

(c) Notice that the cabinet does not concur that the information submitted in accordance with this section meets the applicable criteria in 401 KAR Chapter 46.

(4)(a) Failure by the applicant to provide the requested information and documentation within ninety (90) days of issuance of a deficiency letter established in subsection (3)(b) of this section. If the submittal is incomplete or additional information is needed after the second deficiency letter, the CCR Permit-by-rule Notice of Concurrence Request, DWM 4610, shall expire.

(b) More than two (2) deficiency letters shall not be issued in accordance with subsection (3)(b) of this section, after which the CCR Permit-by-rule Notice of Concurrence Request, DWM 4610, shall expire.

(c) Expiration of the CCR Permit-by-rule Notice of Concurrence Request, DWM 4610, shall not prevent the applicant from reapplying if the requested documentation becomes available.

(5)(a) The cabinet may rescind or modify in writing the Notice of Concurrence if the applicant or permittee is not in compliance with 401 KAR Chapter 46.

(b) The cabinet shall rescind the Notice of Concurrence in writing if the cabinet determines that the applicant submitted a false certification.

Section 3. Transition of a Permit Issued in Accordance with 401 KAR Chapter 45. (1) A permittee who is subject to 401 KAR Chapter 46 shall notify the cabinet in writing of its intent to meet the requirements of 401 KAR Chapter 46 by no later than January 15, 2017, if the permittee possesses a:

- (a) Special waste permit-by-rule in accordance with 401 KAR 45:060;
- (b) Special waste registered permit-by-rule in accordance with 401 KAR 45:070; or
- (c) Formal permit for special waste in accordance with 401 KAR 45:030.

(2) As of January 15, 2017, a permit issued pursuant to 401 KAR Chapter 45 for management, disposal, or beneficial reuse of CCR shall terminate if the permittee is subject to 401 KAR Chapter 46.

Section 4. Annual Fees. (1)(a) The owner or operator of a CCR unit shall pay a \$15,000 annual fee for each facility in operation or post-closure.

(b) An owner or operator of a CCR unit shall notify the cabinet in writing upon completion of post-closure activities as established in 401 KAR 46:110, Section 6, and shall no longer be subject to annual fees established in this section.

(2) Payment shall be submitted to the Solid Waste Branch of the Division of Waste Management no later than July 31 of each year.

(3) The owner or operator shall complete and submit with the payment the CCR Annual Fee Form, DWM 4620, incorporated by reference in this administrative regulation.

(4) A check or money order shall be made payable to the Kentucky State Treasurer.

(5) The annual fee shall be due July 31, 2017, and every year after.

(6)(a) The owner or operator of a CCR unit may request an extension to the deadline not to exceed thirty (30) days.

(b) The extension request shall be in writing and shall be received by the Solid Waste Branch of the Division of Waste Management prior to the deadline.

Section 5. Beneficial Use of CCR Reporting Requirements. The user shall submit to the cabinet an annual report of the beneficial use activity undertaken in the previous calendar year by March 31 that identifies the:

- (1) Name and address of the CCR generator;
- (2) Tonnage of CCR beneficially used;
- (3) Name and address of each user of CCR; and
- (4) Specific use of the CCR.

Section 6. Noncompliances. (1) The cabinet may take any appropriate enforcement action, including corrective action, pursuant to 401 KAR Chapter 40, KRS 224.10-410, or 224.10-420, if the permittee is not operating in compliance with 401 KAR Chapter 46.

(2) The cabinet may invalidate a CCR permit-by-rule upon a final determination of noncompliance.

(3) The cabinet shall follow the procedures in 401 KAR 40:040 in taking action to invalidate any permit-by-rule pursuant to this section.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CCR Permit-by-rule Notice of Concurrence Request", DWM 4610, September 2016; and

(b) "CCR Annual Fee Form", DWM 4620, September 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at waste.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 11, 2016

FILED WITH LRC: October 11, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2016, at 6:00 p.m., at 300 Sower Blvd., 1st Floor, Training Room C. 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 through November 30, 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: Louanna Aldridge, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502)782-6538, fax (502) 564-4245, email Louanna.Aldridge@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Louanna Aldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a CCR permit-by-rule, the transition of permits for facilities previously regulated by 401 KAR Chapter 45, reporting requirements for the beneficial use of CCR, procedures for which a regulated entity may

request a concurrence from the cabinet for compliance, and fees associated with the implementation of the program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for a CCR permit-by-rule, the transition of permits for facilities previously regulated by 401 KAR Chapter 45, reporting requirements for the beneficial use of CCR, and procedures for which a regulated entity may request a concurrence from the cabinet for compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.50-760 by establishing compliance requirements for the management of coal combustion residuals. This administrative regulation conforms to KRS 224.10-100(20) by exempting publicly-owned facilities from the fees established.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing requirements for the management of coal combustion residuals as required by KRS 224.50-760.

(2) If 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 not applicable as this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect electric generating utilities that manage coal combustion residuals by establishing the requirements for a CCR permit-by-rule. There are currently eight electric generating utilities that will be affected in Kentucky. This administrative regulation will affect the Division of Waste Management and the Division of Water as it establishes requirements for entities regulated by the divisions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will require a utility previously regulated by 401 KAR Chapter 45 to notify the cabinet by January 15, 2017 of their intent to comply with this chapter. Facilities operating CCR units will be required to pay an annual fee. A person conducting beneficial use of CCR will be required to report annually.

(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 cost each facility \$15,000 annually. The Division of Waste Management and the Division of Water will have personnel costs associated with the implementation of this administrative regulation related to investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, reviewing annual reports for the beneficial use of CCR, processing of fees, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit the regulated entities by providing a permit-by-rule for compliance with this chapter. The regulated entity may request a

notice of concurrence from the cabinet on whether they are complying with the requirements established in 401 KAR 46:110 which may provide some protectiveness. In addition, the criteria for the disposal of coal combustion residuals established in this administrative regulation will increase the protectiveness of human health and the environment.

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

(a) Initially: The administrative body will have personnel costs associated with the implementation of this administrative regulation related to investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, reviewing annual reports for the beneficial use of CCR, processing of fees, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000.

(b) On a continuing basis: This administrative regulation will cost \$225,000 on an annual basis to administer.

(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 administrative regulation is established by an annual fee per facility, and a fee for concurrence if requested.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will require an increase in funding to implement. The implementation of this administrative regulation will be funded by the annual fee and the fee for a concurrence request.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an annual fee of \$15,000 for facilities with CCR units, with the exception of publicly-owned facilities which are exempt. In addition, if a new utility company requests a notice of concurrence, a \$5,000 fee is required. If a request for a notice of concurrence for the unencapsulated beneficial use of CCR involving placement on the land of 12,400 tons or more in non-roadway applications, a fee of \$2,500 is required.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation. All facilities and notice of concurrence requests are charged the same annual fee.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Division of Waste Management and Division of Water.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.50-760

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 an annual revenue of \$225,000 in annual fees. In addition, this administrative regulation will generate \$2,500 or \$5,000, if applicable, per notification of concurrence request for the Division of Waste Management. The amount of revenues that will be generated for concurrence requests will depend on the number received and cannot be determined 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? This administrative regulation will generate an annual

revenue of \$225,000 in annual fees for subsequent years. In addition, this administrative regulation will generate \$2,500 or \$5,000, if applicable, per notification of concurrence request for the Division of Waste Management. The amount of revenues that will be generated for concurrence requests will depend on the number received and cannot be determined at this time.

(c) How much will it cost to administer this program for the first year? This administrative regulation will have personnel costs associated with the implementation of this administrative regulation related to investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, reviewing annual reports for the beneficial use of CCR, processing of fees, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will have continued personnel costs for subsequent years associated with investigation of complaints for noncompliance of the regulated entities, processing the notifications required in the federal regulation, reviewing annual reports for the beneficial use of CCR, processing of fees, and evaluation of the criteria established in this regulation upon request by the regulated entities. The Division of Waste Management anticipates the need for an additional 2.25 personnel positions to administer the coal combustion residual program at a cost of \$225,000.

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

Revenues (+/-): 15 facilities x \$15,000/annual fee = \$225,000 generated.

Expenditures (+/-): \$225,000 for the implementation of this administrative regulation on 2.25 additional personnel.

Other Explanation: The revenue generated for processing the notification of concurrence requests will be \$2,500 or \$5,000, whichever is applicable. The amount of revenues that will be generated for concurrence requests will depend on the number received and cannot be determined at this time.

TRANSPORTATION CABINET Department of Highways (New Administrative Regulation)

603 KAR 2:020. Public-private partnerships.

RELATES TO: 45A.070, 45A.077, 45A.085, 45A.494, 175B.005, 175B.010, 175B.020, 175B.030, 175B.035, 175B.037, 176.080, 176.140

STATUTORY AUTHORITY: KRS 175B.037(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 175B.037(7) requires the Transportation Cabinet to promulgate administrative regulations establishing the procurement and proposal review processes for a public-private partnership related to a project undertaken by the state authority. This administrative regulation establishes the requirements for a private business or entity to submit a proposal to the Transportation Cabinet and the review processes for the proposal.

Section 1. Definitions. (1) "Best value" is defined by KRS 45A.070.

(2) "Cabinet" is defined by KRS 175B.010(3).

(3) "Evaluation committee" means a committee designated by the secretary to review and evaluate proposals.

(4) "Financial plan" means a plan submitted to, or proposed by, the state authority pursuant to KRS 175B.030 or KRS 175B.035.

(5) "Project" is defined by KRS 175B.010(11).

(6) "Public-private partnership" is defined by KRS 175B.010(14).

(7) "Request for proposals" is defined by KRS 45A.070(5).

(8) "State authority" is defined by KRS 175B.010(16).

Section 2. Procurement Process. (1) If a public-private partnership is included in an approved or recommended financial plan, and the project is contained in the highway plan and the State Transportation Improvement Program, the cabinet, the state authority, and another state if involved in the project shall undertake a competitive, best value procurement to obtain a private partner.

(2) A request for proposals shall be issued by the cabinet pursuant to KRS 45A.085.

(3) A proposal submitted in response to the cabinet's request for proposals shall include:

(a) The name, address, telephone number, and electronic mail address of the contact person for the proposing entity;

(b) A demonstration of financial responsibility for the proposing entity or, if the proposing entity is made up of more than one (1) legal entity, a demonstration of financial responsibility for each member of the proposing team;

(c) A copy of a current insurance policy indicating all coverage including Kentucky workers' compensation for the type of work described in the request for proposals;

(d) Information indicating work on similar projects and resumes of principal officers and key personnel; and

(e) Evidence by the response due date that the proposing entity, or that each member of the proposing team, is registered as a business and in good standing with the Kentucky Secretary of State, and is prequalified with the cabinet pursuant to KRS 176.140.

(4) A bond or check shall accompany each bid pursuant to KRS 176.080(1) and (3).

(5) A proposal shall be forwarded to the Kentucky Transportation Cabinet, Division of Construction Procurement. A proposal shall be addressed to the attention of the director.

(6) A proposal received outside of the time designated in the request for proposal shall be rejected.

Section 3. Proposal Review. (1) The secretary of the cabinet shall designate a committee of engineers and cabinet professionals to review and evaluate proposals based on the specifications of the project.

(2) The director and the evaluation committee may conduct meetings or accept written questions from a potential proposing entity to ask for clarification.

(3) A written confirmation of the questions from the proposing entity and the answers of the director and evaluation committee shall become an official addendum to the request for proposals and shall be provided to potential proposing entities.

(4) Written proposals received in response to a solicitation shall be kept secure and unopened until the date and hour established for opening proposals. If a proposal is not clearly marked, it may be opened for identification purposes and shall be appropriately identified with reference to a particular procurement and resealed until the time for opening proposals.

(5) At the close of the proposal submission deadline, a proposal received by the director shall be examined for general conformity with the terms of the procurement.

(6) If acceptable proposals are not submitted:

(a) New proposals may be solicited based on the same or revised terms; or

(b) The procurement may be canceled.

(7)(a) If, after solicitation of proposals to enter into competitive negotiations, only one (1) proposal responsive to the solicitation is received, the director may commence negotiations with the single offeror and a contract entered into with that offeror shall be valid.

(b) The terms and conditions of the contract with a single offeror shall not deviate from the terms and conditions established in the solicitation for proposals.

(c) Subject to the requirements and conditions of the request for proposal, if a non-selected submitted response to a request for proposal is retained by the cabinet, a stipend shall be paid to an unsuccessful bidder. The amount of the stipend shall be based upon:

1. Project complexity;

2. Estimated proposal costs; and

3. The anticipated degree of competition.

(8) The pricing information and financing terms and conditions shall be kept separate and secure until they are combined with the evaluation committee aggregate qualitative scoring to achieve the final score for the procurement process as established in the request for proposals.

(9) A contract shall be awarded to the highest scoring entity submitting a responsive proposal based upon the pricing and qualitative evaluation factors established in the request for proposals.

(10)(a) Discussions with proposing entities by a member of the evaluation committee regarding the procurement shall be prohibited except during the selection committee interview process.

(b) Ex parte communication between a proposing entity and a member of the evaluation committee shall be prohibited. If an ex parte communication occurs, the proposing entity shall be disqualified if the ex parte communication creates an unfair advantage or an appearance of impropriety.

(c) Each ex parte communication shall be documented with a written summary that shall become part of the procurement file. The documentation shall include the date and general substance of the communication.

GREG THOMAS, Secretary

PATTY DUNAWAY, State Highway Engineer

D. ANN DANGELO, Assistant General Counsel

APPROVED BY AGENCY: October 4, 2016

FILED WITH LRC: October 6, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2016 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Written comments shall be accepted through November 30, 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: D. Ann Dangelo, Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email Ann.Dangelo@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a private business or entity to submit a proposal to the Transportation Cabinet and the review processes for the proposal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procurement and proposal processes for a public-private partnership.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 175B.037(7) requires the cabinet to promulgate administrative regulations establishing the procurement and proposal review processes for a public-private partnership related to a project undertaken by the state authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the process for private

entities to submit proposals with the cabinet as required by KRS 175B.037(7).

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky Transportation Cabinet, Kentucky Public Transportation Infrastructure Authority, contractors, design professionals, and financial institutions that provide funding for projects.

(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 private entity desiring to enter into a public-private partnership with the commonwealth will be required to submit a proposal for review pursuant to a request for proposal issued by the cabinet. A private entity must register as a business in good standing with the Kentucky Secretary of State and be prequalified with the Kentucky Transportation Cabinet.

(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 involved in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposal of the private entity will be considered during the proposal review process with the possibility of selection.

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

(a) Initially: There are no costs involved with this administrative regulation.

(b) On a continuing basis: There are no costs involved with 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 costs involved with 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: Fees are not necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are not established by this administrative regulation.

(9) TIERING: Is tiering applied? No. Proposals submitted in response to a request for proposal will be considered by the cabinet without tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) 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 175B.037

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is not expedited to effect expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? No costs are expected as a result of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are expected as a result of this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (Repealer)

902 KAR 20:013. Repeal of 902 KAR 20:014.

RELATES TO: KRS 216B.010, 216B.015, 216B.042, 216B.105
STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the cabinet to promulgate administrative regulations to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. In accordance with KRS 13A.310(3)(a), this administrative regulation repeals 902 KAR 20:014 as the effect of a previous denial or revocation action against a health facility's license is addressed in the amendment for 902 KAR 20:008, filed concurrently with this administrative regulation.

Section 1. 902 KAR 20:014, Effect of previous denial or revocation on applications for a license to operate a health facility, is hereby repealed.

ROBERT S. SILVERTHORN, Jr., Inspector General

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 12, 2016

FILED WITH LRC: October 13, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2016 at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 November 30, 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 40621, phone (502) 564-7905, fax (502) 564-7573, email: tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes (502-564-2888, stephanie.brammer@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(a), repeals 902 KAR 20:014.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 902 KAR 20:014 as the effect of a previous denial or revocation action against a health facility's license is addressed in the amendment for 902 KAR 20:008, filed concurrently with this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by repealing 902 KAR 20:014 as the effect of a previous denial or revocation action against a health facility's license is addressed in the amendment for 902 KAR 20:008.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by repealing 902 KAR 20:014 as the effect of a previous denial or revocation action against a health facility's license is addressed in the amendment for 902 KAR 20:008.

(2) If 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 not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing 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 individuals and entities that apply for licensure as a health care facility under 902 KAR 20:008, License procedures and fee schedule, and applicable administrative regulations under 902 KAR Chapter 20.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals and entities that apply for licensure as a health care facility defined by KRS 216B.015(13) are subject to the requirements established in 902 KAR 20:008 and applicable administrative regulations under 902 KAR Chapter 20.

(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 to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation repeals 902 KAR 20:014.

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

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.

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

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee or funding increase is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals 902 KAR 20:014.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects individuals and entities that apply for licensure as a health care facility under 902 KAR 20:008, License procedures and fee schedule, and applicable administrative regulations under 902 KAR Chapter 20.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310(3)(a)

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Repealer)

906 KAR 1:151. Repeal of 906 KAR 1:150.

RELATES TO: KRS 216B.155(2)

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the cabinet to promulgate administrative regulations to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. In accordance with KRS 13A.310(3)(a), this administrative regulation repeals 906 KAR 1:150 as the requirement established by KRS 216B.155(2) for licensed health facilities to assess the credentials of health care professionals applying for privileges is addressed in the amendment for 902 KAR 20:008, filed concurrently with this administrative regulation.

Section 1. 906 KAR 1:150, Uniform evaluation and reevaluation of a health care professional, is hereby repealed.

VOLUME 43, NUMBER 5 – NOVEMBER 1, 2016

ROBERT S. SILVERTHORN, JR., Inspector General
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 12, 2016

FILED WITH LRC: October 13, 2016 at 3 p.m

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 2016 at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 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 November 30, 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 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes (502-564-2888, stephanie.brammer@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in accordance with KRS 13A.310(3)(a), repeals 906 KAR 1:150.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 906 KAR 1:150 as the requirement for licensed health facilities to assess the credentials of health care professionals applying for privileges is addressed in the amendment for 902 KAR 20:008, filed concurrently with this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by repealing 906 KAR 1:150 as the requirement for licensed health facilities to assess the credentials of health care professionals applying for privileges is addressed in the amendment for 902 KAR 20:008.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by repealing 906 KAR 1:150 as the requirement for licensed health facilities to assess the credentials of health care professionals applying for privileges is addressed in the amendment for 902 KAR 20:008.

(2) If 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 not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing 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 licensed health facilities required to comply with KRS 216B.155(2).

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by licensed health facilities.

(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 to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation repeals 906 KAR 1:150.

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

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals 906 KAR 1:150.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects licensed health facilities required to comply with KRS 216B.155(2).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310(3)(a)

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health,
Developmental and Intellectual Disabilities
Division of Program Integrity
(Repealer)

908 KAR 3:081. Repeal of 908 KAR 3:080, 908 KAR 3:090, 908 KAR 3:100, 908 KAR 3:110, 908 KAR 3:120, 908 KAR 3:130, 908 KAR 3:140, 908 KAR 3:150, 908 KAR 3:160, and 908 KAR 3:180.

RELATES TO: KRS Chapters 202A, 202B, 210

STATUTORY AUTHORITY: KRS 210.010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.010 authorizes the Secretary for the Cabinet for Health and Family Services to prescribe administrative regulations for the administration of the cabinet and of the institutions under the control of the cabinet. This administrative regulation repeals 908 KAR 3:080, 908 KAR 3:090, 908 KAR 3:100, 908 KAR 3:110, 908 KAR 3:120, 908 KAR 3:130, 908 KAR 3:140, 908 KAR 3:150, 908 KAR 3:160, and 908 KAR 3:180. These administrative regulations are being repealed for consistency with other cabinet administrative regulations, to eliminate redundancy, and to remove antiquated policy.

Section 1. The following administrative regulations are hereby repealed:

- (1) 908 KAR 3:080, Policies and procedures of Hazelwood Center;
- (2) 908 KAR 3:090, Policies and procedures of Central State Hospital ICF (intermediate care facility);
- (3) 908 KAR 3:100, Policies and procedures of Eastern State Hospital;
- (4) 908 KAR 3:110, Policies and procedures of Central State Hospital;
- (5) 908 KAR 3:120, Policies and procedures of Western State Hospital;
- (6) 908 KAR 3:130, Policies and procedures of Glasgow State ICF (intermediate care facility);
- (7) 908 KAR 3:140, Policies and procedures of Western State Hospital ICF (intermediate care facility);
- (8) 908 KAR 3:150, Policies and procedures of Western State Hospital VOLTA Program;
- (9) 908 KAR 3:160, Policies and procedures of Kentucky Correctional Psychiatric Center; and
- (10) 908 KAR 3:180, Policies and procedures of Oakwood.

WENDY MORRIS, Acting Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: September 26, 2016

FILED WITH LRC: September 27, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 21, 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 November 14, 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 November 30, 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

Contact Persons: Justin Dearing (502-787-7212, justin.dearing@ky.gov), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 908 KAR 3:080, 3:090, 3:100, 3:110, 3:120, 3:130, 3:140, 3:150, 3:160, and 3:180.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to be consistent with other Cabinet regulations, eliminate redundancy, and remove antiquated policy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 210.010 in that it administers the administrative regulations concerning the institutions under control of the Cabinet.

(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 statute by repealing regulations to be consistent with other Cabinet regulations, eliminate redundancy, and remove antiquated policy.

(2) If 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: Ten mental health facilities and programs will be impacted by this administrative regulation including: Hazelwood Center; Central State Hospital; Eastern State Hospital; Western State Hospital Glasgow State Intermediate Care Facility; Kentucky Correctional Psychiatric Center; and Oakwood.

(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: These regulated entities will not have to take any actions to comply with this administrative regulation.

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

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

Mental health facilities will have clear and up to date regulations.

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

(a) Initially: No costs will be incurred to implement this administrative regulation on an initial basis.

(b) On a continuing basis: No costs will be incurred 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: NA

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

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

(9) TIERING: Is tiering applied? Tiering will not be applied as this regulation is applied statewide in an equal manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 440-489
2. State compliance standards. KRS Chapters 202A, 202B, 210
3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 440-489
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirement, or additional, or different requirements or responsibilities, than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, additional, or different responsibilities or requirements. This administrative regulation does not impose stricter requirement, or additional, or different requirements or responsibilities, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following statutes authorize the actions taken by this administrative regulation: KRS 210.010.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 new revenues for state or local government in the first year.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate new revenues for state or local government in subsequent years.
 - (c) How much will it cost to administer this program for the first year? There will be no additional costs to implement this program in the first year.
 - (d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues: (+/-)

Expenditures: (+/-)

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 11, 2016

Members: Senators Julie Raque-Adams, Perry Clark, Alice Forgy Kerr, and Ernie Harris; and Representatives Linda Belcher, Mary Lou Marzian, and Tommy Turner.

LRC Staff: Sarah Amburgey, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Klaber, and Donna Little.

Guests: Darrell Johnson, University of Kentucky Regulatory Services; John Ghaelian, Kevin Winstead, Attorney General's Office; Richard Bertelson, Department of Revenue; Brian Judy, Sonja Minch, Board of Barbering; Nathan Goldman, Board of Nursing; Amy Barker, Deaira Douglas, Mark Filburn, Department of Criminal Justice Training; Ann DAngelo, Department of Transportation; Andrea Fryman, Morehead State University; Chuck Stribling, Michael Swansburg, Labor Cabinet; Steve Humphress, Melissa McQueen, Department of Alcoholic Beverage Control; Jared Downs, Tim House, Steve Milby, Department of Housing, Building and Construction; Laura Begin, Robert Brawley, Andrea Flinchum, Department of Public Health; Stephanie Brammer-Barnes, John Inman, Office of Inspector General; Maria Lewis, Department for Income Support; Elizabeth Caywood, Department for Community Based Services; Steve Kennedy, Tri-City Barber College.

The Administrative Regulation Review Subcommittee met on Tuesday, October 11, 2016, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

AGRICULTURAL EXPERIMENT STATION: Seed

12 KAR 1:116. Sampling, analyzing, testing, and tolerances. Darrell Johnson, executive director, represented the University of Kentucky, Division of Regulatory Services.

12 KAR 1:140. Permits, reports, and fees for persons using own tags.

12 KAR 1:155. Schedule of charges for samples submitted for testing.

In response to questions by Co-Chair Harris, Mr. Johnson stated that the fee increases only covered the increased costs of the testing kits. Fees had not been increased since 2012. There were no public comments expressing concern pertaining to the fee increases.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) add a definition for "free test; and (2) comply with the drafting and formatting requirements of KRS Chapter 13A." Without objection, and with agreement of the agency, the amendments were approved.

OFFICE OF THE ATTORNEY GENERAL: Office of Consumer Protection: Office

40 KAR 2:145. Funeral planning declaration form. John Ghaelian, assistant attorney general, and Kevin Winstead, assistant attorney general, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to update the edition date of the Funeral Planning Declaration Form; and (2) to clarify on the form that signatures shall be obtained from the declarant, witnesses, and notary public to be consistent with the language in the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

40 KAR 2:150. Cremation forms and inspections.

In response to a question by Representative Belcher, Mr. Winstead stated that funeral directing related to cremation, if for profit, would need to be done in conjunction with a licensed funeral home or funeral director. Some crematories were separate from a licensed funeral home or funeral director. The office would

investigate further and provide Representative Belcher with a more in-depth summary of cremation requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (2) to amend Section 1 to reference declarants in conjunction with references to decedents; and (3) to amend Sections 1, 3, and 6 to: (a) clarify that the July 15, 2016 date is not applying retroactively, but that it is the effective date for KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization Form, CR-3; and (b) comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Ad Valorem Tax; State Assessment

103 KAR 8:160. Valuation of municipal solid waste landfill facilities. Richard Bertelson, staff attorney, represented the department.

In response to questions by Co-Chair Harris, Mr. Bertelson stated that landfill valuation for tax assessment purposes was based on tipping fees in dollars per ton over the economic life of the landfill, divided for a yearly average. The economic life of a landfill was determined based on how much waste the site could accept. The administrative regulation was amended to revise valuation calculations based on comments from stakeholders. The royalty rate was the leasing rate for a municipality to use a privately-owned landfill property. The discount rate was the return on investment.

GENERAL GOVERNMENT CABINET: Board of Barbering: Board

201 KAR 14:125. Teacher requirements. Brian Judy, assistant attorney general, and Sonja Minch, administrator, represented the board. Steve Kennedy, owner, Tri-city Barber College, appeared in support of this administrative regulation.

In response to questions by Co-Chair Harris, Ms. Minch stated that this administrative regulation was amended to require 600 hours of instructional experience under supervision, rather than twelve (12) months, because 600 hours was a more specific standard. If an applicant was unable to complete 600 hours within the twelve (12) month time frame, the applicant may submit an extension request. Mr. Kennedy stated that this administrative regulation would ensure good educators for barbering schools. Ms. Minch stated that the board reached out to all nine (9) barbering schools without any negative feedback regarding these amendments.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add citations; (2) to amend Section 1 to clarify the examinations for which the passing score of eighty (80) percent applies; and (3) to amend Sections 3, 7, and 13 for: (a) clarity; and (b) compliance with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing: Board

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements. Nathan Goldman, general counsel, represented the board.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Criminal Justice Training: Law Enforcement Foundation Program Fund

503 KAR 5:090. Participation: requirements; application; withdrawal. Amy Barker, assistant general counsel, and Mark Filburn, commissioner, represented the department.

A motion was made and seconded to approve the following

amendments: (1) to amend Section 2(2)(d) to require completion of a forty (40) hour basic officer skills or new police chief orientation course for an officer who has completed basic training in the past but has had a separation of employment for more than thirty-six (36) months; (2) to amend Sections 5 and 7 to incorporate by reference the Application for Police Training Incentive form; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Motor Carriers

601 KAR 1:231. Repeal of 601 KAR 1:025, 601 KAR 1:029, 601 KAR 1:060, 601 KAR 1:075, 601 KAR 1:095, 601 KAR 1:101, 601 KAR 1:110, 601 KAR 1:145, 601 KAR 1:190, and 601 KAR 1:230. Ann D'Angelo, assistant general counsel, represented the cabinet.

In response to questions by Co-Chair Harris, Ms. D'Angelo stated that the cabinet was confident that these administrative regulations were superfluous and should be repealed.

Co-Chair Harris stated that it was important to repeal unnecessary administrative regulations in a timely manner.

Senator Clark stated that legislators should also repeal unnecessary statutes timely, such as if a statute is notwithstanding in a bill because the statute is superfluous.

In response to a question by Co-Chair Marzian, Ms. D'Angelo stated that the agency amendment removed 601 KAR 1:025 from the list of administrative regulations to be repealed because there was a federal mandate that required it. The cabinet planned to repeal and refile this subject matter as part of another administrative regulation, but realized that the repeal should wait until the other administrative regulation was ready.

A motion was made and seconded to approve the following amendments: to amend the TITLE; NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 1 to remove 601 KAR 1:025 from the list of administrative regulations to be repealed because there was a federal mandate in effect that required that administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

Administration

601 KAR 2:011. Repeal of 601 KAR 2:010.

Motor Vehicle Tax

601 KAR 9:111. Repeal of 601 KAR 9:010, 601 KAR 9:020, 601 KAR 9:060, 601 KAR 9:065, 601 KAR 9:095, and 601 KAR 9:105.

Transportation of Solid Waste

601 KAR 40:011. Repeal of 601 KAR 40:010.

Department of Aviation: Airport Safety Standards

602 KAR 20:091. Repeal of 602 KAR 20:090.

Department of Highways: Construction and Materials

603 KAR 1:031. Repeal of 603 KAR 1:030.

Right-of-way

603 KAR 4:046. Repeal of 603 KAR 4:045.

Traffic

603 KAR 5:311. Repeal of 603 KAR 5:020, 603 KAR 5:030, 603 KAR 5:080, 603 KAR 5:090, 603 KAR 5:240, and 603 KAR 5:301.

A motion was made and seconded to approve the following amendments: to amend the TITLE; NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 1 to remove 603 KAR 5:240 from the list of administrative regulations to be repealed because KRS 177.074 requires it. Without objection, and with agreement of the agency, the amendments were approved.

Office for Transportation Delivery: Mass Transportation

603 KAR 7:071. Repeal of 603 KAR 7:010, 603 KAR 7:040, 603 KAR 7:050, 603 KAR 7:060, and 603 KAR 7:070.

Department of Vehicle Regulation: Motor Vehicle Commission: Commission

605 KAR 1:011. Repeal of 605 KAR 1:010.

MOREHEAD STATE UNIVERSITY: Board of Regents: Board

755 KAR 1:080. Capital construction procedures. Andrea Fryman, business manager, represented the board.

In response to questions by Co-Chair Harris, Ms. Fryman stated that the \$100,000 salary estimation included benefits. The estimate consisted of several potential positions. Existing staff was currently able to fulfill demand, but it may be necessary to hire more employees for future needs. This administrative regulation would allow decisions to be made by the board, rather than the state level, for increased efficiency.

In response to a question by Senator Raque Adams, Ms. Fryman stated that sometimes there was a delay in projects because the board had to wait on determinations from the state. This administrative regulation would allow the board to work directly with contractors.

Co-Chair Marzian stated that this issue may need to be reviewed by the Interim Joint Committee on Appropriations and Revenue or the Capital Projects and Bond Oversight Committee.

LABOR CABINET: Department of Workforce Standards: Division of Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

803 KAR 2:180. Recordkeeping, reporting, statistics. Chuck Stribling, occupational safety and health federal – state coordinator, and Michael Swansburg, general counsel, represented the division.

A motion was made and seconded to approve the following amendments: 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.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Fair Trade, Pricing and Sales

804 KAR 3:081. Repeal of 804 KAR 3:080. Steve Humphress, general counsel, and Melissa McQueen, staff attorney, represented the department.

In response to a question by Co-Chair Harris, Mr. Humphress stated that the department was confident that these administrative regulations were superfluous and should be repealed.

Licensing

804 KAR 4:041. Repeal of 804 KAR 4:040, 804 KAR 4:050, 804 KAR 4:050, 804 KAR 4:150, 804 KAR 4:310, 804 KAR 4:340, and 804 KAR 4:385.

Conduct of Business; Employees

804 KAR 5:031. Repeal of 804 KAR 5:030 and 804 KAR 5:050.

Retail Premises

804 KAR 7:051. Repeal of 804 KAR 7:050.

Transportation of Alcoholic Beverages

804 KAR 8:041. Repeal of 804 KAR 8:040 and 804 KAR 8:060.

Quotas

804 KAR 9:021. Repeal of 804 KAR 9:020 and 804 KAR 9:030.

Malt Beverage Equipment, Supplies, and Service

804 KAR 11:021. Repeal of 804 KAR 11:020.

Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Plumbing

815 KAR 20:020. Parts or materials list. Jared Downs, general

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counsel; Tim House, deputy commissioner; and Steve Milby, commissioner, represented the department.

In response to questions by Co-Chair Harris, Mr. House stated that this administrative regulation was required to use brand names, rather than product descriptions, because there were no national standards for these materials. For example, there was not a national standard for electric tankless water heaters. Kentucky and Illinois were the only states that required a temperature relief valve for water heaters; however, because technology had improved, the department amended this administrative regulation to require only a pressure relief valve. The plumbing industry requested these changes.

A motion was made and seconded to approve the following amendments: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 20:080. Waste pipe size.

815 KAR 20:090. Soil, waste, and vent systems.

815 KAR 20:120. Water supply and distribution.

In response to questions by Senator Clark, Mr. Milby stated that NFPA 13D was the code for these specific fire protection systems. Because there was not a national standard, this administrative regulation was required to use brand names, rather than product descriptions.

A motion was made and seconded to approve the following amendments: 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.

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. Laura Begin, regulation coordinator; Dr. Robert Brawley, chief of infectious diseases; and Andrea Flinchum, program manager, represented the division.

Office of Inspector General: Health Services and Facilities

902 KAR 20:058. Operation and services; primary care center. John Inman, deputy inspector general, and Stephanie Brammer – Barnes, policy analyst, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend Sections 3, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Income Support: Child Support Enforcement: Child Support

921 KAR 1:380. Child Support Enforcement Program application and intergovernmental process. Marcia Lewis, regional program manager, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 and 6 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 Protection and Permanency: Child Welfare

922 KAR 1:151. Repeal of 922 KAR 1:150, 922 KAR 1:170, 922 KAR 1:210, and 922 KAR 1:230. Elizabeth Caywood, executive advisor, represented the division.

Child Welfare

922 KAR 1:500. Educational and training vouchers.

Other Business: Co-Chair Harris stated that he wanted to remind agencies about a requirement for repealer administrative regulations. In repealer administrative regulations, the NECESSITY, FUNCTION, AND CONFORMITY paragraph was required to include the reason for repeal of an existing administrative regulation. It was helpful if the reason for repeal was more specific than obsolescence. If a statute previously required the promulgation of an administrative regulation, the NECESSITY, FUNCTION, AND CONFORMITY paragraph should explain why that administrative regulation was no longer necessary, such as a statutory change or a replacement administrative regulation. Combining smaller administrative regulations into a larger administrative regulation was not always the best option. *(Note from the Regulations Compiler: The statutory requirements for this paragraph within repealer administrative regulations are established in KRS 13A.310(3)(a)2.)*

The following administrative regulations were deferred to the November 7, 2016, meeting of the Subcommittee:

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

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

601 KAR 2:030 & E. Ignition interlock.

Department of Aviation: Airport Development

602 KAR 15:011. Repeal of 602 KAR 15:010.

Division of Planning

603 KAR 9:021. Repeal of 603 KAR 9:020.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: School Administration and Finance

702 KAR 3:171. Repeal of 702 KAR 3:170.

Instructional Programs

705 KAR 4:231. General program standards for secondary career and technical education programs.

Instructional Programs

780 KAR 4:012. Repeal of 780 KAR 4:010.

LABOR CABINET: Department of Workforce Standards: Division of Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

803 KAR 2:412. Fall protection.

The Subcommittee adjourned at 1:55 p.m. until November 7, 2016, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of September 28, 2016

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of September 28, 2016, having been referred to the Committee on September 7, 2016, pursuant to KRS 13A.290(6):

739 KAR 2:140

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 28, 2016 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT
Meeting of October 6, 2016

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of October 6, 2016, having been referred to the Committee on September 7, 2016, pursuant to KRS 13A.290(6):

401 KAR 51:010
921 KAR 4:119

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 6, 2016 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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**INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND
ENVIRONMENT
Meeting of October 6, 2016**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of October 6, 2016 having been referred to the Committee on October 5, 2016, pursuant to KRS 13A.290(6):

301 KAR 1:015
301 KAR 1:201
301 KAR 2:132

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 6, 2016

meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of October 19, 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 October 19, 2016, having been referred to the Committee on October 5, 2016, pursuant to KRS 13A.290(6):

201 KAR 22:045
201 KAR 32:030
910 KAR 1:210
921 KAR 1:420

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 19, 2016 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

E - 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

E - 9

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 43 of the *Administrative Register of Kentucky*.

Technical Amendment Index

E - 16

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

E - 18

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 of the 2016 Kentucky Administrative Register but had not yet gone into effect when the 2016 Kentucky Administrative Register was published.					
SYMBOL KEY:			201 KAR 9:240		
* Statement of Consideration not filed by deadline			Amended	2804	See 43 Ky.R.
** Withdrawn before being printed in Register			201 KAR 9:250		
*** Emergency expired after 180 days			Amended	2807	See 43 Ky.R.
‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))			201 KAR 13:040		
(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.			Amended	2621	
			AmComments	2906	See 43 Ky.R.
			201 KAR 13:050		
			Amended	2624	See 43 Ky.R.
			201 KAR 14:015		
			Amended	2920	See 43 Ky.R.
EMERGENCY ADMINISTRATIVE REGULATIONS:			201 KAR 14:030		
(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.)			Amended	2922	See 43 Ky.R.
			201 KAR 14:045		
			Amended	2923	See 43 Ky.R.
			201 KAR 14:090		
			Amended	2924	See 43 Ky.R.
9 KAR 1:040E	2866	5-13-2016	201 KAR 14:110		
301 KAR 2:221E	1699	11-3-2015	Amended	2926	See 43 Ky.R.
Resubmitted	2868	5-11-2016	201 KAR 14:125		
301 KAR 2:222E	1701	11-3-2015	Amended	2927	
Resubmitted	2870	5-11-2016	Withdrawn		7-12-16
301 KAR 2:225E	1111	8-21-2015	201 KAR 14:150		
Resubmitted	2875	5-11-2016	Amended	2929	See 43 Ky.R.
401 KAR 31:040E	2877	4-26-2016	201 KAR 14:180		
601 KAR 2:030E	1114	9-1-2015	Amended	2930	See 43 Ky.R.
Resubmitted	2702	3-29-2016	201 KAR 18:020		
921 KAR 3:035E	2708	4-1-2016	Amended	2810	8-5-2016
922 KAR 1:320E	2530	2-26-2016	201 KAR 20:240		
922 KAR 2:020E	2534	2-26-2016	Amended	2626	
922 KAR 2:160E	2540	2-26-2016	As Amended	2887	6-15-2016
922 KAR 2:260E	2550	2-26-2016	201 KAR 20:520	2684	See 43 Ky.R.
			201 KAR 23:055	2845	See 43 Ky.R.
ORDINARY ADMINISTRATIVE REGULATIONS:			201 KAR 23:070		
9 KAR 1:040			Amended	2251	
Amended	2911	See 43 Ky.R.	AmComments	2591	
11 KAR 4:080			As Amended	2888	6-15-2016
Amended	2611	7-1-2016	201 KAR 23:075		
11 KAR 5:145			Amended	2812	See 43 Ky.R.
Amended	2612	7-1-2016	201 KAR 29:015		
103 KAR 3:050			Amended	2628	See 43 Ky.R.
Amended	2614		201 KAR 32:030		
As Amended	2881	7-1-2016	Amended	2817	See 43 Ky.R.
200 KAR 30:010			201 KAR 44:020		
Amended	2913	See 43 Ky.R.	Repealed	2685	7-1-2016
200 KAR 30:020			201 KAR 44:021(r)	2685	7-1-2016
Amended	2914	See 43 Ky.R.	201 KAR 44:030		
200 KAR 30:030			Repealed	2685	7-1-2016
Amended	2916	See 43 Ky.R.	201 KAR 45:110		
200 KAR 30:040			Amended	855	See 43 Ky.R.
Amended	2918	See 43 Ky.R.	201 KAR 46:020		
200 KAR 30:050			Amended	2932	See 43 Ky.R.
Repealed	2997	10-7-2016	201 KAR 46:070		
200 KAR 30:051(r)	2997	10-7-2016	Amended	2933	See 43 Ky.R.
200 KAR 30:060			301 KAR 2:095		
Repealed	2997	10-7-2016	Amended	2819	7-19-2016
200 KAR 30:070			301 KAR 2:122		
Amended	2919		Amended	2820	See 43 Ky.R.
Withdrawn		7-29-2016	301 KAR 2:176		
201 KAR 9:016			Amended	2935	See 43 Ky.R.
Amended	2796	7-20-2016	301 KAR 2:221		
201 KAR 9:025			Amended	2937	See 43 Ky.R.
Amended	2798	See 43 Ky.R.	301 KAR 2:222		
201 KAR 9:081			Amended	2940	See 43 Ky.R.
Amended	2800	See 43 Ky.R.	301 KAR 2:225		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
Amended	2944	8-4-2016	Amended	2957	9-2-2016
301 KAR 2:226			803 KAR 2:317		
Amended	2822	See 43 Ky.R.	Amended	2958	9-2-2016
301 KAR 5:040			803 KAR 2:318		
Amended	2947	See 43 Ky.R.	Amended	2960	9-2-2016
401 KAR 31:040			803 KAR 2:320		
Amended	2949	See 43 Ky.R.	Amended	2962	9-2-2016
401 KAR 51:010			803 KAR 2:400		
Amended	2824	See 43 Ky.R.	Amended	2968	See 43 Ky.R.
401 KAR 53:010			803 KAR 2:403		
Amended	2830	See 43 Ky.R.	Amended	2970	9-2-2016
501 KAR 6:020			803 KAR 2:404		
Amended	2630		Amended	2972	9-2-2016
AmComments	2908	See 43 Ky.R.	803 KAR 2:421		
501 KAR 6:170			Amended	2974	9-2-2016
Amended	2632		803 KAR 2:425		
As Amended	2890	7-1-2016	Amended	2976	9-2-2016
600 KAR 1:030			803 KAR 2:500		
Repealed	2846	8-2-2016	Amended	2978	9-2-2016
600 KAR 1:031(r)	2846	8-2-2016	803 KAR 25:010		
600 KAR 1:045			Amended	2634	See 43 Ky.R.
Repealed	2846	8-2-2016	803 KAR 25:009		
600 KAR 2:010			Repealed	2686	10-7-2016
Repealed	2847	8-2-2016	803 KAR 25:014(r)	2686	10-7-2016
600 KAR 2:011(r)	2847	8-2-2016	803 KAR 25:089		
600 KAR 2:020			Amended	2980	10-7-2016
Repealed	2847	8-2-2016	804 KAR 4:400		
600 KAR 2:030			Amended	2839	
Repealed	2847	8-2-2016	Withdrawn		7-13-2016
600 KAR 2:040			804 KAR 9:040		
Repealed	2847	8-2-2016	Amended	2648	9-2-2016
601 KAR 1:030			808 KAR 9:050	2852	See 43 Ky.R.
Repealed	2849	8-2-2016	815 KAR 6:010		
601 KAR 1:031			Amended	2265	
Repealed	2849	8-2-2016	AmComments	2596	
601 KAR 1:032(r)	2849	8-2-2016	As Amended	2891	7-1-2016
601 KAR 1:045			815 KAR 6:040		
Repealed	2849	8-2-2016	Amended	2269	
601 KAR 1:050			As Amended	2894	7-1-2016
Repealed	2849	8-2-2016	815 KAR 6:080		
601 KAR 1:065			Amended	2270	
Repealed	2849	8-2-2016	As Amended	2895	7-1-2016
601 KAR 1:070			815 KAR 6:090		
Repealed	2849	8-2-2016	Amended	2272	
601 KAR 2:030			AmComments	2600	
Amended	2833		As Amended	2895	7-1-2016
601 KAR 9:055			815 KAR 7:120		
Repealed	2850	8-2-2016	Amended	2650	6-22-2016
601 KAR 9:056(r)	2850	8-2-2016	815 KAR 7:125		
601 KAR 15:010			Amended	2653	6-22-2016
Repealed	2851	8-2-2016	815 KAR 8:095	2687	
601 KAR 15:020			As Amended	2897	6-22-2016
Repealed	2851	8-2-2016	815 KAR 20:084	2688	
601 KAR 15:030(r)	2851	8-2-2016	As Amended	2898	6-22-2016
704 KAR 3:470			815 KAR 20:191		
Repealed	2998	9-2-2016	Amended	2655	
704 KAR 3:471(r)	2998	9-2-2016	As Amended	2899	6-22-2016
780 KAR 4:030			815 KAR 20:195		
Repealed	2999	9-2-2016	Amended	2661	
780 KAR 4:031	2999	9-2-2016	As Amended	2904	6-22-2016
780 KAR 7:060			902 KAR 4:120		
Amended	2951	See 43 Ky.R.	Amended	2982	See 43 Ky.R.
780 KAR 7:070			902 KAR 100:030		
Repealed	3000	9-2-2016	Amended	2985	See 43 Ky.R.
780 KAR 7:071(r)	3000	9-2-2016	902 KAR 100:080		
803 KAR 2:300			Amended	2990	See 43 Ky.R.
Amended	2953	9-2-2016	902 KAR 100:085		
803 KAR 2:307			Amended	2993	See 43 Ky.R.
Amended	2955	See 43 Ky.R.	921 KAR 3:035		
803 KAR 2:308			Amended	2841	See 43 Ky.R.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
922 KAR 1:320					
Amended	2663	See 43 Ky.R.			
922 KAR 2:020					
Amended	2668	See 43 Ky.R.			
922 KAR 2:160					
Amended	2673	See 43 Ky.R.			
922 KAR 2:260	2690	See 43 Ky.R.			

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn before being printed in Register
- *** Emergency expired after 180 days
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))
- (r) Repealer regulation: KRS 13A.310 - on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
VOLUME 43					
SYMBOL KEY:			16 KAR 1:030		
* Statement of Consideration not filed by deadline			Amended	585	
** Withdrawn before being printed in Register			16 KAR 6:010		
*** Emergency expired after 180 days			Amended	588	
‡ Withdrawn deferred more than twelve months (KRS			16 KAR 7:010		
13A.300(4) and 13A.315(1)(d))			Amended	592	
(r) Repealer regulation: KRS 13A.310 - on the effective date of an			30 KAR 7:010		
administrative regulation that repeals another, the regulations			Amended	250	
compiler shall delete the repealed administrative regulation and			40 KAR 2:145	358	
the repealing administrative regulation.			AsAmended	674	
<hr/>			40 KAR 2:150		
EMERGENCY ADMINISTRATIVE REGULATIONS:			Amended	251	
(Note: Emergency regulations expire 180 days from the date filed;			AmComments	556	
or 180 days from the date filed plus number of days of requested			AsAmended	675	
extension, or upon replacement or repeal, whichever occurs first.)			40 KAR 2:250		
13 KAR 4:010E	657	10-14-2016	Recodified as 40 KAR 2:155		6-30-2016
101 KAR 2:210E	517	9-15-2016	101 KAR 2:210		
103 KAR 15:180E	168	7-13-2016	Amended	599	
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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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