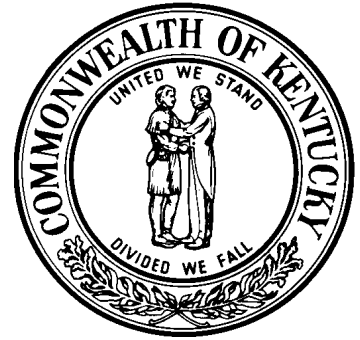


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 43, NUMBER 7
SUNDAY, JANUARY 1, 2017

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

ARRS – January 6, 2017 TENTATIVE AGENDA	1139
REGULATION REVIEW PROCEDURE	1143

EMERGENCIES

CHFS: Department for Medicaid Services	1144
CHFS: Department for Community Based Services	1154

AS AMENDED

Governor's Office: Early Childhood Development Authority	1161
Council on Postsecondary Education.....	1162
Finance and Administration Cabinet: Office of the Secretary ...	1164
Board of Chiropractic Examiners	1169
Board of Durable Medical Equipment Suppliers	1170
Department of Fish and Wildlife Resources	1173
Department of Corrections.....	1179
Department of Education	1180
CHFS: Department for Behavioral Health, Developmental and Intellectual Disabilities	1182
CHFS: Department for Community Based Services	1182

AMENDED AFTER COMMENTS

Education Professional Standards Board.....	1185
Public Transportation Infrastructure Authority	1199
CHFS: Department for Community Based Services	1201

PROPOSED AMENDMENTS

Education Professional Standards Board.....	1205
Department of Military Affairs.....	1211
Board of Physical Therapy.....	1237
Board of Alcohol and Drug Counselors	1243
Board of Licensure for Pastoral Counselors.....	1254
Department of Fish and Wildlife Resources	1261
Department of Education	1264
Labor Cabinet: Department of Workplace Standards	1265
Department of Alcoholic Beverage Control	1277
Department of Insurance	1278
Department of Financial Institutions	1292
Horse Racing Commission	1294
CHFS: Office of Health Policy.....	1302
CHFS: Office of Inspector General	1311
CHFS: Department for Medicaid Services	1316
CHFS: Department for Community Based Services	1321

NEW ADMINISTRATIVE REGULATIONS

Education Professional Standards Board	1330
Department of Revenue	1333
Board of Alcohol and Drug Counselors.....	1339
Department of Alcoholic Beverage Control	1341
Department of Insurance.....	1342
Department of Financial Institutions	1344
CHFS: Department for Public Health.....	1348
CHFS: Department for Medicaid Services	1350
CHFS: Department for Community Based Services	1355

ARRS Report	1357
OTHER COMMITTEE REPORTS	1360

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates	G - 2
KRS Index.....	G - 12
Technical Amendments.....	G - 22
Subject Index	G - 25

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet January 6, 2017, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1139 to 1142** 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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VOLUME 43, NUMBER 7 – JANUARY 1, 2017

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, JANUARY 6, 2017, at 1:00 p.m., Room 149 Capitol Annex**

**FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission**

Commission

9 KAR 1:010. Statement of financial disclosure.

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services**

Authority

11 KAR 4:080. Student aid applications.

**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. (Amended After Comments)

Assessment

16 KAR 6:010. Assessment prerequisites for teacher certification. (Amended After Comments)

Internship

16 KAR 7:010. Kentucky Teacher Internship Program. (Amended After Comments)

SECRETARY OF STATE

Occupational License Fees

30 KAR 7:020. Standard form occupational license fee returns for dual tax districts.

STATE BOARD OF ELECTIONS

Forms and Procedures

31 KAR 4:170. Exceptions to prohibition on electioneering.

PERSONNEL BOARD

Board

101 KAR 1:325. Probationary periods.

PERSONNEL CABINET

Personnel Cabinet, Classified

101 KAR 2:034 & E. Classified compensation administrative regulations. ("E" expires 5/14/2017)

101 KAR 2:180 & E. Employee performance evaluation system. ("E" expires 5/14/2017)

Personnel Cabinet, Unclassified

101 KAR 3:045 & E. Compensation plan and pay incentives for unclassified service. ("E" expires 5/14/2017)

Personnel Cabinet, General

101 KAR 5:016. Repeal of 101 KAR 5:015.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue**

Forms

103 KAR 3:011. Repeal of 103 KAR 3:010, 103 KAR 3:020, 103 KAR 3:030, 103 KAR 3:040, and 103 KAR 3:050.

**GENERAL GOVERNMENT CABINET
Board of Nursing**

Board

201 KAR 20:215. Continuing competency requirements.

201 KAR 20:220. Nursing continuing education provider approval.

Board of Social Work

Board

201 KAR 23:075. Continuing education for renewal.

Board of Licensure for Occupational Therapy

Board

201 KAR 28:090. Renewals.

201 KAR 28:200. Continuing competence.

201 KAR 28:230. Telehealth occupational therapy services.

Board of Licensed Professional Counselors

Board

201 KAR 36:045. Distance counseling. (Deferred from December)

201 KAR 36:055. Administrative subpoena. (Deferred from December)

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

Board of Licensure for Massage Therapy

Board

- 201 KAR 42:020. Fees. (Not Amended After Comments)
- 201 KAR 42:040. Renewal. (Not Amended After Comments)

BOARD OF EMERGENCY MEDICAL SERVICES

Board

- 202 KAR 7:810. Survivor benefits for death of emergency medical services personnel.

PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY

Authority

- 202 KAR 10:010. Unsolicited proposals. (Amended After Comments)
- 202 KAR 10:020. Public-private partnerships. (Not Amended After Comments)
- 202 KAR 10:030 & E. Tolling projects. ("E" expires 5/13/2017)

**GENERAL GOVERNMENT CABINET
Department of Agriculture**

Marketing and Product Promotion

- 302 KAR 39:020. Kentucky Small Farm Wineries Support Fund.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality**

New Source Performance Standards

- 401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources.

General Standards of Performance

- 401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants.
- 401 KAR 63:060. List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

**TRANSPORTATION CABINET
Department of Highways**

Preconstruction

- 603 KAR 2:020. Public-private partnerships. (Comments Received, SOC ext. due 1/13/2017)

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employment and Training**

Unemployment Insurance

- 787 KAR 1:070. Reasonable time for protesting claim. (Not Amended After Comments)

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

Quotas

- 804 KAR 9:010. Quota retail license limits for counties.

**Department of Insurance
Agent Licensing Division**

Agents, Consultants, Solicitors, and Adjusters

- 806 KAR 9:360 & E. Pharmacy benefit manager license. ("E" expires 4/23/2017)

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Kentucky Health Benefit and Information Exchange**

Kentucky Health Benefit Exchange

- 900 KAR 10:200 & E. Kentucky State Based Exchange on the Federal Platform. ("E" expires 4/30/2017)

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

Health Services and Facilities

- 902 KAR 20:013. Repeal of 902 KAR 20:014. (Deferred from December)
- 902 KAR 20:091 & E. Facilities specifications, operation and services; community mental health center. ("E" expires 4/30/2017)

Division of Audits and Investigations

Controlled Substances

- 902 KAR 55:015. Schedule I substances. ("E" expires 5/14/2017)
- 902 KAR 55:035. Schedule V substances. (Not Amended After Comments)

Division of Health Care

Office of Inspector General

- 906 KAR 1:151. Repeal of 906 KAR 1:150. (Deferred from December)

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

Department for Medicaid Services Division of Community Alternatives

Medicaid Services

- 907 KAR 1:045 & E. Reimbursement provisions and requirements regarding community mental health center services. ("E" expires 4/30/2017)
- 907 KAR 1:047 & E. Community mental health center primary care services. ("E" expires 4/30/2017)

Commissioner's Office

Payments and Services

- 907 KAR 3:031. Repeal of 907 KAR 3:030.

Kentucky Children's Health Insurance Program

- 907 KAR 4:020. Kentucky Children's Health Insurance Program Medicaid Expansion Title XXI of the Social Security Act.
- 907 KAR 4:030. Kentucky Children's Health Insurance Program Phase III Title XXI of the Social Security Act.

Division of Community Alternatives

Behavioral Health

- 907 KAR 15:005 & E. Definitions for 907 KAR Chapter 15. ("E" expires 4/30/2017)
- 907 KAR 15:010 & E. Coverage provisions and requirements regarding behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups. ("E" expires 4/30/2017)
- 907 KAR 15:015 & E. Reimbursement provisions and requirements for behavioral health services provided by individual behavioral health providers, behavioral health provider groups, or behavioral health multi-specialty groups. ("E" expires 4/30/2017)

Department for Community Based Services Division of Protection and Permanency

Violence Prevention Resources

- 920 KAR 2:040. Standards for children's advocacy centers.

Department for Income Support Child Support Enforcement

Family Support (Sarah)

- 921 KAR 1:001. Definitions for 921 KAR Chapter 1. (Deferred from December)

Department for Community Based Services Division of Protection and Permanency

Child Welfare

- 922 KAR 1:140. Foster care and adoption permanency services. (Amended After Comments)

Division of Family Support

Community Action Agencies

- 922 KAR 6:010. Standards for community action agencies.

REGULATIONS REMOVED FROM JANUARY AGENDA

FINANCE AND ADMINISTRATION CABINET Executive Branch Ethics Commission

Commission

- 9 KAR 1:060. Requirements relating to fundraising activities and charitable nonprofit organizations. (Comments Received, SOC ext. due 1/13/2017)

GENERAL GOVERNMENT CABINET Board of Licensed Professional Counselors

Board

- 201 KAR 36:005. Definitions for 201 KAR Chapter 36. (Comments Received, SOC ext., due 1/13/2017)
- 201 KAR 36:020. Fees. (Comments Received, SOC ext., due 1/13/2017)
- 201 KAR 36:030. Continuing education requirements. (Comments Received, SOC ext., due 1/13/2017)
- 201 KAR 36:040. Code of ethics. (Comments Received, SOC ext., due 1/13/2017)
- 201 KAR 36:050. Complaint management process. (Comments Received, SOC ext., due 1/13/2017)
- 201 KAR 36:060. Qualifying experience under supervision. (Comments Received, SOC ext., due 1/13/2017)
- 201 KAR 36:065. Licensed professional clinical counselor supervisor. (Comments Received, SOC ext., due 1/13/2017)
- 201 KAR 36:070. Application, education, and examination requirements. (Comments Received, SOC ext., due 1/13/2017)
- 201 KAR 36:075. Renewal, late renewal, and reinstatement of license. (Comments Received, SOC ext., due 1/13/2017)
- 201 KAR 36:090. Administrative hearings for denials and revocation of probation. (Comments Received, SOC ext., due 1/13/2017)

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water

Water Resources

- 401 KAR 4:070. Coal combustion residuals surface impoundments. (Comments Received, SOC ext., due 1/13/2017)

Division of Waste Management

Special Waste

- 401 KAR 45:010. Definitions for 401 KAR Chapter 45. (Comments Received, SOC ext., due 1/13/2017)
- 401 KAR 45:060. Special waste permit-by-rule. (Comments Received, SOC ext., due 1/13/2017)

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

Coal Combustion Residuals (CCR)

401 KAR 46:101. Definitions for 401 KAR Chapter 46. (Comments Received, SOC ext., due 1/13/2017)

401 KAR 46:110. Standards for the disposal of coal combustion residuals (CCR) in CCR units. (Comments Received, SOC ext., due 1/13/2017)

401 KAR 46:120. Coal combustion residuals (CCR) permit-by-rule. (Comments Received, SOC ext., due 1/13/2017)

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing

Administration

601 KAR 2:030 & E. Ignition interlock. ("E" expires 4/25/2017)

CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy

State Health Plan

900 KAR 5:020 & E. State Health Plan for facilities and services. ("E" expires 4/24/2017) (Comments Received, SOC ext., due 1/13/2017)

Office of Inspector General Division of Health Care

Health Services and Facilities

902 KAR 20:008. License procedures and fee schedule. (Comments Received, SOC ext., due 1/13/2017)

Office of Inspector General

906 KAR 1:190. Kentucky National Background Check Program. (Comments Received, SOC 1/13/2017)

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
907 KAR 17:015E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a) 3. to establish a new external independent third-party review for providers to appeal a denial by any Medicaid Managed Care Organization policy in order to comply with a deadline established in KRS 205.646(5). This action must be taken on an emergency basis to comply with the requirements of KRS 205.646(5). An ordinary administrative regulation would not allow the cabinet to satisfy the deadline provision in KRS 205.646(5). This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative is identical to this emergency administrative regulation.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(Emergency Amendment)

907 KAR 17:015E. Managed care organization requirements and policies relating to providers.

RELATES TO: 194A.025(3), 42 U.S.C. 1396n(c), 42 C.F.R. 438

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

EFFECTIVE: December 1, 2016

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to providers.

Section 1. Provider Network. (1) An MCO shall:

(a) Enroll providers of sufficient types, numbers, and specialties in its network to satisfy the:

1. Access and capacity requirements established in Section 2 of this administrative regulation; and

2. Quality requirements established in 907 KAR 17:025, Section 5;

(b) Attempt to enroll the following providers in its network:

1. A teaching hospital;

2. A rural health clinic;

3. The Kentucky Commission for Children with Special Health Care Needs;

4. A local health department; and

5. A community mental health center;

(c) Demonstrate to the department the extent to which it has enrolled providers in its network who have traditionally provided services to Medicaid recipients;

(d) Have at least one (1) FQHC in a region where the MCO operates in accordance with 907 KAR 17:020, if there is an FQHC that is licensed to provide services in the region; and

(e) Exclude, terminate, or suspend from its network a provider or subcontractor who engages in an activity that results in suspension, termination, or exclusion from a Medicare or Medicaid program.

(2) The length of an exclusion, termination, or suspension referenced in subsection (1)(e) of this section shall equal the length

of the exclusion, termination, or suspension imposed by a Medicare or Medicaid program.

(3) If an MCO is unable to enroll a provider specified in subsection (1)(b) or (c) of this section, the MCO shall submit to the department for approval, documentation which supports the MCO's conclusion that adequate services and service sites as required in Section 2 of this administrative regulation shall be provided without enrolling the specified provider.

(4) If an MCO or the department determines that the MCO's provider network is inadequate to comply with the access standards established in Section 2 of this administrative regulation for ninety-five (95) percent of the MCO's enrollees, the MCO shall:

(a) Notify the department; and

(b) Submit a corrective action plan to the department.

(5) A corrective action plan referenced in subsection (4)(b) of this section shall:

(a) Describe the deficiency in detail; and

(b) Identify a specific action to be taken by the MCO to correct the deficiency, including a time frame.

Section 2. Provider Access Requirements. (1) The access standards requirements established in 42 C.F.R. 438.206 through 438.210 shall apply to an MCO.

(2) An MCO shall make available and accessible to an enrollee:

(a) Facilities, service locations, and personnel sufficient to provide covered services consistent with the requirements specified in this section;

(b) Emergency medical services twenty-four (24) hours a day, seven (7) days a week; and

(c) Urgent care services within forty-eight (48) hours of request.

(3)(a) An MCO's primary care provider delivery site shall be within:

1. Thirty (30) miles or thirty (30) minutes from an enrollee's residence in an urban area; or

2. Forty-five (45) miles or forty-five (45) minutes from an enrollee's residence in a non-urban area.

(b) An MCO's primary care provider shall not have an enrollee to primary care provider ratio greater than 1,500:1.

(c) An appointment wait time at an MCO's primary care delivery site shall not exceed:

1. Thirty (30) days from the date of an enrollee's request for a routine or preventive service; or

2. Forty-eight (48) hours from an enrollee's request for urgent care.

(4)(a) An appointment wait time for a specialist, except for a specialist providing a behavioral health service as provided in paragraph (b) of this subsection, shall not exceed:

1. Thirty (30) days from the referral for routine care; or

2. Forty-eight (48) hours from the referral for urgent care.

(b)1. A behavioral health service requiring crisis stabilization shall be provided within twenty-four (24) hours of the referral.

2. Behavioral health urgent care shall be provided within forty-eight (48) hours of the referral.

3. A behavioral health service appointment following a discharge from an acute psychiatric hospital shall occur within fourteen (14) days of discharge.

4. A behavioral health service appointment not included in subparagraph 1, 2, or 3 of this paragraph shall occur within sixty (60) days of the referral.

(5) An MCO shall have:

(a) Specialists available for the subpopulations designated in 907 KAR 17:010, Section 17; and

(b) Sufficient pediatric specialists to meet the needs of enrollees who are less than twenty-one (21) years of age.

(6) An emergency service shall be provided at a health care facility most suitable for the type of injury, illness, or condition, whether or not the facility is in the MCO network.

(7)(a) A hospital located in Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within:

1. Thirty (30) miles or thirty (30) minutes from an enrollee's residence in an urban area; or
 2. Sixty (60) minutes of an enrollee's residence in a non-urban area.
 - (b) A hospital located in Region 3 shall be within:
 1. Thirty (30) miles or thirty (30) minutes of an enrollee's residence in an urban area; or
 2. Sixty (60) miles or sixty (60) minutes of an enrollee's residence in a non-urban area.
 - (8) A behavioral or physical rehabilitation service in:
 - (a) Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or
 - (b) Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.
 - (9)(a) A dental service in:
 1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or
 2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.
 - (b) A dental appointment wait time shall not exceed:
 1. Three (3) weeks for a regular appointment; or
 2. Forty-eight (48) hours for urgent care.
 - (10)(a) A general vision, laboratory, or radiological service in:
 1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or
 2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.
 - (b) A general vision, laboratory, or radiological appointment wait time shall not exceed:
 1. Three (3) weeks for a regular appointment; or
 2. Forty-eight (48) hours for urgent care.
 - (11)(a) A pharmacy service in:
 1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or
 2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.
 - (b) A pharmacy delivery site, except for a mail-order pharmacy, shall not be further than fifty (50) miles from an enrollee's residence.
 - (c) Transport time or distance threshold shall not apply to a mail-order pharmacy except that it shall:
 1. Be physically located within the United States of America; and
 2. Provide delivery to the enrollee's residence.
 - (12)(a) Prior authorization shall not be required for a physical emergency service or a behavioral health emergency service.
 - (b) In order to be covered, an emergency service shall be:
 1. Medically necessary;
 2. Authorized after being provided if the service was not prior authorized; and
 3. Covered in accordance with 907 KAR 17:020.
- Section 3. MCO Provider Enrollment. (1) A provider enrolled with an MCO shall:
- (a) Be credentialed by the MCO in accordance with the standards established in Section 4 of this administrative regulation; and
 - (b) Be eligible to enroll with the Kentucky Medicaid Program in accordance with 907 KAR 1:672.
- (2) An MCO shall:
- (a) Not enroll a provider in its network if:
 1. The provider has an active sanction imposed by the Centers for Medicare and Medicaid Services or a state Medicaid agency;
 2. A required provider license or a certification is not current;
 3. Based on information or records available to the MCO:
 - a. The provider owes money to the Kentucky Medicaid program; or
 - b. The Kentucky Office of the Attorney General has an active fraud investigation of the provider; or

4. The provider is not credentialed;
- (b) Have and maintain documentation regarding a provider's qualifications; and
- (c) Make the documentation referenced in paragraph (b) of this subsection available for review by the department.
- (3)(a) A provider shall not be required to participate in Kentucky Medicaid fee-for-service to enroll with an MCO.
- (b) If a provider is not a participant in Kentucky Medicaid fee-for-service, the provider shall obtain a Medicaid provider number from the department in accordance with 907 KAR 1:672.

Section 4. Provider Credentialing and Recredentialing. (1) An MCO shall:

- (a) Have policies and procedures that comply with 907 KAR 1:672; KRS 205.560; and 42 C.F.R. 455 Subpart E, 455.400 to 455.470, regarding the credentialing and recredentialing of a provider;
- (b) Have a process for verifying a provider's credentials and malpractice insurance that shall include:
 1. Written policies and procedures for credentialing and recredentialing of a provider;
 2. A governing body, or a group or individual to whom the governing body has formally delegated the credentialing function; and
 3. A review of the credentialing policies and procedures by the governing body or its delegate;
- (c) Have a credentialing committee that makes recommendations regarding credentialing;
- (d) If a provider requires a review by the credentialing committee, based on the MCO's quality criteria, notify the department of the facts and outcomes of the review;
- (e) Have written policies and procedures for:
 1. Excluding, terminating, or suspending a provider; and
 2. Reporting a quality deficiency that results in an exclusion, suspension, or termination of a provider;
- (f) Document its monitoring of a provider;
- (g) Verify a provider's qualifications through a primary source that includes:
 1. A current valid license or certificate to practice in the Commonwealth of Kentucky;
 2. A Drug Enforcement Administration certificate and number, if applicable;
 3. If a provider is not board certified, proof of graduation from a medical school and completion of a residency program;
 4. Proof of completion of an accredited nursing, dental, physician assistant, or vision program, if applicable;
 5. If a provider states on an application that the provider is board certified in a specialty, a professional board certification;
 6. A previous five (5) year work history;
 7. A professional liability claims history;
 8. If a provider requires access to a hospital to practice, proof that the provider has clinical privileges and is in good standing at the hospital designated by the provider as the primary admitting hospital;
 9. Malpractice insurance;
 10. Documentation, if applicable, of a:
 - a. Revocation, suspension, or probation of a state license or Drug Enforcement Agency certificate and number;
 - b. Curtailment or suspension of a medical staff privilege;
 - c. Sanction or penalty imposed by the United States Department of Health and Human Services or a state Medicaid agency; or
 - d. Censure by a state or county professional association; and
11. The most recent provider information available from the National Practitioner Data Bank;
- (h) Obtain access to the National Practitioner Data Bank as part of its credentialing process;
- (i) Have:
 1. A process to recredential a provider at least once every three (3) years that shall be in accordance with subsection (3) of this section; and
 2. Procedures for monitoring a provider sanction, a complaint, or a quality issue between a recredentialing cycle;

(j) Have or obtain National Committee for Quality Assurance (NCQA) accreditation for its Medicaid product line:

1. By November 1, 2015, for an MCO that began participating November 1, 2011;

2. By January 1, 2017, for an MCO that began participating January 1, 2013; or

3. Within four (4) years of the date an MCO begins participation, for an MCO that did not begin participating by the effective date of this administrative regulation; and

(k) Continuously maintain NCQA accreditation for its Medicaid product line after obtaining the accreditation.

(2) If an MCO subcontracts a credentialing or recredentialing function, the MCO and the subcontractor shall have written policies and procedures for credentialing and recredentialing.

(3) A provider shall complete a credentialing application, in accordance with 907 KAR 1:672, that includes a statement by the provider regarding:

(a) The provider's ability to perform essential functions of a position, with or without accommodation;

(b) The provider's lack of current illegal drug use;

(c) The provider's history of a:

1. Loss of license or a felony conviction;

2. Loss or limitation of a privilege; or

3. Disciplinary action;

(d) A sanction, suspension, or termination by the United States Department of Health and Human Services or a state Medicaid agency;

(e) Clinical privileges and standing at a hospital designated as the primary admitting hospital of the provider;

(f) Malpractice insurance maintained by the provider; and

(g) The correctness and completeness of the application.

(4) The department shall be responsible for credentialing and recredentialing a hospital-based provider.

Section 5. Provider Services. (1) An MCO shall have a provider services function responsible for:

(a) Enrolling, credentialing, recredentialing, and evaluating a provider;

(b) Assisting a provider with an inquiry regarding enrollee status, prior authorization, referral, claim submission, or payment;

(c) Informing a provider of the provider's rights and responsibilities;

(d) Handling, recording, and tracking a provider grievance and appeal;

(e) Developing, distributing, and maintaining a provider manual;

(f) Provider orientation and training, including:

1. Medicaid covered services;

2. EPSDT coverage;

3. Medicaid policies and procedures;

4. MCO policies and procedures; and

5. Fraud, waste, and abuse;

(g) Assisting in coordinating care for a child or adult with a complex or chronic condition;

(h) Assisting a provider with enrolling in the Vaccines for Children Program in accordance with 907 KAR 1:680; and

(i) Providing technical support to a provider regarding the provision of a service.

(2) An MCO's provider services staff shall:

(a) Be available at a minimum Monday through Friday from 8:00 a.m. to 6:00 p.m. Eastern Time; and

(b) Operate a provider call center.

Section 6. Provider Manual. (1) An MCO shall provide a provider manual to a provider within five (5) working days of enrollment with the MCO.

(2) Prior to distributing a provider manual or update to a provider manual, an MCO shall procure the department's approval of the provider manual or provider manual update.

(3) The provider manual shall be available in hard copy and on the MCO's Web site.

Section 7. Provider Orientation and Education. An MCO shall:

(1) Conduct an initial orientation for a provider within thirty (30) days of enrollment with the MCO to include:

(a) Medicaid coverage policies and procedures;

(b) Reporting fraud and abuse;

(c) Medicaid eligibility groups;

(d) The standards for preventive health services;

(e) The special needs of enrollees;

(f) Advance medical directives;

(g) EPSDT services;

(h) Claims submission;

(i) Care management or disease management programs available to enrollees;

(j) Cultural sensitivity;

(k) The needs of enrollees with mental, developmental, or physical disabilities;

(l) The reporting of communicable diseases;

(m) The MCO's QAPI program as referenced in 907 KAR 17:025, Section 5;

(n) Medical records;

(o) The external quality review organization; and

(p) The rights and responsibilities of enrollees and providers; and

(2) Ensure that a provider:

(a) Is informed of an update on a federal, state, or contractual requirement;

(b) Receives education on a finding from its QAPI program if deemed necessary by the MCO or department; and

(c) Makes available to the department training attendance rosters that shall be dated and signed by the attendees.

Section 8. Primary Care Provider Responsibilities. (1) A PCP shall:

(a) Maintain:

1. Continuity of an enrollee's health care;

2. A current medical record for an enrollee in accordance with Section 12 of this administrative regulation; and

3. Formalized relationships with other PCPs to refer enrollees for after-hours care, during certain days, for certain services, or other reasons to extend their practice;

(b) Refer an enrollee for specialty care or other medically necessary services:

1. Within the MCO's network; or

2. If the services are not available within the MCO's network, outside the MCO's network;

(c) Discuss advance medical directives with an enrollee;

(d) Provide primary and preventive care, including EPSDT services;

(e) Refer an enrollee for a behavioral health service if clinically indicated; and

(f) Have an after-hours phone arrangement that ensures that a PCP or a designated medical practitioner returns the call within thirty (30) minutes.

(2) An MCO shall monitor a PCP to ensure compliance with the requirements established in this section.

Section 9. Provider Discrimination. An MCO shall:

(1) Comply with the anti-discrimination requirements established in:

(a) 42 U.S.C. 1396u-2(b)(7);

(b) 42 C.F.R. 438.12; and

(c) KRS 304.17A-270; and

(2) Provide written notice to a provider denied participation in the MCO's network stating the reason for the denial.

Section 10. Release for Ethical Reasons. An MCO shall:

(1) Not require a provider to perform a treatment or procedure that is contrary to the provider's conscience, religious beliefs, or ethical principles in accordance with 42 C.F.R. 438.102;

(2) Not prohibit or restrict a provider from advising an enrollee about health status, medical care, or a treatment:

(a) Whether or not coverage is provided by the MCO; and

(b) If the provider is acting within the lawful scope of practice; and

(3) Have a referral process in place if a provider declines to perform a service because of an ethical reason.

Section 11. Provider Grievances and Appeals. (1) An MCO shall have written policies and procedures for the filing of a provider grievance or appeal.

(2) A provider shall have the right to file:

- (a) A grievance with an MCO; or
- (b) An appeal with an MCO regarding:

- 1. A provider payment issue; or
- 2. A contractual issue.

(3)(a) A provider grievance or appeal shall be resolved within thirty (30) calendar days.

(b)1. If a grievance or appeal is not resolved within thirty (30) days, an MCO shall request a fourteen (14) day extension from the provider.

2. The provider shall approve the extension request from the MCO.

(c) If a provider requests an extension, the MCO shall approve the extension.

(4) In accordance with KRS 205.646, a provider who has exhausted an MCO's internal grievance or appeal process may request an external independent third-party review pursuant to 907 KAR 17:035 on any final decision that denies in whole or in part a health care service to an enrollee or a claim for reimbursement.

Section 12. Medical Records. (1) An MCO shall:

(a) Require a provider to maintain an enrollee medical record on paper or in an electronic format; and

(b) Have a process to systematically review provider medical records to ensure compliance with the medical records standards established in this section.

(2) An enrollee medical record shall:

(a) Be legible, current, detailed, organized, and signed by the service provider;

(b)1. Be kept for at least five (5) years from the date of service unless a federal statute or regulation requires a longer retention period; and

2. If a federal statute or regulation requires a retention period longer than five (5) years, be kept for at least as long as the federally-required retention period;

(c) Include the following minimal detail for an individual clinical encounter:

1. The history and physical examination for the presenting complaint;

2. A psychological or social factor affecting the patient's physical or behavioral health;

3. An unresolved problem, referral, or result from a diagnostic test; and

4. The plan of treatment including:

a. Medication history, medications prescribed, including the strength, amount, and directions for use and refills;

b. Therapy or other prescribed regimen; and

c. Follow-up plans, including consultation, referrals, and return appointment.

(3) A medical chart organization and documentation shall, at a minimum, contain the following:

(a) Enrollee identification information on each page;

(b) Enrollee date of birth, age, gender, marital status, race or ethnicity, mailing address, home and work addresses, and telephone numbers (if applicable), employer (if applicable), school (if applicable), name and telephone number of an emergency contact, consent form, language spoken, and guardianship information (if applicable);

(c) Date of data entry and of the encounter;

(d) Provider's name;

(e) Any known allergies or adverse reactions of the enrollee;

(f) Enrollee's past medical history;

(g) Identification of any current problem;

(h) If a consultation, laboratory, or radiology report is filed in the medical record, the ordering provider's initials or other documentation indicating review;

(i) Documentation of immunizations;

(j) Identification and history of nicotine, alcohol use, or substance abuse;

(k) Documentation of notification of reportable diseases and conditions to the local health department serving the jurisdiction in which the enrollee resides or to the Department for Public Health pursuant to 902 KAR 2:020;

(l) Follow-up visits provided secondary to reports of emergency room care;

(m) Hospital discharge summaries;

(n) Advance medical directives for adults; and

(o) All written denials of service and the reason for each denial.

Section 13. Provider Surveys. (1) An MCO shall:

(a) Conduct an annual survey of provider satisfaction of the quality and accessibility to a service provided by an MCO;

(b) Annually assess the need for conducting other surveys to support quality and performance improvement initiatives;

(c) Submit to the department for approval the survey tool used to conduct the survey referenced in paragraph (a) of this subsection; and

(d) Provide to the department:

1. A copy of the results of the provider survey referenced in paragraph (a) of this subsection;

2. A description of a methodology to be used to conduct surveys;

3. The number and percentage of providers surveyed;

4. Provider survey response rates;

5. Provider survey findings; and

6. Interventions conducted or planned by the MCO related to activities in this section.

(2) The department shall:

(a) Approve provider survey instruments prior to implementation; and

(b) Approve or disapprove an MCO's provider survey tool within fifteen (15) days of receipt of the survey tool.

Section 14. Cost Reporting Information. The department shall provide to the MCO the calculation of Medicaid allowable costs as used in the Medicaid Program.

Section 15. Centers for Medicare and Medicaid Services Approval and Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 18, 2016

FILED WITH LRC: December 1, 2016 at 1 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation adds the reference to 907 KAR 17:035, which establishes the requirements regarding external independent third-party reviews in accordance with KRS 205.646. An external independent third-party review is an appeal option for a Medicaid provider that has received an adverse final decision from a managed care organization (MCO) that "denies, in whole or in part, a health care service rendered by the provider to an enrollee of the Medicaid managed care organization." The party that receives an adverse decision from the review, whether it be the provider or the MCO, will then have the option to request an administrative

hearing conducted by the Cabinet for Health and Family Services. A separate administrative regulation (907 KAR 17:040) is being promulgated concurrently with this administrative regulation to establish the administrative hearing provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a mandate, established in KRS 205.646, to establish the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.646 by establishing the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(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 authorizing statutes by establishing the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(2) If 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 just adds the reference to 907 KAR 17:035 to allow providers the right to an external independent third-party review.

(b) The necessity of the amendment to this administrative regulation: This amendment establishes the provider's right to an external independent third-party appeal..

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing the policy of the external independent third-party review.

(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 creating the external independent third-party review to allow providers to appeal adverse decisions by the managed care organizations.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid providers and all five (5) managed care organizations will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will have to develop procedures to adhere to this Administrative Regulation. Medicaid providers will need to create an internal process that determines who, within their office, will request the external independent third-party review. Medicaid managed care organizations will have to create a new process, internally, which allows providers to submit the request for the external independent third-party review to the MCO. Medicaid managed care organizations will also need to revise all of their adverse determination letters and be prepared to submit denial documentation to the Department upon request from the providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Medicaid Services is unable to determine the cost to the physician's or MCOs. For providers, it will be an added administrative step. For managed care organization, there will be an added administrative step as well as the added cost of revising all adverse determination letters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the provider wins the appeal, they will receive reimbursement for a previously denied claim.

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

(a) Initially: DMS estimates that this administrative regulation will increase DMS's costs by \$4.95 million (\$3.71 million federal funds/\$1.24 million state funds) annually. In order to estimate a partial potential cost estimate for the external third-party review, the Department reviewed the number of similar appeals that were upheld against the MCOs in favor of the appealing providers which was approximately 30,000 per year. The Department has modified its existent contract with the contractor Island Peer Review Organization (IPRO) based on approximately one-third of the given number of similar appeals made the year before. The contract modification will pay IPRO \$495 per case review; thus the contract modification for the SFY 2017 contract allows for 10,000 case reviews for a total increase in the budget of \$4,950,000. This increase is funded at a 75/25 split with CMS paying the larger federal share.

Further, there are two positions being created for administrative assistants within DMS.

Finally, the Department is using two nurses from Community Alternatives for the independent reviews initiated for plan delivery rules and coverage denials review. These two medical professionals, if needed full time, will require a \$45,000 base salary plus 67% for state benefits per year for each positions. The total cost of both medical professionals can also be funded using 75% federal funds and 25% state funds.

(b) On a continuing basis: The response to the question in (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, 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: DMS was not allocated any funds to implement the administrative regulation. However, the DMS contract with IPRO, the external quality review organization, has been increased to allow for IPRO to conduct the external independent third-party reviews related to medical necessity. Additionally, DMS will be hiring additional staff to administer the additional administrative work.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration 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 Department for Medicaid Services will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.646.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue for state or local government will result from the amendment.

(c) How much will it cost to administer this program for the first year? DMS estimates that this administrative regulation will increase DMS's costs by \$4.95 million (\$3.71 million federal funds/\$1.24 million state funds) annually. In order to estimate a partial potential cost estimate for the external third-party review, the Department reviewed the number of similar appeals that were upheld against the MCOs in favor of the appealing providers which was approximately 30,000 per year. The Department has modified its existent contract with the contractor Island Peer Review Organization (IPRO) based on approximately one-third of the given number of similar appeals made the year before. The contract modification will pay IPRO \$495 per case review; thus the contract modification for the SFY 2017 contract allows for 10,000 case reviews for a total increase in the budget of \$4,950,000. This increase is funded at a 75/25 split with CMS paying the larger federal share.

Further, there are two positions being created for administrative assistants within DMS.

Finally, the Department is using two nurses from Community Alternatives for the independent reviews initiated for plan delivery rules and coverage denials review. These two medical professionals, if needed full time, will require a \$45,000 base salary plus 67% for state benefits per year for each positions. The total cost of both medical professionals can also be funded using 75% federal funds and 25% state funds.

(d) How much will it cost to administer this program for subsequent years? The response in (c) also applies here.

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

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

STATEMENT OF EMERGENCY **907 KAR 17:035E**

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)3. to establish external independent third-party review policy in order to comply with a deadline established in KRS 205.646(5). This action must be taken on an emergency basis to comply with the requirements of KRS 205.646(5). An ordinary administrative regulation would not allow the cabinet to satisfy the deadline provision in KRS 205.646(5). This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative is identical to this emergency administrative regulation.

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

CABINET FOR HEALTH AND FAMILY SERVICES **Department for Medicaid Services** **Commissioner's Office** **(New Emergency Administrative Regulation)**

907 KAR 17:035E. External Independent Third-Party Review.

RELATES TO: KRS 194A.025(3), 205.646, 42 C.F.R. 438
STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.646, 42 C.F.R. Part 438
EFFECTIVE: December 1, 2016
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS

205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. In accordance with KRS 205.646, this administrative regulation establishes provisions regarding a Medicaid provider's right to an external independent third-party review of a managed care organization's adverse final decision of a provider's appeal of a denial of a claim for reimbursement or a service.

Section 1. Managed Care Organization Notice to Provider. (1) If an MCO issues an adverse final decision to a provider of a denial, in whole or in part, of a health care service, or claim for reimbursement as referenced in KRS 205.646(2), the MCO shall notify the provider in writing of the provider's right to an external independent third-party review pursuant to KRS 205.646.

(2) The MCO's notice shall:

(a) Comply with the requirements established in KRS 205.646(3) regarding an external independent third-party review; and

(b) State the reason for the adverse decision.

Section 2. External Independent Third-Party Review Preliminary Requirements. (1)(a) To request an external independent third-party review afforded to a provider pursuant to KRS 205.646(2), a provider shall submit a written request for external independent third-party review to the MCO within sixty (60) calendar days of receiving the MCO's final decision resulting from the MCO's internal appeal process.

(b) The sixty (60) day count shall begin on the:

1. Date that the notice was received electronically, if received electronically;

2. Date that the notice was received via fax, per the date and time documented on the fax transmission, if the notice was faxed; or

3. Post mark date on the envelope containing the notice, if the notice was sent via postal mail. An additional three (3) days shall be added when the service is by mail.

(c) A request for an external independent third-party review shall be sent to the MCO:

1. Electronically;
2. By fax; or
3. By postal mail.

(2) A provider's request for an external independent third-party review shall:

(a) Identify each specific issue and dispute directly related to the adverse final decision issued by the MCO;

(b) State the basis on which the MCO's decision on each issue is believed to be erroneous; and

(c) State the provider's designated contact information, including name, phone number, mailing address, fax number, and email address.

(3) Within five (5) business days of receiving a provider's request for an external independent third-party review, the MCO shall:

(a) Confirm in writing to the provider's designated contact the MCO's receipt of the external independent third-party review request from the provider;

(b) Notify the department of the provider's request for an external independent third-party review; and

(c) Notify the enrollee of the provider's request for an external independent third-party review, if related to the denial of a health care service.

(4)(a) An external independent third-party review shall not be granted regarding a claim about which the enrollee has already requested an administrative hearing pursuant to 907 KAR 17:010.

(b) If an enrollee files a request for an administrative hearing pursuant to 907 KAR 17:010 regarding a claim about which a provider has already filed a request for an external independent third-party review, the external independent third-party review shall be held in abeyance until the enrollee's appeal has been fully adjudicated.

(5) Upon receiving a request for an external independent third-party review, the department shall:

(a) Assign the review to an external independent third-party reviewer; and

(b) Notify the:

1. MCO of the external independent third-party reviewer; and
2. Provider's designated contact of the external independent third-party reviewer.

(6) The department shall deny a request to initiate the external independent third-party review process, or a part thereof, if a party fails to:

(a) Exhaust the MCO's internal appeal process in accordance with 907 KAR 17:015; or

(b) Submit a timely request for an external independent party review in accordance with this administrative regulation.

(7) Within fifteen (15) business days of a provider's request for an external independent third-party review, the MCO shall:

(a) Submit to the department all documentation submitted by the provider in the provider's MCO internal appeal process, in addition to any other information related to the MCO's final decision; and

(b) Designate a contact, including name, phone number, mailing address, fax number, and email address.

Section 3. External Independent Third-Party Review. (1) The following shall be the categories of external independent third-party reviews:

(a) Medical necessity. A claim involving a medical necessity determination; or

(b) Service coverage requirements including:

1. A claim involving whether the given service is covered by the Medicaid program; or
2. A claim involving whether the provider followed the MCO requirements for the covered service.

(2)(a) A claim involving a medical necessity determination shall be reviewed by a clinician or clinicians who:

1. Have clinical expertise regarding the subject matter; and
2. Are currently licensed regarding the subject matter.

(b) A claim involving service coverage requirements shall be reviewed by the department.

(3) There shall be no more than one (1) claim reviewed per external independent third-party review unless the department determines that reviewing multiple claims related to one (1) member is expedient and appropriate.

(4) The documentation to be reviewed by an external independent third-party reviewer shall be limited to the documentation referenced in Section 2(7) of this administrative regulation.

(5)(a) An external independent third-party reviewer shall:

1. Except as established in paragraph (c) of this subsection, conduct an external independent third-party review and issue a final decision within thirty (30) calendar days from the receipt of the documentation referenced in Section 2(7) of this administrative regulation; and

2. Issue the final decision to:

- a. The provider's designated contact;
- b. The MCO's designated contact; and
- c. The department.

(b) Within ten (10) business days of receiving the final decision of the external independent third party reviewer, the MCO shall notify the enrollee of the final decision, if related to the denial of a health care service.

(c) An extension of up to fourteen (14) calendar days on a final decision of an external independent third-party review may be allowed upon agreement of both parties.

Section 4. Right to an Administrative Hearing. (1) Upon the issuance of a final decision by an external independent third-party reviewer, the department shall notify in writing the MCO and the provider's designated contact of the right of the party that received an adverse final decision to appeal the decision by requesting an administrative hearing pursuant to 907 KAR 17:040.

(2)(a) A request for an appeal referenced in subsection (1) of this section shall be sent to the department within thirty (30) calendar days of receipt of the department's written notice

referenced in subsection (1) of this section.

(b) The request for an appeal shall be sent to the department:

1. Electronically;
2. By fax; or
3. By postal mail.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 18, 2016

FILED WITH LRC: December 1, 2016 at 1 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: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements regarding external independent third-party reviews in accordance with KRS 205.646. An external independent third-party review is an appeal option for a Medicaid provider that has received an adverse final decision from a managed care organization (MCO) that "denies, in whole or in part, a health care service rendered by the provider to an enrollee of the Medicaid managed care organization." The party that receives an adverse decision from the review, whether it be the provider or the MCO, will then have the option to request an administrative hearing conducted by the Cabinet for Health and Family Services. A separate administrative regulation (907 KAR 17:040) is being promulgated concurrently with this administrative regulation to establish the administrative hearing provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a mandate, established in KRS 205.646, to establish the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.646 by establishing the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(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 authorizing statutes by establishing the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(2) If 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 government affected by this administrative regulation: All Medicaid providers and all five (5) managed care organizations will be affected by this administrative regulation.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will have to develop procedures to adhere to this Administrative Regulation. Medicaid providers will need to create an internal process that determines who, within their office, will request the external independent third-party review. Medicaid managed care organizations will have to create a new process, internally, which allows providers to submit the request for the external independent third-party review to the MCO. Medicaid managed care organizations will also need to revise all of their adverse determination letters and be prepared to submit denial documentation to the Department upon request from the providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Medicaid Services is unable to determine the cost to the provider or MCO. For providers, it will be an added administrative step. For managed care organization, there will be an added administrative step as well as the added cost of revising all adverse determination letters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the provider wins the appeal, they will receive reimbursement for a previously denied claim.

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

(a) Initially: DMS estimates that this administrative regulation will increase DMS's costs by \$4.95 million (\$3.71 million federal funds/\$1.24 million state funds) annually. In order to estimate a partial potential cost estimate for the external third-party review, the Department reviewed the number of similar appeals that were upheld against the MCOs in favor of the appealing providers which was approximately 30,000 per year. The Department has modified its existent contract with the contractor Island Peer Review Organization (IPRO) based on approximately one-third of the given number of similar appeals made the year before. The contract modification will pay IPRO \$495 per case review; thus the contract modification for the SFY 2017 contract allows for 10,000 case reviews for a total increase in the budget of \$4,950,000. This increase is funded at a 75/25 split with CMS paying the larger federal share.

Further, there are two positions being created for administrative assistants within DMS.

Finally, the Department is using two nurses from Community Alternatives for the independent reviews initiated for plan delivery rules and coverage denials review. These two medical professionals, if needed full time, will require a \$45,000 base salary plus 67% for state benefits per year for each positions. The total cost of both medical professionals can also be funded using 75% federal funds and 25% state funds.

(b) On a continuing basis: The response to the question in (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, 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: DMS was not allocated any funds to implement the administrative regulation. However, the DMS contract with IPRO, the external quality review organization, has been increased to allow for IPRO to conduct the external independent third-party reviews related to medical necessity. Additionally, DMS will be hiring additional staff to administer the additional administrative work.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in

this administrative regulation because the administration 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 Department for Medicaid Services will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.646.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue for state or local government will result from the amendment.

(c) How much will it cost to administer this program for the first year? DMS estimates that this administrative regulation will increase DMS's costs by \$4.95 million (\$3.71 million federal funds/\$1.24 million state funds) annually. In order to estimate a partial potential cost estimate for the external third-party review, the Department reviewed the number of similar appeals that were upheld against the MCOs in favor of the appealing providers which was approximately 30,000 per year. The Department has modified its existent contract with the contractor Island Peer Review Organization (IPRO) based on approximately one-third of the given number of similar appeals made the year before. The contract modification will pay IPRO \$495 per case review; thus the contract modification for the SFY 2017 contract allows for 10,000 case reviews for a total increase in the budget of \$4,950,000. This increase is funded at a 75/25 split with CMS paying the larger federal share.

Further, there are two positions being created for administrative assistants within DMS.

Finally, the Department is using two nurses from Community Alternatives for the independent reviews initiated for plan delivery rules and coverage denials review. These two medical professionals, if needed full time, will require a \$45,000 base salary plus 67% for state benefits per year for each positions. The total cost of both medical professionals can also be funded using 75% federal funds and 25% state funds.

(d) How much will it cost to administer this program for subsequent years? The response in (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY
907 KAR 17:040E**

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)3. to establish appeal and administrative hearing post external independent third-party review policy in order to comply with a deadline established in KRS 205.646(5). This action must be taken on an emergency basis to comply with the requirements of KRS 205.646(5). An ordinary administrative regulation would not allow the cabinet to satisfy the deadline provision in KRS 205.646(5). This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative is identical to this emergency administrative regulation.

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

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(New Emergency Administrative Regulation)**

907 KAR 17:040E. Appeal and administrative hearing post external independent third-party review.

RELATES TO: KRS 194A.025(3), 205.646, 42 C.F.R. 438
STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.646, 42 C.F.R. Part 438
EFFECTIVE: December 1, 2016

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. In accordance with KRS 205.646, this administrative regulation establishes provisions regarding a Medicaid provider's and managed care organization's right to an administrative hearing following an external independent third-party review.

Section 1. Administrative Hearing Notice and Preliminary Requirements. (1) Upon the issuance of a final decision by an external independent third-party reviewer pursuant to 907 KAR 17:035, the department shall notify in writing the MCO and the provider of the right of the party that received an adverse final decision to appeal the decision by requesting an administrative hearing pursuant to this administrative regulation.

(2)(a) A written request for an administrative hearing referenced in subsection (1) of this section shall be sent to the department within thirty (30) calendar days of receipt of the department's written notice referenced in subsection (1) of this section.

(b) The request for an administrative hearing shall be sent to the department:

1. Electronically;
2. By fax; or
3. By postal mail.

(3) A provider or MCO request for an administrative hearing shall:

(a) Identify each specific issue and dispute directly related to the adverse final decision issued by the external independent third-party reviewer;

(b) State the basis on which the external independent third-party reviewer's decision on each issue is believed to be erroneous;

(c) State the name, mailing address, and telephone number of individuals who may be contacted about the request for an administrative hearing; and

(d) State the mailing address, fax number, email address, or other contact information to which the MCO's confirmation of receipt of the request shall be sent.

(4) The department shall forward to the hearing officer an administrative record that shall include:

- (a) The notice of action taken;
- (b) The statutory or regulatory basis for the action taken;
- (c) The decision following the external third party review; and
- (d) All documentary evidence provided by:
 1. The provider;
 2. The provider's billing agent;
 3. The provider's subcontractor;
 4. The provider's fiscal agent; or
 5. Another provider-authorized individual.

(5) The department shall deny a request to initiate the administrative hearing appeal process, or a part thereof, if a party fails to:

- (a) Exhaust the external third-party review process in accordance with 907 KAR 17:035; or
- (b) Submit a timely request for administrative hearing in accordance with subsection (2) of this section.

Section 2. Administrative Hearing. (1)(a) A hearing officer shall establish the date, time, and location of an administrative hearing.

(b) The administrative hearing shall be held in Frankfort, Kentucky.

(c) The hearing officer shall comply with the notice requirements established in KRS 13B.050.

(d) An administrative hearing date shall be scheduled to occur no later than sixty (60) calendar days from the date that the administrative hearing request was received by the department.

(e) An administrative hearing date may be extended beyond sixty (60) calendar days upon agreement of both parties.

(2) If a pre-hearing conference is requested by a party and granted by the hearing officer, the conference shall comply with KRS 13B.070.

(3) An administrative hearing may be withdrawn if:

(a) The hearing officer receives a written statement from the appealing party requesting the withdrawal; or

(b) The appealing party makes a statement on the record at the hearing withdrawing the request for an administrative hearing.

(4) Upon the agreement of all parties, an administrative hearing may be conducted telephonically or by other electronic means.

(5) A hearing officer shall preside over an administrative hearing and shall conduct the administrative hearing in accordance with:

- (a) KRS 13B.080; and
- (b) KRS 13B.090.

(6) The issue considered at the hearing shall be limited to the specific records and disputes raised or presented in the provider's initial appeal to the MCO.

(7) The hearing officer's decision shall be issued within sixty (60) calendar days after the close of the official record of the administrative hearing and shall include:

(a) The findings of facts, conclusions of law, and the final order solely based on the evidence on the record;

(b) The party that shall pay an administrative hearing fee in accordance with Section 3 of this administrative regulation; and

(c) Notice that judicial review on a final order is available to the parties in accordance with Section 4 of this administrative regulation.

(8) A hearing officer's decision shall constitute the final order in the matter for purposes of appeal.

Section 3. Administrative Hearing Fee. The party that receives an adverse final order shall pay a fee of \$600 to the department within thirty (30) calendar days of the issuance of the final order.

Section 4. Judicial Review of the Final Order. (1) Judicial review of the hearing officer's final order is available pursuant to KRS 13B.140 and KRS 13B.150.

(2) Within twenty (20) days after the service of the petition for judicial review under subsection (1) of this section, the administrative hearings branch shall transmit a certified copy of the official record of the proceeding under review.

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary
APPROVED BY AGENCY: November 18, 2016
FILED WITH LRC: December 1, 2016 at 1 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist,
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: Sharley Hughes (sharleyj.hughes@ky.gov;
phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements regarding administrative hearings conducted by the Cabinet for Health and Family Services following an external independent third-party review. An external independent third-party review is an appeal option for a Medicaid provider that has received an adverse final decision from a managed care organization (MCO) that "denies, in whole or in part, a health care service rendered by the provider to an enrollee of the Medicaid managed care organization." The party that receives an adverse decision from the external independent third-party review, whether it be the provider or the MCO, will then have the option to request an administrative hearing conducted by the Cabinet for Health and Family Services. This administrative regulation is being promulgated concurrently with the administrative regulation (907 KAR 17:035) that establishes external independent third-party review provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a mandate, established in KRS 205.646, to grant administrative hearings to either Medicaid providers or MCOs who receive an adverse decision from an external independent third-party review.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.646 by establishing an option for a Medicaid provider or MCO that receives an adverse decision from an external independent third-party review to receive an administrative hearing regarding the same matter.

(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 authorizing statutes by establishing an option for a Medicaid provider or MCO that receives an adverse decision from an external independent third-party review to receive an administrative hearing regarding the same matter.

(2) If 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 government affected by this administrative regulation: Medicaid providers and all five managed care organizations will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A Medicaid provider or MCO that receives an adverse decision from an external independent third-party review and that wishes to appeal the decision may do so by submitting a request to the Department for Medicaid Services

(DMS) – within thirty (30) days of receiving from DMS a notice of the right to such an administrative hearing – for an administrative hearing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Medicaid Services is unable to determine the cost to the provider or MCO to file an appeal, i.e. – staff to gather the necessary information. However, the losing party in every appeal will have to pay \$600 to the state.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the provider wins the appeal, they will receive reimbursement for a previously denied claim.

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

(a) Initially: Depending on the volume of appeals, the Department for Medicaid Services and the Administrative Hearing Branch could have to hire additional staff to handle the volume of appeals. However, we are optimistic that the majority of the disputes will be resolved before reaching this step.

(b) On a continuing basis: Depending on the volume of appeals, the Department for Medicaid Services and the Administrative Hearing Branch could have to hire additional staff to handle the volume of appeals. However, we are optimistic that the majority of the disputes will be resolved before reaching this step.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, 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: DMS was not allocated any funds to implement the functions required by this administrative regulation. KRS 205.646(6) allows the Department to establish reasonable fees, not to exceed one thousand dollars (\$1,000), to defray expenses associated with an administrative hearing. The Department has set the fee at \$600, which will be paid by the party that does not prevail, which will help offset the added costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: KRS 205.646(6) allows the Department to establish reasonable fees, not to exceed one thousand dollars (\$1,000), to defray expenses associated with an administrative hearing. The Department has set the fee at \$600, which will be paid by the party that does not prevail.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration 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 Department for Medicaid Services and the Division of Administrative Hearings will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.646.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Because the bill only allows the Department to charge through the administrative hearing process established in 907 KAR 17:040, the Department estimated that party receiving an adverse determination should pay \$600.00 to defray some of the cost associated with increasing the number of hearings in the

Administrative Hearings Branch of CHFS. As the actual number of cases is at this time only an estimate, the Department made an initial assessment that something less than \$1000.00 would help cover costs while not chilling the parties right to appeal the external third party reviewer's determination.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Because the bill only allows the Department to charge through the administrative hearing process established in 907 KAR 17:040, the Department estimated that party receiving an adverse determination should pay \$600.00 to defray some of the cost associated with increasing the number of hearings in the Administrative Hearings Branch of CHFS. As the actual number of cases is at this time only an estimate, the Department made an initial assessment that something less than \$1000.00 would help cover costs while not chilling the parties right to appeal the external third party reviewer's determination.

(c) How much will it cost to administer this program for the first year? The Department was not allocated any funds for this program. However, without knowing the number of appeals to be filed, it the Department is not able to determine a cost.

(d) How much will it cost to administer this program for subsequent years? The Department was not allocated any funds for this program. However, without knowing the number of appeals to be filed, it the Department is not able to determine a cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 921 KAR 2:015E

This emergency administrative regulation is necessary to increase the standards of need for all levels of care in the State Supplementation Program for persons who are aged, blind, or have a disability due to the federal and state agreement to pass through the Supplemental Security Income 2017 cost of living adjustment. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department for Community Based Services of the Supplemental Security Income cost of living adjustment in October 2016. An ordinary administrative regulation would not allow the agency sufficient time to have an administrative regulation in place in order to revise the payment standards effective January 1, 2017.

This emergency administrative regulation shall 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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Emergency Amendment)

921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS Chapter 194A, 202A.011(12), 209.020(4), 216.530, 216.557(1), 216.750(2), 216.765(2), Chapter 216B, 514, 20 C.F.R. 416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

EFFECTIVE: December 14, 2016

NECESSITY, FUNCTION, AND CONFORMITY: KRS

194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.

(3) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative regulation.

(4) "Department" means the Department for Community Based Services or its designee.

(5) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(6) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(7) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 20:001.

(8) "Qualified mental health professional" is defined by KRS 202A.011(12).

(9) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.

(10) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Behavioral Health, Developmental and Intellectual Disabilities to employ a mental health professional who has specialized training in the care of a resident with mental illness or intellectual disability.

(11) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b) 1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

- (a) Income as recognized in December 1973 decreases;
- (b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or
- (c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.
- (6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 7, 8, and 9 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 11;
- (c) 907 KAR 20:020, Section 2(4)(a);
- (d) 907 KAR 20:025; and
- (e) 907 KAR 20:040, Section 1.

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

- (a) Furnish a Social Security number; or
- (b) Apply for a Social Security number, if a Social Security number has not been issued.
- (3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.
- (4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

- (a) Requires a full-time living arrangement;
- (b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and
- (c) 1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);
- 2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);
- 3. Receives caretaker services and is at least eighteen (18) years of age; or
- 4. a. Resides in a private residence;
- b. Is at least eighteen (18) years of age; and
- c. Has SMI.
- (2) A full-time living arrangement shall include:
 - (a) Residence in a personal care home that:
 - 1. Meets the requirements and provides services established in 902 KAR 20:036; and
 - 2. Is licensed under KRS 216B.010 to 216B.131;
 - (b) Residence in a family care home that:
 - 1. Meets the requirements and provides services established in 902 KAR 20:041; and
 - 2. Is licensed under KRS 216B.010 to 216B.131;
 - (c) A situation in which a caretaker is required to be hired to provide care other than room and board; or
 - (d) A private residence, which shall:
 - 1. Be permanent housing with:
 - a. Tenancy rights; and
 - b. Preference given to single occupancy; and
 - 2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.
- (3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:
 - (a) Return the check to the Kentucky State Treasurer, the month after the month of:
 - 1. Discharge to a:
 - a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or
 - b. Residence other than a private residence pursuant to

subsection (2)(d) of this section; or

- 2. Death of the state supplementation recipient; and
- (b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

- (a) Return the check to the Kentucky State Treasurer, the month after the month of:

- 1. Discharge to a:
 - a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;
 - b. Another personal care or family care home; or
 - c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or
- 2. Death of the state supplementation recipient; and
- (b) Notify a local county department within five (5) working days of the:

- 1. Death or discharge of the state supplementation recipient; or
- 2. Voluntary relinquishment of a license to the Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

- (a) Remain safely and adequately:
 - 1. At home;
 - 2. In another family setting; or
 - 3. In a room and board situation; and
- (b) Prevent institutionalization.
- (2) Service by a caretaker shall be provided at regular intervals by:
 - (a) A live-in attendant; or
 - (b) One (1) or more persons hired to come to the home.
- (3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:
 - (a) Often the service is provided;
 - (b) The service prevents institutionalization; and
 - (c) Payment is made for the service.
- (4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:
 - (a) Client is taken daily or periodically to the home of the caretaker; or
 - (b) Caretaker service is provided by the following persons living with the applicant:
 - 1. The spouse;
 - 2. Parent of an adult or minor child who has a disability; or
 - 3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation. (1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

- (a) Not include a primary diagnosis of Alzheimer's disease or dementia;
- (b) Be described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), fourth (4th) edition or edition currently in use;
- (c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

(d) Be unlikely to improve without treatment, services, or supports.

(2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant, recipient, or care coordinator to establish how:

(a) Often services are provided;

(b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and

(c) Payment is made for the services.

(3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:

(a) Licensed or registered in accordance with KRS Chapter 216B; or

(b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:020, Section 2(4)(a);

(c) 907 KAR 20:025; and

(d) 907 KAR 20:040, Section 1.

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) \$2,000 for an individual; or

(b) \$3,000 for a couple.

Section 8. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:020, Section 2(4)(a);

(c) 907 KAR 20:025; and

(d) 907 KAR 20:040, Section 1.

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 9 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. The applicant or recipient; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollar general exclusion shall not be an allowable deduction from income.

Section 9. Standard of Need. (1) To the extent funds are available, the standard of need is as follows:

(a) For a resident of a personal care home on or after January 1, 2017, \$1,255:

1. January 1, 2014, \$1,241; or

2. January 1, 2015, \$1,253;

(b) For a resident of a family care home on or after January 1, 2017, \$907:

1. January 1, 2014, \$893; or

2. January 1, 2015, \$905;

(c) For individuals who receive caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after January 1, 2017, \$797:

a. January 1, 2014, \$783; or

b. January 1, 2015, \$795;

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after January 1, 2017, \$1,164:

a. January 1, 2014, \$1,143; or

b. January 1, 2015, \$1,161;

3. An eligible couple, both aged, blind or have a disability and both requiring care on or after January 1, 2017, \$1,218:

a. January 1, 2014, \$1,197; or

b. January 1, 2015, \$1,215;

(d) For an individual who resides in a private residence and has SMI on or after January 1, 2017, \$1,255:

1. January 1, 2014, \$1,241; or

2. January 1, 2015, \$1,253.

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollar personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollar personal needs allowance that shall be retained by the client.

Section 10. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary

absence shall continue through the date of discharge.

Section 11. Citizenship requirements. An applicant or recipient shall be a:

- (1) Citizen of the United States; or
- (2) Qualified alien.

Section 12. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13. Mental Illness or Intellectual Disability (MI/ID) Supplement Program. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;

(b) Shall not be eligible for a payment for a Type A Citation that is not ~~abated~~^{corrected}; and

(c) Shall meet the following certification criteria for eligibility to participate in the MI/ID Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a population that is thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and who have a:

a. Primary or secondary diagnosis of intellectual disability including mild or moderate, or other ranges of intellectual disability whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician or Kentucky medication aide training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of Inspector General in accordance with Section 15(2) through (4) of this administrative regulation; and

6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July, and October.

b. Unless mental illness or intellectual disability supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 15(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form, that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or intellectual disability diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or intellectual disability diagnosis and is a recipient of state supplementation; and

(b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:

1. Mail;
2. Fax; or
3. Electronically.

(5) The monthly report shall be used by the department for:

- (a) Verification as specified in subsection (4)(a) of this section;
- (b) Payment; and
- (c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 14. Mental Illness or Intellectual Disability (MI/ID) Training. (1)(a) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall attend the mental illness or intellectual disability training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(b) Other staff may attend the training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or intellectual disability training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability.

(3) Initial training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician or Kentucky medication aide training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4) To assure that a staff member who has received training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training; and

2.a. Has received mental illness or intellectual disability training; or

b. Is enrolled in the next scheduled mental illness or intellectual disability training workshop at the closest location.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the training

workshop; and

(b) Listing to the department of staff who completed the training workshop.

(6) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/ID Supplement Program; and

(b) For each staff member receiving training up to the maximum of five (5) staff per year.

(7) Attendance of the training workshop shall be optional for a specialized personal care home.

Section 15. MI/ID Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program.

(a) The personal care home's initial MI/ID Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial MI/ID Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2 of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of training, as specified in Section 14(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability training workshop; and

b. Maintains documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training:

a. Demonstrates a knowledge of psychotropic drug side effects; and

b. Is on duty as specified in Section 13(1)(c)3 of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID Supplement Program Certification Survey process.

(4) If thirty-five (35) percent of the population is mental illness or intellectual disability clients, as specified in Section 13(1)(c)2 of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or intellectual disability population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is issued.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(c)6 of this administrative regulation, for the next following quarter.

Section 16. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits", 01/15;

(b) "STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home", 01/15;

(c) "STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form", 01/13/14; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/17 [01/13/14].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, 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: December 7, 2016

FILED WITH LRC: December 14, 2016 at 4 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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 (elizabeth.caywood@ky.gov, (502) 564-3703), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons who are aged, blind, or have a disability in accordance with KRS 205.245 and the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the MI/ID Supplement Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, to maintain the state's eligibility for federal Medicaid funding.

(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 eligibility requirements and standards of need for the State Supplementation Program for persons who are aged, blind, or have a disability.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will increase the standards of need in the State Supplementation Program to reflect the 0.3% cost of living adjustment (a.k.a., COLA) to be implemented in calendar year 2017 by the Social Security Administration for Supplemental Security Income (SSI) recipients. In addition, the amendment recognizes Kentucky medication aide training for the Mental Illness or Intellectual Disability (MI/ID) Supplement Program and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the agreement between the Commonwealth of Kentucky and the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, to pass along the cost of living adjustment in Supplemental Security Income (SSI) benefits to State Supplementation Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The amendment is also necessary to recognize other training that meets the MI/ID Supplement Program's requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes by complying with an agreement between Kentucky and the U.S. Department of Health and Human Services to pass along the cost of living adjustment for Supplemental Security Income to State Supplementation Program through an increase in the program's standard of need for all recipients.

(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 passing along the 2017 0.3% cost of living adjustment for the Supplemental Security Income benefit by modifying the standard of need for all levels of care for the State Supplementation Program and making other technical corrections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of September 2016, there were 2,569 individuals who received State Supplementation Program benefits. As of fall 2016, there are 26 personal care homes participating in the MI/ID Supplement Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required 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): There will be no new or additional cost to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The recipients of the State Supplementation payment will receive the 0.3% cost of living adjustment implemented by the Social Security Administration.

Other staff training will fulfill MI/ID Supplement Program requirements.

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

(a) Initially: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the 2014 SSI cost of living adjustment. Not complying with the federal pass-through mandate would jeopardize the state's federal Medicaid funding.

(b) On a continuing basis: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the 2014 SSI cost of living adjustment. Not complying with the federal pass-through mandate would jeopardize the state's federal Medicaid funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds and agency funds are used to implement and enforce the State Supplementation Program.

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

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

(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. 1382 e-g, 20 C.F.R. Part 416

2. State compliance standards. KRS 194A.050 (1), 205.245

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1382 e-g, 20 C.F.R. Part 416

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, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 (1), 205.245, 42 U.S.C. 1382e-g, 20 C.F.R. Part 416

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

years? This administrative regulation will not generate any additional revenue in the subsequent year.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GOVERNOR'S OFFICE
(As Amended at ARRS, December 13, 2016)

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(~~7~~)(9)].

(2) A majority of voting members or their designees, if applicable, present at a meeting shall constitute a quorum for the transacting of business. A majority vote of members present at a meeting in which a quorum is present shall be required for the council to take action[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 not be[~~be~~] 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, or enhanced Management Administrative Reporting System[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.

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COUNCIL ON POSTSECONDARY EDUCATION **(As Amended at ARRS, December 13, 2016)**

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 "Diversity, Equity, and Inclusion Plan Report Evaluation Rubric - KCTCS"["Kentucky Council on Postsecondary Education Diversity Plan Rubric - KCTCS"], September 23, 2016; and

(c) The "Diversity, Equity, and Inclusion Plan Report Evaluation Rubric - Universities"["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, 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

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COUNCIL ON POSTSECONDARY EDUCATION (As Amended at ARRS, December 13, 2016)

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. (1) In order to participate in SARA, an institution shall submit the following items to the president for review and action:

(a) [(4)] The current NC-SARA Application and Approval Form for Institutional Participation in SARA, in electronic format; and

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

(2) The application referenced in subsection (1)(a) of this section may be found online at www.nc-sara.org.

Section 3. Renewal Application Procedures. (1) 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:

(a) [(4)] The current NC-SARA Application for Institutional Renewal to Participate in SARA, in electronic format; and

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

(2) The application referenced in subsection (1)(a) of this section may be found online at www.nc-sara.org.

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 **by email** 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 **full time equivalent[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

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**FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, December 13, 2016)**

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)](41)~~ "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. **If expenses requested to be paid or reimbursed under the provisions of this administrative regulation are attributable to multiple funding sources or projects, attach a Travel Voucher Prepaid Registration Fees: Multiple Cost Distribution document to any Travel Voucher submitted;**

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

~~6. 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), ~~or 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 ~~document~~(form) shall be submitted.

(10)[(7)] A travel request for travel specified in subsections (7), (8), ~~or 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 ~~if 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 Exchange Transaction (JET) process in the eMars program[Travel Voucher (JET)][(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~~[(f)]~~ 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) If/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

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

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, 06/19/06;

(b) "Request for Authorization of Out-of-State Travel" document, Form DOA-28, 1/2003;

(c) "Request for Authorization of Out-of-Country Travel" document, Form DOA-28A, 1/2003;

(d) "State Park Travel Authorization" document, 1/13/15;

(e) "Travel Voucher" document, Form eMARS-34, 10/27/06;

(f) "Travel Voucher Prepaid Registration Fees: Multiple Cost Distribution" document, Form eMARS-36, 06/19/06;

(g) "Travel Voucher, Other Expenses" document, Form eMARS-34B, 04/17/06;

(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 (IIT) document (1999)";

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

[(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.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Chiropractic Examiners
(As Amended at ARRS, December 13, 2016)**

201 KAR 21:025. Board; officers, duties, and compensation.

RELATES TO: KRS 312.019, 312.055

STATUTORY AUTHORITY: KRS 312.019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.055 requires[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, and establishes compensation.

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 ~~312.175~~~~[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.

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.

GENERAL GOVERNMENT CABINET

Kentucky Board of Durable Medical Equipment Suppliers (As Amended at ARRS, December 13, 2016)

201 KAR 47:010. Home medical equipment and supplier licenses, requirements, and fees.

RELATES TO: KRS 17.500, Chapter 209, 224.10-052, 309.404, 309.406, 309.412, 309.414, 309.416, 309.418, 309.420, 439.3401

STATUTORY AUTHORITY: KRS 309.404, 309.406, 309.412, 309.414, 309.416, 309.418, 309.420

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.404(4) and 309.406(1)(a) authorize the board to promulgate administrative regulations governing home medical equipment and service providers. This administrative regulation establishes the minimum requirements for the licensing of a home medical equipment and services provider.

Section 1. License Required. Unless exempted by KRS 309.412(2), a person engaged in providing home medical equipment and services in the commonwealth shall hold a license.

Section 2. Initial License. (1) An applicant for licensure that does not currently hold or that has not previously held a license in the commonwealth shall submit:

(a) An Application for Home Medical Equipment License or Renewal;

(b) A license fee of \$350; and

(c) Evidence of the ability to comply with KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47. To demonstrate the ability

to comply with those provisions, the applicant shall:

1. At the time of application, submit proof of accreditation or exemption by a national accreditation organization approved by the Centers for Medicare and Medicaid Services that accredits suppliers of durable medical equipment; or

2. Within sixty (60) days of application, submit to an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47. The board shall not consider a license application, a license shall not be issued, and the applicant shall not engage in the business of providing home medical equipment or services until the board is provided a final report from the inspector demonstrating the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47.

(2)(a) An applicant issued a license based on proof of accreditation by a national accreditation organization approved by the Centers for Medicare and Medicaid Services shall maintain accreditation during the license period.

1. Each licensee shall advise the board in writing of any change in accreditation, including if the accreditation is revoked, suspended, not renewed, or expires.

2. If the accreditation is revoked, suspended, not renewed, or expires, the licensee shall request and submit to an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47.

(b) An applicant that does not maintain an accreditation by a national accreditation organization approved by the Centers for Medicare and Medicaid Services and is issued a license based upon an inspection by the board to ensure the applicant's ability to comply with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47 shall submit to an annual inspection by the board.

~~[(c) If the notification required by paragraph (a) of this subsection is not submitted within thirty (30) days of the date on which the licensee's accreditation is revoked, suspended, not renewed, or otherwise expires, the license shall be deemed suspended.]~~

Section 3. License Renewals. A licensee seeking to renew a license shall submit:

(1) An Application for Home Medical Equipment License or Renewal;

(2) The evidence required by Section 2(1)(c) of this administrative regulation; and

(3) A license renewal fee of \$350.

Section 4. Reciprocal Licenses. An applicant seeking licensure pursuant to KRS 309.420 on the basis of reciprocity shall submit:

(1) An Application for Home Medical Equipment License or Renewal;

(2) A certified copy of the applicant's license issued in another state;~~[and]~~

(3) A copy of the applicant's discipline history certified by the licensing authority that issued the license referenced in subsection (2) of this section;~~and~~

(4) A reciprocal license fee of \$350.

Section 5. License Fee Refunds. If an applicant's license is denied or remains incomplete for more than sixty (60) days following submission, \$150 of the license fee shall be refunded to the applicant.

Section 6. (1) Annual Training[Continuing Education] Requirement. Licenses shall provide to employees and persons engaged in the provision of home medical equipment and services operating under its license[shall complete] at least six (6) hours of annual training[continuing education] related to providing home medical equipment and services, which may be provided in-house by the licensee.

(2) The training[annual educational calendar] shall include programs in:

(a) Infection control and blood borne pathogens;

- (b) OSHA and safety issues to include fire safety, disaster preparedness, and office security;
- (c) HIPAA, privacy and security; and
- (d) Any new home medical equipment or services the licensee plans to provide.

Section 7[6]. Safety Requirements. Each licensee shall:

- (1) Refrain from modifying home medical equipment in a way that might reasonably cause harm to its user;
- (2) Maintain electrical components on licensed premises in a manner to prevent fire or shock hazard;
- (3) Provide adequate lighting for the licensed premises;
- (4) Provide adequate ventilation for the licensed premises;
- (5) If essential to maintain life or if the lack of service might reasonably cause harm to the user, provide services twenty-four (24) hours daily if contracted for by supplier and user;
- (6) Ensure that all home medical equipment is free of defects and operates within the manufacturer's specifications;
- (7) Document the chain of custody and possession of home medical equipment;
- (8) Establish, maintain, and adhere to a protocol for retrieving home medical equipment if a recall is initiated;
- (9) Ensure that home medical equipment bears the appropriate labels, including:
 - (a) Warning labels and tags; and
 - (b) A label that contains the licensee's name, address, and telephone number;
- (10) Maintain in a secure location all home medical equipment stored on the licensed premises;
- (11) Establish, maintain, and adhere to procedures for accurately and precisely tracking records of all home medical equipment shipped or received that includes the home medical equipment purchased or the services rendered in each transaction, the date of the transaction, the quantity of the transaction, and an itemized description of the home medical equipment and services rendered; and
- (12) Establish, maintain, and adhere to procedures that set forth a detailed description of how the operation will comply with applicable federal, state, or local laws or administrative regulations.

Section 8[7]. Sanitation Requirements. A home medical equipment supplier shall:

- (1) Instruct users of the home medical equipment on proper cleaning techniques as specified by the manufacturer;
- (2) Repair and clean all components of home medical equipment in a confined and properly ventilated area;
- (3) Maintain and store home medical equipment to ensure proper lighting, ventilation, temperature, humidity control, sanitation, space, and security; and
- (4) Establish, maintain, and adhere to a protocol for cleaning and disinfecting home medical equipment that addresses both aerobic and anaerobic pathogens. The protocol shall include:
 - (a) Maintain segregated areas on the licensed premises and in delivery vehicles for clean, dirty, and contaminated home medical equipment; and
 - (b) Cleaning and disinfecting home medical equipment according to manufacturer specifications.

Section 9[8]. Record Retention and Inspection. (1) Licensees shall ~~[be required to]~~ maintain the following records for a period of at least three (3) years:

- (a) Invoices and receipts for all home medical equipment and services provided;
- (b) A complete and accurate list that includes the following information for the licensee's employees:
 - 1. Names;
 - 2. Addresses;
 - 3. Telephone numbers;
 - 4. Criminal history, if any; and
 - 5. Dates of employment;
- (c) Records of training required by Section 6 of this administrative regulation, which shall include:

1.[continuing education completed for each person or

~~employee engaged in the provision of home medical equipment and services, including]~~ The names of the persons attending the training;

2.[continuing education,] The date of attendance;

3.[,] The title of the course;

4.[,] The entity offering the course; and

5.[, and] A certificate of completion or similar document;

(d) Documentation of home medical equipment and services that includes:

- 1. The types of home medical equipment;
- 2. The manufacturer;
- 3. The model number;
- 4. The serial number;
- 5. Date of repair;
- 6. Specific repair made; and
- 7. The name of the person performing the repair;
- (e) Documentation of any complaints received and how the complaint was resolved;

(f) Documentation of a function and safety check of home medical equipment that was performed prior to delivery of the home medical equipment and that the user of the home medical equipment is provided instruction on its proper use, safety, and maintenance; and

(g) A material safety data sheet (MSDS) documenting the solutions, products, and procedures used in cleaning and disinfecting home medical equipment.

(2) A licensee shall provide the records required by subsection (1) of this section to the board for inspection within three (3) business days of a request by the board. The board shall specify the location to which the records shall be delivered and if the board shall require electronic or hard copies of the records.

Section 10[9]. Other fees. Pursuant to KRS 309.406(1)(f), the board shall charge the following fees for services:

Service	Fee
Duplicate license	\$15
Discipline history	\$15
Paper copies of documents	\$.10 per page if for a noncommercial purpose; or \$.25 per page if for a commercial purpose
Disks	\$2.00 per disk if for a noncommercial purpose; or \$10.00 per disk if for a commercial purpose
Mailing lists	\$15.00 per list if for a noncommercial purpose; or \$75.00 per list if for a commercial purpose

Section 11[10]. Office of Occupations and Professions. Pursuant to KRS 309.404 and 224.10-052.[(9), the board vests in the staff of] the Office of Occupations and Professions may[the authority to grant or deny licenses,] accept payments, employ inspectors, receive complaints, [take disciplinary action against home medical equipment and service providers,] and receive appeals.

Section 12[11]. Incorporation by Reference. (1) "Application for Home Medical Equipment License or Renewal", December 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., and is available at <http://kdbdmes.ky.gov/>.

JEFF KNIGHT, Chair

APPROVED BY AGENCY: August 19, 2016

FILED WITH LRC: August 25, 2016 at 9 a.m.

CONTACT PERSON: Carson Kerr, Executive Advisor, Public

Protection Cabinet, Capital Plaza Tower, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Carson.Kerr@ky.gov.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Durable Medical Equipment Suppliers
(As Amended at ARRS, December 13, 2016)**

201 KAR 47:020. Inspections, discipline, reinstatement, and administrative appeals.

RELATES TO: KRS 17.500, Chapter 209, 309.406, 309.412, 309.414, 309.416, 309.418, 309.420, 439.3401

STATUTORY AUTHORITY: KRS 309.404, 309.406, 309.412, 309.414, 309.416, 309.418, 309.420

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.404(4) and 309.406(1)(a) authorize the board to promulgate administrative regulations governing home medical equipment and services providers. KRS 309.418 authorizes the board to discipline licensees and expunge minor violations. This administrative regulation ~~authorizes the board, its designee, or its inspector to inspect and investigate all persons engaged in providing home medical equipment or services,~~ establishes inspection and investigation procedures, the process for seeking an expungement of a minor violation, and ~~establishes~~ the process for appeals.

Section 1. Inspections. (1) Pursuant to KRS 309.406 and 309.414, the board and its inspectors may inspect and investigate all applicants and licensees~~[persons engaged in providing home medical equipment or services,]~~ as well as their premises and records:

(a) In conjunction with an application;

(b) If the board has grounds to believe that ~~the~~a person's actions of an applicant or licensee are endangering the public;

(c) If there is reason to believe an applicant or licensee~~a person]~~ has violated any provision of KRS Chapter 309.400 through 309.422 or 201 KAR Chapter 47;

(d) To investigate a complaint; or

(e) To verify that action has been taken to correct a violation.

~~(2) If the board conducts an inspection pursuant to subsection (1) of this section, the licensee or applicant shall pay the reasonable costs of the inspection, not to exceed \$350, which shall be:~~

~~(a) The inspector's hourly rate approved by the board; and~~

~~(b) If the inspector is required to travel more than 100 miles from the inspector's regular place of business to conduct an inspection, a reimbursement for the inspector's reasonable costs of accommodations for each day the inspection continues, consistent with the requirements of 200 KAR 2:006.~~

~~(3) The board may conduct an unannounced inspection of a licensee's premises and records to ensure compliance with the provisions of KRS 309.400 through KRS 309.422 and 201 KAR Chapter 47. The board shall not charge for an unannounced inspection.]~~

~~(3) (4) The board may investigate a licensee's or applicant's criminal history~~[or credit history] and may obtain those reports as part of the licensure process, an inspection, or during an investigation.

~~(4) (5) (a) Unless a deficiency threatens the public safety subject to KRS 309.406(1)(g), the licensee or applicant shall be advised in writing of any deficiencies and shall have thirty (30) days to correct the deficiency.~~

~~[(b) If the inspector determines that a deficiency threatens the public safety, the inspector shall require the licensee or applicant to remediate the deficiency before again providing home medical equipment or services.]~~

Section 2. Reinstatement. (1) A person whose license has been revoked may petition the board for reinstatement of the license. The petition shall include:

(a) The person's name;

(b) The person's license number;

(c) A statement of why the license was revoked and if the person's license was revoked because the person was convicted of or entered an Alford plea or plea of nolo contendere to:

1. A sex crime as defined in KRS 17.500;

2. A criminal offense against a victim who is a minor as defined in KRS 17.500;

3. A felony offense under KRS Chapter 209; or

4. An offense that would classify the person as a violent offender under KRS 439.3401;

(d) An explanation of how the person has been rehabilitated and is again able to engage in the practice of providing home medical equipment and services with applicable skill, competency, and safety to the public; and

(e) A processing fee of twenty-five (25) dollars.

(2) A reinstated license shall expire two (2) years following the date it was first issued.

Section 3. Permanent Record. The board shall maintain a permanent record of:

(1) A licensee's violations;

(2) The date of the violation;

(3) The disciplinary action taken; and

(4) The date on which the disciplinary action was completed.

Section 4. Expungement. (1) Except as established in subsection (3)(b) of this section, a licensee may request that the board expunge a minor violation.

(2) Minor violations shall include:

(a) The failure to meet an inspector at a scheduled inspection; or

(b) A first-time failure to update information provided on an application for licensure.

(3) To request an expungement, a licensee shall provide:

(a) A written request stating with specificity the violation to be expunged;

(b) If not listed as a minor violation in subsection (2) of this section, an explanation of why the violation should be deemed minor based upon the considerations established in KRS 309.418(7)(d); and

(c) A twenty-five (25) dollar processing fee.

Section 5. Appeals. (1) An applicant or licensee may request an administrative hearing before the board within twenty (20) days of the denial, suspension, or revocation of a license.

(2) The appeal shall include:

(a) The name of the licensee;

(b) A copy of the notice of the denial, suspension, or revocation; and

(c) A brief statement of the reasons for the appeal.

(3) Appeals shall be governed by KRS Chapter 13B.

JEFF KNIGHT, Chair

APPROVED BY AGENCY: August 19, 2016

FILED WITH LRC: August 25, 2016 at 9 a.m.

CONTACT PERSON: Carson Kerr, Executive Advisor, Public Protection Cabinet, Capital Plaza Tower, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969, email Carson.Kerr@ky.gov.

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, December 13, 2016)

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

RELATES TO: KRS 150.010, 150.092, 150.170, 150.370, 150.399,~~[150.400, 150.410,]~~ 150.990, 150.995

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply statewide or to a limited area. KRS 150.175(7) and (9) authorize the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands the department has acquired for public recreation. This administrative regulation establishes exceptions to statewide small game and furbearer regulations on public areas.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill an animal upon capture.

(3) "Dry land set" means a trap that is set so that no portion of the trap touches the water of a stream, river, pond, lake, wetland, or other water course.

(4) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, or striped skunk.

(5) "Upland bird" means a ruffed grouse or northern bobwhite.

(6)~~[(3)]~~ "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

(7)~~[(4)]~~ "Youth" means a person under the age of sixteen (16) by the date of the hunt or the trapping date.

Section 2. This administrative regulation shall establish exceptions to the statewide requirements established in 301 KAR 2:122, 2:251, and 3:010.

Section 3. General Requirements on a Wildlife Management Area or Outdoor Recreation Area. (1) Except as established in subsection (2) of this section, a person hunting any species during daylight hours, and any person accompanying that hunter, shall comply with hunter orange requirements as established in 301 KAR 2:132, 2:172, and 2:300.

(2) The hunter orange clothing requirement in subsection (1) of this section shall not apply to a person:

(a)[legally] Hunting waterfowl or doves as established in 301 KAR 2:225; or

(b) Hunting waterfowl as established in 301 KAR 2:221, 2:222, or 2:226; or

(c) Trapping furbearers as established in 301 KAR 2:251.

(3) There shall be a free youth small game hunting week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may take small game without a hunting license.

(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in

which a youth may trap without a trapping license.

(5) A body-gripping trap used as a dry land set shall have a maximum inside jaw spread of five and one-quarter (5 ¼)~~[(5.25)]~~ inches measured:

(a) In the center of the trap; and

(b) In the unset position.

(6) Dry land sets shall not be placed closer than ten (10) feet apart.

(7) Prior to trapping on a WMA or Outdoor Recreation Area, a person shall complete for each area a KDFWR Public Area Trapping Registration Form obtained from a department office or the department's Web site at fw.ky.gov.

Section 4. Exceptions on Wildlife Management Areas and Outdoor Recreation Areas. (1) Barren River Wildlife Management Area.

(a) The WMA shall be considered to be entirely within the Eastern Zone, as established in 301 KAR 2:122.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) On the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt with a breech-loading firearm.

(2) Beaver Creek WMA, including private inholdings.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person shall hunt coyotes during daylight hours only.

(3) Cane Creek WMA, including private inholdings.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person shall hunt coyotes during daylight hours only.

(4) Cedar Creek Lake WMA.

(a) Rabbit season shall be closed after December 31.

(b) With the exception of the statewide squirrel season, the area shall be closed to all other small game and furbearer hunting.

(5) Clay WMA.

(a) The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Rabbit season shall be closed after December 31.

(c) Ruffed grouse and northern bobwhite hunting shall be restricted to quota hunt dates established in Section 5 of this administrative regulation. All other small game hunting shall be closed until 2:00 p.m. on upland bird quota hunt dates.

(d) Pheasants[Pheasant] may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

1. Any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) pheasants[birds] of either sex.

(e) Quota fox hunting field trials.

1. There shall be a maximum of two (2) four (4) day events per calendar year.

2. Each event shall be limited to 250 participants.

3. The area shall be closed to nonparticipants.

4. A participant shall:

a. Wear a laminated identification badge issued by the department during the event; and

b. Return the laminated badge at the close of the event.

(6) Curtis Gates Lloyd WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August except if squirrel hunting.

(7) Dix River WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Ruffed grouse season shall be open from October 1

through December 31.

(8) Fleming WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Ruffed grouse season shall be open from October 1 through December 31.

(9) Green River Lake WMA.

(a) The area shall be closed to all hunting for four (4) consecutive days beginning on the third Friday in November except for archery deer hunting and the pheasant quota hunt established in Section 5 of this administrative regulation.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) Pheasant.

1. Beginning on the Tuesday following the pheasant quota hunt through December 31, any person with a valid hunting license may take a pheasant.

2. The daily limit per hunter shall be three (3) pheasants[birds] of either sex.

(d) The area shall be closed to ruffed grouse hunting and trapping.

(10) Higginson-Henry WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(11) Kleber WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(12) Lake Cumberland WMA.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(13) Mill Creek WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) A person shall hunt coyotes during daylight hours only.

(14) Miller-Welch Central Kentucky WMA.

(a) Small game and furbearer hunting seasons shall be closed, except that squirrel season shall be open.

(b) A person shall not allow a dog to be unleashed:

1. From April 1 until the third Saturday in August; or

2. On a Monday, Wednesday, or Friday during the remainder of the year, except:

a. If a person is hunting squirrels during an open season; or

b. If a person is participating in an authorized field trial.

(15) Mullins WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(16) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(17) Otter Creek Outdoor Recreation Area.

(a) Except as authorized by the department, a person shall not enter the area during a deer quota hunt without a valid quota hunt confirmation number.

(b) Northern bobwhite season shall be closed.

(c) Rabbit hunting season shall be from December 1 through December 31.

(d) Trapping season shall be from January 1 through the last day in February.

(e) A person who traps on the area shall:

1. First obtain prior authorization from the area manager; and

2. Only trap in department designated areas.

(f) Except during deer quota hunts, a person shall not use the following to take furbearers:

1. A rifle;

2. Ball ammunition; or

3. Slug ammunition.

(g) A person shall not use a rimfire gun to take small game, except during a deer quota hunt.

(18) Paul Van Booven WMA. The area shall be closed to vehicle access from one (1) hour after sunset until one (1) hour before sunrise.

(19) Peabody WMA.

(a) Northern bobwhite hunting on the Sinclair Unit shall:

1. Have shooting hours between 7:30 a.m. and 3:00 p.m.; and

2. Be closed on Sunday.

(b) A northern bobwhite hunter on the Sinclair Unit shall:

1. Check in and check out at the Peabody WMA office; and

2. Visibly display a hunting log on the dashboard of the hunter's vehicle.

(20) Pennyrile Forest WMA.

(a) Ruffed grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2) ruffed grouse.

(21) Pioneer Weapons WMA.

(a) A person shall not hunt with a breech-loading firearm.

(b) A person shall hunt coyotes during daylight hours only.

(22) Redbird WMA. A person shall hunt coyotes during daylight hours only.

(23) Robinson Forest WMA.

(a) Hunting shall not be permitted on the Main Block.

(b) The remainder of the WMA shall be open under statewide requirements.

~~(24) [(c) A person shall hunt coyotes during daylight hours only.~~

~~(23)]~~ Taylorsville Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

~~(25) [(24)]~~ Tradewater WMA.

(a) Ruffed grouse season shall be open from December 1 through December 31.

(b) The daily limit shall be two (2) ruffed grouse.

~~(26) [(25)]~~ West Kentucky WMA.

(a) A person shall check in daily at a designated check station prior to using an "A" tract.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31 on Tracts 2, 3, 6, and 7.

(c) Northern bobwhite and rabbit seasons shall be open on Tracts 1, 4, 5, and "A" beginning one-half (1/2) hour before sunrise until 1:00 p.m. local time from January 1 through January 10, except if harvest limits are reached prior to January 10.

1. A hunter shall report harvest numbers and total hours hunted to the area supervisor on a daily basis.

2. If a tract is closed prior to January 10, a sign indicating closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(d) A person shall not:

1. Use a rifle, ball, or slug ammunition;

2. Operate a vehicle on Tract 6 from February 1 through April 16; or

3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.

~~(27) [(26)]~~ Yellowbank WMA.

(a) Northern bobwhite and rabbit seasons shall be closed after December 31.

(b) Pheasants[Pheasant] may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

(c) A person shall:

1. Possess a valid hunting license to take pheasant, unless exempt pursuant to KRS 150.170; and

2. Not take more than three (3) pheasants of either sex.

Section 5. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt on:

(a) Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November;

(b) Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December; and

(c) Yellowbank Wildlife Management Area for three (3) consecutive days beginning on the second Friday in December.

(2) There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular WMA.

(3) Hunt hours for each day shall be from 9:00 a.m. to 4:00 p.m.:

(a) Eastern time for the Green River Wildlife Management Area and Clay Wildlife Management Area hunts; and

(b) Central time for the Yellowbank Wildlife Management Area hunt.

(4) During a quota hunt or clean-up hunt, a person shall wear hunter orange clothing as established in 301 KAR 2:172.

(5) The daily bag limit per hunter shall be two (2) pheasants[birds] of either sex, except there shall be a daily bag limit of three (3) pheasants[birds] of either sex during the one (1) day clean-up hunt.

(6) Pheasant quota hunt procedures.

(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.

(b) A person applying for a pheasant quota hunt shall not apply:

1. More than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

2. As a group of more than five (5) people.

(c) A person who is drawn to hunt shall pay the pheasant quota hunt permit fee established in 301 KAR 3:022 prior to the hunt.

Section 6. Northern Bobwhite and Upland Bird Quota Hunts.

(1) There shall be one (1) day northern bobwhite quota hunts on one (1) tract of Peabody WMA on the:

(a) Fourth Saturday in November, which shall only be a youth-mentor hunt;

(b) Tuesday following the fourth Saturday in November;

(c) Tuesday following the third Saturday in December;

(d) First Saturday in January;

(e) Second Saturday in January; and

(f) Tuesday following the third Saturday in January.

(2) There shall be one (1) day upland bird quota hunts on Clay WMA on the:

(a) Wednesday following the first Saturday in November;

(b) Third Sunday in November;

(c) Third Saturday in December; and

(d) Fourth Tuesday in December.

(3) A person participating in a quota hunt shall:

(a) Only hunt from one-half (1/2) hour before sunrise to 2:00 p.m.;

(b) Wear hunter orange clothing pursuant to 301 KAR 2:172; and

(c) Not take more than four (4) northern bobwhite on a daily basis.

(4) A person who participates in an upland bird quota hunt:

(a) Shall not take more than four (4) ruffed grouse daily; and

(b) May take woodcock. Woodcock shall only be taken pursuant to the requirements established in 301 KAR 2:225.

(5) A person applying for a northern bobwhite or upland bird quota hunt shall not apply:

(a) More than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

(b) As a group of more than three (3) people.

(6) A person selected for a quota hunt shall only hunt the species identified on the permit.

Section 7. General Quota Hunt Requirements. (1) A person applying for a pheasant, northern bobwhite, or upland bird quota hunt shall:

(a) Call the toll-free number listed in the current Fall Hunting and Trapping Guide from a touch tone phone between September 1 and September 30;

(b) Enter each applicant's Social Security number;

(c) Indicate a choice of days to hunt; and

(d) Pay a three (3) dollar application fee for each applicant prior to the drawing by:

1. Check;

2. Money order;

3. Visa; or

4. MasterCard.

(2) A person, prior to participating in a quota hunt, shall be required to show a:

(a) Department-issued quota hunt permit;

(b) Valid Kentucky hunting license or proof of exemption; and

(c) Hunter education card, if required pursuant to 301 KAR 2:185.

(3) A person or group participating in a northern bobwhite or upland bird quota hunt shall submit a hunting log within seven (7) days after the hunt.

(4) A youth-mentor quota hunt party shall have a minimum of one (1) youth as a member of the party.

(5) A person shall comply with all quota hunt requirements or be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.

(6) A youth shall only apply as part of a party that has at least one (1) adult.

(7) The department shall extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(8) A quota hunt applicant who is not selected and who applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(9) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(10) A person shall forfeit all accumulated points if, in a given year, the person does not apply for the hunt in which points were earned.

Section 8. Dog Training Areas on Wildlife Management Areas.

(1) A group or club may request that a dedicated dog training area be authorized by the department on a specific WMA.

(2) The department shall authorize a dog training area if:

(a) The department approves a suitable location for the dog training area; and

(b) A signed memorandum of understanding is entered into with the club or group.

(3) The conditions established in this subsection shall apply for each dog training area on a WMA.

(a) All northern bobwhite quail to be used in training shall be banded with aluminum leg bands and individually placed in the dog training area.

(b) Dog training areas shall remain open to all other legal WMA uses.

(c) A person shall comply with all dog training area requirements pursuant to 301 KAR 2:041, unless otherwise stated in the memorandum of understanding.

(d) Unleashed dogs shall be allowed within the boundaries of the dog training area year-round, except for:

1. May 15 through August 15;

2. The youth statewide turkey season; and

3. The statewide turkey season.

(e) Released northern bobwhite quail with aluminum leg bands, chukars, pheasants, or pigeons may be harvested on legal dog training days.

(f) Immediately prior to dog training, a person shall:

1. Walk and examine the entire dog training area to ensure that no wild northern bobwhite quail are present; and

2. Then place released birds in the training area.

Section 9. General Requirements on Federally Owned Areas.

(1) Season dates, bag limits, and other requirements of 301 KAR 2:251, and 2:050 shall apply except as otherwise established in this administrative regulation.

(2) Hunter orange requirements established in Section 3 of this administrative regulation shall apply to a person hunting or trapping on federal areas referenced in this section.

(3) A person shall:

(a) Obtain permission from the landowner before hunting;

(b) Not hunt except on assigned dates and in assigned areas; and

(c) Comply with all requirements established by the agency controlling the area.

Section 10. Exceptions on Specific Federally Owned Areas. (1) If hunting is not prohibited by other area priorities, Fort Campbell, Fort Knox, Land Between the Lakes National Recreation Area, Bluegrass Army Depot, and Reelfoot National Wildlife Refuge may allow hunting if in compliance with 301 KAR 2:122 and 2:251 for:

(a) Squirrels, from June 1 through June 14;

(b) Northern bobwhite and rabbit, no earlier than November 1

nor later than the last day of February;

(c) Furbearers, no earlier than October 1 nor later than the last day of February;

(d) Frogs, year round; or

(e) Crows, for a maximum of 124 days between September 1 and the last day of February.

(2) A person shall hunt coyotes during daylight hours only on lands managed by:

(a) Daniel Boone National Forest;

(b) George Washington and Jefferson National Forests;

(c) Land Between the Lakes National Recreation Area;

(d) Clarks River National Wildlife Refuge; and

(e) Reelfoot National Wildlife Refuge.

(3) Fort Knox shall not allow more than thirty (30) days of ruffed grouse hunting between October 1 and the last day of February.

(4) On Land Between the Lakes National Recreation Area, a person hunting the species listed in this administrative regulation shall not use:

(a) Crossbows;

(b) Shotgun slugs or shot larger than BB; or

(c) Center-fire rifles or center-fire handguns, except during designated groundhog or coyote hunts.

(5) Big South Fork National River and Recreation Area.

(a) Ruffed grouse season shall be open from October 1 through December 31.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31.

(c) A person hunting coyotes shall comply with any federal requirements established by the National Park Service.

Section 11. Incorporation by Reference. (1) "KDFWR Public Area Trapping Registration Form", 2016 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: August 8, 2016

FILED WITH LRC: August 12, 2016 at 2 p.m.

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at ARRS, December 13, 2016)**

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

RELATES TO: KRS 150.170, 150.180, 150.370, 150.399, 150.415, 150.416, 150.990, 150.995

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap

visitation, and trap placement to protect domestic animals. [KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night.] This administrative regulation establishes seasons, bag limits, [and] legal methods of take, and checking and recording requirements for hunting and trapping furbearers.

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill an[the] animal upon capture.

(2) "Dry land set" means a trap that is[not] set so that no portion of the trap touches the[to submerge an animal in] water of a[stream,] river, stream, pond, lake, wetland, or other water course[upon capture].

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic or rubber soft-catch jaws that close upon an animal's foot.

(4) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, or striped skunk.

(5) "Hunter" means a person legally taking[hunting] furbearers[with gun, gun and dog, bow and arrow, dog, or] by means other than trapping[falconry].

(6) "Otter Zone 1" means the following counties: Anderson, Ballard, Bath, Boone, Bourbon, Bracken, Breckinridge, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Daviess, Fayette, Fleming, Franklin, Fulton, Gallatin, Grant, Graves, Grayson, Hancock, Hardin, Harrison, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McCracken, McLean, Meade, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Pendleton, Robertson, Rowan, Scott, Shelby, Spencer, Trigg, Trimble, Union, Webster, and Woodford.

(7) "Otter Zone 2" means all Kentucky counties not included in subsection (6) of this section.

(8) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device, the deployment of which is or is not spring-assisted, but any spring-assisted device is not for the purpose of applying tension to the closing device.

(9) "Squaller" means a hand-operated, mouth-operated, or electronic call capable of mimicking the vocalizations of furbearers.

(10) "Trap" means a body-gripping trap, box trap, deadfall, foothold trap, snare, or wire cage trap used to catch furbearers.

(11) "Water set" means a trap set in the[to submerge an animal in] water of a river, stream, pond, lake, wetland, or other water course so that a portion of the trap body is underwater[upon capture].

(12) "Youth" means a person under the age of sixteen (16) by the date of the hunt or the trapping date[who has not reached sixteen (16) years of age].

Section 2. License[Hunting] Requirements. [(4)] Unless exempted by KRS 150.170, a person shall carry proof of purchase of a:

(1) Valid hunting license while hunting furbearers; or

(2) Valid trapping license while trapping furbearers.

Section 3. Furbearer Hunting Seasons. Except as established in 301 KAR 2:049, a person shall only take furbearers by hunting during the seasons established in subsections (1) through (5) of this section:

(1) Bobcat, from one-half (1/2) hour before sunrise on the fourth Saturday in November through the last day of February;

(2) Coyote, year-round;

(3) Raccoon and opossum, October 1 through the last day of February;

(4) All other furbearers except as established in subsection (5) of this section, from one-half (1/2) hour before sunrise on the third day of modern gun deer season through the last day of February; and

(5) Furbearers taken by falconry, September 1 through March 30.

Section 4. Furbearer Trapping Season. Except as established in 301 KAR 2:049, a person shall only take furbearers by trapping from one-half (1/2) hour before sunrise on the third day of the modern gun deer season through the last day of February.

Section 5. License-Exempt Youth Season. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a license, but all other statewide requirements shall apply.

Section 6. Legal Hunting Weapons. Except as established in Section 7(8) of this administrative regulation[(2) Unless established in subsection (10) of this section], a hunter shall only use the weapons established in subsections (1)[paragraphs (a)] through (7)[(f)] of this section[subsection] to hunt[take] furbearers:

- (1)[(a)] Centerfire gun;
- (2)[(b)] Rimfire gun;
- (3)[(c)] Shotgun;
- (4) Muzzleloader;
- (5)[(d)] Bow and arrow;
- (6)[(e)] Crossbow; or
- (7)[(f)] An air gun using pellets at least .22 caliber in size.

Section 7. Hunter Restrictions. (1)[(3)] Furbearers may be taken during daylight hours only, except for the following, which may also be taken after daylight hours:

- (a) Coyote;
- (b) Opossum; or
- (c) Raccoon.

(2)[(4)] A person shall not take a raccoon or opossum during daylight hours during the modern gun deer season, as established in 301 KAR 2:172.

(3)[(5)] A person hunting from[hunter]in a boat shall not use a light in conjunction with taking a raccoon or opossum.

(4)[(6)] A person shall not use the following while chasing a raccoon or opossum from noon on March 1 through September 30;

- (a) A firearm;
- (b) Slingshot;
- (c) Tree climber; or

(d) Any device to kill, injure, or force a raccoon or opossum from a tree or den.

(5)[(7)] A person may use a squaller year-round.

(6)[(8)] There shall not be a closed season on:

(a) Chasing red and gray foxes during daylight hours for sport and not to kill; or

(b) Chasing raccoons or opossums for sport and not to kill.

(7)[(9)] A hunter may use a hand or mouth-operated call, electronic call, or any other attracting device during a furbearer hunting season.

(8)[(10)] A person may take a coyote after daylight hours, except that[with the following restrictions]:

(a) A person shall not use artificial light or other means designed to make wildlife visible at night from June 1 through January 31;

(b) Any artificial light or other means designed to make wildlife visible at night shall not be connected to or cast from a mechanized vehicle;

(c) A person shall not use any weapon other than a shotgun; and

(d) A person shall not use a shell with a single projectile.

Section 8. Legal Traps[3. Trapping Methods and Requirements]. (1)[Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid trapping license while trapping furbearers. (2)] A person who is trapping with a dry land set shall only use traps as established in paragraphs (a) through (e) of this subsection[not]:

(a)[Set traps closer than ten (10) feet apart; or

(b) Use any trap except for the following:

1.] Deadfall;

(b)[2.] Wire cage or box trap;

(c)[3.] Foothold trap with a maximum inside jaw spread of six

(6) inches measured perpendicular to the hinges;

(d) A snare; or

(e) Except as established in 301 KAR 2:049, a[4.] body-gripping trap with a maximum inside jaw spread of seven and one-half (7 1/2)[(7.5)] inches measured parallel with the trigger;

1. In the center of the trap; and

2. In the unset position[; or

5. A snare].

(2)[(3)] There shall be no restrictions on the size or type of trap used as a water set, except that any body-gripping trap greater than twenty (20) inches in width shall be set so that the trap is completely submerged underwater.

Section 9. Trapper Restrictions. (1) A person trapping on private land shall not place traps used as dry land sets any closer than ten (10) feet apart unless possessing written permission from the landowner or the landowner's designee, except that there shall not be more than three (3) traps set within any ten (10) foot spacing.

(2) The trap spacing requirement established in subsection (1) of this section shall not apply to:

(a) Box or cage live traps; or

(b) Properties of five (5) acres or less.

(3)[(4)] A trap shall not be set in a trail or path commonly used by a human or a domestic animal.

(4)[(2)](5)] A trapper may use lights from a boat or a vehicle in conjunction with trapping furbearers.

Section 10. [Hunter Orange. A person trapping furbearers shall be exempt from hunter orange clothing requirements as established in 301 KAR 2:132, 2:172, and 2:300.

Section 11. [4.] Trap Tags. (1) Each trap shall have a metal tag attached to it that clearly shows[one (1) of the following]:

(a) The name and address of the person setting, using, or maintaining the trap; or

(b) A wildlife identification number issued by the department and the 1-800-25ALERT department hotline phone number.

(2) A person applying for a wildlife identification number shall apply by:

(a) Completing the Wildlife Identification Number for Trap Tags – Application available on the department's Web site at[www.] fw.ky.gov; or

(b) Calling the department's information center at 1-800-858-1549.

(3) The following information shall be required for a person to apply for a wildlife identification number:

(a) Name;

(b) Current home address;

(c) Social Security number;

(d) Current phone number;

(e) Date of birth; and

(f) Driver's license number, if available.

(4) A person shall:

(a) Not use a trap tag that has an inaccurate or outdated address;

(b) Not use a trap tag that has a wildlife identification number that corresponds to an inaccurate or outdated address or phone number; and

(c) Contact the department to provide updated address and phone number.

(5) A wildlife identification number shall be valid for the life of the holder.

[Section 5. Hunting Season Dates. Except as established in 301 KAR 2:049, a person shall not take the following wildlife except during the dates established in this section:

(1) Bobcat: from one-half hour before sunrise on the fourth Saturday in November through the last day of February;

(2) Coyote: year round;

(3) Raccoon and Opossum: October 1 through the last day of February;

(4) All other furbearers except as established in subsection (5) of this section: from one-half hour before sunrise on the third day of

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

the modern gun deer season through the last day of February; or
(5) Furbearers taken by falconry: September 1 through March 30.

Section 6. ~~Trapping Season Dates. Except as established in 301 KAR 2:049, a person shall not take furbearers except from one-half hour before sunrise on the third day of the modern gun deer season through the last day of February.~~

Section 7. ~~License-Exempt Season for Youth. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may hunt or trap furbearers without a license, but all other statewide requirements shall apply.]~~

Section ~~11[12]~~[8.] Bag Limits. (1) There shall not be a bag limit on furbearers except as established in subsections (2) through (6) of this section.

(2)[(4)] A person shall not take more than five (5) bobcats per season, no more than three (3) of which shall be taken with a gun.

(3)[(2)] A person shall not take more than ten (10) river otters per season in Otter Zone 1.

(4)[(3)] A person shall not take more than six (6) river otters per season in Otter Zone 2.

(5)[(4)] The total river otter bag limit per season shall be ten (10) per person, only six (6) of which can be taken from Otter Zone 2.

(6)[(5)] A falconer hunting within the falconry season, but outside the dates specified in Section 3(3)[5(3)] and (4) of this administrative regulation, shall not take more than two (2) of any furbearer per day.

Section ~~12[13]~~[9.] Harvest Recording. (1) Immediately after harvesting[taking] a river otter or bobcat, and prior to[before] moving the carcass, a person shall record in writing the[following information]:

- (a)[The] Species;
- (b)[The] Date;
- (c)[The] County where taken; and
- (d)[The] Sex of the river otter or bobcat.

(2) The information required by subsection (1)(a) through (d) of this section shall be documented on[animal].(2) The information listed in subsection (1) of this section shall be recorded on one (1) of the following]:

- (a) The hunter's log section on the reverse side of a license or permit;
 - (b) A[The] hunter's log printed from the department's Web site at fw.ky.gov[section in the current hunting and trapping guide];
 - (c) A hunter's log available from any KDSS agent; or
 - (d) An index card or similar card.
- (3) A person shall retain and possess the completed hunter's log while hunting or trapping during the current season.

Section ~~13[14]~~[10.] Checking a River Otter or Bobcat. (1) A person who harvests[takes] a river otter or bobcat shall check each animal by:

(a) Completing[Check each animal by calling] the telecheck process after calling 800-245-4263 or completing the check-in process on the department's Web site at fw.ky.gov:

1. Before midnight[toll-free number listed in the current hunting and trapping guide] on the day the river otter or bobcat is recovered[harvested];

2. Prior to processing the carcass[(b) Provide the information requested by the automated check-in system]; and

3. Prior to transporting the raw fur, pelt, or unskinned carcass out of Kentucky; and

(b) Writing[(c) Write] the check-in confirmation number[provided by the automated check-in system] on the hunter's log as established in Section 13[9] of this administrative regulation.

(2) A person who intends to sell the raw fur of a river otter or bobcat to a licensed fur processor, fur buyer, or taxidermist or wishing to export a river otter or bobcat pelt outside the United States shall:

(a) Contact the department and request a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag by providing:

1. A valid check-in confirmation number as established in subsection (1) of this section; and

2. A street address where the tag is to be mailed; or

(b) ~~Complete[Access the department's Web site at www.fw.ky.gov and complete and submit] the CITES tag request form on[te] the department's Web site at fw.ky.gov[department].~~

(3) A person who is transferring[intends to transfer to another person] a river otter or bobcat that does not have an attached CITES tag shall attach to the carcass a handmade tag that contains the[following]:

(a)[The] Confirmation number;

(b)[The] Hunter or trapper's name; and

(c)[The] Hunter or trapper's phone number.

(4) A person shall not knowingly provide false information when[while]:

(a) Completing the hunter's log;

(b) Checking a river otter or bobcat;[or]

(c) Completing a CITES tag request form; or

(d) Creating a handmade carcass tag.

(5) A CITES tag shall be attached to the raw fur, pelt, or unskinned carcass upon receipt of the tag from the department per the instructions provided by the department and remain attached[with the pelt] until it is processed or exported outside the United States.

(6) Possession of an unused CITES tag[that is] issued by the department shall be prohibited.

Section ~~14[15]~~[11.] Transporting and Processing a River Otter or Bobcat. (1) A person shall not sell the raw fur of a river otter or bobcat except to a licensed:

- (a) Fur buyer;
- (b) Fur processor; or
- (c) Taxidermist.

(2) A taxidermist, fur buyer, or fur processor shall:

(a) Not accept a river otter or bobcat carcass or any part thereof[~~of a river otter or bobcat~~] without a proper carcass tag or CITES tag established in Section 14[10] of this administrative regulation; and

(b) Retain[Keep] the[following] information established in subparagraphs 1. through 4. of this paragraph from a hunter or trapper:

- 1. Name;
- 2. Address;
- 3. Confirmation number or CITES tag number; and
- 4. Date received for each river otter or bobcat.

Section ~~15[16]~~[12.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Wildlife Identification Number for Trap Tags – Application", [April] 2014 edition; and

(b) "CITES Tag Request" form, 2014 edition[~~is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern time.

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: August 9, 2016

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CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, December 13, 2016)

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 Correctional Complex Policies and Procedures", December 13/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 12/13/16/10/14/16)
- [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 12/13/16/10/14/16[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

- 12/13/16/10/14/16)
- 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 12/13/16/10/14/16)
- [EKCC 11-06-01 Food Service: Kitchen and Dining Room Inmate Worker Responsibilities]
- EKCC 11-07-01 Dining Room Rules (Amended 12/13/16/10/14/16)[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 12/13/16/10/14/16[9/14/05])
- EKCC 13-01-02 Self-Administration of Medication (SAM) Program (Amended 12/13/16/10/14/16[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 12/13/16/10/14/16[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 12/13/16/10/14/16[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 12/13/16/10/14/16[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

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

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
~~EKCC 25-04-01 Inmate Furloughs~~
 EKCC 25-06-01 Community Center Program
~~EKCC 26-01-01 Citizens Involvement and Volunteers]~~

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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, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (As Amended at ARRS, December 13, 2016)

705 KAR 4:231. General program standards for secondary career and technical education programs.

RELATES TO: KRS[154B.025(5);] 156.029, 156.802, 20 U.S.C. 2301-2471

STATUTORY AUTHORITY: KRS[154B.025(5);] 156.029, 156.070, 156.802, 156.852, 20 U.S.C. 2301-2471

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.802[154B.025(5)] requires the Kentucky Board of Education to establish program standards for secondary area vocational education and technology centers. This administrative regulation establishes standards for secondary career and technical education programs in local school districts and area centers essential for compliance with the Carl D. Perkins Career[Vocational] and Technical Education Improvement Act of 2006[1998], 20 U.S.C. 2301-2471.

Section 1. (1) Secondary career and technical education programs shall be designed to serve students enrolled in the following middle school and secondary program areas:

- (a) Agricultural education;
 - (b) Business and marketing education;
 - (c) Construction technology;
 - (d) Engineering and technology education;
 - (e) Family and consumer sciences education;
 - (f) Government and homeland security;
 - (g) Health science education;
 - (h) Information technology;
 - (i) Law and public safety;
 - (j) Manufacturing technology;
 - (k) Media arts;
 - (l) Transportation education;
 - (m) Pathway to careers; and
 - (n) Other new and emerging business and industry needs[Health sciences];
 - (d) Family and consumer sciences;
 - (e) Industrial technology education;
 - (f) Marketing education;
 - (g) Technology education; and
 - (h) Pathway to careers].
- (2) Instructional programs shall not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or disability, in violation of state or federal statutes.

Section 2. (1) Instruction shall be designed to:

- (a)[(4)] Assist students preparing for school to work transition in recognized occupations and new or emerging occupations, including high technology industries;
 - (b)[(2)] Prepare students for advanced or highly skilled postsecondary technical education programs[, including Tech Prep] or entrance into community and technical colleges or universities; and
 - (c)[(3)] ~~Assist individuals in obtaining computer literacy skills;~~ and
 - (4) Provide career guidance and academic counseling in the development of the individual learning[graduation] plan as established in 704 KAR 3:305.
- (2) If needed, instruction shall be provided to upgrade and update individuals in their present occupations and to retrain existing workers.

Section 3. The content of the instruction in secondary career and technical education programs shall be:

- (1)[Be] Aligned with state or national occupational skill standards that have been recognized by business and industry to include an understanding of all aspects of an industry;
- (2)[Be] Developed and conducted in consultation with employers and other individuals having skills and knowledge of the occupational fields or industry included in the instruction;
- (3)[Be] Developed to include a coherent sequence of academic and career or technical courses for each program, aligned with career clusters and pathways[majors];
- (4)[Be] Sufficiently extensive in duration and intensive within a scheduled unit of time to enable students to achieve the objectives of the instruction;
- (5)[Be] Structured to provide for the integration of technology and rigorous academic content relevant to the career area and aligned with the Kentucky Academic Standards, 704 KAR 3:303[academic expectations, 703 KAR 4:060]; and
- (6)[Be] Linked to postsecondary education in order to provide smooth and seamless transition to postsecondary education in related technical fields. If possible, articulation of credit from secondary to postsecondary education shall be provided for students, as well as dual credit opportunities.

Section 4. [(4)] A student completing the requirements for a career pathway[major] may receive a Career Pathway[Major] Certificate. Requirements for a Career Pathway[Career–Major] Certificate shall include the following:

- (1)[(a)] Successful completion of high school graduation requirements to include four (4) career-related credits relevant to a career cluster or pathway[major];
- (2)[(b)] Participation in a structured work-based learning

experience related to the career cluster or pathway[major]; and
 (3)[(e)] A culminating project related to the career cluster or pathway[major].

[(2) A student may earn the Department of Education Career and Technical Certificate of Achievement by:

- (a) Earning four (4) credits within a career major; or
- (b) Enrolling in a specific occupational area (in high school programs or vocational/technical schools) and successfully obtaining the competencies identified for a major (DOT) Dictionary of Occupational Title.]

Section 5. A secondary career and technical education program shall provide opportunities for students to participate in high quality work-based learning experiences related to the program in which they are enrolled and shall comply with 705 KAR 4:041. These work-based learning experiences may include the following:

- (1) Job shadowing;
- (2) Mentoring;
- (3) Service Learning[Internships];
- (4) School-based enterprises;
- (5) Entrepreneurship;
- (6) Internships[Clinicals];
- (7) Cooperative education; or
- (8) Pre-apprenticeship[Service learning];
- (9) Apprenticeship; or
- (10) Work experience].

Section 6. A secondary career and technical education program shall be designed to accommodate students with special learning needs, i.e., the disadvantaged, the disabled, and individuals with limited English proficiency.

Section 7. A secondary career and technical education program shall provide a variety of learning experiences. Programs in grades six (6) through eight (8) shall be designed to allow students to become aware of and explore clusters of occupations. Programs in grades nine (9) through twelve (12) shall provide in-depth exploration, specialized skill development, and preparation for advanced education. Students enrolled in public or private schools shall be permitted to enroll in a state-operated career and technical program consistent with that school district's enrollment quota.

Section 8. A career and technical preparation program shall provide a curriculum of sufficient length to permit students to secure entry level skills in the occupation for which they are training.

Section 9. Recognized career and technical student organizations shall be an integral part of a career and technical education program and shall be supervised by qualified career and technical education personnel. All students shall be provided an opportunity to participate in leadership development activities.

Section 10. Instructional and administrative personnel shall meet the certification requirements as specified by the Education Professional Standards Board in Title 16 KAR[in 704 KAR Chapter 20].

Section 11. Opportunities in secondary career and technical education programs shall be provided for students to receive an industry-recognized skill standard certificate or credential based on skill standards and assessments.

Section 12. A[vocational] career and technical education program area shall have an active program advisory committee comprised of business and industry representatives, parents, education representatives, and, if applicable to the program area, labor organizations representatives to assist in planning, implementing, and evaluating programs.

Section 13. Requests for exceptions to any standards for

career and technical instructional programs shall be submitted in writing by the local educational agency to the chief state school officer.

Section 14. (1) Assessment of the career and technical education programs shall be conducted in accordance with requirements and instruments approved by the Office of Career and Technical Education, which are based upon indicators of quality programming including curriculum and assessment alignment with industry standards, the academic and technical skill attainment of students, work-based learning opportunities, career and technical student organizations, active advisory committees and industry partnerships, and the successful transition of students to postsecondary opportunities.

(2) Staff from the Office of Career and Technical Education shall conduct annual evaluations of career and technical education programs, based on state and federal accountability data, and identify programs for technical assistance and continuous improvement visits.

Section 15. (1) The maximum number of students per class shall be based on the class setting.

(a) For a classroom setting, the maximum enrollment shall be thirty-one (31).

(b) For a laboratory or shop setting, the number of students enrolled in a class shall not exceed the number of work stations available in the facility.

(2)(a) A program shall provide classrooms, laboratories, and other facilities including instructional equipment, supplies, teaching aids, and other materials in sufficient quantity and quality to meet the objectives of the instructional programs.

(b) Equipment used in career and technical education programs shall be similar to that used in business and industry.

(c) An inventory of all equipment with an original purchase price of \$500 or more shall be maintained by the local school district or area technology center.

(d) The facilities for each program shall be:

1. In compliance with 702 KAR 4:180 and be of adequate size to accommodate the activities and the number of work stations unique to the program; and

2. Approved by the chief state school officer or designee.

Section 16.[15.] (1) A career and technical education program shall meet the performance indicators in accordance with the requirements of the Carl Perkins Career and Technical Education Improvement Act of 2006[Vocational-Technical Education Act of 1998], 20 U.S.C. 2301-2471, which include the following:

(a) State established academic and vocational technical skill achievement;

(b) Attainment of a secondary diploma;

(c) Placement in postsecondary education or employment;

(d) Nontraditional training and employment; and

(e) Issuance of a Career Pathway[Major] Certificate or Career and Technical Certificate of Achievement to students.

(2) The performance indicators shall be used to determine the effectiveness of the program in terms of its objectives and shall include annual follow-up data as well as annual enrollment reports.

(3) An audit of the utilization of federal and state funds shall be conducted by the Kentucky Department of Education[or Department of Technical Education] to assure that eligible recipients meet the requirements for each approved career and technical education program.

Section 17.[16.] Federal funds to be received by a local school district under the Carl D. Perkins Career and Technical Education Improvement Act of 2006[Vocational and Technical Education Act of 1998], 20 U.S.C. 2301-2471, may be withheld for noncompliance with this administrative regulation or with the Carl D. Perkins Career and Technical Education Improvement Act of 2006[Vocational-Technical Education Act of 1998].

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner of Education
WILLIAM TWYMAN, Chairperson

APPROVED BY AGENCY: August 12, 2016

FILED WITH LRC: August 12, 2016 at noon

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and
Intellectual Disabilities
Division of Intellectual and Developmental Disabilities
(As Amended at ARRS, December 13, 2016)

908 KAR 2:040. Hospital district assignments.

RELATES TO: KRS Chapter 202A, 210.300, Chapter 504

STATUTORY AUTHORITY: KRS 202A.008,

202A.201(2)[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 requires[authorizes] the secretary for the cabinet to
promulgate administrative regulations designating[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 202A.201(2)[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[:] 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[:] 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[:] 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[:] 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. (1) A person may be admitted to a hospital other
than the hospital[one] in the district of his or her[their] residence
upon verbal or written permission of the Commissioner of the
Department for Behavioral Health, Developmental and Intellectual
Disabilities or authorized designee if:

(a) A patient has specific needs or treatments that are
better addressed at another hospital;

(b) A hospital has staffing or facility issues limiting
admittance; or

(c) Placement would cause undue hardship on affected
stakeholders.

(2) If verbal permission is given, 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
assuring the unit has the proper resources.

WENDY MORRIS, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: October 12, 2016

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

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, December 13, 2016)

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. 2000d, 52 U.S.C. 20506[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 C.F.R. 273.2(i), 7 U.S.C. 2020(e)(2)(B), 7 U.S.C.
2011-2029, 52 U.S.C. 20506[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

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

C.F.R. 271.4 authorize the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) and ~~prescribe~~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 52 U.S.C. 20506[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
- (d)(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 52 U.S.C. 20506[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.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Amended After Comments)

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

RELATES TO: KRS 161.028(1), 161.120, 218A.010(5)

STATUTORY AUTHORITY: KRS 161.028(1), 161.120(1), 161.175(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining an educator's[a-teaching] certificate. The EPSB is authorized to revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued to Kentucky certified educators for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator[a-teacher] whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator[teacher] engaged in misconduct involving the illegal use of controlled substances to submit to drug testing. This administrative regulation identifies the conditions for initiating a disciplinary action against an educator's[a-teaching-or-administrative] certificate and establishes procedures for certificate reinstatement, reissuance, and application denial.

Section 1. Purpose. (1) In order to support the mission of the Education Professional Standards Board (EPSB), the EPSB may take action against an educator's certificate in an effort:

(a) To ensure that an educator has an understanding of an educator's professional duties and responsibilities; and

(b) To protect students, parents of students, school personnel, or school officials.

(2) The board may take action against any certificate issued under KRS 161.010 to 161.100 for any of the reasons set forth in KRS 161.120(1).

Section 2. Complaints and Reports. (1) A complaint may be made by any person, organization, or entity. The complaint shall be in writing and shall be signed by the person offering the complaint. The complaint shall be sent to the offices of the EPSB. The complaint shall contain:

(a) The name, phone number, and address of the person making the complaint, and the name of the educator against whom the complaint is made. If known, the person making the complaint shall include the address of the school district where the educator works; and

(b) A clear and concise description of the issues of fact.

(2) A report shall be sent to the EPSB by superintendents of local school districts pursuant to KRS 161.120(2)(a).

(a) A superintendent's duty to report shall include the reporting of criminal convictions discovered by the district pursuant to KRS 160.380 even if the conviction occurred prior to the date the educator's certification was issued.

(b) The superintendent or the superintendent's designee shall have thirty (30) days from the date that superintendent receives notice of the criminal conviction to report that criminal conviction to the EPSB pursuant to KRS 161.120(2)(a).

(3) EPSB staff shall do an initial review of all complaints and reports to determine whether there is sufficient credible evidence that a violation of KRS 161.120(1) may have occurred. If the report or complaint contains sufficient credible evidence that a violation of KRS 161.120(1) may have occurred, EPSB staff shall open a file and assign that file a number.

(a) The EPSB staff shall send a copy of these complaints and reports by certified mail to the educator's address on file with

EPSB.

(b) The educator shall have the right to file a rebuttal with the EPSB within thirty (30) calendar days from the date the educator receives the complaint or report from the EPSB unless the parties agree to extend that deadline.

(c) Upon receipt of the educator's rebuttal or return of the notice as undeliverable, EPSB staff shall add the case to the EPSB's docket and prepare the file for board review by redacting all educator's identifiers.

(d) The board shall determine whether the nature and quality of the alleged violation warrants dismissal, training, admonishment, further investigation, or initiation of a hearing.

(e) In making its determination, the board shall consider if the allegation, if proven, would warrant sanction by the board.

(f) When making a determination as to the level of sanctions warranted, the board shall consider the following factors:

1. The seriousness of the alleged violation;

2. Whether the alleged violation was premeditated or intentional;

3. Whether an attempt to conceal the alleged violation was made;

4. Whether there were any prior violations;

5. Whether training is appropriate to prevent further violations;

6. Whether the sanction is necessary to deter future violations;

or

7. Other relevant circumstances or facts.

(4)(a) If the board determines that sanctions are warranted, the board shall refer the matter to hearing.

(b) If the board refers the matter to hearing, the board shall, by majority vote, approve the issuance of a notice of hearing and the statement of charges. The statement of charges shall include specific reasons for the board's proposed action, including the:

1. Statutory or regulatory violation;

2. Factual basis on which the disciplinary action is based; and

3. Penalty sought.

(c) The parties may agree to resolve the matter informally at any time. Any agreement to resolve the matter informally shall be memorialized in an agreed order and approved by the board. The agreed order shall be signed by the educator, the educator's attorney, if any, and the board chair.

(d) The EPSB staff shall initiate the hearing process within thirty (30) days after the board refers the matter to hearing.

Section 3. (1) The hearing shall be held in accordance with KRS Chapter 13B.

(2) Either party may be entitled to a reasonable continuance of the hearing date for good cause.

(3) The educator has the right to request a private in-person hearing.

(a) The educator shall waive the right to a private[an] in-person hearing if the educator fails to specifically make the request for a private in-person[an in-person] hearing in writing.

(b) Even if the educator elects to proceed with a private hearing, the hearing transcript for that private hearing shall be subject to disclosure after the board issues its final decision unless exempt from disclosure by law.

(c) All hearings shall be conducted in the office of the Education Professional Standards Board, 100 Airport Road, Frankfort, Kentucky 40601 unless a new location is agreed upon by the parties.

(4) The hearing officer's recommended order shall include a discussion of the factors set forth in Section 2(3)(f) of this administrative regulation when recommending sanctions.

(5) A party may file any exceptions to the recommended order within fifteen (15) calendar days after receiving the recommended order.

(a) This time limit shall not be extended and responses to exceptions shall not be considered by the board.

(b) Any disagreement with a factual finding or conclusion of law in the recommended order not contained in the exceptions shall be

waived.

Section 4. Final Decision. (1) In making its final decision, the board shall consider the record including the recommended order and any exceptions filed.

(2) After the board chair certifies that a quorum is present, a majority of the voting members present shall be required to make a final decision on the recommended order, agreed order, or request for the issuance of an order of default judgment.

(3) The board may delegate to the board chair the authority to sign a decision made or order issued under this section on behalf of a majority of the board members.

Section 5. Procedure for Suspension, Surrender, or Revocation of a Certificate. (1) When the board issues a final decision **in accordance with KRS 13B.120**, the EPSB staff shall mail a copy of the final decision to the educator **by certified mail** using the address the educator provided to the Education Professional Standards Board.

(2) A record of board action shall become part of the educator's official records maintained by EPSB staff.

(3) Immediately following the issuance of the board's final decision, the EPSB staff shall notify the reporting parties of the action taken.

(4) EPSB staff shall also ensure that the suspension, surrender, or revocation is noted on EPSB's Web site.

(5) EPSB staff shall also ensure that the information is provided to the National Association of State Directors of Teacher Education and Certification (NASDTEC) for inclusion in the NASDTEC Clearinghouse. The clearinghouse is a searchable database administered by NASDTEC relating to educator certification and discipline.

Section 6. Procedure for Reinstatement of a Suspended Certificate. (1) Reinstatement of a suspended certificate for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(5).

(a) A certificate that has been suspended by the EPSB shall not be reinstated until the certificate holder has met all conditions and requirements ordered by the EPSB.

(b) If a certificate lapses during a period of suspension, the certificate holder shall apply for renewal of the certificate at the end of the suspension period. The board shall renew the certification if the certificate holder has met all educational requirements for renewal and has completed all of the conditions and requirements ordered by the board.

(c) The burden to initiate the process to reinstate a suspended certificate shall be on the certificate holder.

1. When the suspension does not include conditions, the EPSB staff shall remove all references of the suspension from the Web site at the conclusion of the suspension period.

2. When the suspension includes conditions, the certificate holder shall provide the EPSB proof that all conditions have been met.

a. The EPSB shall reinstate the certificate at the conclusion of the suspension period once the EPSB receives evidence from the certificate holder demonstrating that the conditions of suspension were met.

b. The EPSB shall remove from its Web site any reference to the suspension once the certificate holder has provided evidence that the conditions of suspension have been met.

(d) The record of suspension as well as reinstatement of the certification shall become part of the educator's official certification records, but the record of suspension shall not be referenced on any certificate subsequently issued to the certificate holder.

(2) Reinstatement of a suspended certificate for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(5).

(a) In addition to conditions for reinstatement of a suspended certificate established in subsection (1) of this section, the certificate holder shall provide written evidence that the certificate holder has submitted to a drug test at the certificate holder's own expense administered by a drug testing facility approved by the board within thirty (30) days of reinstatement or submission of an

application for reissuance of the certificate.

(b) The certificate holder shall arrange for the drug testing facility to send the results of the drug test directly to the EPSB.

(c) A certificate holder subject to the terms of this subsection may petition the EPSB to approve a drug testing facility of the certificate holder's choice.

1. Petition to Approve Drug Testing Facility. The petition shall contain the following information:

a. The drug testing facility's name and location;

b. The name and telephone number for the director of the facility;

c. The method of test specimen collection;

d. The drug testing facility's method of assuring identity of the test subject;

e. Procedures for testing specimens, including forensic testing methods; and

f. Chain of custody protocols.

2. The drug testing facility shall test at a minimum for the following named controlled substances:

a. Marijuana;

b. Cocaine;

c. Opiates;

d. Amphetamines;

e. Phencyclidine;

f. Morphine;

g. MDMA (Ecstasy);

h. Methadone;

i. Benzodiazepines;

j. Barbiturates; and

k. Oxycodone.

(d) If the results of the drug test indicate illegal drug use by the certificate holder, the certificate shall not be reinstated or reissued.

Section 7. Procedure for Reissuance of a Certificate after Revocation. (1) When revocation was for reasons other than misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(5), the conditions established in this subsection shall apply.

(a) The former certificate holder shall complete the same application that all educators in Kentucky shall complete to obtain certification.

(b) The former certificate holder shall bear the burden of proving that the certificate holder is fit for practice.

(c) The former certificate holder shall satisfy all current educational requirements for the certificate sought.

(d) The Education Professional Standards Board may include terms and conditions that the board reasonably deems appropriate as a condition of reissuance in accordance with KRS 161.120(11)(b) if reissuing the certificate.

(2) If revocation was for misconduct involving the illegal use of controlled substance as defined in KRS 218A.010(5), the former certificate holder shall:

(a) Comply with the requirements established in Section 6(1) of this administrative regulation for reissuance of certification after revocation for all other offenses; and

(b) Submit to drug testing as established in Section 6(2) of this administrative regulation for the suspension resulting from illegal use of controlled substances.

(3) Regardless of the reason for the revocation, the revocation shall be noted on the certificate that is issued and shall remain on the EPSB Web site.

Section 8. ~~Initiating Disciplinary Action Against a Certificate.~~ The Education Professional Standards Board may initiate disciplinary action against a Kentucky teaching or administrative certificate upon receipt from any source of a report or complaint which contains allegations that an individual who holds a Kentucky teaching or administrative certificate has engaged in conduct listed in KRS 161.120(1).

Section 2. Reinstatement and Reissuance of Certificate. (1)(a) A certificate that has been suspended by the Education Professional Standards Board shall not be reinstated until the

certificate holder has met all conditions and requirements ordered by the Education Professional Standards Board.

(b) If a certificate lapses during a period of suspension, at the end of the suspension period and upon completion of all conditions and requirements ordered by the Education Professional Standards Board, the certificate holder shall apply for renewal of the certificate and shall meet all educational requirements for renewal of the certificate.

(2) An individual whose certificate has been revoked shall complete the "Application for Kentucky Certification or Change in Salary Rank", Form TC-1, incorporated by reference in 16 KAR 2:010, prior to the reissuance of the certificate.

(3) The burden of proving suitability for reissuance of a revoked certificate shall rest on the applicant seeking reinstatement.

(4) If reissuing a certificate, the Education Professional Standards Board may include terms and conditions that the board reasonably deems appropriate as a condition of reissuance in accordance with KRS 161.120(1)(b).

(5) An applicant for reissuance of a revoked certificate shall satisfy all current educational requirements for the certificate.

(6)(a) If a certificate is suspended or revoked because the certificate holder engaged in misconduct involving the illegal use of a controlled substance as defined in KRS 218A.010(5), in addition to conditions for reinstatement or reissuance, the certificate holder shall at the certificate holder's own expense provide written evidence that the certificate holder has submitted to a drug test administered by a drug testing facility approved by the Education Professional Standards Board within thirty (30) days of reinstatement or submission of an application for reissuance of the certificate.

(b) If the results of the drug test indicate drug use by the certificate holder, the certificate shall not be reinstated or reissued.

(c) The certificate holder shall arrange for the drug testing facility to send the results of the drug test directly to the Education Professional Standards Board.

(d) A drug test conducted under this subsection shall at a minimum test for the following controlled substances:

1. Marijuana;
2. Cocaine;
3. Opiates;
4. Amphetamines;
5. Phencyclidine;
6. Morphine;
7. MDMA (Ecstasy);
8. Methadone;
9. Benzodiazepines;
10. Barbiturates; and
11. Oxycodone.

(e) 1. A certificate holder subject to the terms of this subsection may petition the Education Professional Standards Board to approve a drug testing facility of the certificate holder's choice.

2. The petition shall contain the following information:

- a. The drug testing facility's name and location;
- b. The name and telephone number for the director of the facility;
- c. The method of test specimen collection;
- d. The drug testing facility's method of assuring identity of the test subject;
- e. Procedures for testing specimens, including forensic testing methods; and
- f. Chain of custody protocols.

Section 3.] Denial of Application for a Certificate. If the Education Professional Standards Board denies an individual's application for a Kentucky[teaching or administrative] certificate pursuant to this administrative regulation, the applicant[individual] may file an appeal in accordance with KRS 161.120(5)(a)2.

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

FILED WITH LRC: December 14, 2016 at 1 p.m.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100

Airport Road, Third Floor, Frankfort, Kentucky 40601, email LisaK.Lang@ky.gov, phone (502) 782-2147, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation identifies the conditions for initiating a disciplinary action against a certificate and establishes procedures for certificate suspension, surrender, revocation, reinstatement, reissuance, and application denial.

(b) The necessity of this administrative regulation: KRS 161.028(1) authorizes the Education Professional Standards Board (EPSB) to establish standards and requirements for obtaining and maintaining a teaching certificate. The EPSB is authorized to revoke, suspend, or refuse to issue or renew: impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued to Kentucky certified educators for reasons delineated in KRS 161.120(1). KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing. This administrative regulation also identifies the conditions for initiating a disciplinary action against a teaching certificate and establishes procedures for certificate suspension, surrender, revocation, reinstatement, reissuance, and application denial.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process for initiating a disciplinary action against a teaching certificate and establishes procedures for certificate suspension, surrender, revocation, reinstatement, reissuance, and application denial.

(2) If 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 further clarifies the EPSB's procedures for certificate suspension, surrender, revocation, reinstatement, reissuance, and application denial and will ensure the efficient processing of complaints and reports filed against certificate holders.

(b) The necessity of the amendment to this administrative regulation: This amendment reflects changes the EPSB is making to its procedures for certificate suspension, surrender, revocation, reinstatement, reissuance, and application denial and will ensure the efficient processing of complaints and reports filed against certificate holders to ensure that certificate holders have an understanding of an educator's professional duties and responsibilities and to protect students, parents of students, school personnel, or school officials.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. As the EPSB is authorized to revoke, suspend, or refuse to issue or renew: impose probationary or supervisory conditions upon; issue a written reprimand or admonishment; or any combination of those actions regarding any certificate issued to Kentucky certified educators for reasons delineated in KRS 161.120(1) this amendment helps make clear the disciplinary process and will aid

the efficient processing of complaints filed against certified educators. KRS 161.175(2) authorizes the Education Professional Standards Board to promulgate administrative regulations requiring an educator whose certificate has been suspended or revoked by the Education Professional Standards Board because the educator engaged in misconduct involving the illegal use of controlled substances to submit to drug testing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment further clarifies the EPSB's procedures for certificate suspension, surrender, revocation, reinstatement, reissuance, and application denial and will ensure the efficient processing of complaints and reports filed against certificate holders.

(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 applicants seeking Kentucky educator certification, educators currently holding certificate, and superintendents for the 173 Kentucky public school districts that employ educators holding certifications.

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

(a) List 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 sets forth the actions an applicant that has been denied a teaching certificate must take in order to challenge a denial of a certificate. This administrative regulation sets forth the actions an educator may take if the EPSB initiates action against that educator's certificate. This administrative regulation sets forth the actions a superintendent must take when that superintendent becomes aware of violations of KRS 161.120. This amended regulation also makes clear that superintendents have a duty to report criminal convictions discovered by the district pursuant to KRS 160.380 even if the conviction occurred prior to the date the certificate holder's certification was issued.

(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 amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will ensure that applicants for Kentucky educator certification and educators currently holding teaching certifications receive due process. This amendment will also support the superintendents in the 173 school districts in Kentucky in their efforts to protect the students in their charge.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding used for the implementation and enforcement of this administrative regulation comes from restricted funds generated by educator certification application 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: There is nothing in this amendment that will result in an increase in fees.

(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.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation. This regulation applies to all applicants for certification and current certificate holders 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? This administrative

regulation will impact the Education Professional Standards Board as well as all school districts in Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1) and KRS 161.175(2).

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

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

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

(c) How much will it cost to administer this program for the first year? Currently, the EPSB spends approximately \$518,000.00 per year to process complaints and reports against educators holding a certification.

(d) How much will it cost to administer this program for subsequent years? The EPSB hopes to reduce the administrative costs associated with the processing of complaints and reports against educators holding a certification as a result of the EPSB's efforts to streamline the complaint and report process.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Amended After Comments)

16 KAR 6:010. Assessment[~~Examination~~] prerequisites for teacher certification.

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4)

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) require the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification. This administrative regulation establishes the examination prerequisites for teacher certification.

Section 1. A teacher applicant for certification shall successfully complete the applicable assessments[~~tests~~] identified in this administrative regulation prior to Kentucky teacher certification.

Section 2. The Education Professional Standards Board shall require the assessment or assessments[~~test or tests~~] and passing scores identified in this section for each new teacher applicant and each teacher seeking an additional certificate. (1) An applicant for Interdisciplinary Early Childhood Education certification (birth to primary) shall take ~~one (1) of the following tests and achieve the corresponding passing score or higher:~~

(a) "Interdisciplinary Early Childhood Education (0023)" - 166;

or

(b) "Interdisciplinary Early Childhood Education (5023)" - 166.

(2) An applicant for Elementary certification (grades P-5) shall take "Elementary Education: Multi-Subjects Test (5001)[~~(5034)~~]" with the following passing scores on the corresponding assessment[~~test~~] sections:

(a) [Until August 31, 2015:
 1. "Reading and Language Arts (5032)" - 165;
 2. "Mathematics (5033)" - 164;
 3. "Social Studies (5034)" - 155; and
 4. "Science (5035)" - 159; and
 (b) Beginning September 1, 2015:
 1.] "Elementary Education: Reading and Language Arts (5002)" - 157;
 (b) [2.] "Elementary Education: Mathematics (5003)" - 157;
 (c) [3.] "Elementary Education: Social Studies (5004)" - 155;
 and
 (d) [4.] "Elementary Education: Science (5005)" - 159.
 (3) An applicant for certification at the middle school level (grades 5 through 9) shall take the content assessment or assessments[test or tests] based on the applicant's content area or areas with the corresponding passing scores as identified in this subsection:
 (a) Middle School English and Communications: "Middle School English Language Arts (5047)" - 164;
 (b) Middle School Mathematics: "Middle School Mathematics (5169)" - 165;
 (c) Middle School Science:
 1. Until August 31, 2015, "Middle School Science (0439)" - 144; or
 2. Beginning September 1, 2015, "Middle School Science (5440)" - 150; or
 (d) Middle School Social Studies:
 1. "Middle School Social Studies (0089)" - 149; or
 2.] "Middle School Social Studies (5089)" - 149.
 (4) An applicant for certification at the secondary level (grades 8 through 12) shall take the content assessment or assessments[test or tests] corresponding to the applicant's content area or areas with the passing scores identified in this subsection:
 (a) Biology:
 1. "Biology: Content Knowledge (0235)" - 146; or
 2.] "Biology: Content Knowledge (5235)" - 146;
 (b) Chemistry:
 1. "Chemistry: Content Knowledge (0245)" - 147; or
 2.] "Chemistry: Content Knowledge (5245)" - 147;
 (c) Earth Science:
 1. "Earth and Space Sciences: Content Knowledge (0571)" - 147; or
 2.] "Earth and Space Sciences: Content Knowledge (5571)" - 147;
 (d) English: "English Language Arts: Content and Analysis (5039)" - 168;
 (e) Mathematics: "Mathematics: Content Knowledge (5161)" - 160;
 (f) [1.] Physics: "Physics: Content Knowledge (0265)" - 133; or
 2.] "Physics: Content Knowledge (5265)" - 133; or
 (g) Social Studies:
 1. "Social Studies: Content and Interpretation (0086)" - 153; or
 2.] "Social Studies: Content and Interpretation (5086)" - 153.
 (5) An applicant for certification in all grades shall take the content assessment or assessments[test or tests] corresponding to the applicant's area or areas of specialization identified in this subsection, and, if a passing score is established in this subsection, the applicant shall achieve the passing score or higher:
 (a) Art:
 1. "Art: Content and Analysis (0135)" - 161; or
 2.] "Art: Content and Analysis (5135)" - 161;
 (b) Chinese: "Chinese (Mandarin): World Language (5665)" - 164;
 (c) French: "French: World Language (5174)" - 162;
 (d) German: "German: World Language (5183)" - 163;
 (e) Health: "Health Education (5551)" - 155;
 (f) Health and Physical Education:
 1. [a. Until August 31, 2015:
 (i) "Health and Physical Education: Content Knowledge (0856)" - 156; or
 (ii) "Health and Physical Education: Content Knowledge

(5856)" - 156; or
 b. Beginning September 1, 2015, "Health and Physical Education: Content Knowledge (5857)" - 160; and
 2. [a.] "Physical Education: [Content and Design (0095)]" - 169;
 or
 b.] "Physical Education: Content and Design (5095)" - 169;
 (g) Integrated Music:
 1. "Music: Content and Analysis (0114)" - 162; or
 2.] "Music: Content and Instruction (5114)" - 162;
 (h) Instrumental Music:
 1. "Music: Content and Analysis (0114)" - 162; or
 2.] "Music: Content and Analysis (5114)" - 162;
 (i) Vocal Music:
 1. "Music: Content and Analysis (0114)" - 162; or
 2.] "Music: Content and Analysis (5114)" - 162;
 (j) Latin:
 1. "Latin (0601)" - 166; or
 2.] "Latin (5601)" - 166;
 (k) Physical Education:
 1. "Physical Education: Content and Design (0095)" - 169; or
 2.] "Physical Education: Content and Design (5095)" - 169;
 (l) School Media Librarian:
 1. "Library Media Specialist (0311)" - 156; or
 2.] "Library Media Specialist (5311)" - 156;
 (m) School Psychologist:
 1. Until August 31, 2015, "School Psychologist (0401)" - 161;
 or
 2. Beginning September 1, 2015, "School Psychologist (5402)" - 147; or
 (n) Spanish: "Spanish: World Language (5195)" - 168.
 (6) Except as provided in subsection (7) of this section, an applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take the content assessment or assessments[test or tests] based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:
 (a) Communication Disorders:
 1. [a. "Special Education: Core Content Knowledge and Applications (0354)" - 151; or
 b.] "Special Education: Core Content Knowledge and Applications (5354)" - 151; and
 2. [a. "Speech-Language Pathology (0330)" - 600; or
 b. (i) Until August 31, 2015, "Speech-Language Pathology (5330)" - 600; or
 (ii) Beginning September 1, 2015, "Speech-Language Pathology (5331)" - 162;
 (b) Hearing Impaired:
 1. [a. "Special Education: Core Knowledge and Applications (0354)" - 151; or
 b.] "Special Education: Core Knowledge and Applications (5354)" - 151; and
 2. [a. "Special Education: Education of Deaf and Hard of Hearing Students (0272)" - 160; or
 b.] "Special Education: Education of Deaf and Hard of Hearing Students (5272)" - 160;
 (c) Hearing Impaired With Sign Proficiency:
 1. [a. "Special Education: Core Knowledge and Applications (0354)" - 151; or
 b.] "Special Education: Core Knowledge and Applications (5354)" - 151;
 2. [a. "Special Education: Education of Deaf and Hard of Hearing Students (0272)" - 160; or
 b.] "Special Education: Education of Deaf and Hard of Hearing Students (5272)" - 160; and
 3. "American Sign Language Proficiency Interview (ASLPI)" - 3+; [One (1) of the following tests with a passing score of Intermediate Level:
 a. "Sign Communication Proficiency Interview (SCPI)"; or
 b. "Educational Sign Skills Evaluation (ESSE)";]
 (d) Learning and Behavior Disorders:
 1. "Special Education: Core Knowledge and Mild to Moderate

Applications (0543)" - 158; or

2.] "Special Education: Core Knowledge and Mild to Moderate Applications (5543)" - 158;

(e) Moderate and Severe Disabilities:

1.] "Special Education: Core Knowledge and Severe to Profound Applications (0545)" - 158; or

2.] "Special Education: Core Knowledge and Severe to Profound Applications (5545)" - 158; or

(f) Visually Impaired:

1.] "Special Education: Core Knowledge and Applications (0354)" - 151; or

b.] "Special Education: Core Knowledge and Applications (5354)" - 151; and

2.] "Special Education: Teaching Students with Visual Impairments (0282)" - 163; or

b.] "Special Education: Teaching Students with Visual Impairments (5282)" - 163.

(7) A holder of an exceptional child certificate in Learning and Behavior Disorders or Moderate and Severe Disabilities who is seeking additional certification for any exceptional children teaching certificate listed in subsection (6) of this section shall not be required to take:

(a) "Special Education: Core Knowledge and Applications (0354);" or

(b) "Special Education: Core Knowledge and Applications (5354)".

(8)(a) Except as provided in paragraph (b) of this subsection, an applicant for Career and Technical Education certification to teach in grades 5 - 12 shall take the content **assessment or assessments [test or tests]** corresponding to the applicant's area or areas of specialization identified in this paragraph, and, if a passing score is established in this paragraph, the applicant shall achieve the passing score or higher:

1. Agriculture:

[a. "Until August 31, 2015, "Agriculture (0700)" - 520; or

b. Beginning September 1, 2015, "Agriculture (5701)" - 147;

2. Business and Marketing Education:

[a. "Business Education (0101)" - 154; or

b.] "Business Education (5101)" - 154;

3. Family and Consumer Science:

[a. "Until August 31, 2015:

(i) "Family and Consumer Sciences (0121)" - 162; or

(ii) "Family and Consumer Sciences (5121)" - 162; or

b. Beginning September 1, 2015, "Family and Consumer Sciences (5122)" - 153; or

4. Engineering and Technology Education:

[a. "Technology Education (0051)" - 159; or

b.] "Technology Education (5051)" - 159.

(b) An applicant for Industrial Education shall take the content **assessment or assessments [test or tests]** corresponding to the applicant's area or areas of specialization with the passing scores identified in 16 KAR 6:020.

(9) An applicant for a restricted base certificate in the following area or areas shall take the content **assessment or assessments [test or tests]** based on the applicant's area or areas of specialization with the corresponding passing scores as identified in this subsection:

(a) English as a Second Language:

1. Until August 31, 2017, "English to Speakers of Other Languages (0361)" - 157; or

2.] "English to Speakers of Other Languages (5361)" - 157; or

2. Beginning September 1, 2017: "English to Speakers of Other Languages (5362)" - 155;

(b) Speech/Media Communications:

1.] "Speech Communication (0221)" - 146; or

2.] "Speech Communication (5221)" - 146; or

(c) Theater:

1.] "Theatre (0641)" - 162; or

2.] "Theatre (5641)" - 162.

(10) An applicant for an endorsement in the following content area or areas shall take the content **assessment or assessments [test or tests]** based on the applicant's area or areas of specialization with the passing scores identified in this

subsection:

(a) American Sign Language: "American Sign Language Proficiency Interview (ASLPI)" [administered by the Gallaudet University] - 3+;

(b) English as a Second Language:

1. Until August 31, 2017, "English to Speakers of Other Languages (0361)" - 157; or

2.] "English to Speakers of Other Languages (5361)" - 157; or

2. Beginning September 1, 2017: "English to Speakers of Other Languages (5362)" - 155;

(c) Learning and Behavior Disorders, grades 8 - 12:

1.] "Special Education: Core Knowledge and Mild to Moderate Applications (0543)" - 158; or

2.] "Special Education: Core Knowledge and Mild to Moderate Applications (5543)" - 158;

(d) Literacy Specialist:

1.] "Reading Specialist (0301)" - 164; or

2.] "Reading Specialist (5301)" - 164;

(e) Gifted Education, grades primary - 12:

1.] Until August 31, 2015, "Gifted Education (0357)" - 152; or

2. Beginning September 1, 2015, "Gifted Education (5358)" - 157; or

(f) Reading Primary through Grade 12:

1.] "Teaching Reading (0204)" - 153; or

2.] "Teaching Reading (5204)" - 153.

Section 3. In addition to the content area **assessment or assessments [test or tests]** established in Section 2 of this administrative regulation, each new teacher shall take the pedagogy **assessment [test]** and meet the passing score identified in this section that corresponds to the grade level of certification sought. If a certified teacher is seeking additional certification in any area, the applicant shall not be required to take an additional pedagogy **assessment [test]**.

(1) An applicant for Elementary certification (grades primary - 5) shall take ~~one (1) of the following tests and achieve the corresponding passing score or higher:~~

(a) ~~"Principles of Learning and Teaching: Grades kindergarten - 6 (0622)" - 160; or~~

(b) ~~"Principles of Learning and Teaching: Grades kindergarten - 6 (5622)" - 160.~~

(2) An applicant for certification at the middle school level (grades 5 through 9) shall take ~~one (1) of the following tests and achieve the corresponding passing score or higher:~~

(a) ~~"Principles of Learning and Teaching: Grades 5 - 9 (0623)" - 160; or~~

(b) ~~"Principles of Learning and Teaching: Grades 5 - 9 (5623)" - 160.~~

(3) An applicant for certification at the secondary level (grades 8 through 12) shall take ~~one (1) of the following tests and achieve the corresponding passing score or higher:~~

(a) ~~"Principles of Learning and Teaching: Grades 7 - 12 (0624)" - 160; or~~

(b) ~~"Principles of Learning and Teaching: Grades 7 - 12 (5624)" - 160.~~

(4) An applicant for certification in all grades with a content area identified in Section 2(5) of this administrative regulation shall take one (1) of the following **assessments [tests]** and achieve the corresponding passing score or higher:

(a) ~~"Principles of Learning and Teaching: Grades kindergarten - 6 (0622)" - 160;~~

(b) ~~"Principles of Learning and Teaching: Grades kindergarten - 6 (5622)" - 160;~~

~~(b) [(c) "Principles of Learning and Teaching: Grades 5 - 9 (0623)" - 160;~~

~~(d) "Principles of Learning and Teaching: Grades 5 - 9 (5623)" - 160; or~~

~~(c) [(e) "Principles of Learning and Teaching: Grades 7 - 12 (0624)" - 160; or~~

~~(f) "Principles of Learning and Teaching: Grades 7 - 12 (5624)" - 160.~~

(5) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate

pedagogy assessment[test] established in this section. The content area assessment or assessments[test or tests] established in Section 2 of this administrative regulation shall fulfill the pedagogy assessment[test] requirement for a teacher of exceptional children.

(6) An applicant for Career and Technical Education certification in grades 5 through 12 shall take one (1) of the following assessments[tests] and receive the identified passing score:

- (a) [~~"Principles of Learning and Teaching: Grades kindergarten - 6 (0622)" - 160;~~
- (b) [~~"Principles of Learning and Teaching: Grades kindergarten - 6 (5622)" - 160;~~
- (b) [(c) [~~"Principles of Learning and Teaching: Grades 5 - 9 (0623)" - 160;~~
- (d) [~~"Principles of Learning and Teaching: Grades 5 - 9 (5623)" - 160; or~~
- (c) [(e) [~~"Principles of Learning and Teaching: Grades 7 - 12 (0624)" - 160; or~~
- (f) [~~"Principles of Learning and Teaching: Grades 7 - 12 (5624)" - 160.~~

Section 4. Assessment Recency. (1) A passing score on an assessment[a test] established at the time of administration shall be valid for the purpose of applying for certification for five (5) years from the assessment[test] administration date.

(2) A teacher who fails to complete application for certification to the Education Professional Standards Board within the applicable recency period of the assessment[test] and with the passing score established at the time of administration shall retake the applicable assessment or assessments[test or tests] and achieve the passing score or scores required for certification at the time of application.

(3) The assessment[test] administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:

- (a) The Educational Testing Service; or
- (b) The agency established by the Education Professional Standards Board as the authorized test administrator.

(2) An applicant shall authorize assessment[test] results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board and to the teacher preparation institution where the applicant received the relevant training.

(3)(a) Public announcement of assessment[testing] dates and locations shall be issued sufficiently in advance of assessment[testing] dates to permit advance registration.

(b) An applicant shall seek information regarding the dates and location of the assessments[tests] and make application for the appropriate assessment[examination] prior to the deadline established and sufficiently in advance of anticipated employment to permit assessment[test] results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6. An applicant shall pay the assessment[examination] fee established by the Educational Testing Service or other authorized test administrator for each relevant assessment[test] required to be taken.

Section 7. An applicant who fails to achieve at least the minimum passing score on any of the applicable assessments[examinations] may retake the assessment[test] [or tests during one (1) of the scheduled test administrations].

Section 8. The Education Professional Standards Board in conjunction with Kentucky Center for Education and Workforce Statistics shall collect data and conduct analyses of the scores and institutional reports provided by the Educational

Testing Service or other authorized test administrator to determine the impact of these assessments[tests].

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

FILED WITH LRC: December 13, 2016 at 3 p.m.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email LisaK.Lang@ky.gov, phone (502) 782-2147, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the assessment prerequisites for Kentucky teacher certification.

(b) The necessity of this administrative regulation: KRS 161.028(1)(a) requires that the Education Professional Standards Board (EPSB) establish requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3)(a) states that the certification of all new teachers and teachers seeking additional certification shall require the successful completion of the appropriate assessments prior to certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028(1)(a) authorizes the EPSB to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) require the EPSB to select and determine the appropriate level of achievement for assessments required prior to teacher certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes assessment requirements, corresponding passing scores, and effective dates for assessment prerequisites of Kentucky teacher certification.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes several discontinued assessment and replaces some with their regenerated counterparts. This amendment removes beginning and end effective dates of assessments and passing score changes for assessments which are discontinued, and replaces two assessments with two new assessments with the same name, but changes numbers associated with those assessments as well as the required passing scores. This amendment also contains changes similar to changes also being made to 16 KAR 6:020.

(b) The necessity of the amendment to this administrative regulation: This amendment establishes the assessments required for teacher certification and sets the corresponding minimal acceptable passing scores for those assessments. This amendment also makes changes similar to changes also being made to 16 KAR 6:020.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes assessment requirements and minimal acceptable achievement scores for those assessments as required by KRS 161.028(1)(a) and KRS 161.030(3)(a).

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies the assessments required for teacher certification and their corresponding minimal acceptable achievement scores for certification.

(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 candidates for Kentucky certification; higher education educator preparation program faculty of the twenty-five (25) colleges/universities who submit Kentucky certification recommendations on behalf of candidates, and the 173 Kentucky public school districts.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Candidates for teacher certification must ensure that they have taken and successfully passed the appropriate assessment for certification. Higher education educator preparation program faculty at the twenty-five (25) colleges/universities must notify candidates for certification and review their curriculum to implement changes, if necessary. The 173 public school districts will not have to take any action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost associated with this amendment. The cost associated with any new assessments is the same as the cost associated with the previous assessments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): **Teaching quality is the most important school-based factor in determining student success and we must ensure that all Kentucky teachers enter their classroom prepared to excel. These amendments reflect Kentucky's commitment to ensure that only academically qualified individuals are issued a teaching certificate, thus enabling them to provide instruction to Kentucky's children. All teacher candidates must successfully demonstrate essential knowledge via comprehensive assessments which help measure skills and content knowledge.**

Educator preparation programs must ensure their curriculum prepares teachers for the specific teaching field of the applicant, including content of the field and teaching of that content. The assessments measure those concepts, ideas, and facts which are being taught in teacher education programs in Kentucky.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Assessment fees are provided to the test administrator by the certification candidates.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: These assessments are not administered by the EPSB therefore no fee or funding increase will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees have been increased. This is a cost to the certification candidate and is paid to the assessment administration agent.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation. All candidates for certification are required to take the specified assessment which measures content knowledge in the specific teaching field of the applicant. The EPSB does not administer these assessments nor does the EPSB set the rates for these assessments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Education Professional Standards Board as well as educator preparation program faculty at colleges/universities who submit Kentucky certification recommendations on behalf of candidates, and the Kentucky public school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1)(a) requires that the EPSB establish requirements for obtaining and maintaining a teaching certificate.

KRS 161.030(3)(a) states that the certification of all new teachers and teachers seeking additional certification shall require the successful completion of the appropriate assessments prior to certification.

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

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

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

(c) How much will it cost to administer this program for the first year? Currently, the EPSB spends approximately \$25,000.00 per year to manage assessments.

(d) How much will it cost to administer this program for subsequent years? The administrative costs associated with this program are estimated to remain constant at approximately \$25,000.00 per year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Amended After Comments)

16 KAR 7:010. Kentucky Teacher Internship Program.

RELATES TO: KRS 156.101, 161.028, 161.030, 161.048[~~161.095~~]

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(5) requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. This administrative regulation establishes the requirements for the Kentucky Teacher Internship Program.

Section 1. Definitions. (1) ~~["Confirmation of Employment" means the electronic document or a hardcopy of the same name that is submitted to the Education Professional Standards Board by the employing school district or nonpublic school to document employment of a teacher intern.~~

(2) "Half-time basis" means teaching fifteen (15) hours per week in the teacher intern's area of certification.

(2) ~~(3)~~ "Instructional day" means a day that:

(a) The teacher intern is performing regular teaching responsibilities in an instructional setting, or is completing professional development for compensation from the district or employing school; and

(b) Does not include annual leave, sick leave, or other authorized or unauthorized leave time.

(3) "Resource teacher" means the classroom teacher that serves on a beginning teacher committee.

(4) ~~["Resource Teacher Time Sheet" means the electronic document or a hardcopy of the same name that is submitted to the Education Professional Standards Board and is used by resource teachers to record in-class hours and, for compensation, resource teacher out-of-class hours.~~

(5) "Teacher intern" means any new teacher or out-of-state teacher with less than two (2) years of successful teaching experience, preschool through grade twelve (12), who has obtained a provisional certificate and is seeking initial certification

in Kentucky.

(5) "Teaching standards" means the standards set forth in 16 KAR 1:010.

Section 2. Basis for Professional Judgment by the Beginning Teacher Committee. (1) A teacher intern and the beginning teacher committee shall follow the requirements established in this administrative regulation.

~~[(a)1. The teacher intern shall successfully complete a KTIP Teacher Performance Assessment.~~

~~2. The assessment shall be organized according to three cycles of the internship year and shall be a set of twelve (12) teaching tasks designed to provide interns the opportunity to demonstrate performance of the Kentucky Teacher Standards established by the Education Professional Standards Board in 16 KAR 1:010.~~

~~(b) The twelve (12) teaching tasks shall be grouped into three (3) components as follows:~~

~~1. Component I: Classroom Teaching, which shall include:~~

~~a. Task A-1: Teaching and Learning Context;~~

~~b. Task A-2: Lesson Plan;~~

~~c. Task B: Classroom Observation; and~~

~~d. Task C: Lesson Analysis and Reflection;~~

~~2. Component II: Professional Responsibilities, which shall include:~~

~~a. Task D: Collaborate to Address Special Learning Needs;~~

~~b. Task E: Assess and Manage Professional Growth; and~~

~~c. Task F: Leadership; and~~

~~3. Component III: Instructional Unit, which shall include:~~

~~a. Task G: Designing the Instructional Unit;~~

~~b. Task H: The Assessment Plan;~~

~~c. Task I: Designing Instructional Strategies and Activities;~~

~~d. Task J-1: Organizing and Analyzing the Results Reflecting on the Impact of Instruction; and~~

~~e. Task J-2: Communication and Follow-Up.]~~

~~(2)[In arriving at its professional judgment, the beginning teacher committee shall utilize the scoring rubrics contained within the KTIP Intern Performance Record, and take into consideration the progress of the teacher intern throughout the school year and, particularly, the level of performance that has been achieved near the end of the internship.] The beginning teacher committee shall determine the progress and improvement of the teacher intern, pursuant to KRS 161.030, by:~~

~~(a) A systematic observation of classroom performance;~~

~~(b) An ongoing review of documented evidence developed by the teacher intern of progress toward demonstration of the applicable teaching standards; and~~

~~(c) A review of the teacher intern's response to the suggestions and recommendations made by the beginning teacher committee during its meetings with the teacher intern throughout the internship.~~

~~(3) Throughout the internship, the teacher intern and the beginning teacher committee shall utilize the teaching[Kentucky Teacher] standards established by the Education Professional Standards Board in 16 KAR 1:010.~~

~~(4) The assessment shall be organized according to three (3) cycles of the internship designed to provide teacher interns the opportunity to demonstrate performance of the teaching standards established in 16 KAR 1:010[Teacher Interns and their committees shall use the indicators for each standard as outlined in the KTIP Intern Performance Record].~~

Section 3. Beginning Teacher Committee Membership Appointment. (1)(a) Each beginning teacher committee shall be composed of three (3) persons who have been appointed pursuant to KRS 161.030(6).

~~(b) School districts shall maintain a pool of resource teachers and principals who have successfully completed the beginning teacher[Kentucky Teacher Internship Program] committee training in order to assure eligibility for appointment to beginning teacher committees.~~

~~(c)[(b)] The beginning teacher[Kentucky Teacher Internship Program] committee training may be approved for up to six~~

~~(6)[twelve (12)] hours of professional development credit[toward the continuing education requirements] for resource teachers[pursuant to KRS 161.095] and Effective Instructional Leadership Act (EILA) credit for administrators pursuant to KRS 156.101.~~

~~(2) The employing school district shall recommend principals and resource teachers for appointments by the Education Professional Standards Board to beginning teacher committees.~~

~~(3) If the teacher intern is teaching at a nationally or regionally accredited nonpublic school without a principal, the accrediting organization's guidelines for designating the school head or school leader shall be used by the employing school in making the recommendation for appointment of the principal member. If no guidelines exist, the school shall provide a written rationale for the appointment to the Education Professional Standards Board for approval.~~

~~(4) Representatives of the teacher training institutions shall consult the Education Professional Standards Board with respect to the school districts and the geographical area to be served by teacher educator members on beginning teacher committees. All teacher educators shall have completed the beginning teacher[Kentucky Teacher Internship Program] committee training in order to assure eligibility for appointment to beginning teacher committees.~~

~~(5) The teacher training institution shall appoint a teacher educator no later than thirty (30) calendar days after being notified by the district or nonpublic school of the need for a teacher educator.[If the teacher intern is employed after the date required to submit the Confirmation of Employment in accordance with Section 4(3)(a) of this administrative regulation, the teacher training institution shall appoint a teacher educator no later than ten (10) days after being notified by the district or nonpublic school of the need for a teacher educator.]~~

~~(6) If the superintendent or designated nonpublic school head or leader determines that a teacher educator is unsuitable for appointment, the superintendent or designated nonpublic school head or leader shall submit a written request for removal to the Education Professional Standards Board. The request shall contain the following:~~

~~(a) The facts and circumstances that form the basis for removal for cause; and~~

~~(b) The name of a qualified replacement submitted after consultation with the principal of the employing school and the Kentucky Teacher Internship Program university and district coordinators for that school district.~~

~~[(7) The Education Professional Standards Board shall send written notification to the teacher intern, the beginning teacher committee, the superintendent or designated nonpublic school head or leader, and the teacher training institution of its decision regarding the request for removal.]~~

Section 4. Requirements for Time in the Internship and Classroom Assignment. (1) The one (1) year internship shall be completed during one (1) of the following:

(a) No less than 140 instructional days of employment in a certified position in the teacher intern's area of certification for which the teacher intern receives compensation during one (1) school year; or

(b) Two (2) semesters totaling at least 140 instructional days of employment in a certified position in the teacher intern's area of certification for which the teacher intern receives compensation in two (2) consecutive school years.

(2) The internship shall be established for each teacher intern whose initial employment begins at any time during the school term except if the date of employment does not allow for completion of at least seventy (70) instructional days of employment during the school year.

(a) If the period of employment is less than seventy (70) instructional days in a school year, the local school district shall declare an emergency as provided in KRS 161.100, authorizing the superintendent to request an emergency teaching certificate.

(b) The employing school district shall be responsible for providing assistance and supervision to the new teacher during the

period of employment under an emergency certificate.

(3)(a) The school district or nonpublic school shall ~~complete and~~ submit to the Education Professional Standards Board ~~a[the]~~ confirmation of employment ~~[in electronic form or in hard copy if the electronic submission system is unavailable]~~:

1. within thirty (30) calendar days from the teacher intern's first instructional day ~~[date of hire or on or before October 15, whichever occurs first, for a teacher intern participating in the internship for the fall semester or full year; or~~

2. Within thirty (30) days from the date of hire or On or before February 15, ~~whichever comes first, for a teacher intern participating in the internship for the spring semester]~~.

~~(b)[If the teacher intern begins employment after the dates established for submission of the Confirmation of Employment in paragraph (a) of this subsection, the school district or employing school shall submit the Confirmation of Employment in electronic form or in hard copy if the electronic submission system is unavailable within ten (10) days of the date of hire.] A one (1) year internship certificate shall be issued in accordance with the provisions of 16 KAR 2:010 and 16 KAR 4:050.~~

(c) If the district or employing school fails to report verification of enrollment in the internship by the applicable ~~timeline~~[date] established in paragraph (a)~~(or (b))~~ of this subsection, and there is insufficient time remaining for the teacher intern to complete the number of days required under subsection (1) of this section, the district or employing school shall declare an emergency as provided in KRS 161.100, and the teacher intern shall enroll in the internship in the next semester of employment when at least seventy (70) instructional days are available.

(d) Failure to confirm employment~~[submit the completed Confirmation of Employment]~~ or declare an emergency in accordance with paragraph (a), (b), or (c) of this subsection shall:

1. Be a violation of KRS 161.020; and

2. Result in the number of days the teacher intern taught without a valid certificate being included in the out of field report submitted to the Commissioner of the Department of Education in accordance with KRS 161.1221.

(4) A teacher intern may participate in the internship if the intern is teaching in the intern's area of certification on at least a half-time basis. A school district or nonpublic school offering employment to a new teacher for part-time services which do not conform to the definition of half-time basis shall request a waiver from the Education Professional Standards Board staff for the new teacher to participate in the Kentucky Teacher Internship Program. The waiver request shall detail how the part-time employment offered by the district or nonpublic school is commensurate with the half-time basis requirement of this administrative regulation.

(5)(a) Termination or resignation of the internship shall be prohibited unless a written resignation detailing the facts surrounding the resignation is received and approved by:

1. The superintendent or designated nonpublic school head or leader; and

2. The Education Professional Standards Board staff.

(b) A teacher intern who terminates or resigns the internship without the approval of the Education Professional Standards Board staff shall be recorded as unsuccessfully completing the internship for that school year.

(6) The internship shall be established in a classroom which corresponds to the certificate of the teacher intern. An internship shall not be established in a classroom designated as an alternative school, classroom or program unless the district superintendent or designated nonpublic school head or leader submits a written request for a waiver to the staff of the Education Professional Standards Board. The request shall include the following:

(a) The type of students that attend the alternative school, classroom or program;

(b) The student selection and placement process;

(c) The level of support for students and faculty provided by the district or nonpublic school;

(d) The degree of administrative support within the school, classroom, or program;

(e) The location and facility that houses the school, classroom,

or program;

(f) The instructional resources available to the faculty;

(g) The curriculum used by the school, classroom, or program;

(h) The manner in which the school, classroom, or program collaborates with other schools within the district;

(i) The current faculty and staff positions assigned to the school, classroom, or program;

(j) A brief description of how a teacher intern placed in the alternative school, classroom, or program could demonstrate that the teacher intern has met all of the applicable standards;

(k) Contact information for an individual who could provide additional information about the request; and

(l) A signed affidavit by the superintendent, the superintendent's designee, or the designated nonpublic school head or leader confirming the information.

(7) The Education Professional Standards Board staff shall grant the waiver if there is a determination that the request and accompanying documentation sufficiently demonstrate that:

(a) The level of support and services provided to the teacher intern assigned to an alternative school, classroom, or program is equivalent to that provided to a teacher intern placed in a nonalternative setting; and

(b) The teacher intern assigned to the alternative school, classroom, or program shall be provided the opportunity to successfully demonstrate all teaching~~[Kentucky Teacher]~~ standards.

(8) If the waiver is granted, it shall remain in effect for the duration of the internship.

Section 5. Designation and Duties of Chair; Responsibilities of Resource Teacher, Teacher Intern, and Teacher Educator; Requirements for Timing and Content of Beginning Teacher Committee Meetings. (1) The principal member of the three (3) person beginning teacher committee shall serve as chair and shall be responsible for convening the committee and coordinating its efforts~~[by scheduling observations and committee meetings]~~. The chair shall be responsible for the timely submission of all documents and reports of the beginning teacher committee to the Education Professional Standards Board as required by this administrative regulation.~~[All documents and reports shall be submitted through the electronic reporting system, or by hard copy if the electronic reporting system is unavailable.]~~ In addition, the chair shall:

(a)1. Make three (3) official observation visits to the teacher intern's classroom with each observation lasting one (1) hour in duration or one (1) class period; or

2. Make two (2) one (1) hour or one (1) class period observation visits followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lesson;

(b) Conduct a lesson plan review prior to each of the three (3) observations and a post-observation~~[postobservation]~~ conference after each observation;

(c) Report progress observed and concerns to the committee at the scheduled committee meetings;

(d) Track and verify~~[Monitor]~~ the time that the resource teacher spends with the teacher intern both in and out of class~~[and sign the electronic version of the resource teacher time sheets or the hard copy of the resource teacher time sheets if the electronic reporting system is unavailable]~~; and

(e) Ensure that all program policies and procedures are followed.

(2) The resource teacher shall be a mentor to the teacher intern and assess the teacher intern's progress in the internship.

(a) The resource teacher,~~[upon completion of Kentucky Teacher Internship Program Committee Training and]~~ upon appointment, shall begin to assist the teacher intern.

(b) The resource teacher shall spend the required amount of hours working with the teacher intern in the classroom setting as specified in KRS 161.030(7).

1. As a portion of the hours, the resource teacher shall conduct:

a. Three (3) official observations with each observation lasting one (1) hour in duration or one (1) class period; or

b. Two (2) observations lasting one (1) hour in duration or one (1) class period followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lesson.

2. The observations shall be preceded by ~~a pre-observation conference and~~ lesson plan review and shall be concluded with a post-observation conference.

(c) Pursuant to the resource teacher requirements established in KRS 161.030(7), a resource teacher shall complete out-of-class time identified in KRS 161.030 in consultation with the teacher intern to:

1. Assist the teacher intern in the development of the professional growth plan;

2. Assist the teacher intern in areas identified in the professional growth plan;

3. Assist the teacher intern with instructional activities such as planning, management techniques, assessment, and parent conferences;

4. Assist the teacher intern in arranging to attend seminars, conferences, or lectures offering educational assistance commensurate with the teacher intern's professional growth plan;

5. Continually assess the teacher intern's progress in the internship in relation to each of the applicable teaching ~~Kentucky Teacher~~ standards;

6. Provide the opportunity for the teacher intern to receive mentoring in a collaborative setting if the collaboration meets the needs of the teacher intern as defined in the professional growth plan. Mentoring in a collaborative setting shall be documented ~~on the Resource Teacher Time Sheet; and~~

~~7. Enter and submit data into the online Resource Teacher Time Sheet or the hard copy of that document if the electronic reporting system is unavailable.~~

(d) The resource teacher shall divide the consultation time required in paragraphs (b) and (c) of this subsection into appropriate increments that provide support for the teacher intern throughout the internship. The resource teacher shall not spend this required consultation time with the teacher intern at required in-school or district-wide meetings, or any other activity for which the resource teacher receives compensation from the district or employing school, to include a professional development activity.

(3) The teacher intern shall:

(a) Complete all requirements of the Kentucky Teacher Internship Program as established in KRS 161.030 and this administrative regulation, including compliance with the applicable teaching ~~Kentucky Teacher~~ standards;

(b) Attend the orientation ~~pre-observation~~ and post-observation conferences with individual committee members, and all beginning teacher committee meetings;

(c) Participate with the resource teacher in consultation time to be spent outside of an instructional setting in the amount of time specified in KRS 161.030;

(d) Cooperate with the resource teacher in completing the instructional observations;

(e) Complete a professional growth plan ~~(PGP)~~;

(f) Prepare for three (3) official one (1) hour observations by each committee member during the internship, including submitting a written lesson plan to the observer in a timely fashion prior to each visit. Each observation shall be one (1) hour in duration or one (1) class period;

(g) Develop documentary evidence of progress toward demonstration of the applicable standards for presentation and review at committee meetings; and

(h) Review all ~~electronic~~ documents completed by the beginning teacher committee and affix ~~a~~ an electronic signature if required. ~~If the electronic version of a document is unavailable through the electronic reporting system, the teacher intern shall review and sign a hard copy version of the document.~~

(4) The teacher educator shall:

a1. Make three (3) official observations of the teacher intern with each observation lasting one (1) hour in duration or one (1) class period; or

2. Make two (2) observations of one (1) hour in duration or one (1) class period, followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lesson;

(b) Conduct a lesson plan review prior to each of the three (3) observations and a post-observation ~~postobservation~~ conference after each observation; and

(c) Report progress observed and concerns to the committee at the scheduled committee meetings.

(5) Observations and committee meetings shall be scheduled in accordance with the following:

(a) The orientation meeting shall be held prior to the conduct of any formal classroom observations of the teacher intern;

(b) The classroom observations by all committee members shall occur prior to the corresponding committee meeting;

(c) The Cycle 1 classroom observations and ~~second~~ committee meeting shall be held between one (1) and sixty (60) instructional days following the orientation meeting;

(d) The Cycle 2 classroom observations and ~~third~~ committee meeting shall be held between sixty-one (61) and 110 instructional days following the orientation meeting; and

(e) The Cycle 3 taping and reviews of the video or classroom observations and ~~fourth~~ committee meeting shall be held between 111 instructional days after the orientation meeting and by the closing day of the school year ~~140 instructional days following the orientation meeting~~.

(6) Committees formed during the spring semester shall establish a meeting schedule that observes the time sequences established in subsection (5) of this section for the full-year teacher interns but which shall span the spring and fall semesters of two (2) consecutive school years.

(7)(a) Classroom observations conducted by committee members shall be:

1. Of at least one (1) hour or one (1) class period in duration; and

2. In the classroom or at the work station of the teacher intern.

(b) Additional classroom observations may be conducted at the option of the committee.

(c) All classroom observations shall be scheduled in advance in order to provide adequate time for preparation by the teacher intern.

(8) All members of the committee shall attend all four (4) meetings of the committee.

(9) At the orientation meeting of the beginning teacher committee, the following items shall be addressed:

(a) Expectations on the part of the teacher intern and each committee member;

(b) Procedures and materials for classroom observations;

(c) Use of classroom observation data in designing the teacher intern's professional growth plan;

(d) Requirements for the teacher intern for compiling documentary evidence of progress toward demonstration of the applicable teaching standards;

(e) General schedule for the events to take place during the internship program; and

(f) Work of the resource teacher with the teacher intern.

(10)(a) The primary purpose of the Cycle 1 and Cycle 2 ~~second and third~~ committee meetings shall be to provide the teacher intern with information based on classroom observations, review of the teacher intern's documented evidence of progress toward demonstration of the applicable teaching standards, and reports of the resource teacher that shall support the growth of the teacher intern.

(b) The committee shall provide the teacher intern at the cycle committee ~~second, third, and fourth~~ meetings with ~~a consensus assessment of~~ the teacher intern's progress in the internship in relation to the applicable teaching ~~each of the Kentucky Teacher~~ standards.

(11) The professional growth plan ~~(PGP)~~ shall be initiated at the Cycle 1 ~~second~~ committee meeting.

(12) The Cycle 2 committee ~~third~~ meeting shall include a review of expectations for the performance of the teacher intern, taking into account the reflections of the teacher intern and the committee members, and incorporating these expectations and reflections into the professional growth plan ~~(PGP)~~.

(13) The Cycle 3 committee ~~fourth~~ meeting shall include a professional judgment by the committee members on the

satisfactory completion of the one (1) year internship. This judgment shall be based upon the teacher intern's ability to meet the requirements of Kentucky Teacher Internship Program[all Kentucky Teacher Standards].

(14) If all committee members believe that more time would allow for improved demonstration of the teaching standards, a fourth cycle may be conducted.

(15) Cycle 4 may include additional observations or a review of the teaching standards.

(16) Cycle 4 shall fall within the timelines of Cycle 3 and shall include a committee meeting. Upon completion of Cycle 4, the Cycle 4 results shall replace the Cycle 3 results.

Section 6. Decision by the Beginning Teacher Committee, Reporting, and Certification Actions. (1)(a) The decision of the beginning teacher committee as to satisfactory completion of the internship for all[full-year] teacher interns shall be reported by the chair to the local school superintendent or other employer and to the Education Professional Standards Board[by May 1 or] no later than two (2) weeks following the final committee meeting[; whichever occurs first].

(b)[For teacher interns completing the internship in December, the final report shall be submitted by December 15-]

(c)[If a teacher intern's performance is judged by the majority of the committee to be unsuccessful, the school district or employing school shall submit all[relevant][the following] documentation to the Education Professional Standards Board by the deadline[deadlines] established in paragraph (a)[paragraphs (a) and (b)] of this subsection:]

1. Record of Teacher Internship Year;
2. Resource Teacher Time Sheets;
3. All Teacher Performance Assessment documents created in compliance with Section 2 of this administrative regulation;
4. School Calendar;
5. Video if available;
6. Any electronic communications that relate to any aspect of the internship sent to the teacher intern along with read receipts and responses back from the teacher intern if available; and
7. The KTIP Intern Performance Record or the KTIP IECE Intern Performance Record].

(c)[(d)] All materials submitted shall become the property of the Education Professional Standards Board and shall not be returned to the teacher intern.

(2) Failure to meet the deadlines established in subsection (1) of this section may warrant action against the District Superintendent's or employing school head or leader's certification.

(3) If a teacher intern's performance is judged by the committee to be unsatisfactory, the teacher intern shall have the opportunity to repeat the internship during one (1) additional school year [contingent upon employment within the period of validity of the statement of eligibility for internship]. If the teacher intern does not successfully complete the internship[during the period of validity of the statement of eligibility], the teacher intern shall requalify for admission to the remaining one (1) year of internship by meeting the requirements in effect at the time of reapplication for certification.

(4)(a) If the teacher intern is unable to complete the internship within one (1) school year in accordance with the requirements of Section 5 of this administrative regulation, an interim report shall be submitted to the Education Professional Standards Board[EPSB through the electronic system, or by hard copy if the electronic system is unavailable] within ten (10) calendar days of the date the internship ceases.

(b) Under extraordinary circumstances and with the approval of the Education Professional Standards Board[EPSB], the teacher intern may continue the internship during a subsequent school year if employed in a public or nonpublic accredited school. Extraordinary circumstances shall include:

1. Medical condition[Serious medical conditions];
2. Temporary disability; or
3. Military deployment.

(c) The provisions of Section 4(1)(a) or (b) of this administrative regulation shall not apply if the Education

Professional Standards Board[EPSB] approves the request for an exception based on extraordinary circumstances in this situation.

Section 7. Payments to Committee Members. (1) The Education Professional Standards Board shall contract with the local school district, or make other appropriate arrangements, for the direct service of a resource teacher to each teacher intern.

(2) A resource teacher shall:

(a) Not serve as a resource teacher for more than two (2) teacher interns concurrently; and

(b) Be paid a stipend in accordance with subsection (3) of this section.

(3)(a) Contingent upon funding, the Education Professional Standards Board shall provide a stipend[in an amount not to exceed \$1,400 per teacher intern] to each resource teacher as compensation for out-of-class time spent with the teacher intern.

(b) The stipend shall be prorated if the required number of hours are not performed and documented pursuant to the requirements of Section 5(2) of this administrative regulation.

(c) The stipend shall be disbursed in accordance with KRS 161.030(6)(f) on a biannual basis corresponding to the semester in which the mentoring occurred or on an annual basis for full-year interns with payment being disbursed at the end of the one (1) year internship.

~~1. The frequency of the disbursement shall be at the option of the district if the resource teacher is serving in a public school district.~~

~~2. If the resource teacher is serving in a nonpublic school, the frequency of the disbursement shall be determined by the submission of the resource teacher time sheets.]~~

Section 8. Appeals. (1)(a) If a Beginning Teacher Committee finds that a teacher intern was unsuccessful, the Education Professional Standards Board shall notify the teacher intern by certified mail to the last known address of the teacher intern on file with the Education Professional Standards Board. Service of the notice shall be deemed complete on the day the teacher intern receives the notice or on the day the Education Professional Standards Board receives the returned notice. The teacher intern may inspect the documentation submitted by the beginning teacher committee to the Education Professional Standards Board.

(b) To appeal the decision, the teacher intern shall file a written notice of appeal along with any additional documentation the teacher intern would like the appeals committee to consider within thirty (30) calendar days of the date service was deemed complete[the written notice of finding of unsuccessful completion of the internship is received by the teacher intern. If the teacher intern fails to maintain a current address with the Education Professional Standards Board or refuses to claim the certified mail, the teacher intern shall file a written notice of appeal within thirty-five (35) days of the date the notice is mailed to the teacher intern's last known address].

(c) If a written notice of appeal is not received within the timeline established in paragraph (b) of this subsection, the Beginning Teacher Committee's decision shall be final.

(2)(a) Appeals by teacher interns shall be reviewed by a committee of four (4) persons. The appeals committee shall include:

1. One (1) teacher;
2. One (1) principal;
3. One (1) teacher educator; and
4. The Executive Director of the Education[Educational] Professional Standards Board, or his or her designee.

(b)[The appeals committee members shall be chosen from a pool of committee candidates appointed annually by the Education Professional Standards Board.

(c) An appeals committee member shall not take part in a decision in which the member has an interest or is biased.

(3)(a) The appeals committee shall review the written appeal by the teacher intern, any documentation submitted by the teacher intern, all beginning teacher committee reports, any additional documentation that accompanied the final report, and

any written responses from the members of the beginning teacher committee.

(b) The appeals committee shall review all of the documentation listed in paragraph (a) of this subsection to determine if the evidence supports the findings of~~provide~~reference to the beginning teacher committee and base its recommendation upon the following requirements:

1. Evidence of the teacher intern's ability to meet the requirements of the applicable teaching~~[Kentucky Teacher]~~ standards;

2. Appropriate documentation of the instructional setting and outside normal working hours spent by the resource teacher in assisting the teacher intern as specified in KRS 161.030(7);

3. Assignment of beginning teacher committee members in accordance with legal requirements;

4. Compliance with the requirements for the timing, content, reporting, and signing of teacher intern performance records, meeting and observation forms, and resource teacher time sheets; and

5. Agreement between teacher intern performance records, professional growth plans, beginning teacher committee meeting reports, the~~[teacher performance]~~ assessment, and the final decision of the committee.

(4) The appeals committee shall make a recommendation to the Education Professional Standards Board on the appeal within sixty (60) calendar days following the receipt of the appeal, unless good cause exists for additional time.

(5) The Education Professional Standards Board shall issue a final decision in each appeal reviewed by the appeals committee. When making its final decision, the Education Professional Standards Board shall~~[may]~~ consider only the appeals committee recommendation and the records reviewed by the appeals committee~~[in issuing its decision]~~.

~~(6) If the decision of the beginning teacher committee is not upheld, the Education Professional Standards Board shall issue the appropriate certificate to the teacher intern.~~

~~(6) If the decision of the beginning teacher committee is upheld, the Education Professional Standards Board shall issue another Statement of Eligibility for Internship, unless:~~

~~(a) The teacher intern has exhausted the two (2)-year provision for participation in the Kentucky Teacher Internship Program; or~~

~~(b) The period of validity of the statement of eligibility has expired.~~

~~(7) If the Education Professional Standards Board determines that there is sufficient credible evidence, during the appeal process, it becomes evident that the beginning teacher committee has committed some procedural violation during the internship that[which] makes it impossible to determine if the teacher intern has in fact been unsuccessful, the Education Professional Standards Board may nullify the internship and allow the teacher intern to repeat the internship without penalty.~~

~~(7) In its final decision, the Education Professional Standards Board shall make a determination as to whether or not a certification shall be issued.~~

~~(8) If the teacher intern is not satisfied with the decision of the board based on the recommendation of the appeals committee, the teacher intern may request a formal hearing under the provisions of KRS Chapter 13B. The request shall be filed in writing with the Executive Director of the Education Professional Standards Board within fifteen (15) calendar days of the date the board's decision is received by the teacher intern.~~

~~(9) In notifying the teacher intern of the board's decision, the Education Professional Standards Board shall send its decision[the decision of the board] by certified mail to the address of the teacher intern on file with the EPSB[the last known address of the teacher intern]. Service shall be effective when the teacher intern receives the notice or when the Education Professional Standards Board receives the notice of return. If the teacher intern fails to maintain a current address with the Education Professional Standards Board, or refuses to claim the certified mail, the request for a hearing shall be filed in writing with the Executive Director of the Education Professional Standards Board within (20) calendar days of the date the board's decision is mailed to the teacher intern~~

~~by certified mail.~~

(9) If the teacher intern is not satisfied with the decision of the Education Professional Standards Board based on the recommendation of the appeals committee, the teacher intern may request a formal hearing under the provisions of KRS Chapter 13B. The request shall be filed in writing with the Executive Director of the Education Professional Standards Board within fifteen (15) calendar days of the date the board's decision is served on the teacher intern.

Section 9. A teacher intern who has not successfully completed the internship and has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program shall not be eligible for a Kentucky teaching certificate under this administrative regulation.

~~[Section 10. A teacher intern serving the internship in Interdisciplinary Early Childhood Education (IECE) shall successfully demonstrate the Kentucky Teacher Standards as adapted to the IECE standards and shall utilize the KTIP-IECE Intern Performance Record.~~

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

~~(a) "Confirmation of Employment", November 2004;~~

~~(b) "KTIP Intern Performance Record", March 2008;~~

~~(c) "KTIP IECE Intern Performance Record", March 2008;~~

~~(d) "Record of Teacher Internship Year", March 2008; and~~

~~(e) "Resource Teacher Time Sheet", March 2008.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

FILED WITH LRC: December 14, 2016 at 1 p.m.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email LisaK.Lang@ky.gov, phone (502) 782-2147, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of 16 KAR 6:010

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Kentucky Teacher Internship Program.

(b) The necessity of this administrative regulation: KRS 161.030(5) requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. This administrative regulation is necessary as it establishes the requirements for the Kentucky Teacher Internship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish the standards and requirements for maintaining a teaching certificate. KRS 161.030(5) requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. This administrative regulation establishes the requirements for the Kentucky Teacher Internship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for the Kentucky Teacher Internship 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 administrative regulation addresses the requirements for the Kentucky Teacher Internship Program (KTIP).

During 2014 and 2015, the Kentucky Advisory Council for Internships (KACI), at the direction of the Board, redesigned KTIP to align with the Kentucky Framework for Teaching using the district certified plan. The new program was piloted in 21 districts over the 2014-15 school year. Feedback was collected and used to further revise and refine KTIP process and sources of evidence. During 2016, all school district began using the revised KTIP with their new teachers after a waiver of this administrative regulation was approved by the Board. This proposed amendment reflects the redesigned KTIP and includes provisions that make specifically states that 1) an intern may review documentation used to form the basis of the determination made a beginning appeals committee; 2) an intern may submit additional documentation to an appeals committee reviewing the determination of a beginning appeals committee; and 3) that the appeals committee will review both the documentation submitted by the beginning teacher committee as well as the intern. The proposed amendment also makes clear that the beginning teacher committee must submit all KTIP documentation to the EPSB and it makes clear that the appeals committee and the EPSB will review all of the documentation listed to determine if the evidence supports the findings of the beginning teacher committee.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align KTIP with the Kentucky Framework for Teaching using the district certified plan and to meet the requirements of the Teacher Professional Growth and Effectiveness System (TPGES).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.030(5) requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. This administrative regulation establishes the requirements for the Kentucky Teacher Internship Program required by KRS 161.030(5).

(d) How the amendment will assist in the effective administration of the statutes: This amendment further clarifies KTIP and aligns it with the Kentucky Framework for Teaching using the district certified plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Several hundred applicants seeking initial certification in Kentucky will be affected by this regulation. Approximately 173 school districts and dozens of private schools that participate in KTIP will be affected by this regulation. Additionally, individuals who serve on the internship committees as mentors will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action will be required of the applicants seeking initial certification in Kentucky, the school districts and private schools employing these applicants, or the individuals serving on the internship committees. In fact, this amendment to the regulation reduces the burden of the administrative paperwork that was previously associated with KTIP.

(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 additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment seeks to simplify the KTIP process and reduce the administrative paperwork for all regulated entities involved with the KTIP while still providing applicants seeking initial certification a successful first year classroom experience by providing critical mentoring and feedback. Helping new teachers move through professional growth which is designed to enhance their ability to reflect on and analyze their teaching and to make the curricular and instructional adjustments necessary to ensure maximum student learning is

critical to student success in the Commonwealth.

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

(a) Initially: EPSB has capped spending at \$3,342,100.00 to administer the KTIP. If KTIP were fully funded, EPSB would spend approximately \$5,617,470.00.

(b) On a continuing basis: EPSB has capped spending at \$3,342,100.00 to administer the KTIP. If KTIP were fully funded, EPSB would spend approximately \$5,617,470.00.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: EPSB implements KTIP using funds from the EPSB's General Fund. Pursuant to the most recently passed biennial budget, EPSB may also use some restricted funds to help reduce the number of KTIP participants deferred due to insufficient funding each year.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The amendment of this administrative regulation will not result in an increase in funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation. All candidates for initial certification in Kentucky are required to do a one (1) year internship.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts and approved educator preparation programs at Kentucky public colleges/universities and the EPSB are impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028 requires the EPSB to establish the standards and requirements for maintaining a teaching certificate. KRS 161.030(5) requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship.

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

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

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

(c) How much will it cost to administer this program for the first year? Currently, the EPSB spends approximately \$3,342,100.00 per year to manage KTIP.

(d) How much will it cost to administer this program for subsequent years? To fully fund KTIP for all teachers seeking initial certification in Kentucky, EPSB would need to spend approximately \$5,617,470.00. Due to current funding constraints, the EPSB has capped spending at \$3,342,100.00.

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

Revenues (+/-): No revenue will be generated.

Expenditures (+/-): No additional expenditures will be generated.

Other Explanation:

KENTUCKY PUBLIC TRANSPORTATION INFRASTRUCTURE
AUTHORITY
(Amended After Comments)

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).

(4)(5) "Public-private partnership" is defined by KRS 175B.010(14).

(5)(6) "State authority" is defined by KRS 175B.010(16).

(6)(7) "Unsolicited proposal" means a proposal submitted pursuant to KRS 175B.020(5) to (9).

(7)(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 kyptia@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 ~~authority~~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 ~~professionals~~professionals and ~~consultants~~consultants.

(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 pay an agreed amount in exchange for the use of 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, **if[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, **each[all]** unsolicited **proposal[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) **The date[After]** a contract has been awarded, if the state authority elects to undertake an open, competitive procurement process pursuant to KRS Chapter 175B.

GREG THOMAS, Secretary, Transportation Cabinet, and Chairman,

KPTIA

MAX BRIDGES, Wyatt Tarrant and Combs, KPTIA General Counsel

APPROVED BY AGENCY: December 15, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

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:

(a) How the amendment will change the existing administrative regulation: The amendment makes it clearer that compensation can be provided to unsolicited proposers and better conforms the regulation to language requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide potential unsolicited proposers assurance they will be compensated for the time and expense that goes into making a proposal.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 175B requires that unsolicited proposers reimburse the state authority for the expense of evaluating an unsolicited proposal. The regulation makes it clear that the amount of this reimbursement can be offset by the value to the state authority gained from the unsolicited proposal.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will potentially encourage more unsolicited proposals as authorized by KRS Chapter 175B.

(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. If the unsolicited proposal is approved for further review, the authority may commit to pay an agreed amount in exchange for the use of any design, idea, or intellectual property contained in the proposal.

(a) How much 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

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, 527.100, 527.110, 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 in accordance with KRS 527.100

and 527.110; 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 the[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)(c)].

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[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.

(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: December 13, 2016

FILED WITH LRC: December 14, 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 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 administrating 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:

PROPOSED AMENDMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Amendment)

16 KAR 1:010. Standards for certified teachers[school personnel].

RELATES TO: KRS 161.020, 161.028[~~(+)(a)~~], 161.030, 161.048(1)(d), 161.095, 161.120

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028[~~(+)(a)~~] requires the Education Professional Standards Board to establish standards for obtaining and maintaining certification[~~a teaching certificate~~]. This administrative regulation establishes the standards required for certified teachers[~~school personnel~~] to obtain or maintain certification.

Section 1.[~~Kentucky~~] Teacher Standards for Educator Preparation and Certification prior to July 1, 2018. The standards established in this section shall be used in the evaluation and assessment of a teacher for initial or advanced certification and for the accreditation of educator[~~teacher~~] preparation programs until June 30, 2018.

(1) Standard 1. The teacher demonstrates applied content knowledge. The teacher demonstrates a current and sufficient academic knowledge of certified content areas to develop student knowledge and performance in those areas.

(2) Standard 2. The teacher designs and plans instruction. The teacher designs and plans instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(3) Standard 3. The teacher creates and maintains learning climate. The teacher creates a learning climate that supports the development of student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(4) Standard 4. The teacher implements and manages instruction. The teacher introduces, implements, and manages instruction that develops student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(5) Standard 5. The teacher assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(6) Standard 6. The teacher demonstrates the implementation of technology. The teacher uses technology to support instruction; access and manipulate data; enhance professional growth and productivity; communicate and collaborate with colleagues, parents, and the community; and conduct research.

(7) Standard 7. The teacher reflects on and evaluates teaching and learning. The teacher reflects on and evaluates specific teaching or learning situations or programs.

(8) Standard 8. The teacher collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other agencies to design, implement, and support learning programs that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge.

(9) Standard 9. The teacher evaluates teaching and implements professional development. The teacher evaluates his or her overall performance with respect to modeling and teaching Kentucky's learning goals, refines the skills and processes necessary, and implements a professional development plan.

(10) Standard 10. The teacher provides leadership within the school, community, and profession. The teacher provides professional leadership within the school, community, and education profession to improve student learning and well-being.

Section 2. Teacher Standards for Educator Preparation and Certification after June 30, 2018. The standards established in this section shall be used in the evaluation and assessment of a teacher for initial or advanced certification and for the accreditation of educator preparation programs after June 30, 2018.

(1) Standard 1. Learner development. The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences.

(2) Standard 2. Learning differences. The teacher uses the understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards.

(3) Standard 3. Learning environments. The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self-motivation.

(4) Standard 4. Content knowledge. The teacher understands the central concepts, tools of inquiry, and structures of the discipline he or she teaches, and creates learning experiences that make these aspects of the discipline accessible and meaningful for learners to assure mastery of the content.

(5) Standard 5. Application of content. The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

(6) Standard 6. Assessment. The teacher understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the educator's and learner's decision making.

(7) Standard 7. Planning for instruction. The teacher plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context.

(8) Standard 8. Instructional strategies. The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways.

(9) Standard 9. Professional learning and ethical practice. The teacher engages in ongoing professional learning and uses evidence to continually evaluate his or her practice, particularly the effects of his or her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner.

(10) Standard 10. Leadership and collaboration. The teacher seeks appropriate leadership roles and opportunities to take responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession.

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

FILED WITH LRC: December 13, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2017, at 10:00 a.m. at 100 Airport Road, Third Floor, 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. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email LisaK.Lang@ky.gov, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the teaching standards required for certified teachers to obtain or maintain certification.

(b) The necessity of this administrative regulation: The Education Professional Standards Board (EPSB) is statutorily required to establish teaching standards pursuant to KRS 161.028(1)(a). Teaching standards are the first step to help create a supportive state policy infrastructure that leads to improved student outcomes. Teaching standards ensure a coherent set of expectations for teachers from beginning through accomplished practice and the conditions necessary to support professional growth along the career continuum and provide an anchor for state policy by outlining the professional responsibilities, behaviors, and expectations of teachers.

The teaching standards identify what teachers across all content and grade levels should know and be able to do in today's learning environment to ensure that every student attending Kentucky's public schools has opportunities to learn at a high level and succeed as he or she makes the transition from high school to postsecondary education or the workplace. These standards ensure that today's learners meet both the academic and global skills and knowledge necessary to navigate the world. Additionally, these teaching standards stress that teachers build literacy and thinking skills across the curriculum, as well as help learners address multiple perspectives in exploring ideas and solving problems. As a result, students can gain a deeper understanding of subject matter, learn to think critically, and apply their learning to real-world problems.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 mandates that no person shall be eligible to hold the position of teacher unless he or she holds a certificate of legal qualifications for the position, issued by the EPSB. KRS 161.030 mandates that the certification of all teachers and other school personnel in public schools is vested in the EPSB.

The General Assembly vests the statutory authority and responsibility in the EPSB in KRS 161.028(1)(a) to establish the teaching standards necessary to ensure that institutions of higher education develop educator preparation programs that produce educators prepared to teach Kentucky students so that Kentucky's students graduate and succeed as they make the transition from high school to postsecondary education or the workplace. Further, in keeping with the directives in Senate Bill 1 (2009) these revised standards will lead to highly effective teachers who will be able to help today's students gain the academic and global skills, and knowledge necessary to navigate the world as required under KRS 158.6451.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The General Assembly outlines learning goals in KRS 158.6451 that will result in high levels of achievement for all students.

The General Assembly vests the statutory authority and responsibility in the EPSB in KRS 161.028(1)(a) to establish the teaching standards necessary to ensure that institutions of higher education develop educator preparation programs that produce teachers prepared to teach Kentucky students so that Kentucky's students graduate ready to transition from high school to postsecondary education or the workplace.

(2) If 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 proposed amendment sets forth teaching standards that reflect a vision of teaching where teachers engage students in developing 21st century knowledge and skills including deeper critical/creative thinking and collaborative problem solving, personalize learning to new levels, make teaching more transparent and encourages teachers to work collaboratively with colleagues to improve practice, and problem solve in a data-informed culture to improve student learning.

These teaching standards consist of ten individual standards organized into four priority areas: the learner and learning (standards 1–3); content (standards 4–5); instructional practice (standards 6–8); and professional responsibility (standards 9–10). While each standard emphasizes a discrete aspect of teaching, we recognize that teaching and learning are dynamic, integrated, and reciprocal processes. Thus, of necessity, the standards overlap and must be taken as a whole in order to convey a complete picture of teaching and learning.

Integrated across the standards is the teacher's responsibility for the learning of all students, the expectation that they will advocate for each student's needs, and the obligation to actively investigate and consider new ideas that would improve teaching and learning and promote the profession.

This proposed amendment will also align the teaching standards with the national accreditation requirements for the state educator preparation programs.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the teaching standards in Kentucky reflect the present learning environment; this amendment is also necessary to ensure that institutions of higher education develop educator preparation programs that are based on teaching standards that will result, not only in educator preparation programs that can be meet national accreditation standards (Council for the Accreditation of Educator Preparation or "CAEP"), but will ensure that institutions of higher education produce educators who are capable of helping Kentucky students become college and career ready.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020 mandates that no person shall be eligible to hold the position of teacher unless he or she holds a certificate of legal qualifications for the position, issued by the EPSB. KRS 161.030 mandates that the certification of all educators in public schools is vested in the EPSB.

The General Assembly vests the statutory authority and responsibility in the EPSB in KRS 161.028(1)(a) to establish the teaching standards necessary to ensure that institutions of higher education develop educator preparation programs that produce teachers prepared to teach Kentucky students so that Kentucky's students graduate and succeed as they make the transition from high school to postsecondary or the workplace.

Further, in keeping with the directives in Senate Bill 1 (2009) these revised standards will lead to highly effective teachers who will be able to help today's students gain the academic and global skills, and knowledge necessary to navigate the world as required under KRS 158.6451.

(d) How the amendment will assist in the effective administration of the statutes: The first step in designing a coherent system of education is setting the expectations for student outcomes and for the behaviors of teachers and leaders within the system. These revised teaching standards articulate a vision of teaching very different from the vision most teacher education programs are organized around. This new vision engages learners in developing 21st century knowledge and skills including deeper critical/creative thinking and collaborative problem solving, personalize learning to new levels, make teaching more transparent and work collaboratively with colleagues to improve practice, develop deep skills around assessment and participate as a team member in a problem solving data-informed culture to improve student learning. By amending this regulation, the EPSB will modernize the teaching standards to reflect the changes in today's learning environment while also directly tying those standards to the national accreditation requirements for the state educator preparation programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prospective teachers, current teachers, leaders of Kentucky's 173 public school districts, Kentucky's institutions of higher education in Kentucky that offer educator preparation programs, institutions of higher education outside of Kentucky interested in offering an educator preparation program that can lead to Kentucky certification, and the Kentucky Department of Education will all be affected in some way 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: As a result of this amendment, prospective teachers will not have to do anything more once the regulation goes into effect.

Current teachers will not be required to do anything more than what they currently do once the regulation goes into effect.

Kentucky school districts will need to implement professional development opportunities to ensure that the teachers and administrators they employ understand the revised teaching standards and they will need to make sure that their teachers and administrators are utilizing these revised standards to transform their practices, if necessary, to improve student outcomes.

Kentucky Department of Education will need to develop guidance on how school districts and the employees in those districts can use the new teaching standards to update current practices to improve student outcomes and ensure every child reaches his/her learning potential and graduates from high school ready to successfully transition to postsecondary education or the workplace.

The revised standards will require institutions of higher education offering educator preparation programs to evaluate current state approved educator preparation programs to make sure that those programs reflect the revised teacher standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated as a result of the amendment to this administrative regulation. The work associated with the implementation of this regulation falls within the normal scope of the regulated entity's normal day to day responsibilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit of this amendment, in general, is that it will help the regulated entities meet their statutory duties to ensure that Kentucky students successfully transition to postsecondary education or the workplace.

The additional benefit for the institutions of higher education with education preparation programs is that this amendment will result in the alignment of state and national accreditation. The alignment of both standards will make the accreditation process easier for institutions of higher education. It should also help institutions of higher education in Kentucky to attract more students interested in the teaching profession to come to Kentucky.

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

(a) Initially: No initial cost is associated with the implementation of this amendment.

(b) On a continuing basis: No continuing cost is associated with the implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: EPSB general funds will be used for EPSB work. To the extent there are costs associated with this work for the regulated entities, the regulated entity is responsible for their respective related 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: The EPSB does not anticipate the need to increase certification fees as a result of the implementation of this amendment.

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This amendment does not establish any certification fees nor does it directly or indirectly increase any certification fees.

(9) TIERING: Is tiering applied? No. There is no additional cost associated with this regulation so tiering would not be applicable for this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Prospective teachers, current teachers, leaders of Kentucky's 173 public school districts, Kentucky's institutions of higher education in Kentucky that offer educator preparation programs, institutions of higher education outside of Kentucky interested in offering an educator preparation program that can lead to Kentucky certification, and the Kentucky Department of Education would 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 158.6451, 161.020, 161.028(1)(a), 161.030, 161.048(1)(d), 161.095, 161.120

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

(a) How much 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 on revenues of a state or local government agency is anticipated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No impact on revenues of a state or local government agency is anticipated.

(c) How much will it cost to administer this program for the first year? No cost with the administration of this regulation is anticipated.

(d) How much will it cost to administer this program for subsequent years? No cost with the administration of this regulation is anticipated.

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

Revenues (+/-): No anticipated additional revenues

Expenditures (+/-): No anticipated additional expenditures.

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (Amendment)

16 KAR 4:040.[Recency and] Certification Fees.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030, 161.046, 161.048, 161.053

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that educators~~[a teacher and other professional school personnel]~~ hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of educator preparation prescribed by the Education Professional Standards Board (EPSB); furthermore, an educator preparation provider~~[a teacher education institution]~~ is required to be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the EPSB~~[Education Professional Standards Board]~~. KRS 161.030 establishes additional testing and

internship requirements for certification. ~~[This administrative regulation establishes requirements for the issuance of the limited initial certificate; the beginning teacher internship program; certificate renewal; and filing a certificate application.]~~ This administrative regulation establishes fees to be charged for the issuance, reissuance, and renewal of a certificate.

Section 1. (1) Application for teacher certification shall be made to the Division of Certification.

(2) ~~[The]~~ Application shall be accompanied by an official transcript showing all college credits necessary for the requested certification.

Section 2. ~~[Recency. Teacher certification issued initially under the provisions of 16 KAR 2:010 or 16 KAR 2:020 shall comply with the provisions of KRS 161.030 and the following requirements and procedures:~~

(1) There shall be a recency of preparation prerequisite for the issuance of a certificate covered by this section, as follows:

(a) Except as provided in paragraphs (b) and (c) of this subsection, ~~an out-of-state applicant for initial Kentucky certification shall have prepared as a teacher or completed six (6) semester hours of graduate credit within the five (5) years preceding the application.~~

(b) ~~An out-of-state applicant for initial Kentucky certification who has completed a Planned Fifth-year Program shall be exempt from taking the six (6) additional hours, if the applicant has completed two (2) years of successful teaching experience within the last ten (10) years.~~

(c) 1. A certificate shall be issued for a one (1) year period ending June 30 of the next calendar year if the applicant:

- a. Does not meet the recency of preparation requisite;
- b. Has not previously held a Kentucky teaching certificate;
- c. Otherwise qualifies for certification; and
- d. Agrees that six (6) semester hours of credit applicable toward the usual renewal requirement shall be completed by September 1 of the year of expiration.

2. To renew a certificate issued under subparagraph 1 of this paragraph, the applicant shall comply with the requirements for renewal established in subsection (2) of this section.

(2)(a) A teaching certificate described in this section shall be issued for a duration period of five (5) years and with provisions for a subsequent five (5) year renewal, as established in 16 KAR 7:010.

(b) Semester hour credit for certificate renewal shall be earned after the issuance of the certificate. Credit earned in excess of the minimum requirement for a renewal period shall accumulate and be carried forward to apply toward a subsequent renewal.

Section 3. (1) Reissuance.

(a) If a certificate has lapsed as a result of the applicant's failure to meet the renewal requirements, the certificate shall be reissued at a later date for a one (1) year period if the applicant completes at least six (6) semester hours of graduate credit applicable toward the Planned Fifth-year Program.

(b) The applicant shall complete an additional nine (9) semester hours of credit applicable toward the planned fifth-year program by September 1 of the year of expiration to qualify for extending the certificate for the remaining four (4) years of the first five (5) year renewal period.

(c) At the end of the renewal period established in paragraph (b) of this subsection, the applicant shall have completed the Planned Fifth-year Program to qualify for the next five (5) year renewal. After the renewal period established in this paragraph, the regular renewal schedule of three (3) years of successful teaching experience with evidence of continuing growth documented in a portfolio as required by 16 KAR 4:060 or six (6) semester hours of additional graduate credit each five (5) year period shall apply.

(2) An applicant who has already completed the Planned Fifth-year Program and whose certificate lapses shall have the certificate reissued after completing another six (6) semester hours of graduate credit. The certificate shall be issued for a five (5) year period and subject to the renewal schedule of three (3) years of

successful teaching experience or completion by September 1 of the year of expiration of at least six (6) semester hours of additional credit for each five (5) year period.

(3) Pursuant to KRS 161.030 (3) and (4), successful experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made and shall be defined as follows:

- (a) Employment shall be at least on a half-time basis;
- (b) A full year of experience shall include at least 140 days of employment performed within the academic year; and
- (c) A half year of experience shall include at least seventy (70) days of employment performed within an academic semester.

Section 4. Fees. (1) The Education Professional Standards Board shall assess a fee of eighty-five (85) dollars for the issuance, reissuance, or renewal of a certificate except under the following circumstances ~~[following fees for teaching certificates shall apply]:~~

(a) Issuance of an initial statement of eligibility for internship - no charge;

(b) Issuance or reissuance of a ~~[Limited]~~ one (1) year certificate - no charge;

(c) Renewal of a statement of eligibility - fifty (50) dollars ~~[issuance, reissuance, or renewal of a regular certificate - fifty (50) dollars, which shall include all previously approved certifications and endorsements];~~

(d) Issuance of a five (5) year substitute certificate - fifteen (15) dollars;

(e) Issuance ~~[Reissuance]~~ of a ~~[limited]~~ four (4) year certificate ~~[certification] - fifty (50) [thirty-five (35)] dollars; and~~

(f) A duplicate copy of the certificate - twenty-five (25) dollars.

(2) If a certificate holder is renewing or adding a new certification, he or she may align all certification renewal dates to the same date for each of the certificate holder's certificates for a fee of fifteen (15) dollars in addition to the fee established in subsection (1) of this section.

(3) All fees paid to the EPSB shall be nonrefundable if application for certification is denied.

(4) ~~[A refund of the certification fee shall be provided to an unsuccessful certification applicant, less a ten (10) dollar processing fee.~~

(3) The appropriate fee shall:

- (a) Accompany ~~[the]~~ application; and
- (b) Be paid through electronic payment on the EPSB's Web site ~~[received in the form of a certified check or money order made payable to the Kentucky State Treasurer].~~

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

FILED WITH LRC: December 13, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2017, at 10:00 a.m. at 100 Airport Road, Third Floor, 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. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2017 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email LisaK.Lang@ky.gov, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of 16 KAR 4:040

(a) What this administrative regulation does: This administrative regulation establishes fees to be charged for the

issuance, reissuance, and renewal of a certificate.

(b) The necessity of this administrative regulation: KRS 161.028(1)(q) requires that the Education Professional Standards Board (EPSB) establish reasonable fees for the issuance, reissuance, and renewal of certificates. The proceeds are to be used to meet a portion of the costs of the issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder under KRS 161.120. Additionally, the biennium budget enacted in 2016, notwithstanding KRS 161.028 (1)(q), allows use of these funds to support the Kentucky Teacher Internship Program (KTIP). KRS 13A.221 requires that a separate regulation be promulgated for each topic.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.027, 161.028, 161.030 and 161.048 require that an educator hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation, internship and appropriate assessments prescribed by the EPSB; this administrative regulation establishes fees to be charged for the issuance, reissuance, and renewal of an educator's certificate issued under KRS 161.010-161.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes fees to be charged for the issuance, reissuance, and renewal of a certificate. This regulation is applicable to all certificates issued under KRS 161.010-161.100.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation will increase certain fees to be charged for the issuance, reissuance, and renewal of an educator's certificate. The amendment adds a certificate renewal synchronization option for educators wishing to align multiple certification renewal dates. This administrative regulation proposes to also change the means by which fees will be accepted by the EPSB.

This administrative regulation also removes language regarding recency and reissuance requirements. The topics of recency and reissuance will be included in new regulations that the agency is in the process of initiating.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been updated since 1997. The fees that are presently included in the administrative regulation are no longer reasonable or adequate given the significant budgetary cuts implemented since 2008. After careful review of the certification fees and the necessary expenditures needed to continue efficient operations related to the issuance, reissuance, and renewal of certificates; action(s) against a certificate holder under KRS 161.120; and support use of these funds to additionally support the Kentucky Teacher Internship Program (KTIP) as allowed under passage of the current biennium budget this administrative regulation must be amended to increase certain certification fees so that the fees are more closely in range to meet the current fiscal needs identified above. This administrative regulation is also being amended to bring the regulation in compliance with KRS 13A.221(1) which provides that agencies shall promulgate separate regulations for each topic.

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

KRS 161.020, 161.028, and 161.030 require that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation prescribed by the EPSB. Further, KRS 161.028(1)(q) requires that the EPSB establish reasonable fees for the issuance, reissuance, and renewal of certificates. These changes are applicable to all certificates issued under KRS 161.010-161.100. The amendment to this administrative regulation will increase certain fees to be charged for the issuance, reissuance, and renewal of a certificate and will change the means by which fees will be accepted.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will increase certain fees already charged for the

issuance, reissuance, and renewal of educator certificates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact the EPSB; educators applying for the issuance, reissuance, or renewal of an educator certificate (approximately 40,000 educators apply for the issuance, reissuance, or renewal of their certificates each year while the number of individual credentials issued each year is over 100,000); and higher education educator preparation programs of the twenty-five (25) colleges/universities who submit Kentucky certification recommendations on behalf of educator certification candidates. Indirectly, Kentucky public school districts may see benefit from these changes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Some educators may see an increase in the amount of money paid for the issuance, reissuance, and renewal of certain certificates. However, the certificate renewal alignment option provides a convenience and can offer great cost savings to those educators who meet renewal requirements and choose to synchronize staggered renewal dates for multiple certificates to the same renewal date. Educators have asked for the ability to synchronize multiple certificate renewal dates. So, instead of paying the full renewal fee for each certificate every time a certificate expires, educators can choose the option to align them all to the same 5 year renewal cycle. Approved educator preparation programs at Kentucky public colleges/universities will not be negatively impacted by this amendment. Additional monies collected by the agency will be utilized to streamline the certification process related to costs for the issuance, reissuance, and renewal of certificates; action(s) against certificate holders under KRS 161.120; and to additionally support the KTIP as allowed under passage of the current biennium budget to ensure that all first year teachers can participate in KTIP during year one. Additionally, the certificate renewal alignment option should help create greater agency operational efficiencies by not having to repeatedly handle separate certificates and credentials over staggered years for a single educator.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will help ensure that there are sufficient funds necessary to support the associated costs for the issuance, reissuance, and renewal of certificates; action(s) against a certificate holder under KRS 161.120; and to support the KTIP as allowed under passage of the current biennium budget. This amendment not only supports new teachers, but it also supports school districts and the students of the Commonwealth. By increasing certain certification fees so that the fees are more closely in range to meet the current fiscal needs identified above, the agency can continue streamlining its process for issuing, reissuing, and renewing certificates while also supporting school districts that need properly credentialed educators hired in a timely fashion before the school year begins. Educators who meet renewal requirements and who choose to synchronize renewal dates for multiple certificates to the same renewal date are not only provided a convenience, but they may accrue great cost savings over the life of their certificates. Educators have asked for the ability to synchronize multiple certificate renewal dates. Approved educator preparation programs (EPPs) at Kentucky public colleges/universities may also experience benefit by the streamlining of the certification and licensure processes as EPPs offer preparation programs that correspond to specific certificates issued by the EPSB. Additionally, the certificate renewal alignment should create greater agency operational efficiencies over time by better utilizing resources.

(5) Provide an estimate of how much it will cost to implement

this administrative regulation:

(a) Initially: There is no initial cost for the agency associated with the amendment to this administrative regulation. Upon enactment of the regulation, there may be an increased cost to those educators applying for issuance or renewal of certain certifications. The amount for issuance, reissuance, or renewal of a regular certificate will rise from fifty (50) dollars to eighty-five (85) dollars; and the amount for issuance of a four (4) year certification will rise from thirty-five (35) dollars to fifty (50) dollars. The amendment also provides a certificate renewal synchronization option for educators wishing to align multiple certification renewal dates for the eighty-five (85) dollar renewal fee plus the fifteen (15) dollar synchronization fee for a total of one hundred (100) dollars. The synchronization option will result in a savings to an educator over the lifetime of an educator's certificate(s).

(b) On a continuing basis: There is no anticipated continuing cost for the agency associated with the implementation of 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: The funding used for the implementation and enforcement of this administrative regulation is the certification fees collected pursuant to 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 amendment to this administrative regulation may increase fees already charged for the issuance, reissuance, and renewal of certain certificates. Additionally, the amendment establishes a fee for the optional certificate renewal date synchronization.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation may increase fees for issuing, reissuing, and renewing certain certifications. It also establishes a fee for a certificate renewal synchronization option for educators wishing to align multiple certification renewal dates.

(9) TIERING: Is tiering applied? Tiering is not applied because it applies to educators in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will impact the Education Professional Standards Board (EPSB) because it will further support EPSB operations. Indirectly, Kentucky public school districts may see a benefit from this amendment because the EPSB will have the ability to ensure that all first year teachers can be included in the Kentucky Teacher Internship Program (KTIP).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.027, 161.028, 161.030 and 161.048 require that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation, internship and appropriate assessments prescribed by the EPSB; This administrative regulation establishes fees to be charged for the issuance, reissuance, and renewal of an educator's certificate issued under KRS 161.010-161.100. KRS 161.028(1)(q) requires that the EPSB establish reasonable fees for the issuance, reissuance, and renewal of certificates. The proceeds are to be used to meet a portion of the costs of the issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder under KRS 161.120. Additionally, the biennium budget enacted in 2016, notwithstanding KRS 161.028 (1)(q), allows use of these funds to support the KTIP.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 EPSB will have a direct increase in restricted fund revenues with the proposed fee increases. Expenditures for implementation

should be absorbed in the regular day to day operations as certification activities are already occurring. It is also anticipated that the certificate renewal alignment option will lead to operational efficiencies if utilized by eligible educators. Other state or local government agencies should not be impacted by these changes.

(a) How much 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 EPSB estimates that the changes to this administrative regulation will increase its restricted fund revenues by \$460,300 based upon the numbers of educators who applied for the related types of certificate issuance, reissuance, or renewal. (The amount for issuance, reissuance, or renewal of a regular certificate will rise from fifty (50) dollars to eighty-five (85) dollars and the amount for issuance of a four (4) year certification will rise from thirty-five (35) dollars to fifty (50) dollars.) It is not possible at this time to estimate how many educators may wish to utilize the option for certificate renewal date synchronization or if it will be fully utilized by eligible educators.

(b) How 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 EPSB estimates that the changes to this administrative regulation will increase its restricted fund revenues by \$475,000 based upon the numbers of educators who applied for the related types of certificate issuance, reissuance, or renewal. (The amount for issuance, reissuance, or renewal of a regular certificate will rise from fifty (50) dollars to eighty-five (85) dollars and the amount for issuance of a four (4) year certification will rise from thirty-five (35) dollars to fifty (50) dollars.) It is not possible at this time to estimate how many educators may wish to utilize the option for certificate renewal date synchronization or if it will be fully utilized by eligible educators.

(c) How much will it cost to administer this program for the first year? KRS 161.028(1)(q) requires that the EPSB establish reasonable fees for the issuance, reissuance, and renewal of certificates and that the proceeds be used to cover the costs of certificate issuance, reissuance, and renewal as well as the EPSB's costs relating educator disciplinary action pursuant to KRS 161.120.

It is not possible at this time to subdivide the elements of these statutorily mandated activities. Educator certification spans the agency and the work is multifaceted. The amount of expenditures related to disciplinary actions may vary dependent upon the number of cases brought before the Board.

Additionally, the biennium budget enacted in 2016, notwithstanding KRS 161.028 (1)(q), allows use of these funds to support the KTIP. The number of first year teachers who have been deferred entrance into KTIP due to lack of funds varies. The number of new teacher deferrals ranges between 200 and 300. Due to the increase in funding from the certification fee increase, the EPSB will not have to defer KTIP for some first year teachers. EPSB will be able to ensure that all first year teachers will be able to enter KTIP during their first year.

(d) How much will it cost to administer this program for subsequent years? KRS 161.028(1)(q) requires that the EPSB establish reasonable fees for the issuance, reissuance, and renewal of certificates and that the EPSB use the proceeds to cover the costs of the issuance, reissuance, and renewal of certificates as well as the costs associated with disciplinary action against a certificate holder under KRS 161.120.

Additionally, the biennium budget enacted in 2016, notwithstanding KRS 161.028 (1)(q), allows use of these funds to support the KTIP. The number of first year teachers who have been deferred entrance into KTIP due to lack of funds varies. The number of new teacher deferrals ranges between 200 and 300. Due to the increase in funding from the certification fee increase, the EPSB will not have to defer KTIP for some first year teachers. EPSB will be able to ensure that all first year teachers will be able to enter KTIP during their first year.

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

Revenues (+/-): Approximately \$475,000 to restricted funds.
Expenditures (+/-): No anticipated additional expenditures.
Other Explanation: See responses above.

**DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(Amendment)**

106 KAR 1:081. Kentucky Emergency Response Commission Tier 2 reporting and fee schedule requirements – EHS facility planning participation[fee system] requirements.

RELATES TO: KRS 39E.020, 39E.030, 39E.040, 39E.050, 39E.110, 39E.120, 39E.130, 39E.140, 39E.150, 39E.160, 39E.170, 39E.190, 39E.220, 39E.230[39.800-39.999], 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39E.010, 39E.040, 39E.050, 39E.120, 39E.130, 39E.210[39.817, 39.845, 39.850, 39.890], 42 U.S.C. 11002(c), 11003(c), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes the Tier 2 reporting and facility planning participation requirements for facilities subject to 42 U.S.C. 11001 through 42 U.S.C. 11050[This administrative regulation sets forth the requirements to be followed by facilities subject to paying a fee].

Section 1. Definitions. (1) "Category" means the five (5) types of facilities, defined in paragraphs (a) through (e) of this subsection, describing individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances and the category number applicable to each.

(a) "Category one facility" means any facility owned or operated by local, state, or federal government, which shall:

1. Be[is] exempted from paying any fee in accordance with KRS 39E.050; and

2. Not be exempt[39.817. This exemption applies solely to fees and does not exempt any Category One Facility] from reporting requirements pursuant to KRS 39E.020, 39E.030, 39E.040, 39E.050, 39E.110, 39E.120, 39E.190, 39E.220 and 39E.230[39.800 to 39.905].

(b)[(2)] "Category two facility" means any facility that has not less than 10,000 pounds and not more than 499,999 pounds of each of ten (10) or fewer hazardous substances, with[-] the combined total of all hazardous substances[shall] not exceeding[exceed] 499,999 pounds.

(c)[(3)] "Category three facility" means any facility that has 10,000 pounds or more of each of eleven (11) or more hazardous substances, with[-] the combined total of all hazardous substances[shall] not exceeding[exceed] 499,999 pounds.

(d)[(4)] "Category four facility" means any facility that has a total inventory of over 499,999 pounds of hazardous substances.

(e)[(5)] "Category five facility" means any facility that has an extremely hazardous substance as defined by subsection (5) of this section[set out in Section 6 of this administrative regulation] in excess of the threshold planning quantity (TPQ).

(2) "EHS facility emergency response plan" means an emergency response plan for a facility subject to SARA Title III (Superfund Amendments and Reauthorization Act of 1986) that:

(a) Has in its inventory an extremely hazardous substance (EHS) above threshold planning quantity (TPQ); and

(b) Meets all required planning elements of SARA Title III (P.L. 99-499) Section 303; KRS 39E.110, KRS 39E.130, 39E.140, 39E.150, 39E.160, 39E.170, and 39E.220; and the Kentucky Emergency Response Commission's planning requirements found in the Emergency Response Planning Guide for EHS Facilities

(KERC Document #730-PGSS).

(3) "Emergency Planning and Community Right-to-Know Act (EPCRA) How to Comply Packet" or "KERC Document #700-CP" means the packet published by Kentucky Emergency Management that describes the steps required to be compliant with all EPCRA, KRS, and KAR requirements for the current calendar year.

(4) "Emergency Response Planning Guide for EHS Facilities" or "KERC Document #730-PGSS" means the packet published by Kentucky Emergency Management, which provides instructions for the completion of each section of an EHS facility emergency response plan required to be compliant with all EPCRA, KRS, and KAR requirements for the current calendar year.

(5) "Extremely hazardous substance" or "EHS" means any chemical listed on the List of Extremely Hazardous Substance and Their Threshold Planning Quantities, codified as 40 C.F.R. Part 355, Appendix A and Appendix B.

(6) "Facility annual certification letter" or "FACL" means the annual letter provided by the LEPC by any facility that has an EHS in excess of the TPQ to certify that the current EHS facility emergency response plan has been reviewed and:

(a) Is correct without changes; or

(b) Has been revised and the revisions are included with the FACL[(6) "DES/SARA-312" means the state annual chemical inventory reporting form due March 1 each year, covering the preceding calendar year].

(7) "Facility emergency coordinator" or "FEC" means the EHS facility representative, assigned by the owner or operator of the EHS facility and designated on the annual Tier2 report["DES/SARA-312-C" means the confidential state annual chemical inventory reporting form due March 1 each year, covering the preceding calendar year which may be used if a facility elects to withhold location information on a specific chemical from disclosure to the public pursuant to 42 USC 11044(a)].

(8) "Hazardous chemical" means any chemical that is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified[substance for which a facility is required to prepare or have available a material safety data sheet under the Occupational Safety and Health Act of 1970 and federal regulations promulgated under that Act].

(9) "Hazardous substance" is defined by KRS 39E.020(5)[means any substance defined in KRS 39.805(5) and for annual inventory reporting purposes shall include hazardous chemicals].

(10) "KERC[KyERC]" means the Kentucky Emergency Response Commission.

(11) "Safety data sheet" or "SDS" means the safety data sheets required by the Hazard Communication Standard (HCS) as of June 1, 2015 to be created by chemical manufacturers, distributors, or importers in order to communicate the hazards of hazardous chemical products.

Section 2. Filing Requirements. (1) A facility shall file a Tier 2 report and pay all associated fees electronically as specified in the Emergency Planning and Community Right-to-Know Act (EPCRA) How to Comply Packet. A paper report or check shall not be accepted.

(2)(a) The owner or operator of a facility that is required to prepare or have available a safety data sheet for a hazardous chemical present at the facility shall submit a Tier 2 Report.

(b) The SDS requirements shall be as specified in 29 C.F.R. 1910.1200, Hazard communication.

(c) A facility subject to the annual chemical inventory reporting requirements established in KRS 39E.210 and 42 U.S.C. 11022 shall submit the completed Tier 2 Report:

1. No later than March 1 each year; and

2. To each of the following organizations:

a. The KERC;

b. The local emergency planning committee; and

c. The fire department with jurisdiction over the facility.

(3) A facility shall report hazardous chemicals that were present at the facility at any time during the previous calendar year at levels that equal or exceed reporting thresholds.

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

(a) The minimum reporting thresholds are established at 40 C.F.R. Part 370.

(b) The EPCRA chemical exemptions shall be those exemptions established in 40 C.F.R. Part 370.

(c) The exemptions established in 29 C.F.R. 1910.1200(b) shall govern the preparation and availability of a safety data sheet[Facility Requirements. (1) In accordance with the planning requirements of KRS 39.845 and 39.850, 42 USC 11002(c) and 11003(c)(d), no later than sixty (60) days after a facility notifies the Kentucky Emergency Response Commission that it is subject to the requirements of this section, the facility shall provide emergency response planning information to the local emergency planning committee and shall assist the local emergency planning committee develop a Tab Q-7 or commission-approved equivalent as set out in Section 6 of this administrative regulation for all extremely hazardous substances set out in Section 6 of this administrative regulation in excess of the threshold planning quantity for submission in accordance with the requirements of 106 KAR 1:091.

(2) After initial submission and approval of the Tab Q-7 or commission-approved equivalent in accordance with subsection (1) of this section, each March 1 any facility that has an extremely hazardous substance as set out in Section 6 of this administrative regulation in excess of the threshold planning quantity shall review the Tab Q-7 or commission-approved equivalent and send certification to the local emergency planning committee stating that there were no changes and therefore the plan is correct as is; or the plan has been revised and the revisions are included with the certification.

(3) A Category Five Facility which is not subject to the annual chemical inventory reporting requirement due on DES/SARA-312 and, if applicable DES/SARA-312-C shall comply with Section 2(1) and (2) of this administrative regulation and shall file the fee in accordance with Section 4 of this administrative regulation.

(4) Any facility subject to the annual chemical inventory reporting requirements contained in KRS Chapter 39.890, and 42 USC 11022 shall submit Form DES/SARA-312 and, if applicable DES/SARA-312-C as set out in Section 6 of this administrative regulation no later than March 1 each year in accordance with the filing instructions in Section 4 of this administrative regulation].

Section 3. Fees. (1) Except as provided in subsection (2) of this section, a facility that is not exempt shall pay the applicable fee established in this subsection.

(a) There shall not be a fee for a category one facility.

(b) The fee for a category two facility shall be forty (40) dollars.

(c) The fee for a category three facility shall be \$250.

(d) The fee for a category four facility shall be \$250.

(e) The fee for a category five facility shall be \$250.

(2) If[Fees shall be payable in accordance with the schedule listed below except] the same owner or owners have[of] two (2) or more facilities in a single county subject to paying a fee, the owner or owners shall pay a fee not to exceed a total of \$250 for all those facilities in that county.

(3) An owner or operator who violates this administrative regulation shall be subject to the penalties established in KRS 39E.990.

Section 4. EHS Facility Planning Participation Requirements.

(1) In accordance with the planning requirements of KRS 39E.120 and KRS 39E.130, 42 U.S.C. 11002(c) and 11003(c)(d), no later than sixty (60) days after a facility notifies the Kentucky Emergency Response Commission that it is subject to the requirements of this section, the facility shall:

(a) Provide emergency response planning information to the local emergency planning committee; and

(b) Assist the local emergency planning committee in developing an EHS facility emergency response plan for all extremely hazardous substances in accordance with the Emergency Response Planning Guide for EHS Facilities.

(2) After initial submission and approval of the EHS facility emergency response plan in accordance with subsection (1) of this section, each March 1 any facility that has an extremely hazardous

substance in excess of the threshold planning quantity (TPQ) shall review the EHS facility emergency response plan and send a facility annual certification letter to the local emergency planning committee.

(3) A facility that is exempt pursuant to 40 C.F.R. Part 370 shall comply with subsections (1) and (2) of this section and shall file the fee in accordance with Section 3 of this administrative regulation.

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

(a) "Emergency Response Planning Guide for EHS Facilities", KERK Document #730-PGSS, November 2017;

(b) "Emergency Planning and Community Right-to-Know Act (EPCRA) How to Comply Packet", KERK Document #700-CP, December 2017; and

(c) The EPA's Tier2Submit 20xx Self-Study Manual #720A-T2SSS, December 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601-6168, Monday through Friday, 8:00 a.m. to 4:30 p.m.[(4) Category One Facility fee is \$0.

(2) Category Two Facility fee is \$40.

(3) Category Three Facility fee is \$250.

(4) Category Four Facility fee is \$250.

(5) Category Five Facility fee is \$250.

Section 4. Filing Requirements for Fees and Forms DES/SARA-312 and DES/SARA-312-C. A computer-generated form containing all the information in DES/SARA-312 and DES/SARA-312-C may be accepted. All fees and forms DES/SARA-312 and, if applicable DES/SARA-312-C, shall be filed simultaneously, no later than March 1 each year. Checks shall be made payable to "Kentucky State Treasurer" and shall be marked "For KyERC Fee Account". Fees and forms shall be mailed to: Chairman, Kentucky Emergency Response Commission, EOC Building-Boone National Guard Center, Frankfort, Kentucky 40601-6168.

Section 5. Penalties. Failure to comply with provisions of this administrative regulation shall result in penalties as provided in KRS 39.990(3).

Section 6. The forms referred to in Sections 1(6), (7), 2(1), (2), (3), (4) and 4 of this administrative regulation is are set out in this section. The list of extremely hazardous substances referred to in Section 2(1), (2) of this administrative regulation are set out in this section.

The List of Extremely Hazardous Substances and their Threshold Planning Quantities (Alphabetical Order)			
GAS No.	Chemical Name	Threshold	Notes Planning quantity (pounds)
75865	ACETONE	1000	
1752303	CYANOHYDRIN	1000/10000	e
107028	ACETONE	500	
79064	THIOSEMICARBAZI	1000/10000	d,l
107134	DE	10000	d,l
814686	ACRYLONITRILE	100	e,h
111693	CHLORIDE	1000	e,l
116063	ADIPONITRILE	100/10000	e
309002	ALDICARB	500/10000	d
107186	ALDRIN	1000	
107119	ALLYL ALCOHOL	500	e
20859738	ALLYLAMINE	500	b
	ALUMINUM PHOSPHIDE		

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

54626	AMINOPTERIN	500/10000	e
78535	AMITON	500	e
3734972	AMITON OXALATE	100/1000	e
7664417	AMMONIA	500	1
300629	AMPHETAMINE	1000	e
62533	ANILINE	1000	d,1
88051	ANILINE,2,4,6-TRIMETHYL-	500	e
7783702	ANTIMONY PENTAFLUORIDE	500	e
1397940	ANTIMYCINA	1000/10000	c,e
86884	ANTU	500/10000	
1303282	ARSENIC PENTOXIDE	100/10000	d
1327533	ARSENOUS OXIDE	100/10000	d,h
7784341	ARSENOUS TRICHLORIDE	500	d
7784421	ARSINE	100	e
2642719	AZINPHOS-ETHYL	100/10000	e
86500	AZINPHOSMETHYL	10/10000	
98873	BENZAL CHLORIDE	500	d
98168	BENZENAMINE,3(TRIFLUOROMETHYL)-	500	e
100141	BENZENE,1(CHLOROMETHYL)-4-NITRO-	500/10000	e
98055	BENZENEARSONIC ACID	10/10000	e
3616212	BENZIMIDAZOLE,4,5-DICHLORO-2-(TRIFLUOROMETHYL)-	500/10000	e,g
98077	BENZOTRICHLORIDE	100	d
100447	BENZYL CHLORIDE	500	d
140294	BENZYL CYANIDE	500	e,h
15271417	BICYCLO(2.2.1)HEPTANE-2-CARBONITRILE,5-CHLORO-6(((METHYLAMINO)CARBONYL)OXY)IMMINO-,1(S-(2-ALPHA,2-BETA,4-ALPHA,5-ALPHA,6E))-	500/10000	e
534076	BIS(CHLOROMETHYL)KETONE	10/10000	e
4044659	BITOSCANATE	500/10000	e
10294345	BORON TRICHLORIDE	500	e
7637072	BORON TRIFLUORIDE	500	e
353424	BORON TRIFLUORIDE COMPOUND WITH METHYL ETHER(1:1)	1000	e
28772567	BROMADIOLONE	100/10000	e
7726956	BROMINE	500	e,l
1306190	CADMIUM OXIDE	100/10000	e
2223930	CADMIUM STEARATE	1000/10000	c,e
7778441	CALCIUM ARSENATE	500/10000	d
8001352	CAMPHECHLOR	500/10000	d
56257	CANTHARIDIN	100/10000	e
51832	CARBACHOL CHLORIDE	500/10000	e

26419738	CARBAMIC ACID, METHYL-,O-(((2,4-DIMETHYL-1,3-DITHIOLAN-2-yl)METHYLENE)AMINO)-	100/10000	e
1563662	CARBOFURAN	10/10000	
75150	CARBON DISULFIDE	10000	
786196	CARBOPHENOTHION	500	e
57749	CHLORDANE	1000	d
470906	CHLORFENVINFOS	500	e
7782505	CHLORINE	100	
24934916	CHLORMEPHOS	500	e
999815	CHLORMEQUAT CHLORIDE	100/10000	e,h
79118	CHLOROACETICACID	100/10000	e
107073	CHLOROETHANOL	500	e
627112	CHLOROETHYLCHLOROFORMATE	1000	e
67663	CHLORFORM	10000	d,l
542881	CHLOROMETHYL ETHER	100	d,h
107302	CHLOROMETHYL METHYL ETHER	100	c,d
3691358	CHLOROPHACINONE	100/10000	e
1982474	CHLOROXYURON	500/10000	e
21923239	CHLORTHIOPHOS	500	e,h
10025737	CHROMIC CHLORIDE	1/10000	e
10210681	COBALT CARBONYL	10/10000	e,h
62207765	COBALT,((2,2'-(1,2-ETHANEDIYL-BIS(NITRILOMETHYLIDYNE))EiIS(6-FLUOROPHENOLATO))-(2)-N,Ni,O,Oi	100/10000	e
64868	COLCHICINE	10/10000	e,h
56724	COUMAPHOS	100/10000	
5836293	COUMATETRALYL	500/10000	e
95487	CRESOL,O	1000/10000	d
535897	CRIMIDINE	100/10000	e
4170303	GROTONALDEHYDE	1000	
123739	GROTONALDEHYDE(E)-	1000	
506683	CYANOGEN BROMIDE	500/10000	
506785	CYANOGEN IODIDE	1000/10000	e
2636262	CYANOPHOS	1000	e
675149	CYANURIC FLUORIDE	100	e
66819	CYCLOHEXIMIDE	100/10000	e
108918	CYCLOHEXYLAMINE	10000	e,l
17702419	DECABORANE(14)	500/10000	e
8065483	DEMETON	500	e
919868	DEMETON-S-METHYL	500	e
10311849	DIALIFOR	100/10000	e
19287457	DIBORANE	100	e
111444	DICHLOROETHYL ETHER	10000	d
149746	DICHLOROMETHYL PHENYLSILANE	1000	e

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

62737	DICHLORVOS	1000	
141662	DICROTAPHOS	100	e
1464535	DIEPOXYBUTANE	500	d
814493	DIETHYL CHLOROPHOSPHA TE	500	e,h
164254	DIETHYLCARBAMA ZINE CITRATE	100/10000	e
71636	DIGITOXIN	100/10000	c,e
2238075	DIGLYCIDYL ETHER	1000	e
20830775	DIGOXIN	10/10000	e,h
115264	DIMEFOX	500	e
60515	DIMETHOATE	500/10000	
2524030	DIMETHYL PHOSPHOROCHLO RIDOTHIOATE	500	e
77781	DIMETHYL SULFATE	500	d
75785	DIMETHYLDICHLO ROSILANE	500	e,h
57147	DIMETHYLHYDRAZ INE	1000	d
99989	DIMETHYL-P- PHENYLEDIAMINE	10/10000	e
644644	DIMETILAN	500/10000	e
534521	DINITROGRESOL	10/10000	
88857	DINOSEB	100/10000	
1420071	DINOTERB	500/10000	e
78342	DIOXATHION	500	e
82666	DIPHACINONE	10/10000	e
152169	DIPHOSPHORAMID E, OCTAMETHYL-	100	
298044	DISULFOTON	500	
514738	DITHIAZANINE IODIDE	500/10000	e
541537	DITHIOBIURET	100/10000	
316427	EMETINE, DIHYDROCHLORID E	1/10000	e,h
115297	ENDOSULFAN	10/10000	
2778043	ENDOTHION	500/10000	e
72208	ENDRIN	500/10000	
106898	EPICHLOROHYDRI N	1000	d,l
2104645	EPN	100/10000	e
50146	ERGOCALCIFEROL	1000/10000	c,e
379793	ERGOTAMINE TARTRATE	500/10000	e
1622328	ETHANESULFONYL CHLORIDE,2- CHLORO-	500	e
10140871	ETHANOL,1,2- DICHLORO- ACETATE	1000	e
563122	ETHION	1000	
13194484	ETHOPROPHOS	1000	e
538078	ETHYLBIS(2- CHLOROETHYL)AM INE	500	e,h
371620	ETHYLENE FLUOROHYDRIN	10	c,e,h
75218	ETHYLENE OXIDE	1000	d,l
107153	ETHYLENEDIAMIN E	10000	
151564	ETHYLENEIMINE	500	d
542905	ETHYLTHIOCYANA TE	10000	e
22224926	FENAMIPHOS	10/10000	e
122145	FENITROTHION	500	e

115902	FENSULFOTHION	500	e,h
4301502	FLUENETIL	100/10000	e
7782414	FLUORINE	500	k
640197	FLUOROACETAMID E	100/10000	i
144490	FLUOROACETIC ACID	10/10000	e
359068	FLUOROACETYL CHLORIDE	10	c,e
51218	FLOUROURACIL	500/10000	e
944229	FONOFOS	500	e
50000	FORMALDEHYDE	500	d,l
107164	FORMALDEHYDE CYANOHYDRIN	1000	e,h
23422539	FORMETANATE HYDROCHLORIDE	500/10000	e,h
2540821	FORMOTHION	100	e
17702577	FORMPARANATE	100/10000	e
21548323	FOSTHIETAN	500	e
3878191	FUBERIDAZOLE	100/10000	e
110009	FURAN	500	
13450903	GALLIUM TRICHLORIDE	500/10000	e
77474	HEXACHLOROCYC LOPENTADIENE	100	d,h
4835114	HEXAMETHYLENE DIAMINE,NIN- DIBUTYL-	500	e
302012	HYDRAZINE	1000	d
74908	HYDROCYANIC ACID	100	
7647010	HYDROGEN CHLORIDE (GAS ONLY)	500	e,l
7664393	HYDROGEN FLUORIDE	100	
7722841	HYDROGEN PEROXIDE (CONC. GREATER THAN 52%)		
7783075	HYDROGEN SELENIDE	10	e
7783064	HYDROGEN SULFIDE	500	
123319	HYDROQUINONE	500/10000	
13463406	IRON,PENTACARB ONYL-	100	e
297789	ISOBENZAN	100/10000	e
78820	ISOBUTYRONITRIL E	10000	e,h
102363	ISOCYANIC ACID,3,4- DICHLOROPHENYL ESTER	500/10000	e
465736	ISODRIN	100/10000	
55914	ISOFLUORPHATE	100	c
4098719	ISOPHORONE DIISOCYANATE	100	b,e
108236	ISOPROPYL CHLOROFORMATE	1000	e
119380	ISOPROPYLMETHY LPYRAZOLYL DIMETHYL- CARBAMATE	500	e
78977	LACTONITRILE	1000	e
21609905	LEPTOPHOS	500/10000	e
541253	LEWISITE	10	c,e,h
58899	LINDANE	1000/10000	d
7580678	LITHIUM HYDRIDE	100	b,e
109773	MALONONITRILE	500/10000	

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

12108133	MANGANESE, TRICARBONYL METHYLCYCLO-PENTADIENYL	100	e
51752	MECHLORETHAMINE	10	c,e
950107	MEPHOSFOLAN	500	e
1600277	MERCURIC ACETATE	500/10000	e
7487947	MERCURIC CHLORIDE	500/10000	e
21908532	MERCURIC OXIDE	500/10000	e
10476956	METHACROLEIN DIACERATE	1000	e
760930	METHACRYLIC ANHYDRIDE	500	e
126987	METHACRYLONITRILE	500	h
920467	METHACRYLOYL CHLORIDE	100	e
30674807	METHACRYLOYLOXYETHYLISOCYANATE	100	e,h
10265926	METHAMIDOPHOS	100/10000	e
558258	METHANESULFONYL FLUORIDE	1000	e
950370	METHIDATHION	500/10000	e
2032657	METHIOCARB	500/10000	
16752775	METHOMYL	500/10000	h
151382	METHOXYETHYLMERCURIC ACETATE	500/10000	e
80637	METHYL 2-CHLOROACRYLATE	500	e
74839	METHYL BROMIDE	1000	f
79224	METHYL CHLOROFORMATE	500	d,h
60344	METHYL HYDRAZINE	500	
624839	METHYL ISOCYANATE	500	f
556616	METHYL ISOTHIOCYANATE	500	b,e
74931	METHYL MERCAPTAN	500	
3735237	METHYL PHENKAPTON	500	e
676971	METHYL PHOSPHONIC DICHLORIDE	100	b,e
556649	METHYL THIOCYANATE	10000	e
78944	METHYL VINYL KETON	10	e
502396	METHYLMERCURIC DICYANAMIDE	500/10000	e
75796	METHYLTRICHLOROSILANE	500	e,h
1129415	METOLCARB	100/10000	e
7786347	MEVINPHOS	500	
315184	MEXACARBATE	500/10000	
50077	MITOMYCIN C	500/10000	d
69232224	MONOCROTOPHOS	10/10000	e
2763964	MU.S.C.IMOL	500/10000	a,h
505602	MUSTARD GAS	500	e,h
13463393	NICKEL CARBONYL	1	d
54115	NICOTINE	100	e
65305	NICOTINE	100/10000	e

	SULFATE		
7697372	NITRIC ACID	1000	
10102439	NITRIC OXIDE	100	e
98953	NITROBENZENE	1000	
1122607	NITROCYCLOHEXANE	500	e
10102440	NITROGEN DIOXIDE	100	
62759	NITROSDIMETHYLAMINE	1000	d,h
991424	NORBORMIDE	100/10000	e
PMN82147	ORGANORHODIUM COMPLEX (PMN-82-147)	10/10000	e
630604	OUABAIN	100/10000	c,e
23135220	OXAMYL	100/10000	e
78717	OXETANE, 3,3-BIS(CHLOROMETHYL)	500	e
2497976	OXYDISULFOTON	500	e,h
10028156	OZONE	100	e
1910425	PARAQUAT	10/10000	e
2074502	PARAQUAT METHOSULFATE	10/10000	e
56382	PARATHION	100	c,d
298000	PARATHION-METHYL	100/10000	c
12002038	PARIS GREEN	500/10000	d
19624227	PENTABORANE	500	e
2570265	PENTADECYLAMINE	100/10000	e
79210	PERACETIC ACID	500	e
594423	PERCHLOROMETHYLMERCAPTAN	500	
108952	PHENOL	500/10000	
4418660	PHENOL 2,2'-THIOBIS(4-CHLORO-6-METHYL-	100/10000	e
64006	PHENOL,3-(1-METHYLETHYL)-,METHYLCARBAMATE	500/10000	e
58366	PHENOXARSINE, 10,101-OXIDI	500/10000	e
696286	PHENYL DICHLOROARINE	500	d,h
59881	PHENYLHYDRAZINE HYDROCHLORIDE	1000/10000	e
62384	PHENYLMERCURY ACETATE	500/10000	
2097190	PHENYLSILATRAN	100/10000	e,h
103855	PHENYLTHIOUREA	100/10000	
298022	PHORATE	10	
4104147	PHOSACETIM	100/10000	e
947024	PHOSFOLAN	100/10000	e
75445	PHOSGENE	10	f
732116	PHOSMET	10/10000	e
13171216	PHOSPHAMIDON	100	e
7803512	PHOSPHINE	500	
2703131	PHOSPHONOTHIOIC ACID, METHYL-O-ETHYL O-(4-(METHYLTHIO) ESTER	500	e

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

50782699	PHOSPHONOTHIOIC ACID, METHYL-S-(2-(BIS-(1-METHYLETHYL)AMINO)ETHYL)-O-ETHYL ESTER	100	e
2665307	PHOSPHONOTHIOIC ACID, METHYL-O-(4-NITRO-PHENYL)-O-PHENYL ESTER	500	e
3254635	PHOSPHORIC ACID, DIMETHYL-4-(METHYLTHIO) PHENYL ESTER	500	e
2587908	PHOSPHOROTHIOIC ACID, O,O-DIMETHYL-S-(2-METHYLTHIO) ETHYL ESTER	500	c,e,g
7723140	PHOSPHORUS	100	b,h
10025873	PHOSPHORUS OXYCHLORIDE	500	d
10026138	PHOSPHORUS PENTACHLORIDE	500	b,e
1314563	PHOSPHORUS PENTOXIDE	10	b,e
7719122	PHOSPHORUS TRICHLORIDE	1000	
57476	PHYSOSTIGMINE	100/10000	e
57647	PHYSOSTIGMINE, SALICYLATE(1:1)	100/10000	e
124878	PICROTOXIN	500/10000	e
110894	PIPERIDINE	1000	e
23505411	PIRIMIFOS-ETHYL	1000	e
10124502	POTASSIUM ARSENITE	500/10000	d
151508	POTASSIUM CYANIDE	100	b
506616	POTASSIUM SILVER CYANIDE	500	b
2631370	PROMECARB	500/10000	e,h
106967	PROPARGYL BROMIDE	10	e
57578	PROPIOLACTONE, BETA-	500	e
107120	PROPIONITRILE	500	
542767	PROPIONITRILE, 3-CHLORO-	1000	
70699	PROPIOPHENONE, 41-AMINO	100/10000	e,l,g
109615	PROPYL CHLOROFORMATE	500	e
75569	PROPYLENE OXIDE	10000	f
75558	PROPYLENEIMINE	10000	d
2275185	PROTHOATE	100/10000	e
129000	PYRENE	1000/10000	e
140761	PYRIDINE, 2-METHYL-5-VINYL-	500	e
504245	PYRIDINE, 4-AMINO-	500/10000	4
1124330	PYRIDINE, 4-NITRO-1-OXIDE	500/10000	e
53558251	PYRIMINIL	100/10000	e,h
14167181	SALCOMINE	500/10000	e
107448	SARIN	10	e,h
7783008	SELENIUS ACID	1000/10000	
7791233	SELENIUM OXYCHLORIDE	500	e
563417	SEMICARBAZIDE	1000/10000	e

3037727	HYDROCHLORIDE SILANE, (4-AMINO-BUTYL)DIETHOXYMETHYL-	1000	e
7631892	SODIUM ARSENATE	1000/10000	d
7784465	SODIUM ARSENITE	500/10000	d
26628228	SODIUM AZIDE(NA(N3))	500	b
124652	SODIUM CACODYLATE	100/10000	e
143339	SODIUM CYANIDE(NA(CN))	100	b
62748	SODIUM FLOURACETATE	10/10000	
13410010	SODIUM SELENATE	100/10000	e
10102188	SODIUM SELENITE	100/10000	h
10102202	SODIUM TELLURITE	500/10000	e
900958	STANNANE, ACETOXYTRIPHENYL-	500/10000	e,g
57249	STRYCHNINE	100/10000	e
60413	STRYCHNINE, SULFATE	100/10000	e
3689245	SULFOTEP	500	
3569571	SULFOXIDE, 3-CHLOROPROPYL-COTYL	500	e
7446095	SULFUR DIOXIDE	500	e,l
7783600	SULFUR TETRAFLUORIDE	100	e
7446119	SULFUR TRIOXIDE	100	b,e
7664939	SULFURIC ACID	1000	
77816	TABUN	10	c,e,h
13494809	TELLURIUM	500/10000	e
7783804	TELLURIUM HEXAFLUORIDE	100	e,k
107493	TEPP	100	
13071799	TERBUFOS	100	e,h
78002	TETRAETHYL LEAD	100	c,d
597648	TETRAETHYL TIN	100	c,e
75741	TETRAMETHYL LEAD	100	e,e,l
509148	TETRANITROMETHANE	500	
10031591	THALLIUM SULFATE	100/10000	h
6533739	THALLOUS CARBONATE	100/10000	c,h
7791120	THALLOUS CHLORIDE	100/10000	c,h
2757188	THALLOUS MALONATE	100/10000	c,e,h
7446186	THALLOUS SULFATE	100/10000	
2231574	THIOCARBAZIDE	1000/10000	e
39196184	THIOFANOX	100/10000	
297972	THIONAZIN	500	
108985	THIOPHENOL	500	
79196	THIOSEMICARBAZIDE	100/10000	
5344821	THIOUREA, (2-CHLOROPHENYL)-	100/10000	
614788	THIOUREA, (2-METHYLPHENYL)-	500/10000	e
7550450	TITANIUM TETRACHLORIDE	100	e

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

584848	TOLUENE 2,4-DIISOCYANATE	500	
91087	TOLUENE 2,6-DIISOCYANATE	100	
110576	TRANS-1,4-DICHLOROBUTENE	500	e
1031476	TRIAMPHOS	500/10000	e
24017478	TRIAZOFOS	500	e
76028	TRICHLOROACETYL CHLORIDE	500	e
115219	TRICHLOROETHYL SILANE	500	e,h
327980	TRICHLORONATE	500	e,k
98135	TRICHLOROPHENYL SILANE	500	e,h
1558254	TRICHLORO(CHLOROMETHYL)SILANE	100	e
27137855	TRICHLORO(DICHLOROPHENYL)SILANE	500	e
998301	TRIETHOXSILANE	500	e
75774	TRIMETHYLCHLOROSILANE	1000	e
824113	TRIMETHYLOLPROPANE PHOSPHITE	100/10000	e,h
1066451	TRIMETHYLTIN CHLORIDE	500/10000	e
639587	TRIPHENYLTIN CHLORIDE	500/10000	e
555771	TRIS(2-CHLOROETHYL)AMINE	100	e,h
2001958	VALINOMYCIN	1000/10000	e,e
1314621	VANADIUM PENTOXIDE	100/10000	
08054	VINYL ACETATE MONOMER	1000	d,l

81812	WARFARIN	500/10000	
129066	WARFARINSODIUM	100/10000	e,h
28347139	XYLYENE DICHLORIDE	100/10000	e
58270089	ZINC, DICHLORO(4,4- DIMETHYL- 5((((METHYLAM- —ION)CARBONY L)OXY)IMINO)PENT ANENITRILE)(T-4)-	100/10000	e
1314847	ZINC PHOSPHIDE	500	

~~*Only the statutory or final RQ is shown. for more information, see 40 C.F.R. Table 302.4.~~

~~Notes:~~

- a. This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.
- b. This material is a reactive solid. The TPQ does not default to 10,000 pounds for nonpowder, nonmolten, nonsolution form.
- c. The calculate TPQ changed after technical review as described in the technical support document.
- d. Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.
- e. Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).
- f. The statutory 1 pound reportable quantity for methyl isocyanate may be adjusted in a future rulemaking action.
- g. New chemicals added that were not part of the original list of 402 substances.
- h. Revised TPQ based on new or reevaluated toxicity data.
- i. Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other Chemicals").
- j. TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.
- k. The TPQ was revised after proposal due to calculation error.

Tier Two EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY	Facility Identification		Owner/Operator Name		
	Name _____		Name _____	Phone (____) _____	
	Street _____		Mail Address _____		
	City _____ County _____ State _____ Zip _____		Emergency Contact		
	SIC Code [][] [][] Dun & Brad Number [][] [][] [][]	Name _____ Title _____			
	FOR OFFICIAL USE ONLY		Phone (____) _____ 24 Hr. Phone (____) _____		
Specific Information by Chemical	ID#: _____ Fee Received \$ _____	Name _____ Title _____			
	Date received: _____ Check Number _____	Phone (____) _____ 24 Hr. Phone (____) _____			
Important: Read all instructions before completing form		Report Period: From January 1 to December 31, 19__		<input type="checkbox"/> check if information below is identical to the information submitted last year	
CONFIDENTIAL LOCATION INFORMATION SHEET		Container type Pressure Temperature	Storage Codes and Locations (Confidential)		Options
			Storage Locations		
CAS [][][][][][][][][][] Chem. Name	[] [] [] _____ [] [] [] _____ [] [] [] _____ [] [] [] _____ [] [] [] _____ [] [] [] _____				<input type="checkbox"/>
CAS [][][][][][][][][][] Chem. Name	[] [] [] _____ [] [] [] _____ [] [] [] _____ [] [] [] _____ [] [] [] _____ [] [] [] _____				<input type="checkbox"/>

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

CAS <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Chem. Name	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
<p>Certification (Read and sign after completing all sections I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through _____, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.</p> <p>_____ Name & official title of owner/operator OR owner/operator's authorized representative</p> <p>_____ Signature Date Signed</p>	<p>Optional Attachments</p> <p><input type="checkbox"/> I have attached a site plan.</p> <p><input type="checkbox"/> I have attached a list of site _____ coordinate abbreviations.</p> <p><input type="checkbox"/> I have attached a description of dikes and other _____ safeguard measures.</p>	<p>Check appropriate box:</p> <p><input type="checkbox"/> \$250 fee attached</p> <p><input type="checkbox"/> \$40 fee attached</p> <p><input type="checkbox"/> No fee required</p>

Tier Two EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY Specific Information By Chemical	Facility Identification Name _____ Street _____ City _____ County _____ State _____ Zip _____ SIC Code <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Dun & Brad Number <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <div style="border: 1px solid black; height: 20px; width: 100px;"></div>	Owner/Operator Name Name _____ Phone _____ () _____ Mail _____ Address _____ Emergency Contact Name _____ Title _____ Phone () _____ 24 Hr. Phone () _____ Name _____ Title _____ Phone () _____ 24 Hr. Phone () _____
	FOR OFFICIAL USE ONLY ID#: _____ Fee Received \$ _____ Date received: _____ Check Number _____	

[illegible]

<p>Certification (Read and sign after completing all sections) I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through _____, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.</p>	<p>Optional Attachments <input type="checkbox"/> I have attached a site plan. <input type="checkbox"/> I have attached a list of site coordinate abbreviations. <input type="checkbox"/> I have attached a description of dikes and other safeguard measures.</p>	<p>Check appropriate box: <input type="checkbox"/> \$250 fee attached <input type="checkbox"/> \$40 fee attached <input type="checkbox"/> No fee required</p>
<p>Name and official title of owner/operator OR owner/operator's authorized representative</p>		
<p>Signature and Date Signed</p>		

KENTUCKY EMERGENCY RESPONSE COMMISSION TIER TWO INSTRUCTIONS GENERAL INFORMATION

Submission of this Tier Two form is required by the Kentucky Emergency Response Commission in accordance with Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312 and KRS 39.990 and subsequent administrative regulations. The purpose of this Tier Two form is to provide state and local officials and the public with specific information on hazardous chemicals present at your facility during the past year.

CERTIFICATION

The owner or operator or officially designated representative of the owner or operator must certify that all information included in the Tier Two submission is true, accurate, and complete. On the first page of the Tier Two report, enter your full name and official title. Sign your name and enter the current date. Also, enter the total number of pages included in the Confidential and Nonconfidential information Sheets as well as all attachments. An original signature is required on at least the first page of the submission. Submissions to the SERC, LEPC, and fire department must each contain an original signature on at least the first page. Subsequent pages must contain either an original signature, a photocopy of the original signature, or a signature stamp. Each page must contain the date on which the original signature was affixed to the first page of the submission and the total number of pages in the submission.

YOU MUST PROVIDE ALL INFORMATION REQUESTED ON THIS FORM TO FULFILL ANNUAL CHEMICAL INVENTORY REQUIREMENTS.

THE KENTUCKY EMERGENCY RESPONSE COMMISSION REQUIRES SUBMISSION OF THE TIER TWO FORM.

WHO MUST SUBMIT THIS FORM

This request applies to the owner or operator of any facility that is required, under administrative regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at 1910.1200.

WHAT CHEMICALS ARE INCLUDED

You must report the required information on this Tier Two form for each hazardous chemical present at your facility in quantities equal to or greater than established threshold amounts (discussed below), unless the chemicals are excluded under Section 311(e) of Title III. Hazardous chemicals are any substance for which your facility must maintain an MSDS under OSHA's Hazard Communication Standard.

WHAT CHEMICALS ARE EXCLUDED

Section 311(e) of Title III excludes the following substances:

- (1) Any food, food additive, color additive, drug, or cosmetic

regulated by the Food and Drug Administration:

(II) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use:

(III) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public:

(IV) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual:

(V) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

OSHA regulations, Section 1910.1200(b), stipulate exemptions from the requirement to prepare or have available an MSDS.

REPORTING THRESHOLDS

Minimum thresholds have been established for Tier Two reporting under Title III, Section 312. These thresholds are as follows:

For Extremely Hazardous Substances (EHSs) designated under section 302 of Title III, the reporting threshold is 500 pounds (or 227 kg.) or the threshold planning quantity (TPQ), whichever is lower:

For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds (or 4,540 kg.).

You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds. For instructions on threshold determinations for components of mixtures, see "What About Mixtures?" on page 2 of these instructions.

Please read these instructions carefully. Print or type all responses.

WHEN TO SUBMIT THIS FORM

Owners or operators of facilities that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit a Tier Two form by March 1.

WHERE TO SUBMIT FEE

(See Fee Schedule on page 4)

Checks shall be made payable to: "Kentucky State Treasurer" and shall be marked "For KyERC Fee Account". Fees and form shall be mailed to:

Chairman, Kentucky Emergency Response Commission
EOC Building, Boone National Guard Center
Frankfort, KY 40601-6168

WHERE TO SUBMIT THIS FORM

Send a completed Tier Two form(s) to each of the following organizations:

- 1. Your State Emergency Response Commission.

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

2. Your Local Emergency Planning Committee.
3. The fire department with jurisdiction over your facility.

PENALTIES

Any owner or operator who violates any Tier Two reporting requirements shall be subject to penalties as set forth in P.L. 99-499, Title III, Section 325 and KRS Chapter 39.990 and subsequent administrative regulations.

If your Tier Two responses require more than one page use additional forms and fill in the page number at the bottom of the form.

REPORTING PERIOD

Enter the appropriate calendar year, beginning January 1 and ending December 31.

FACILITY IDENTIFICATION

Enter the full name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g., longitude and latitude). Include city, county, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the State or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

OWNER/OPERATOR

Enter the owner's or operator's full name, mailing address, and phone number.

EMERGENCY CONTACT

Enter the name, title, and work phone number of at least one local person or office who can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency information will be available 24 hours a day, every day. This requirement is mandatory. The facility must make some arrangement to ensure that a 24 hour contact is available.

IDENTICAL INFORMATION

Check the box indicating identical information, located below the emergency contacts on the Tier Two form, if the current chemical information being reported is identical to that submitted last year. Chemical descriptions, hazards, amounts, and locations must be provided in this year's form, even if the information is identical to that submitted last year.

CHEMICAL INFORMATION: Description, Hazards, Amounts, and Locations

The main section of the Tier Two form requires specific information on amounts and locations of hazardous chemicals, as defined in the OSHA Hazard Communication Standard.

If you choose to indicate that all of the information on a specific hazardous chemical is identical to that submitted last year, check the appropriate optional box provided at the right side of the storage codes and locations on the Tier Two form. Chemicals descriptions, hazards, amounts, and locations must be provided

even if the information is identical to that submitted last year.

- What units should I use?

Calculate all amounts as weight in pounds. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

- What about mixtures?

If a chemical is part of a mixture, you have the option of reporting either the weight of the entire mixture or only the portion of the mixture that is a particular hazardous chemical (e.g., if a hazardous of only 5 percent of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture or 5 lbs. of the chemical).

The option used for each mixture must be consistent with the option used in your Section 311 reporting.

Because EHSs are important to Section 303 planning, EHSs have lower thresholds. The amount of an EHS at a facility (both pure EHS substances and EHSs in mixtures) must be aggregated for purposes of threshold determination. It is suggested that the aggregation calculation be done as a first step in making the threshold determination. Once you determine whether a threshold for an EHS has been reached, you should report either the total weight of the EHS at your facility, or the weight of each mixture containing the EHS.

CHEMICAL DESCRIPTION

1. Enter the Chemical Abstract Service registry number (CAS). For mixtures, enter the CAS number of the mixtures as a whole if it has been assigned a number distinct from its constituents. For a mixture that has no CAS number, leave this item blank or report the CAS number of as many constituent as possible.

If you are withholding the name of a chemical in accordance with criteria specified in Title III, Section 322, enter the generic class or category that is structurally descriptive of the chemical (e.g., list toluene diisocyanate as organic (isocyanate) and check the box marked Trade Secret. Trade secret information should be submitted to EPA and must include a substantiation. Please refer to EPA's final regulation on trade secrecy (53 FR 28772, July 29, 1988) for detailed information on how to submit trade secrecy claims.

2. Enter the chemical name or common name of each hazardous chemical.

3. Check box for ALL applicable descriptors: pure or mixture; and solid, liquid, or gas; and whether the chemical is or contains an EHS.

4. If the chemical is a mixture containing EHS, enter the chemical name of each EHS in the mixture.

EXAMPLE:

You have pure chlorine gas on hand, as well as two mixtures that contain liquid chlorine. You write "chlorine" and enter the CAS number. Then you check "pure" and "mix" - as well as "liquid" and "gas".

PHYSICAL AND HEALTH HAZARDS

For each chemical you have listed, check all the physical and health hazard boxes that apply. These hazard categories are defined in 40 C.F.R. 370.2. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 C.F.R. 1910.1200.

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

Hazard Category Comparison For Reporting Under Section 311 and 312	
EPA's Hazard Categories	OSHA's Hazard Categories
Fire Hazard	Flammable
	Combustion Liquid
	Pyrophoric
	Oxidizer
Sudden Release of Pressure	Explosive
	Compressed Gas
Reactive	Unstable Reactive
	Organic Peroxide
	Water Reactive
	Highly Toxic
Immediate (Acute) Health Hazards	Toxic
	Irritant
	Sensitizer
	Corrosive
	Other hazardous chemicals with an adverse effect with short term exposure
	Carcinogens
Delayed (Chronic) Health Hazard	Other hazardous chemicals with an adverse effect with long term exposure

MAXIMUM AMOUNT

1. For each hazardous chemical, estimate the greatest amount present at your facility on any single day during the reporting period.
2. Find the appropriate range value code in Table I.
3. Enter this range value as the Maximum Amount.
4. If range value 05 (100,000 to 999,999) is used for the maximum daily amount, enter the actual weight in pounds in the Inventory column directly below the code number. This is necessary to determine the appropriate fee category.

TABLE I REPORTING RANGE		
Range Value	Weight Range in Pounds	
From...	To...	
01	0	99
02	100	999
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	higher than 1 billion

EXAMPLE:

You received one large shipment of solvent mixture last year. The shipment filled five 5,000-gallon storage tanks. You know that the solvent contains 10 percent benzene, which is a hazardous chemical.

You figure that 10 percent of 25,000 gallons is 2,500 gallons. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 2,500 gallons by 7.29 pounds per gallon to get a weight of 18,225 pounds.

Then you look at Table I and find that the range value 04 corresponds to 18,225. You enter 04 as the Maximum Amount.

AVERAGE DAILY AMOUNT

1. For each hazardous chemical, estimate the average weight in pounds that was present at your facility during the year.

To do this, total all daily weights and divide by the number of days the chemical was present on the site.

2. Find the appropriate range value in Table I.

3. Enter this range value as the Average Daily Amount.

EXAMPLE:

The 25,000-gallon shipment of solvent you received last year was gradually used up and completely gone in 315 days. The sum of the daily volume levels in the tank is 4,536,000 gallons. By dividing 4,536,000 gallons by 315 days on site, you calculate an average daily amount of 14,400 gallons.

You already know that the solvent contains 10 percent benzene, which is a hazardous chemical. Since 10 percent of 14,400 is 1,440, you figure that you had an average of 1,440 gallons of benzene. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 1,440 by 7.29 to get a weight of 10,500 pounds.

Then you look at Table I and find that the range value 04 corresponds to 10,500. You enter 04 as the Average Daily Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 10,500 in the shaded area.)

NUMBER OF DAYS ON SITE

Enter the number of days that the hazardous chemical was found on site.

EXAMPLE:

The solvent composed of 10 percent benzene was present for 315 days at your facility. Enter 315 in the space provided.

STORAGE CODES AND STORAGE LOCATIONS

List all nonconfidential chemical locations in this column, along with storage types/conditions associated with each location. Please note that a particular chemical may be located in several places around the facility. Each row of boxes followed by a line represents a unique location for the same chemical.

Storage Codes: Indicate the types and conditions of storage present.

- a. Look at Table II. For each location, find the appropriate storage type and enter the corresponding code in the first box.

- b. Look at Table III. For each location, find the appropriate storage types for pressure and temperature conditions. Enter the applicable pressure code in the second box. Enter the applicable temperature code in the third box.

TABLE II - STORAGE TYPES	
CODES	TYPES OF STORAGE
A	Above ground tank
B	Below ground tank
C	Tank inside building
D	Steel drum
E	Plastic or nonmetallic drum
F	Can
G	Carboy
H	Silo
I	Fiber drum
J	Bag
K	Box
L	Cylinder
M	Glass bottles or jugs
N	Plastic bottles or jugs
O	Tote bin
P	Tank wagon
Q	Rail car
R	Other

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

TABLE III - TEMPERATURE AND PRESSURE CONDITIONS	
CODES	STORAGE CONDITIONS (PRESSURE)
1	Ambient pressure
2	Greater than ambient pressure
3	Less than ambient pressure
	(TEMPERATURE)
4	Ambient temperature
5	Greater than ambient temperature
6	Less than ambient temperature but not cryogenic
7	Cryogenic conditions

EXAMPLE:

The benzene in the main building is kept in a tank inside the building, at ambient pressure and less than ambient temperature.

Table II shows you that the code for a tank inside a building is C. Table III shows you that the code for ambient pressure is 1, and the code for less than ambient temperature is 6.

You enter: C 1 6

Storage Locations

Provide a brief description of the precise location of the chemical, so that emergency responders can locate the area easily. You may find it advantageous to provide the optional site plan or site coordinates as explained below.

For each chemical, indicate at a minimum the building or lot. Additionally, where practical, the room or area may be indicated. You may respond in narrative form with appropriate site coordinates or abbreviations.

If the chemical is present in more than one building, lot, or area location, continue your responses down the page as needed. If the chemical exists everywhere at the plant site simultaneously, you may report that the chemical is ubiquitous at the site.

Optional Attachments: If you choose to attach one of the following, check the appropriate Attachments box at the bottom of the Tier Two form.

- a. A site plan with site coordinates indicated for building, lots, areas, etc. throughout your facility.
- b. A list of site coordinate abbreviations that correspond to building, lots, areas, etc. throughout your facility.
- c. A description of dikes and other safeguard measures for storage locations throughout your facility.

EXAMPLE:

You have benzene in the main room of the main building, and in tank 2 in tank field 10. You attach a site plan with coordinates as follows: main building = G-2, tank field 10 = B-6. fill in the Storage Location as follows:

B-6 (Tank 2) G-2 (Main Room)

CONFIDENTIAL INFORMATION

Under Title III, Section 324, you may elect to withhold location information on a specific chemical from disclosure to the public, if you choose to do so.

- Enter the word "confidential" in the Nonconfidential Location section of the Tier Two form on the first line of the storage locations.

- On a separate Tier Two Confidential Location Information Sheet, enter the name and CAS number of each chemical for which you are keeping the location confidential.

- Enter the appropriate location and storage information, as described above for nonconfidential locations.

- Attach the Tier Two Confidential Location information Sheet to the Tier Two form. This separates confidential locations from other information that will be disclosed to the public.

CERTIFICATION

Instructions for this section are included on page one of these instructions.

FEE SCHEDULE

Check appropriate box on the form.

\$0	Category One Facility is owned or operated by local, state or federal government.
\$40	Category Two Facility has no less than 10,000 pounds and no more than 499,999 pounds of each of ten (10) or fewer hazardous substances. The combined total of all hazardous substances shall not exceed 499,999 pounds.
\$250	Category Three Facility has 10,000 pounds or more of each 11 or more hazardous substance. The combined total of all hazardous substance shall not exceed 499,999 pounds.
\$250	Category Four Facility has a total of over 499,999 pounds of hazardous substances.
\$250	Category Five Facility has an extremely hazardous substance in excess of the threshold planning quantity.

TAB Q-7- COVERED FACILITIES

FACILITY FAC EMERG RESP COORD COMMUNICATIONS

Office# _____
 St. _____ Home# _____
 City _____ Title _____ R. _____
 Freq _____
 Pager \$ _____
 ALTERNATE
 FAC EMERG RESP COORD
 _____ Office# _____
 Home# _____
 Title _____ R.Freq _____

HAZARDOUS CHEMICAL(S)

NAME UN-ID# FORM PACKAGED MAXIMUM HEALTH
 CAS # CONTAINER QUANTITY RISK

SKETCH OF FACILITY AND STORAGE AREAS:

FACILITY RESPONSE POINT (RP) AND DIRECTIONS:

STAGING AREA (Support units will report and await assignment by local organization):

TRANSPORTATION ROUTES AND MODES OF
 TRANSPORTATION (include supplier and telephone number—
 describe how chemicals are handled—list hazardous points along
 the routes):

SPECIAL FACILITIES LIKELY TO BE AFFECTED BY A RELEASE
 (List affected facilities and day/night contacts):

PROTECTIVE ACTIONS (In-place sheltering of evacuation—give
 brief description of area(s) where protection actions may be
 required—add evacuation procedures to Annex EE):

EMERGENCY EQUIPMENT ON HAND/TRAINING/EXERCISING:

SPILL CONTAINMENT/CLEAN-UP/DISPOSAL:

EMERGENCY NOTIFICATION

Local 24 hr. warning number (LEPC): _____
 Haz-mat Coord. (Day) _____ (Night) _____

 Alt. Coord. (Day) _____ (Night) _____
 _____ Fire Dept. _____
 _____ Police Dept. _____
 DES Coord.: _____
 (Day) _____ or _____
 (Night) _____ or _____
 _____ Rescue _____ or _____
 _____ Ambulance _____ or _____

Kentucky Emergency Response Commission (KERC) 502-564-7815

Kentucky DES Area Coordinator:

(O) _____
 (H) _____

Nat. Resources & Envir. Prot. Cabinet (NR&EPC): 502-564-2380
 National Response Center (NRC): 1-800-424-8802
 Envir. Prot. Agency (EPA) Hotline: 1-800-535-0202
 Hours: 8:30 a.m. – 7:30 p.m., Mon-Fri. including federal holidays
 Chemtrec: 1-800-424-9300]

STEVEN P. BULLARD, Director

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017, at 10:00 a.m., at Room 118, Commonwealth Emergency Operations Center (CEOC), 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168. 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 January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation guides the Kentucky Emergency Response Commission in developing reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. This administrative regulation establishes the Tier 2 reporting and facility planning participation requirements for facilities subject to U.S. Public Health laws.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting

requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes the Tier 2 reporting and facility planning participation requirements for facilities subject to U.S. Public Health laws, 42 U.S.C. 11001 through 42 U.S.C. 11050.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies how the Kentucky Emergency Response Commission and Division of Emergency Management are to assist affected facilities in complying with federal requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes technical updates to Statutory Authority; Necessity, Function and Conformity; Definitions; Filing Requirements; Fees; EHS Facility Planning Participation Requirements; Penalties; Forms. It removes outdated information, significantly reducing length of document (by approximately two-thirds).

(b) The necessity of the amendment to this administrative regulation: This administrative regulation had not been updated since 1998. This amendment was necessary to bring the administrative regulation up to date with current Statutory Authority and compliance practices.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment brings the administrative regulation up to date with current Statutory Authority and compliance practices.

(d) How the amendment will assist in the effective administration of the statutes: This amendment brings the administrative regulation up to date with current Statutory Authority and compliance practices, allowing for proper references when researching the applicable Kentucky Revised Statutes and federal statutes and in preparing the required reports.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no associated requirement for action required of any affected individual or organization. This update properly reflects currently mandated practices, correcting outdated references in the existing 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 for any entity because there is no change in requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity.

(b) On a continuing basis: There is no additional cost for any entity.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Emergency Planning and Community Right-to-Know Act 42 U.S.C. 11002(c), 11003(c), (d)

2. State compliance standards. KRS 39E.010, 39E.040, 39E.050, 39E.120, 39E.130, 39E.210

3. Minimum or uniform standards contained in the federal mandate. Affected facilities shall file a Tier 2 report and pay all associated fees electronically as specified in the Emergency Planning and Community Right-to-Know Act (EPCRA) How to Comply Packet. Affected facilities shall report hazardous chemicals that were present at the facility at any time during the previous calendar year at levels that equal or exceed reporting thresholds. KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes the Tier 2 reporting and facility planning participation requirements for facilities subject to U.S. Public Health laws, 42 U.S.C. 11001 through 42 U.S.C. 11050.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation simply codifies how the Kentucky Emergency Response Commission and Division of Emergency Management are to assist affected facilities in complying with federal requirements.

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? Department of Military Affairs

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.010, 39E.040, 39E.050, 39E.120, 39E.130, 39E.210, Emergency Planning and Community Right-to-Know Act 42 U.S.C. 11002(c), 11003(c), (d)

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity

(d) How much will it cost to administer this program for subsequent years? There is no cost for any entity

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact.

DEPARTMENT OF MILITARY AFFAIRS Division of Emergency Management (Amendment)

106 KAR 1:091. Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees.

RELATES TO: KRS 39E.040, 39E.050, 39E.110, 39E.230[39.800-39.990], 42 U.S.C. 11001-11050

STATUTORY AUTHORITY: KRS 39E.040, 39E.050[39.847, 39.845, 39.850]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes criteria and procedures to be met by local emergency planning committees requesting funds generated by KRS 39E.050[39.847].

Section 1. Definitions. (1) "EHS Facility Emergency Response Plan" means an emergency response plan for a facility subject to SARA Title III, which has in its inventory an extremely hazardous substance (EHS) above threshold planning quantity (TPQ) and meets all required planning elements of Pub.L. 99-499, Section 303, KRS 39E.110, KRS 39E.130, KRS 39E.140, KRS 39E.150, KRS 39E.160, KRS 39E.170, KRS 39E.220 and the Kentucky Emergency Response Commission's planning requirements found in the Emergency Response Planning Guide for EHS Facilities (KERC Document #730-PGSS).

(2) "EHS Facility Emergency Response Plan Checklist" or "KERC Form #303-PC" means the checklist completed by all LEPCs and submitted to their Kentucky Emergency Management (KYEM) area manager (AM) for all EHS facility emergency response plans requiring submission to the KERC for approval and in accordance with the Emergency Response Planning Guide for EHS Facilities (KERC Document #730-PGSS).

(3) "Emergency Response Planning Guide for EHS Facilities" or "KERC Document #730-PGSS" means the packet, annually updated and published by Kentucky Emergency Management, which provides instructions for the completion of each section of an EHS facility emergency response plan required to be compliant with all EPCRA, KRS, and KAR requirements for the current calendar year.

(4) "Grant ledger" or "KERC Form #105-GL" means the form LEPCs are required to use to record all of the checks, cash payments, and outlays of cash in the "(Name of County) Emergency Planning Committee Fee Account" during the calendar year, January 1 through December 31.

(5) "KERC Document Library" or "KERC Document #001-LIB" means the packet published and annually reviewed by the Kentucky Emergency Response Commission (KERC) that contains the complete library of required and optional materials, including all aspects of LEPC planning and grants.

(6) "LEPC Annual Certification Letter (ACL)" or "KERC Form #302-ACL" means the letter annually submitted by the local emergency planning committee (LEPC) listing the status of all EHS

facility emergency response plans in the planning district, which includes information that was received from covered facilities by March 1, for the previous calendar year, and in accordance with all ACL requirements found in the Emergency Response Planning Guide for EHS Facilities (KERC Document #730-PGSS).

(7) "LEPC Detailed Budget" or "KERC Form # 102-DB" means the form submitted by LEPCs annually identifying, by category, all intended purchases and expenses for the upcoming calendar year using, if approved, KERC grant funds in accordance with the LEPC Grant Applications Manual (KERC Document #720-GASS).

(8) "LEPC Grant Application" or "KERC Form #101-GA" means the form submitted by LEPCs initially requesting KERC grant funds in accordance with the LEPC Grant Applications Manual (KERC Document #720-GASS).

(9) "LEPC Grant Applications Manual" or "KERC Document #720-GASS" means the packet, annually updated and published by Kentucky Emergency Management, which provides instructions for the request for assistance through the KERC grant funds, including templates for all forms required for the current calendar year.

(10) "LEPC Membership Cover Page" or "KERC Form #104-MCP" means the cover letter submitted by LEPCs with their annually required submission of an updated membership list that serves as a checklist, ensuring all representatives required by EPCRA and KRS are included within each LEPC membership.

(11) "Personal Property Inventory" or "KERC Form #103-PPI" means the form submitted by LEPCs annually listing all property purchased using KERC grant funds in accordance with the LEPC Grant Applications Manual (KERC Document #720-GASS).

(12) "Public (Legal) Notice Advertisement" or "KERC Form #107-PLN" means the template LEPCs shall use to meet the EPCRA requirements found in EPCRA Section 324, which requires that each LEPC annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted. The notice shall state that follow-up emergency notices may subsequently be issued. The notice shall announce that members of the public who wish to review any plan, sheet, form, or follow-up notice may do so at the location designated. Specific information on committee activities (identified within the template by use of parenthesis) shall be provided to the public annually. The "Public (Legal) Notice Advertisement" Template is set out in Section 7 of this administrative regulation. [Tab Q-7 or commission approved equivalent plan] means a plan describing the location and characteristics of extremely hazardous substances which includes the nine (9) required planning elements of PL 99-499, Section 303 and KRS 39.840 and the Kentucky Emergency Response Commission's planning requirements consisting of:

(1) A legible sketch of the facility which shows a directional arrow, the location of extremely hazardous substances, and the access road;

(2) The location of the response point and instructions for responsibilities of the facility emergency response coordinator;

(3) Designation of the staging area and alternative staging area(s);

(4) A listing of major suppliers of extremely hazardous substances and their telephone numbers;

(5) A division of the vulnerable zone into four (4) quadrants, listing the special facilities within each quadrant and the total populations of each quadrant].

Section 2. LEPC Eligibility Requirements. (1) To be eligible for financial assistance, local emergency planning committees that[which] have extremely hazardous substances (EHS) as listed in 40 C.F.R. 355 Appendices A and B[106 KAR 1:081, Section 6,] in excess of the TPQ[threshold planning quantity] present in their community shall meet all the[following] criteria established in this subsection during the preceding calendar year (January 1 through December 31).[:]

(a)[(4)] The local emergency planning committee shall meet all requirements set forth in KRS 39E.110[39.840].

(b)[(2)] The local emergency planning committee shall have an EHS Facility Emergency Response Plan pursuant to KRS

39E.110[39.840](1)(a), (e), (f) and 39E.150 as set out in the Emergency Response Planning Guide for EHS Facilities (KERC Document #730-PGSS) for each facility in the planning district that has an extremely hazardous substance (EHS) in excess of the TPQ[39.860] that has been approved by the KERC[Kentucky Emergency Response Commission].

1. The local emergency planning committee shall submit a completed EHS Facility Emergency Response Plan Checklist (KERC Form #303-PC) as defined in Section 1(2) of this administrative regulation with all EHS Facility Emergency Response plans submitted for KERC approval.

2. The local emergency planning committee shall submit new EHS Facility Emergency Response Plans to the Kentucky Emergency Management (KYEM) area manager (AM) within sixty (60) days of notification that the facility has an extremely hazardous substance (EHS) in excess of the threshold planning quantity (TPQ).

3. The KYEM AM shall review new EHS Facility Emergency plans and their accompanying checklists for completeness. Plans deemed complete by the KYEM AM shall be forwarded to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of receipt from the local emergency planning committee. Plans deemed incomplete shall be returned to the local emergency planning committee with recommendations[(a) The local emergency planning committee's emergency response plan shall contain an approved Tab Q-7 or commission-approved equivalent listed in Section 6 of 106 KAR 1:081 for each facility in the planning district that has an extremely hazardous substance listed in Section 6 of 106 KAR 1:081 in excess of the threshold planning quantity.

(b) The local emergency planning committee shall submit new Tab Q-7 or commission-approved equivalent plans to the state disaster and emergency services area coordinator within sixty (60) days of notification that the facility has an extremely hazardous substance in excess of the threshold planning quantity.

(c) After new Tab Q-7 or commission-approved equivalent plans are submitted, no later than April 1 each year, the local emergency planning committee shall review the Tab Q-7 plans and send certification to the state disaster and emergency services area coordinator stating that there were no changes and therefore the plan is correct as is; or the plan has been revised and the revisions are included with the certification.

(d) The state disaster and emergency services area coordinator shall review new Tab Q-7 or commission-approved equivalent plans for completeness, note any recommendations and forward them to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of receipt from the local emergency planning committee.

(e) The state disaster and emergency services area coordinator shall review Tab Q-7 or commission-approved equivalent revisions and certifications received from the local emergency planning committee for completeness, note any recommendations and forward them to the Chairman of the Kentucky Emergency Response Commission, or designee, no later than May 1 each year].

(c)[(3)] The local emergency planning committee shall meet at least twice during each calendar year (January 1 through December 31) to conduct its business and a quorum shall be required. A copy of the minutes shall be provided to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of the date of the meeting pursuant to KRS 39E.110(2).

(d)1. No later than January 31 each calendar year (January 1 through December 31) in accordance with KRS Chapter 424 (Legal Notice), the local emergency planning committee shall publish public information on committee activities entitled "Public (Legal) Notice Advertisement" (KERC Form #107-PLN) as set out in Section 7 of this administrative regulation.

2. No later than February 28, each local emergency planning committees shall provide the KERC chairman, or designee, with a photocopy of the legal notice published as described clearly showing the name of the newspaper and the date of publication.

(e)1. After new equivalent plans are submitted, no later than

April 1 each year, the local emergency planning committee shall review all existing EHS Facility Emergency Response plans and send an Annual Certification Letter (ACL) as defined in Section 1(6) of this administrative regulation to the Kentucky Emergency Management (KYEM) area manager (AM) stating that:

a. There were no changes and therefore the plan is correct as is; or

b. The plan has been revised and the revisions are included with the ACL.

2. The KYEM AM shall review the ACL and all EHS Facility Emergency Response Plan revisions received from the local emergency planning committee for completeness. Plans deemed complete by the KYEM AM shall be forwarded to the KERC chairman, or designee, no later than May 1 each year. Plans deemed incomplete shall be returned to the local emergency planning committee with recommendations.

(f)1. No later than April 1, the local emergency planning committee shall submit Grant Application (KERC Form #101-GA) to the KYEM AM.

2. The KYEM AM shall review the grant request form for completeness and conformance to statutes and administrative regulations. Grant applications deemed complete by the KYEM AM shall be forwarded to the KERC chairman, or designee, no later than May 1 each year. Grant applications deemed incomplete shall be returned to the local emergency planning committee with recommendations.

(g) No later than April 1, the local emergency planning committee shall provide the KERC chairman, or designee, documentation of expenditures, including bank statements, canceled checks, invoices, receipts, and a Grant Ledger (KERC Form #105-GL) for the preceding year.

(h) No later than June 1, local emergency planning committees shall submit a LEPC Detailed Budget (KERC Form# 102-DB) to the Chairman of the Kentucky Emergency Response Commission or designee, identifying how the funds requested on the LEPC Grant Application are to be spent.

(i)(4) No later than December 1 each year, the local emergency planning committee shall submit an updated membership list and LEPC Membership Cover Page (KERC Form #104-MCP) as defined in Section 1(10) of this administrative regulation to the KERC chairman, or designee [Kentucky Emergency Response Commission].

(j)1. No later than December 1 each year, the bylaws of each local emergency planning committee shall be provided to the KERC chairman, or designee, with certification stating that:

a. There were no changes and therefore the bylaws are identical to last year; or

b. The bylaws have been revised and the revisions are included.

2. The bylaws shall identify the position or person who will be responsible for accountability for the funds and who will be listed as the authorized applicant as shown on the Grant Application (KERC Form #101-GA).

(k) No later than December 1, local emergency planning committees shall submit a Personal Property Inventory (KERC Form #103-PPI) identifying all property items valued in excess of \$500 purchased using KERC grant funds.

(2)(5) In accordance with KRS Chapter 424 (Legal Notice), the local emergency planning committee shall publish during each calendar year (January 1 through December 31) public information on committee activities entitled "Public (Legal) Notice Advertisement" on form DES/SARA-324 as set out in Section 7 of this administrative regulation.

Section 3.] To be eligible for financial assistance, local emergency planning committees that [which] do not have any extremely hazardous substances as defined [listed] in KRS 39E.020[106 KAR 1:081, Section 6.] in excess of the TPQ [threshold planning quantity] present in their community shall meet the [following] criteria established in this subsection during the preceding calendar year (January 1 through December 31).:]

(a)[(4)] The local emergency planning committee shall meet criteria set forth in KRS 39E.110[39.840](1)(b), (c), (d), (2), (4), (5)

and subsection (1)(d), (f), (g), (h), (i), (j), and (k) of this section[4(4) and (5) of this administrative regulation].

(b)[(2)] The local emergency planning committee shall meet at least once during each calendar year (January 1 through December 31) to conduct its business and a quorum shall be required. A copy of the minutes shall be provided to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of the date of the meeting pursuant to KRS 39E.110(2).

Section 3. KERC Grant Review procedures. (1) The KYEM AM, the KERC chairman or designee, or the grant review committee may request additional information that shall be provided by the local emergency planning committee. Failure to provide the requested information shall invalidate the local emergency planning committee's request for funding.

(a) The KERC chairman, or designee, shall annually update, publish, and promulgate all grant requirements in the LEPC Grant Applications Manual (KERC Document #720-GASS).

(b) The KERC chairman, or designee, shall annually review, publish, and promulgate all grant required KERC forms in the KERC Document Library (KERC Document #001-LIB).

(2) The schedule of due dates shall be as established in this subsection.

(a) No later than June 1, the KERC chairman, or designee, shall review the grant request form for completeness and conformance to statutes and administrative regulations, note any recommendations, and forward it to the grant review committee.

(b) No later than July 1, the grant review committee, with a quorum present, shall review all grant requests and Detailed Budgets (KERC Form #102-DB) and forward their recommendations to the KERC for final approval.

(c) No later than September 15, the KERC shall make the grant awards.

Section 4. [Local Emergency Planning Committee Procedures.

(1) If a local emergency planning committee requests financial assistance, it shall use Grant Request Form DES/SARA-303 as set out in Section 7 of this administrative regulation and shall include a detailed budget identifying how the requested funds are to be spent.

(2) The grant request form shall be submitted to the state disaster and emergency services area coordinator no earlier than January 1 and no later than May 1.

(3) The state disaster and emergency services area coordinator shall review the grant request form for completeness and conformance to statutes and administrative regulations, note any recommendations and forward it to the Chairman of the Kentucky Emergency Response Commission or designee, no later than June 1.

(4) The Chairman of the Kentucky Emergency Response Commission, or designee, shall review the grant request form for completeness and conformance to statutes and administrative regulations, note any recommendations and forward it to the Grant Review Committee no later than July 1.

(5) The Grant Review Committee, with a quorum present, shall review all grant requests and forward their recommendations no later than August 15 to the Kentucky Emergency Response Commission for final approval.

(6) The Kentucky Emergency Response Commission shall make the grant awards no later than September 15.

(7) The state disaster and emergency services area coordinator, the Chairman of the Kentucky Emergency Response Commission, or designee, or the Grant Review Committee may request additional information which shall be provided by the local emergency planning committee. Failure to provide the requested information shall invalidate the local emergency planning committee's request for funding.

Section 5.] Requests for Modifications. (1) A modification of a grant award is required if there is a change in the grant request or if a local emergency planning committee is unable to expend the funds for the purpose for which the grant was awarded. A request

for modification shall be submitted by the LEPC for approval by the commission. Unexpended monies shall be returned to the ~~KERC~~[Kentucky Emergency Response Commission] fee account fund.

(2) Requests for modifications of grant awards shall be submitted on an LEPC Detailed Budget (KERC Form# 102-DB)[Grant Request Form DES/SARA-303 as set out in Section 7 of this administrative regulation] and, except for due dates, shall be processed in accordance with Sections 2 and 3[and 6] of this administrative regulation.

(3) Modifications may be submitted throughout the grant period.

Section 5[6]. Supplemental Grant Awards. (1) In the event supplemental money is available, the ~~KERC~~[Kentucky Emergency Response Commission] shall determine the date of the supplemental allocation award and inform the local emergency planning committees of that date.

(2) Requests for supplemental money shall be submitted on a Grant Application (KERC Form #101-GA) and LEPC Detailed Budget (KERC Form# 102-DB)[Grant Request Form DES/SARA-303 as set out in Section 7 of this administrative regulation] and, except for due dates, shall be processed in accordance with this section and Sections 2 and 3[and 6] of this administrative regulation.

(3) If a local emergency planning committee requests supplemental money, the schedule of due dates shall be as established in this subsection[is:]

(a) Thirty (30) days from notification by the ~~KERC~~[Kentucky Emergency Response Commission] of the availability of supplemental money, the local emergency planning committee shall submit the supplemental Grant Application (KERC Form #101-GA) and LEPC Detailed Budget (KERC Form# 102-DB)[request] to the KYEM AM[state disaster and emergency services area coordinator].

(b) Thirty (30) days from receipt of the supplemental grant request, the KYEM AM[state disaster and emergency services area coordinator] shall review the supplemental grant request documents for completeness and conformance to statutes and administrative regulations. Grant applications deemed complete by the KYEM AM shall be forwarded with the LEPC Detailed Budget (KERC Form# 102-DB) to the KERC chairman, or designee. Grant applications deemed incomplete shall be returned with the LEPC Detailed Budget (KERC Form# 102-DB) to the local emergency planning committee with recommendations[in accordance with Sections 3 and 6 of this administrative regulation and forward it to the Chairman of the Kentucky Emergency Response Commission, or designee].

(c) Thirty (30) days from receipt of the supplemental grant request, the ~~KERC~~ chairman [of the Kentucky Emergency Response Commission], or designee, shall review the supplemental grant request in accordance with Section[Sections] 3[and 6] of this administrative regulation and forward it to the Grant Review Committee.

(d) Forty-five (45) days from receipt of the supplemental grant request, the Grant Review Committee, with a quorum present, shall review the supplemental grant request in accordance with Section[Sections] 3[and 6] of this administrative regulation and forward their recommendations to the ~~KERC~~[Kentucky Emergency Response Commission].

(e) Thirty (30) days from receipt of the recommendation of the Grant Review Committee, the ~~KERC~~[Kentucky Emergency Response Commission] shall make the supplemental grant award.

Section 6[7]. Requirements for Funding Accountability. (1) Funds provided by the ~~KERC~~[Kentucky Emergency Response Commission] shall be deposited in a separate "(Name of County) Emergency Planning Committee Fee Account" and fiscal accountability shall be prescribed by the state auditor of public accounts. All funds shall be subject to audit by the ~~KERC~~[Kentucky Emergency Response Commission] and the state auditor of public accounts.

(2) Grant awards approved by the KERC may be withheld for

noncompliance with KRS 39E.050 and this administrative regulation and for failure to provide required documentation[The bylaws of each local emergency planning committee shall identify the position or person who will be responsible for accountability for the funds and who will be listed as the authorized applicant as shown on DES/SARA-303 and shall be submitted simultaneously with the grant request].

(3) All funding allocation decisions shall be made by the KERC and shall be dependent upon availability of fees collected[The local emergency planning committee shall provide documentation of expenditures for the preceding year on each grant request submitted except for the initial grant request].

(4) Unexpended monies shall be returned to the Kentucky Emergency Response Commission fee account fund[Grant awards approved by the Kentucky Emergency Response Commission may be withheld for noncompliance with KRS 39.800 to 39.990 and administrative regulations issued thereunder and for failure to provide required documentation].

(5) All funding allocation decisions shall be made by the Kentucky Emergency Response Commission and shall be dependent upon availability of fees collected].

Section 7[8]. "Public (Legal) Notice Advertisement" (KERC Form #107-PLN) Template[Form DES/SARA-324 and grant request form DES/SARA-303 are set out in this section.]

PUBLIC (LEGAL) NOTICE ADVERTISEMENT
_____ COUNTY EMERGENCY PLANNING COMMITTEE

Pursuant to Section 324, Title III of the 1986 Federal Superfund Amendments and Reauthorization Act (SARA) of 1986 (PL 99-499), the following information is provided in compliance with the Community Right-to-Know requirements of the SARA Law, and the open meetings and open records provisions of Kentucky Revised Statutes. Members of the public may contact the (name of county) County Emergency Planning Committee by writing (name of chairman), Chairman of the (name of county) County Emergency Planning Committee, (working address of chairman or committee), (city), Kentucky (zip code), or contacted by telephone at (area code), (telephone number established by the committee). The (name of county) County Emergency Planning Committee conducts meetings at (name of building), (local address), or at other locations, in accordance with the Kentucky Open Meetings Law. Members of the public may request to be notified of regular or special meetings as provided in KRS 61.820 and KRS 61.825. Records of the Planning Committee, including the county emergency response plan, material safety data sheets, and inventory forms, or any follow-up emergency notices as may subsequently be issued, are open for inspection, and members of the public who wish to review these records may do so (normal hours of business), (Eastern or Central Time), (days of the week), at (location of the office or place where custodian keeps the committee files), as required by the Kentucky Open Records Law. The local 24-hour telephone number for purposes of emergency notification, as required by SARA, is (emergency number adopted by county planning committee).

[KENTUCKY EMERGENCY RESPONSE COMMISSION
FEE ACCOUNT FUND

Grant Application for Grant Period 09/01/9__ to 08/31/9__

DUE DATES

LEPCs to ACs 05/01

Received by AC:

Received by State:

ACs to State 06/01

Received by AC:

Received by State:

Final Award 09/15

Initial & Date

Initial & Date

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

AUTHORIZED APPLICANT (INFORMATION) Emergency Planning Committee

County Name:
County Code-3 digit no.:
Enter total number of Tab Q-7's with Extremely Hazardous Substances in your county. This is the total number of facilities with extremely hazardous substances in your county: _____
DATE: _____

GRANT INFORMATION

Grant Amount Requested \$ _____

Circle Type of Application:

LEPC:

-New

-Revised

State Agency:

-New

-Revised

GRANT RECIPIENT

Checks shall be made payable to and mailed to the AUTHORIZED APPLICANT. The AUTHORIZED APPLICANT is the county emergency planning committee which is authorized to apply for and manage the grant. The AUTHORIZED APPLICANT shall provide the name _____ and phone number _____ of the designated contact person. The AUTHORIZED APPLICANT shall provide the name _____ and address _____ of the bank where the check shall be deposited.

Emergency Planning Committee

County Name:
County Code-3 digit number:
Street Address:
City, Zip:

LEPCs shall submit grant request form DES/SARA-303 to their state disaster and emergency services area coordinator. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

State agencies shall submit grant request form DES/SARA-303 to the Chairman, or designee, of the Kentucky Emergency Response Commission. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

CERTIFICATION

I, the undersigned, certify to the Kentucky Emergency Response Commission that all the information is true and accurate. I further represent that the money received under this grant program will be used for the administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-know program, known as SARA Title III, within the guidelines mandated by Pub.L. 99-499/Title III, KRS Chapter 39.800 to 39.990 and subsequent administrative regulations.

Name, Title and Date:
DES/SARA-303

Grant Application for Grant Period 09/01/9__ to 08/31/9__

ATTACHMENTS

Detailed budget sheet for each budget category you request.
Documentation for preceding year's award.
Copy of published DES/SARA-324
Bylaws.

INELIGIBLE ITEMS

Emergency response equipment.

Reimbursement for emergency response and/or cleanup of a release.

BUDGET CATEGORIES	GRANT REQUEST	GRANT AWARD
Right-to-know responsibilities- includes legal notice DES/SARA-324		
Data Management includes receiving and maintaining data under 302(c)/KRS 39.845; 304/KRS 39.840(b), 311/312/KRS 39.840(c)		
Telephone includes 24-hour warning point for releases and cost of telephone for LEPC business		
Services includes contracts* to support KRS 39.800 to KRS 39.990		
Office Supplies includes postage, printing, copying and paper		
File cabinets, desks, chairs		
Commission approved training		
Commission approved travel		
TOTAL GRANT REQUEST		
LESS CARRYOVER MONIES		
ADJUSTED GRANT AWARD		

*Contracts for personal services and equipment shall be in conformance with state laws and administrative regulations. DES/SARA-303]

STEVEN P. BULLARD, Director

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017, at 10:00 a.m., at Room 118, Commonwealth Emergency Operations Center (CEOC), 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168. 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 January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria and procedures to be met by local emergency planning committees requesting funds generated by KRS 39E.050.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes criteria and procedures to be met by local emergency planning committees requesting funds generated by KRS 39E.050 by outlining definitions; eligibility requirements; plans and grant applications requirements, deadlines and procedures; supplemental funding opportunities and procedures' and public

notice requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies in detail how the Kentucky Emergency Response Commission and Division of Emergency Management are to assist affected facilities in complying with state and federal requirements.

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

(a) How the amendment will change this existing administrative regulation: Changes include Statutory Updates, numerous definitions required to help define existing grant request processes, significant updates and clarifications to Local Emergency Planning Committee (LEPC) Eligibility Requirements, updates KERC Grant Review procedures, adds the "LEPC Detailed Budget" form to the grant award process, provides for the "Grant Application" and the "LEPC Detailed Budget" forms to be used for supplemental money requests, and removes previous used but out-of-date grant application forms/tables.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation had not been updated since 1998. This amendment was necessary to bring the administrative regulation up to date with current Statutory Authority and compliance practices.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment brings the administrative regulation up to date with current Statutory Authority and compliance practices.

(d) How the amendment will assist in the effective administration of the statutes: This amendment brings the administrative regulation up to date with current Statutory Authority and compliance practices, allowing for proper references when researching the applicable Kentucky Revised Statutes and federal statutes and in preparing grant applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no associated requirement for action required of any affected individual or organization. This update properly reflects currently mandated practices, correcting outdated references in the existing 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 for any entity because there is no change in requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity.

(b) On a continuing basis: There is no additional cost for any entity.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.010, 39E.040, 39E.050, 39E.120, 39E.130, 39E.210, 42 U.S.C. 11001-11050

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity

(d) How much will it cost to administer this program for subsequent years? There is no cost for any entity

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact.

DEPARTMENT OF MILITARY AFFAIRS Division of Emergency Management (Amendment)

106 KAR 1:101. Kentucky Emergency Response Commission fee account grant requirements for state agencies.

RELATES TO: KRS 39E.050, 39E.230[39.800-39.990]

STATUTORY AUTHORITY: KRS 39E.050[39.847]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes criteria and procedures to be met by state agencies requesting funds generated by KRS 39E.050[39.847].

Section 1. Eligibility of State Agencies. State agencies that perform functions to assist the Kentucky Emergency Response Commission in the administration of its programs and activities at the state level are eligible to apply for funding.

Section 2. State Agency Procedures. (1) State agencies may apply for financial assistance by completing a Grant Application (KERC Form #101-GA)[Grant Request Form DES/SARA-303] as

set out in 106 KAR 1:091 and shall include a Detailed Budget (KERC Form# 102-DB) identifying how the requested funds are to be spent.

(2) State agencies may request funding for staff to support the commission in the administration of its programs and activities at the state level. If a request for staff is included in the grant request, the state agencies shall attach a position description detailing job duties and an organization chart defining that position within the agency.

(3) The grant application and detailed budget~~[request form]~~ shall be submitted directly to the Chairman of the Kentucky Emergency Response Commission, or designee, no later than May 1.

(4) The Chairman of the Kentucky Emergency Response Commission, or designee, shall review the grant request form for completeness and conformance to administrative regulations and statutes, note any recommendations, and forward it to the Grant Review Committee no later than June~~[July]~~ 1.

(5) The Grant Review Committee, with a quorum present, shall review all grant requests from state agencies and forward their recommendations no later than July 1~~[August 15]~~ to the Kentucky Emergency Response Commission for final approval.

(6) The Kentucky Emergency Response Commission shall make the grant awards no later than September 15.

(7) The Chairman of the Kentucky Emergency Response Commission, or designee, or the Grant Review Committee may request additional information, which shall be provided by the state agency. Failure to provide the requested information shall invalidate the state agency's request for funding.

Section 3. Requests for Modifications. (1) A request for modification of a grant award is required if there is a change in the grant request or if a state agency is unable to expend the funds for which the grant was awarded. A request for modification shall~~must~~ be submitted by the state agency for approval by the commission. Unexpended monies shall be returned to the fund.

(2) Requests for modifications of grant awards shall be submitted on a Detailed Budget (KERC Form DB)~~[Grant Request Form DES/SARA-303]~~ as set out in 106 KAR 1:091 and, except for due dates, shall be processed in accordance with Sections 2 and 4 of this administrative regulation. Requests for modifications may be submitted throughout the grant period.

Section 4. Requirements for Funding Accountability. (1) Funds provided by the Kentucky Emergency Response Commission shall be subject to fiscal accountability prescribed by the state auditor of public accounts. A Memorandum of Agreement (MOA) between the state agency making application and the Chairman of the Kentucky Emergency Response Commission shall be executed. All funds shall be subject to audit by the Kentucky Emergency Response Commission and the state auditor of public accounts.

(2) Grant awards approved by the Kentucky Emergency Response Commission may be withheld for noncompliance with KRS 39E.050~~[39.800 to 39.990]~~ and this administrative regulation~~[regulations issued thereunder]~~ and for failure to provide required documentation.

(3) All funding allocation decisions shall be made by the Kentucky Emergency Response Commission and shall be dependent upon availability of fees collected.

STEVEN P. BULLARD, Director

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017, at 10:00 a.m., at Room 118, Commonwealth Emergency Operations Center (CEOC), 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168. 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 January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria and procedures for the Kentucky Emergency Response Commission to create a grant application program and to institute a fee system to assist in the administration of its programs and activities at both state and local levels, including the establishment and maintenance of the "Kentucky Emergency Response Commission Fee Account."

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes criteria and procedures to be met by state agencies that perform functions to assist the Kentucky Emergency Response Commission in the administration of its programs and activities at the state level to apply for grant funding, and establishes criteria and procedures for the Kentucky Emergency Response Commission to institute a fee system to assist in the administration of its programs and activities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies in detail how the Kentucky Emergency Response Commission and Division of Emergency Management are to assist affected facilities in complying with state and federal requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the Statutory Authority for the administrative regulation, updates forms used for Grant Application and Detailed Budget processes, specifies the annual no later than date for recommendations to the Grant Review Committee as "June" and changes the annual date for final recommendations by the Grant Review Committee to the Kentucky Emergency Response Commission from August 15 to July 1.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation had not been updated since 1998. This amendment was necessary to bring the administrative regulation up to date with current Statutory Authority and compliance practices.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment brings the administrative regulation up to date with current Statutory Authority and compliance practices.

(d) How the amendment will assist in the effective administration of the statutes: This amendment brings the administrative regulation up to date with current Statutory Authority and compliance practices, allowing for proper references when researching the applicable Kentucky Revised Statutes and federal statutes and in preparing grant applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no associated requirement for action required of any affected individual or organization. This update properly reflects currently mandated practices, correcting outdated references in the existing 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 for any entity because there is no change in requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity.

(b) On a continuing basis: There is no additional cost for any entity.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.050

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity

(d) How much will it cost to administer this program for subsequent years? There is no cost for any entity

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact.

DEPARTMENT OF MILITARY AFFAIRS Division of Emergency Management (Amendment)

106 KAR 1:111. Kentucky Emergency Response Commission Fee Account Grant Review Committee.

RELATES TO: KRS 39E.040, 39E.050, 39E.080, 39E.110, 39E.140, 39E.150~~[39.800-39.990]~~

STATUTORY AUTHORITY: KRS 39E.040, 39E.050, 39E.080~~[39.817]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes the Kentucky Emergency Response Commission Grant Review Committee to review requests for financial assistance.

Section 1. Purpose of the Grant Review Committee. (1) The Grant Review Committee shall review all grant requests from local emergency planning committees and state agencies and make recommendations to the Kentucky Emergency Response Commission.

(2) The Grant Review Committee shall monitor all grant awards to ensure compliance with statutes and administrative regulations.

Section 2. Grant Review Committee Organization. (1) The Grant Review Committee shall consist of not less than five (5) nor more than nine (9) members of the Kentucky Emergency Response Commission who shall be appointed by the Chairman of the Kentucky Emergency Response Commission with approval of the commission.

(2) The chairman of the Grant Review Committee shall be elected by members of the Grant Review Committee.

(3) Members shall serve for a term of one (1) year and may be reappointed.

(4) Proxy votes or proxy membership shall not be permitted.

(5) If a member misses two (2) consecutive meetings, the position shall be considered vacant and the Chairman of the Kentucky Emergency Response Commission, with the approval of the Kentucky Emergency Response Commission, shall appoint a replacement.

(6) A quorum shall be~~is~~ required for the Grant Review Committee meetings.

STEVEN P. BULLARD, Director

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017, at 10:00 a.m., at Room 118, Commonwealth Emergency Operations Center (CEOC), 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168. 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 January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Emergency Response Commission Grant Review Committee to review requests for financial assistance.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the Kentucky Emergency Response Commission Grant Review Committee, including membership composition, selection process and duties related to review/approval of requests for financial assistance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures the Kentucky Emergency Response Commission Grant Review Committee will monitor all grant awards to ensure compliance with statutes and administrative 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 updates the Statutory Authority which governs this administrative regulation. There are no other changes.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation had not been updated since 1998. This amendment was necessary to bring the administrative regulation up to date with current Statutory Authority.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment brings the administrative regulation up to date with current Statutory Authority.

(d) How the amendment will assist in the effective administration of the statutes: This amendment brings the administrative regulation up to date with current Statutory Authority, allowing for proper references when researching the applicable Kentucky Revised Statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no associated requirement for action required of any affected individual or organization.

(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 for any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity.

(b) On a continuing basis: There is no additional cost for any entity.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department for Military Affairs

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.040, 39E.050, 39E.080.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity

(d) How much will it cost to administer this program for subsequent years? There is no cost for any entity

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact.

DEPARTMENT OF MILITARY AFFAIRS
Division of Emergency Management
(Amendment)

106 KAR 1:121. Kentucky Emergency Response
Commission fee account grant distribution formula.

RELATES TO: KRS 39E.050[39.800-39.990]

STATUTORY AUTHORITY: KRS 39E.050[39.847]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.040(6) requires the commission to recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement KRS Chapter 39E. This administrative regulation establishes administrative support and the grant distribution formula to be used in awarding grants for funds generated by KRS 39E.050[39.847].

Section 1. Local Emergency Planning Committee Grant Distribution Formula. (1) At least fifty (50) percent of funds collected annually by KRS 39E.050[39.847] shall be awarded to eligible local emergency planning committees that[which] submit grant requests for administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

Know Program, known as SARA Title III (Superfund Amendments and Reauthorization Act of 1986), within the guidelines mandated by Pub.L. [PL] 99-499, Title III (as amended through Pub.L. 107-377, December 31, 2002), and KRS 39E.050[39.800 to 39.990 and subsequent administrative regulations].

(2) The grant distribution formula to determine how much money will be available to each local emergency planning committee is:

(a) Ten (10) percent of the total amount (A) collected by March[April] 1 divided by all eligible[420] local emergency planning committees.

$$\frac{.1(A)}{\text{Eligible}[420] \text{ Local Emergency Planning Committees}}$$

$$\text{Hypothetic al example : } \frac{.1(200,000)}{120} = \$167$$

(b) Plus twenty (20) percent of the total amount (A) collected statewide times the ratio of Kentucky Emergency Response Commission - required and approved EHS Facility Emergency Response Plans[Tab Q-7s or commission-approved equivalent] (Qc) in the county to the total Kentucky Emergency Response Commission - approved[Tab Q-7s or commission-approved equivalent] (Qs) in the state.

$$.2(A) \frac{Qc}{Qs}$$

$$\text{Hypothetic al example : } .2(200,000) \frac{13}{1,000} = \$520$$

(c) Plus twenty (20) percent of the total amount (A) collected statewide times the ratio of[fee-generating] Tiers (Tc) in the county to the total number of[fee-generating] Tiers (Ts) in the state.

$$.2(a) \frac{Tc}{Ts}$$

$$\text{Hypothetic al example : } .2(200,000) \frac{30}{1,000} = \$1200$$

[(d) Therefore the formula for local emergency planning committee grant (Ga) distribution to determine how much money will be available to each eligible local emergency planning committee is:

$$GA = \frac{.1(A)}{120 \text{ LEPCs}} + .2(A) \frac{Qc}{Qs} + .2(A) \frac{Tc}{Ts}$$

(3) The grant (Gr) distribution formula to determine how much money an eligible local emergency planning committee that[which] submits a grant request form may receive is:

$$Gr = \frac{.1(A)}{\text{Total eligible LEPCs}} + .2(A) \frac{Qc}{Qs} + .2(A) \frac{Tc}{Ts}$$

[(4) All grant awards shall be based upon the amount of money requested by the eligible local emergency planning committee and the formula shown in this section.]

Section 2. Notice of Amount of Availability of Funds to Each Local Emergency Planning Committee. (1) No later than May[April] 1 each year, the Kentucky Emergency Response Commission shall notify the local emergency planning committees how much money will be available to each eligible local emergency planning committee that[which] submits a grant request form. This amount shall be based upon the total amount of funds available in the Kentucky Emergency Response Commission fee account divided pursuant to Section 1 of this administrative regulation.

(2) Notification of money available shall not be construed as an automatic grant award to a local emergency planning committee. Each local emergency planning committee who wants an award shall submit a grant request form in accordance with 106 KAR 1:091.

Section 3. State Agency Grant Distribution. No more than fifty (50) percent of funds collected annually by KRS 39E.050[39.847] shall be allocated by the Kentucky Emergency Response Commission to state agencies other than local emergency planning

committees that[which] submit grant requests for administration, development, and implementation of the Kentucky Emergency Planning and Community Right-to-Know program, known as SARA Title III (as amended through Pub.L. 107-377, December 31, 2002), and[within the guidelines mandated by PL 99-499, Title III] KRS 39E.050[39.800 to 39.990 and subsequent administrative regulations].

Section 4. Availability of Additional Funds. The Kentucky Emergency Response Commission may set a date and notify all local emergency planning committees and state agencies of the availability of additional funds collected after March[April] 1 or that[which] were returned to the commission during the year. Any additional funds shall be distributed in accordance with Sections 1(1) and 3 of this administrative regulation.

Section 5. Administrative support required by KRS 39E.050[39.847] shall be provided by the Kentucky Division of Emergency Management[Division of Disaster and Emergency Services].

STEVEN P. BULLARD, Director

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017, at 10:00 a.m., at Room 118, Commonwealth Emergency Operations Center (CEOC), 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168. 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 January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative support and the grant distribution formula to be used in awarding grants for funds generated by KRS 39E.050.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the Local Emergency Planning Committee Grant Distribution Formula, outlines the notice of amount of availability of funds to each Local Emergency Planning Committee, outlines state agency grant distribution, outlines notices regarding the availability of additional funds and charges administrative support responsibility to the Kentucky Division of Emergency Management.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies in detail how the Kentucky Emergency Response Commission and Division of Emergency Management are to assist affected facilities in complying with state and federal requirements.

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

(a) How the amendment will change this existing administrative

regulation: This amendment updates Statutory Authority governing the administrative regulation, updates guidance for the Local Emergency Planning Committee Grant Distribution Formula, adds "eligible" to the definition of local emergency planning committees, changes the defining date for annual grant computing from "April" to "March 1", replaces "Tab Q-7s or commission-approved equivalent" with "EHS Facility Emergency Response Plans", changes the annual grant notification date from "April" to "March 1" and charges administrative support responsibility to the Kentucky Division of Emergency Management.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation had not been updated since 1998. This amendment was necessary to bring the administrative regulation up to date with current Statutory Authority and compliance practices.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment brings the administrative regulation up to date with current Statutory Authority and compliance practices.

(d) How the amendment will assist in the effective administration of the statutes: This amendment brings the administrative regulation up to date with current Statutory Authority and compliance practices, allowing for proper references when researching the applicable Kentucky Revised Statutes and federal statutes and in preparing grant applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no associated requirement for action required of any affected individual or organization. This update properly reflects currently mandated practices, correcting outdated references in the existing 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 for any entity because there is no change in requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity.

(b) On a continuing basis: There is no additional cost for any entity.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.050

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity

(d) How much will it cost to administer this program for subsequent years? There is no cost for any entity

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact.

DEPARTMENT OF MILITARY AFFAIRS Division of Emergency Management (Amendment)

106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

RELATES TO: KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, 39E.990[39.800-39.990]

STATUTORY AUTHORITY: KRS 39E.990[39.990], 1998 Ky. Acts ch. 226, sec. 82[1994 Ky. Acts ch. 382, sec. 19]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), 39E.210 and 39E.210 require the Kentucky Emergency Response Commission and the Division of Emergency Management to promulgate administrative regulations governing the activities of the Kentucky Emergency Response Commission, including standards and procedures for the operations of the commission and local emergency planning committees, fee system, hazardous substance inventory and substance release reporting, emergency procedures and requirements, and establishment of warning and notification standards. This administrative regulation establishes procedures to be followed to assess civil penalties by the Kentucky Emergency Response Commission as provided for in KRS 39E.990[39.990].

Section 1. Construction. These administrative regulations shall be construed liberally and in conformity with reasonable administrative practice to achieve just, timely and inexpensive determinations of matters before the Kentucky Emergency Response Commission. These administrative regulations are not intended as a comprehensive set of hearing administrative regulations and shall in no way be construed to impede or constrict the power of a hearing officer to administer the law, or administrative regulations, or to govern the conduct of the hearing officer's docket or the procedural course of a particular

administrative action. The Kentucky Rules of Civil Procedure and the case law interpreting those rules may be used as analogous authority to interpret these administrative regulations.

Section 2. General Provisions. The commission shall commence an administrative action to impose a civil penalty under KRS ~~39E.990(3)~~~~[39.990(3)]~~ against a person when the commission has notice of the existence of a violation of any provision of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220 and 39E.990~~[39.800 to 39.990]~~. The commission chairman (or designee) shall mail to the alleged violator a writing styled "NOTICE OF VIOLATION", which shall contain the specific date, time, and place of the violation, if applicable, together with a summary of the factual, legal, and other grounds upon which the notice of violation is based, and the specific provisions of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220 and 39E.990~~[39.800 to 39.905]~~ or the commission's administrative regulations that were allegedly violated. Mere recitation of statutory or regulatory standards is not a sufficient summary of the grounds for the commission's action. The commission chairman (or designee) may attempt to informally resolve the violation in accordance with Section 3 of this administrative regulation. Where, after ninety (90) days from the issuance of the notice of violation the alleged violation is unresolved, the commission chairman (or designee) shall issue a notice of administrative hearing, following the requirements of KRS 13B.050.

Section 3. Informal Proceedings. After an administrative action commences, the commission may seek informal resolution of the dispute with a party under the~~[following]~~ procedures established in this section.~~[-]~~

(1) The commission shall give reasonable notice to all affected persons of the commission's notice of violation.

(2) After giving notice, the commission shall give affected persons or parties an opportunity, at a mutually convenient time and place, to present to an authorized commission representative evidence in opposition to the commission action or determination, or to give a statement challenging the grounds upon which the commission has chosen to justify its action or determination.

(3) The authorized representative of the commission shall give the affected person's evidence and objections due consideration, and notify all affected persons in writing within fourteen (14) days of the receipt of the evidence or objections of the commission's decision.

Section 4. Parties. The parties to the proceeding shall be the commission chairman (or designee) and the alleged violator who shall be designated respondent. A person may be permitted to intervene in any action by filing a petition for intervention in accordance with KRS 13B.060.

Section 5. Assignment to Hearing Officer; Duties and Authority. (1) Within ten (10) days of the filing of the notice of violation, the commission shall designate a hearing officer for formal administrative action in any manner consistent with KRS 13B.030. If the commission elects to designate a hearing officer from the Division of Administrative Hearings in the Office of the Attorney General under KRS 13B.030, it shall make that request in writing to the division within ten (10) days of the filing of the notice of violation.

(2) Assignment of a hearing officer from the Division of Administrative Hearings of the Office of the Attorney General shall be made according to the administrative regulations governing the conduct of the Division of Administrative Hearings of the Office of the Attorney General.

(3) A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a designation of a hearing officer under these administrative regulations and a delegation to the hearing officer under KRS 13B.030(1) of all powers conferred on and relating to the conduct of the administrative action. The hearing officer shall have the authority to take any procedural action authorized by KRS Chapter 13B or these administrative regulations, including, for

example, the authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas for witnesses and production of documents or things;
- (c) Regulate discovery;
- (d) Rule on procedural requests;
- (e) Hold prehearing conferences;
- (f) Regulate the course of, and maintain order in the administrative hearing;
- (g) Rule on evidentiary matters and admit in or exclude evidence from the record;
- (h) Examine witnesses;
- (i) Require the parties to submit legal memoranda, and proposed findings of fact and conclusions of law;
- (j) Make proposed findings of fact, conclusions of law and recommended orders for the agency head; and
- (k) Take any action consistent with law to promote the orderly and prompt conduct of the administrative action.

Section 6. Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause. The request shall be in writing and include the reason for the request. The request shall be submitted to the commission chairman (or designee) at least ten (10) days prior to the hearing date.

(2) Any party objecting to a requested continuance may file a written objection to the commission chairman (or designee) at least five (5) days prior to the scheduled hearing.

(3) The hearing officer shall rule on all requests for a continuance. In the hearing officer's absence, the commission chairman (or designee) shall rule on such requests. The commission chairman (or designee) shall execute and transmit an order either granting or denying the continuance to all parties involved.

Section 7. Conflict of Interest; Recusal. (1) If at any time during an administrative action an assigned hearing officer's continued service would violate the standard set forth in KRS 13B.040(2)(a) or a canon of judicial ethics, that hearing officer shall recuse and enter a written order withdrawing from the administrative action.

(2) At any point during an administrative action a party may move the hearing officer to recuse from an administrative action. The motion to recuse shall be in writing filed in the record and shall be supported by an affidavit setting forth specific facts which demonstrate one (1) or more of the grounds for recusal set forth in KRS 13B.040(2)(b).

(3) Within ten (10) days of recusal of a hearing officer, the commission shall request or assign another hearing officer by written order.

Section 8. Ex Parte Contact Prohibited. (1) Unless otherwise allowed by KRS 13B.100, there shall be no administrative action, or any person working under the hearing officer's supervision, and any person with a direct or indirect interest in the outcome to that administrative action concerning the merits of the administrative action assigned to the hearing officer.

(2) This administrative regulation shall not prohibit ex parte contact with staff on purely procedural matters not at issue in the case. This section shall not prohibit communications with staff regarding the status of a case.

(3) Upon receiving an ex parte contact prohibited by this section, the hearing officer shall take every action required under KRS 13B.100, shall cause the parties to be notified of the contact, and shall inform the other parties to the action of their right to move for a recusal.

(4) The hearing officer may impose appropriate sanctions on a person who knowingly makes a prohibited ex parte contact, including, but not limited to deeming the person to have defaulted, striking all or part of that person's pleadings, claims, or defenses, denying any pending motions by the party, issuing a show cause order requiring the person to show why the hearing officer should not sanction the person, or taking such other actions as are appropriate.

Section 9. Motion for Summary Disposition. A hearing officer may grant a motion for a summary disposition and recommend the agency head rule in the moving party's favor if the hearing officer finds that there is no genuine dispute as to any issue of material fact and the moving party is entitled to a summary disposition as a matter of law.

Section 10. Filing of Papers. (1) All papers after the petition required to be served upon a party shall be filed with the commission either before service or within a reasonable time thereafter.

(2) Pleadings and other papers shall be filed with the commission when they are received and endorsed by the commission. The commission shall endorse the date of receipt on every paper filed in an action immediately upon receipt.

(3) Papers may be filed with the commission by telefacsimile machine at the telefacsimile telephone number listed for the commission on the notice of violation. Parties filing by telefacsimile machine shall include a certificate that the paper is being filed by fax and the original paper is being filed by mail and shall immediately after faxing such a paper mail the original paper to the commission. The filing date of a paper sent by facsimile shall be the date the commission receive the original, unless the original is received with five (5) business days of the facsimile, in which case the filing date shall be the date the commission received the facsimile.

(4) All papers filed in an administrative action must be signed by the filing person. The signature of the filing person or his authorized representative constitutes a certificate that the signing person has read the paper and that to the best of his knowledge, information and belief formed after reasonable inquiry, it is not interposed for any improper purpose. If a paper is signed in violation of this subsection, the hearing officer may strike the paper from the record, deem the party to have failed to file the paper and take any action allowed as a consequence of such failure, strike all or part of any pleading, claim or defense asserted in the filing, or bar an attorney violating this subsection from future participation in that administrative action, and recommend that the agency head bar that attorney from appearing in future administrative actions before the commission.

Section 11. Venue. Administrative hearings shall be conducted at a site designated by the hearing officer. In determining venue, the hearing officer shall consider the requirements of law, the convenience of the parties, the witnesses and the evidence.

Section 12. Default. (1) If a party fails to timely comply with an order of a hearing officer or a requirement of these administrative regulations, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his right to an administrative hearing and why the hearing officer should not immediately recommend that the commission chairman (or designee) enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend the entry of a final order in conformity with the relief requested by the opposing party in the administrative action.

(2) If a party fails to appear at a formal administrative hearing, the hearing officer may deem that party to have waived his right to a formal administrative hearing and may immediately recommend the commission chairman (or designee) enter a final order in conformity with the relief requested in the appropriate pleadings, or may proceed without the defaulted party.

(3) Upon the failure of a party to timely comply with a hearing officer's order, the hearing officer may recommend the commission chairman (or designee) grant any relief to which the opposing party is entitled.

(4) A hearing officer may, before the time for filing exceptions has run, set aside a recommendation by default under this section for good cause shown.

Section 13. Burden of Proof. (1) The commission shall have the burden of going forward to establish a prima facie case and the

ultimate burden of persuasion to show the propriety of the commission's action.

(2) The party asserting an affirmative defense shall have the burden of going forward and the ultimate burden of persuasion to establish that defense.

(3) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of substantial evidence in the record.

Section 14. Findings of Fact, Conclusions of Law, and Recommended Order. The hearing officer shall make findings of fact, conclusions of law and issue a recommended order for review and approval by the full commission with service on all parties. Any party may take exception in writing within fifteen (15) days of mailing of the hearing officer's recommended order. Thereafter, the commission chairman (or designee), shall, as directed by the commission, approve the findings of fact, conclusions of law and recommended order or may modify the findings of fact, conclusions of law and recommended order. If no exceptions are filed and the commission takes no action on the hearing officer's findings of fact and conclusions of law within thirty (30) days, the order of the hearing officer shall be final.

Section 15. (1) Service of the notice of violation, notice of administrative hearing, and the hearing officer's recommended order shall be made by certified mail to the alleged violator at the address shown on the annual inventory ~~report~~[reporting forms] or facility plan required to be filed by KRS Chapter ~~39E~~[39]. If no facility plan or annual inventory report has been filed, then to the last known address.

(2) All documents filed with the commission by any party shall be served by mail upon all other parties.

STEVEN P. BULLARD, Director

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

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CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to be followed to assess civil penalties by the Kentucky Emergency Response Commission as provided for in KRS 39E.990.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is directed to ensure just, timely and inexpensive determinations of matters before the Kentucky Emergency Response Commission; manage administrative action and informal proceedings to impose

a civil penalty under KRS 39E.990(3) against a person when the commission has notice of the existence of a violation of any provision of KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220 and 39E.990; provide for a hearing officer who shall make findings of fact, conclusions of law and issue a recommended order for review and approval by the full commission with service on all parties; and provide for an appeals process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies in detail how the Kentucky Emergency Response Commission and Division of Emergency Management ensures compliance with state and federal requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the Statutory Authority governing this administrative regulation and makes one technical correction in Section 15, changing the term "reporting forms" to "report".

(b) The necessity of the amendment to this administrative regulation: This administrative regulation had not been updated since 1998. This amendment was necessary to bring the administrative regulation up to date with current Statutory Authority and compliance practices.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment brings the administrative regulation up to date with current Statutory Authority and compliance practices.

(d) How the amendment will assist in the effective administration of the statutes: This amendment brings the administrative regulation up to date with current Statutory Authority and compliance practices, allowing for proper references when researching the applicable Kentucky Revised Statutes and federal statutes and in preparing grant applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS 39E.040(3) requires the Kentucky Emergency Response Commission to develop reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no associated requirement for action required of any affected individual or organization. This update properly reflects currently mandated practices, correcting outdated references in the existing 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 for any entity because there is no change in requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity.

(b) On a continuing basis: There is no additional cost for any entity.

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

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 39E.990

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

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity

(d) How much will it cost to administer this program for subsequent years? There is no cost for any entity

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact.

GENERAL GOVERNMENT Board of Physical Therapy (Amendment)

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS 164.772, 327.010, 327.050, 327.060, 327.075, 327.080

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(1) requires the board to determine if physical therapist applicants meet the qualifications and standards required by KRS Chapter 327. KRS 327.040(13) authorizes the board to promulgate administrative regulations regarding the qualifications for physical therapist assistants. This administrative regulation establishes the criteria for eligibility, methods, and procedures of qualifying for a credential to practice physical therapy in Kentucky.

Section 1. An application shall be accepted for credentialing as a physical therapist or physical therapist assistant based on successful completion by the applicant of one (1) of the following processes:

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. Examination Candidate. (1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

- (a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;
- (b) Submit certification of completion by the educational administrator of that program;
- (c) Have successfully completed the Jurisprudence Exam;
- (d) Submit a complete Application for Credentialing that includes a photo taken within one (1) year;
- (e) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;
- (f) If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability; and
- (g) Register for the NPTE examination.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

- (a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and
- (b) Complete the requirements of subsection (1)(b) through (g) of this section.

(3) ~~After three (3) failed attempts in taking the examination, an applicant for licensure or certification shall complete a board-approved remediation plan based on identified deficits as provided on the Federation of State Boards of Physical Therapy (FSBPT) Examination Performance Feedback report prior to registering for each subsequent examination.~~

~~(4) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations~~

~~(4)] Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant shall not be eligible to register for any additional examinations~~

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

- (1) Meet the eligibility requirements of Section 2 of this administrative regulation; and
- (2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

- (1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake~~[and remediation]~~ provisions in Section 2(3) ~~and (4)]~~ of this administrative regulation;
- (2) Complete a Supervisory Agreement with one (1) or more physical therapists; and
- (3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. (1) Upon issuance of a temporary permit, the physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently engaged in the practice of physical therapy in Kentucky who:

- (a) Has practiced in Kentucky for more than one (1) year; and
 - (b) Has an unrestricted license.
- (2) ~~A~~The supervising physical therapist:
- (a) Shall be on-site at all times during the practice of the applicant with a temporary permit;
 - (b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;
 - (c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit~~[within twenty-four (24) hours of when the service was provided];~~
 - (d) May designate an alternate~~[a temporary]~~ supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The ~~alternate~~temporary supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility as identified in paragraph (a) through (c) of this subsection; and
 - (e) Shall notify the board immediately if the supervisory

relationship is terminated.

- (3) The applicant with a temporary permit shall:
 - (a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;
 - (b) Sign documentation with the temporary permit number and designation as required in 201 KAR 22:053, Section 5(5)(a) or (b); and
 - (c) Notify the board immediately if the supervisory relationship is terminated.
- (4) The temporary permit shall expire the earlier of:
 - (a) Six (6) months from the date of issuance; or
 - (b) Notice of exam results by the board.

Section 6. A physical therapist applicant who meets the qualifications for physical therapy licensure by examination may become a special candidate for physical therapist assistant certification by examination.

Section 7. To be eligible for credentialing by endorsement, the applicant shall:

- (1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;
- (2) Meet the requirements established in Section 2(1)(b) through (f) of this administrative regulation;
- (3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:
 - (a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or
 - (b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;
- (4) Have an active credential in this profession in another jurisdiction; and
- (5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

Section 8. To be eligible for reinstatement, the applicant shall meet the requirements in 201 KAR 22:040.

Section 9. A credential issued by the board shall be in effect until March 31 of the next odd-numbered year.

Section 10. A foreign-educated physical therapist shall comply with the provisions of 201 KAR 22:070

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

- (a) "Application for Credentialing", December 2011;
 - (b) "Supervisory Agreement", December 2016~~[2014]~~; and
 - (c) "Applicant Special Accommodations Request Form", December 2012.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director

APPROVED BY THE BOARD: November 17, 2016.

FILED WITH LRC: December 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 30, 2017, at 4:00 p.m. (ET) at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to

comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, email lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Scott D. Majors, Louis D. Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 327.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the eligibility and credentialing procedure for physical therapists and physical therapist assistants in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement that applicants complete a board-approved remediation plan after three (3) failed attempts at the National Physical Therapy Examination (NPTE). It also eliminates the requirement that supervising physical therapists review, approve, date and co-sign all documentation provided by an applicant with a temporary permit within twenty four (24) hours. Finally, the amendment replaces the term "temporary supervisor" with "alternate supervisor."

(b) The necessity of the amendment to this administrative regulation: To remove the Board's participation in examination preparation and to better streamline the supervision of individuals working under a temporary permit.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the provisions of KRS Chapter 327.

(d) How the amendment will assist in the effective administration of the statutes: By eliminating superfluous procedures that are unnecessary to the administration of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5800 physical therapists, physical therapist assistants, and applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Exam applicants will no longer have to complete a board-approved remediation plan after three unsuccessful attempts at passing the NPTE. Supervising physical therapists will no longer have to review, approve, date and co-sign all documentation provided by an applicant with a temporary permit

within twenty four (24) hours.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will no longer have to complete a board-approved remediation plan after three unsuccessful attempts at passing the NPTE. Supervising physical therapists will no longer have to review, approve, date and co-sign all documentation provided by an applicant with a temporary permit within twenty four (24) hours.

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

(a) Initially: No cost to the board.

(b) On a continuing basis: No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Applicants for physical therapist licenses and physical therapists supervising applicants working under a temporary permit.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.050.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT
Board of Physical Therapy
(Amendment)**

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

RELATES TO: KRS 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(11), (12), (13), 367.4082

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040 (12) and (13) authorize the Board of Physical Therapy to establish by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

Section 1. Code of Ethical Standards. (1) Physical therapists and physical therapist assistants shall:

- (a) Respect the rights and dignity of all patients;
- (b) Practice within the scope of the credential holder's training, expertise and experience;
- (c) Ensure that all personnel involved in the delivery of physical therapy services are identified to the patient by name and title;
- (d) Report to the board any reasonably suspected violation of KRS Chapter 327, KRS 367.4082, or 201 KAR Chapter 22 by a[another] credential holder or applicant within thirty (30) days;~~and]~~

(e) Report to the board any civil judgment, settlement, or civil claim involving the credential holder's practice of physical therapy made against the credential holder relating to the credential holder's own physical therapy practice within thirty (30) days;and

(f) Comply with the provisions of KRS 367.4082.

(2) Physical therapists and physical therapist assistants shall not:

- (a) Verbally or physically abuse a client; or
- (b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing.

Section 2. Standards of Practice for the Physical Therapist. While engaged in the practice of physical therapy, a physical therapist shall:

- (1) Perform screenings in order to:
 - (a) Provide information on a person's health status relating to physical therapy;
 - (b) Determine the need for physical therapy evaluation and treatment;
 - (c) Make a recommendation regarding a person's ability to return to work or physical activity; and
 - (d) Provide physical therapy services;
- (2) Evaluate each patient prior to initiation of treatment;
- (3) Upon receipt of a patient under an active plan of care from another physical ~~therapist[therapy service]~~, the receiving physical therapist shall:
 - (a) Complete an[initial] evaluation in compliance with Sections 2(2) and 5(1)(a)-~~(d)~~(e) of this administrative regulation; or
 - (b) Ensure the evaluation and plan of care from the other physical ~~therapist is[therapy service are]~~ current and appropriate;
 - (c) Retain the evaluation and plan of care from the other physical ~~therapist[therapy service]~~ in the medical record;
 - ~~[(d) Document the patient transfer of care in the medical record;] and~~
 - (d)[(e)] Comply with reassessment requirements based on the date of the most recent evaluation.
- (4) Reassess each patient in accordance with the following:
 - (a) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;
 - (b) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:
 - 1. A facility defined in 902 KAR 20:086 as an intermediate care

facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or

2. A school system.

a. A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year;

b. During this grace period treatment may continue based upon the previous reassessment or~~[initial]~~ evaluation;

(c) Reassessing each patient not otherwise noted every thirty (30) days following the ~~last~~[initial] evaluation or subsequent reassessment;

(d) Reassessing a patient whose medical condition has changed;

(5) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;

(6) Be responsible for the physical therapy record of each patient;

(7) Be responsible for the plan of care until the patient is received by another physical therapist pursuant to subsection 3 of this Section;

(8) Provide services that meet or exceed the generally accepted practice of the profession;

(9)[(8)] Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;

(10)[(9)] Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those; and

(11)[(10)] Disclose in writing to each patient any financial interest, compensation, or other value to be received by the referral source:

- (a) For services provided by the physical therapist;
- (b) For equipment rental or purchase; or
- (c) For other services the physical therapist may recommend for the patient.

(12)[(11)] Unless prohibited by law, all members of a business entity shall be allowed to pool or apportion fees received in accordance with a business agreement.

Section 3. Standards of Practice for the Physical Therapist Assistant. While engaged in the practice of physical therapy, the physical therapist assistant shall:

- (1) Provide services only under the supervision and direction of a physical therapist;
- (2) Refuse to carry out procedures that the assistant believes are not in the best interest of the patient or that the assistant is not competent to provide by training or skill level;
- (3) Initiate treatment only after evaluation by the physical therapist;
- (4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not determine the significance of the data as it pertains to the development of the plan of care;
- (5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;
- (6) Comply with the plan of care~~[supervision]~~ established by the physical therapist;
- (7) Communicate with the physical therapist any change or lack of change that occurs in the patient's condition that may indicate the need for reassessment; and
- (8) Discontinue physical therapy services if reassessments are not done in compliance with Section 2(4) of this administrative regulation, and communicate to the appropriate parties.

Section 4. Standards for Supervision. While supervising the physical therapist assistant and supportive personnel, the physical therapist shall:

- (1)(a) At all times, including all work locations in all jurisdictions, be limited to supervising not more than four (4) physical therapist assistants or supportive personnel; and
- (b) Abide by the maximum staffing ratio of physical therapists to physical therapist assistants or supportive personnel required in this section except that a maximum of seven (7) work days in a

sixty (60) consecutive day period shall not constitute a violation of this standard;

(2) Provide direct supervision when supervising supportive personnel as defined by 201 KAR 22:001, Section 1(23), effective September 1, 2013;

(3) Not delegate procedures or techniques to the physical therapist assistant that are outside his or her scope of training, education or expertise;

(4) Not delegate procedures or techniques to supportive personnel that are outside his or her scope of training, education or expertise.

(a) Scope of training and competency for supportive personnel shall be documented and verified at least annually.

(b) Documentation of training and competency shall be immediately available for review;

(5) Be responsible for:

(a) Interpreting any referral;

(b) Conducting the[initial] physical therapy evaluation;

(c) Establishing reporting procedures to be followed by the physical therapist assistant and supportive personnel;

(d) Evaluating the competency of the physical therapist assistant and supportive personnel;

(e) Supervising the physical therapist assistant by being available and accessible by telecommunications during the working hours of the physical therapist assistant;

(f) Ensuring that if supportive personnel provide direct patient care that there is direct supervision as defined by 201 KAR 22:001, Section 1(6), effective September 1, 2013 by a physical therapist or physical therapist assistant;

(g) Ensuring that a physical therapy student fulfilling clinical education requirements shall receive on-site supervision by a physical therapist;

(h) Ensuring that a physical therapist assistant student fulfilling clinical education requirements shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant; and

(i) Establishing discharge planning for patients who require continued physical therapy.

(6) The physical therapist shall direct and be responsible for services rendered by physical therapist students or physical therapist assistant students, including documentation requirements in Section 5 of this administrative regulation.

Section 5. Standards for Documentation. The physical therapist shall be responsible for the physical therapy record of a patient. The physical therapy record shall include an evaluation and, as required, ongoing documentation and reassessment.[consist of:]

(1) An[The initial] evaluation consisting of,] a written or typed report signed and dated by the physical therapist performing the evaluation or supervising the physical therapist student performing the evaluation, which shall include:

(a) Pertinent medical and social history;

(b) Appropriate subjective and objective information;

(c)[Appropriate objective testing;

(d)] Assessment, which may include problems, interpretation, and a[physical therapy] diagnosis identifying the nature and extent of the patient's impairment; and

(e) Plan of care, which includes[including]:

1. Treatment[to be rendered]; and

2.[Frequency and duration of treatment; and

3-] Measurable goals, including anticipated time frame of achievement;

(2) Ongoing documentation.[Progress notes] which shall:

(a) Be completed at least weekly or, if treatment is less than weekly, at each patient visit;

(b) Be written or typed, signed, and dated:

1. By the physical therapist or physical therapist assistant[person] rendering treatment;[or]

2. By the[student or by the] supervising physical therapist or physical therapist assistant if treatment was rendered by a physical therapist student or physical therapist assistant student; or

3. By the physical therapist student or physical therapist

assistant student rendering treatment if countersigned and dated by the supervising physical therapist;

~~[(b) Be countersigned and dated by the physical therapist if written by supportive personnel, students, or physical therapy examination candidates; and]~~

(c) Include:

1. Treatment rendered since the last evaluation, ongoing documentation, or reassessment[A current record of treatment];

2. Patient's[adverse] response to treatment; and

3. Appropriate subjective and objective information[Any factors affecting treatment; and

4. Data obtained by all objective tests performed];

(3) Reassessment for the revision or reaffirmation of the existing plan of care, or the establishment of a new plan of care, which shall be written or typed, signed, and dated by a physical therapist.

(a) The[This] reassessment shall be in compliance with Section 2(4) of this administrative regulation.

(b)]:

(a) ~~If a physical therapist or physical therapist student is treating the patient, these reports may be incorporated into the progress notes.~~

(b) ~~If a physical therapist assistant, physical therapist assistant student, or supportive personnel are treating the patient, the report shall be a separate entry into the record.~~

(c)] A reassessment shall include;

1. Subjective, objective, and medical information acquired by the physical therapist, physical therapist student, physical therapist assistant, or physical therapist assistant student;

2. An assessment in compliance with subsection (1)(c) of this section completed by the physical therapist or physical therapist student; and

3. A plan of care in compliance with subsection (1)(d) of this section completed by the physical therapist or physical therapist student.

(4)~~[directly observed objective, subjective, and medical information completed by the physical therapist, or physical therapist student, that is necessary for the revision or reaffirmation of the plan of care and measurable goals;~~

(4) Discharge summary, which shall be a written or typed, signed, and dated statement.

(a) ~~A physical therapist assistant, physical therapist student, or physical therapist assistant student may write the discharge summary, which shall be signed by the responsible physical therapist.~~

(b) ~~The discharge summary shall include:~~

1. ~~The date of discharge;~~

2. ~~The reason for discharge;~~

3. ~~The physical therapy status upon discharge; and~~

4. ~~A discharge plan, which shall include recommendations the physical therapist has regarding the need for continuing physical therapy.~~

5. ~~A discharge summary, which shall be written within thirty (30) days of the termination of the current plan of care if a subsequent plan of care has not been established; and~~

(5)] The correct designation following the signature of the person who has entered a statement into the patient record shall be as follows:

(a) If written by a physical therapist: "PT". Appropriate designations for advanced physical therapy degrees may follow "PT";

(b) If written by a physical therapist assistant: "PTA";

(c) If written by supportive personnel: "PT Aide", or "Physical Therapy Aide", or "PT Tech"; and

(d) If written by a student: "Physical Therapist Student" or "PT Student"; "Physical Therapist Assistant Student" or "PTA Student".

SCOTT D. MAJORS, Executive Director

APPROVED BY THE BOARD: November 17, 2016.

FILED WITH LRC: December 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 30, 2017, at 4:00 p.m. (ET) at 312 Whittington Parkway,

Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, email ScottD.Majors@ky.gov; and Louis D. Kelly, Esq., General Counsel, Board of Physical Therapy, Adams, Stepner, Woltermann & Dusing, 40 W. Pike Street, P.O. Box 861, Covington, Kentucky 41012, phone (859) 394-6200, fax (859) 392-7239, email lkelly@aswdlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors, Louis D. Kelly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 367.4082 and further clarify standards of practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It adds provisions to the regulations prohibiting the solicitation of individuals involved in a motor vehicle accident for thirty (30) days and requires credential holders to report violations of KRS 367.4082. It also clarifies the standard of practice by removing the requirement of discharge summaries, refining terms, and clarifying requirement for documentation in a patient plan of care.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It adds provisions to the regulations prohibiting the solicitation of individuals involved in a motor vehicle accident for thirty (30) days and requires credential holders to report violations of KRS 367.4082. It also clarifies the standard of practice by removing the requirement of discharge summaries, refining terms, and clarifying requirement for documentation in a patient plan 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 it adds provisions to the regulations prohibiting the solicitation of individuals involved in a motor vehicle accident for thirty (30) days and requires credential holders to report violations of KRS 367.4082. It also clarifies the standard of practice by removing the requirement of discharge summaries, refining terms, and clarifying requirement for documentation in a patient plan of care.

(b) The necessity of the amendment to this administrative regulation: To comply with recent enactment of KRS 367.4081 - .4083 and further clarify standards of practice.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment makes the regulation consistent with the requirements of KRS 367.4081 - .4083 and further clarifies the standards of practice.

(d) How the amendment will assist in the effective administration of the statutes: By adding the new provisions, the regulation will be consistent with the requirements of KRS 367.4081 - .4083 and will further clarify standards of practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5800 physical therapists

and physical therapist assistants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Credential holders are prohibited from soliciting individuals involved in a motor vehicle accident for thirty (30) days and are required to report violations of KRS 367.4082. It also clarifies the standard of practice by removing the requirement of discharge summaries, refining terms, and clarifying requirement for documentation in a patient plan of care.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will be in compliance with KRS 367.4082 and will no longer have to complete discharge summaries.

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

(a) Initially: No cost to the board.

(b) On a continuing basis: No cost to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Approximately 5800 physical therapists and physical therapist assistants.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 327.040, 327.070, and 367.4082.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

201 KAR 35:020. Fees.

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

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

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

Section 1. Application Fee. (1) The application fee for board review of an application for a licensed clinical alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, certified alcohol and drug counselor, or registered alcohol and drug peer support specialist, KBADC Form 1, shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

(3) An application shall lapse one (1) year from the date it is filed with the board office.

(4)(a) If an approved applicant applies one (1) or more times after the original application lapses, the applicant shall comply with the requirements of this subsection.

1. The applicant shall successfully complete the examination required by the board within two (2) years from the date the original application is filed.

2. If the applicant does not successfully complete the examination within the time period required by subparagraph 1. of this paragraph, the applicant shall update and refile the application prior to sitting for the examination again.

(b) The fee for refiling the application form shall be twenty (20) dollars.

Section 2. Comprehensive Examination Fee. (1)(a) An applicant for registration as an alcohol and drug peer support specialist~~[shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and]~~ shall pay a fee of \$150. The fee for retaking the comprehensive examination for registration shall be \$150.

(2) An applicant for certification~~[shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and]~~ shall pay a fee of \$200. The fee for retaking the comprehensive examination for certification shall be \$200.

(3) An applicant for licensure~~[shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium and]~~ shall pay a fee of \$200. The fee for retaking the comprehensive examination for licensure shall be \$200.

Section 3. Credentialing Fee. (1)(a) The registration fee for an alcohol and drug peer support specialist shall be \$100.

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

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

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

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

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

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

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

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

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

(a) The renewal fee for registration shall be \$100 for a three (3) year period, and shall accompany the Application for Renewal, KBADC Form 16.

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

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

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

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

(f) The late renewal fee for the ninety (90) day grace period, as well as licensure for a three (3) year period, shall be a:

1. \$300 fee; and
2. Penalty fee of fifty (50) dollars.

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

(a) Submitting a completed Application for Reinstatement~~[Reinstatement Application]~~;

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

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

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

(a) Submitting a completed Application for Reinstatement~~[Reinstatement Application]~~;

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

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

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

(a) Submitting a completed Application for Reinstatement~~[Reinstatement Application]~~;

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

(c) Payment for licensure for a three (3) year period, which shall be a:

1. \$300 fee; and
2. Penalty fee of \$100.

Section 6. Duplicate Credential and ID Card Fees. (1) The fee

for a duplicate credential shall be twenty (20) dollars.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) "KBADC Form 1, Application", June 2015;

(b) "KBADC Form 16, Application for Renewal", June 2015;

(c) "KBADC Form 17, Application for Reinstatement", June 2015; and

(d) [~~"KBADC Form 19, Reinstatement Application", June 2015;~~

and
(e)] "Continuing Education Sponsor Application", 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leewood Drive, Frankfort, Kentucky, Monday through Friday, 8:00[8:30] a.m. to 4:30[5] p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: December 15, 2016

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

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2017, at 10:00 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 January 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the application, comprehensive examination, credential, renewal, penalty, reinstatement, duplicate credential and ID, inactive status, and continuing education fees.

(b) The necessity of this administrative regulation: The necessity of this regulation is to advise the public, licensee and applicant of fees to be assessed.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the fees to be assessed for the application, comprehensive examination, credential, renewal, penalty, reinstatement, duplicate credential and ID, inactive status, and continuing education.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the examination requirements from the fee regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the board to establish an examination regulation and avoid repeating requirements in different regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the establishment of fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will result in all the requirements for an examination in a single regulation.

(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 number of applications vary from month to month. There are presently 467 Licensed Clinical Alcohol and Drug Counselors, three (3) Licensed Clinical Alcohol and Drug Counselor Associates, 816 Certified Alcohol and Drug Counselors, 386 Temporary Certified Alcohol and Drug Counselors, fifty-six (56) Temporary Registered Alcohol and Drug Peer Support Specialists, and one (1) Registered Alcohol and Drug Peer Support Specialist.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An application and credential holder shall pay a fee associated with the credential or services sought.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment to the administrative regulation does not establish any new fees or increases any existing fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulations place applicants and credential holders on clear notice of the fees associated with their credential and services provided.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes fees. There is no increase in the amendment to existing fees. There is an application fee of \$50 assessed to all applicants. The comprehensive examination fee for certification increasing is \$200.00. The fee for the registration of peer support specialists is \$100.00. The fee for the licensure of alcohol and drug counselors or alcohol and drug counselor associates is \$300.00.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (12), 309.085.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The board is uncertain the amount of revenue this regulation will generated because it is impossible to predict the number of registrants and licensees, late renewals, and services from the board.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The board is uncertain the amount of revenue this regulation will generated because it is impossible to predict the number of registrants and licensees, late renewals, and services from the board.

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

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

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

Revenues (+/-): +

Expenditures (+/-):

Other Explanation:

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

201 KAR 35:030. Code of Ethics.

RELATES TO: KRS 309.081

STATUTORY AUTHORITY: KRS 309.0813(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315(14) requires the board to promulgate a code of ethics for credential holders. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A credential holder shall:

(a) Advance and protect the welfare of the client;

(b) Respect the rights of a person seeking assistance; and

(c) Make reasonable efforts to ensure that services are used appropriately.

(2) If an alcohol and drug peer support specialist is employed by a facility or credential holder from whom the peer support specialist received services as a client, the peer support specialist's supervisor shall clearly define the relationship and boundaries of the peer support specialist's employment position.

(3) Regarding any client, including clients of the facility where the counselor provides alcohol and drug counseling or any other service, or where the peer support specialist provides services, a credential holder shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of:

1. Race;

2. Gender;

3. Age;

4. Sexual preference or orientation;

5. Religion; or

6. National origin;

(b) Exploit the trust and dependency of a client;

(c) Engage in a dual relationship with a client, whether social, business, or personal, that may impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, unless:

1. A dual relationship:

a. Cannot be avoided; and

b. Does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation; and

2. The counselor takes appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur;

(d) Engage in:

1. A romantic or sexual relationship with a:

a. Current or former client;

b. Current or former client of the facility where the counselor provides alcohol and drug counseling; or

c. Member of a client's immediate family or client's romantic partner; or

2. Sexual or other harassment, or exploitation, of a:

a. Client;

b. Student;

c. Trainee;

d. Supervisee;

e. Employee;

f. Colleague;

g. Research subject; or

h. Actual or potential witness or complainant in an investigation or ethical proceeding;

(e) Use the professional relationship with a client to further an institutional or personal interest;

(f) Continue a therapeutic relationship unless it is reasonably clear that the client is benefiting from the relationship;

(g) Fail to assist a person in obtaining other therapeutic service if the counselor is unable or unwilling, for an appropriate reason, to provide professional help;

(h) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of a therapy session without having first obtained written informed consent from the client; or

(j) Diagnose, treat, or advise on problems outside the recognized boundaries of competence.

Section 2. Confidentiality. (1) A credential holder shall respect and guard the confidence of each individual client in any setting and through any means of communication.

(2) A credential holder shall not disclose a client confidence except:

(a) As mandated or permitted by law;

(b) To prevent a clear and immediate danger to a person;

(c) During the course of a civil, criminal, or disciplinary action arising from the counseling, at which the credential holder is a defendant; or

(d) In accordance with the terms of a written informed consent agreement.

(3) A credential holder may use client or clinical material in teaching, writing, and public presentations if:

(a) Written informed consent has been obtained in accordance with subsection (2)(d) of this section; or

(b) Appropriate steps have been taken to protect client identity and confidentiality.

(4) A credential holder shall maintain a client's record for no less than seven (7) years from termination of services with the client.

(5) A credential holder shall store or dispose of a client record so as to maintain confidentiality.

Section 3. Publication Credit. A credential holder shall assign credit to all who have contributed to the published material and for the work upon which publication is based. A credential holder shall:

(1) Recognize joint authorship and major contributions of a professional character made by several persons to a common project. The author who has made the principal contribution to a publication shall be identified as the first listed;

(2) Acknowledge in a footnote or introductory statement minor contributions of a professional character, extensive clerical or similar assistance; and

(3) Acknowledge, through specific citations, unpublished, as well as published, material that has directly influenced the research or writing.

Section 4. Professional Competence and Integrity. (1) A credential holder shall maintain standards of professional competence and integrity and shall be subject to disciplinary action if:

(a) The board determines the credential holder has violated KRS Chapter 309 or 201 KAR Chapter 35 by an act that results in disciplinary action by another state's regulatory agency; or

(b) The credential holder:

1. Is impaired due to mental capacity or the abuse or use of alcohol or other substances which negatively impacts the practice of alcohol and drug counseling or peer support services;

2. Refuses to comply with an order issued by the board; or

3. Fails to cooperate with the board by not:

a. Furnishing in writing a complete explanation to a complaint filed with the board;

b. Appearing before the board at the time and place designated; [or]

c. Properly responding to a subpoena issued by the board;

d. Notifying the board of any arrest or conviction, felony or misdemeanor, in any jurisdiction within thirty (30) days of the arrest or conviction; or

e. Notifying the board of disciplinary action taken against any state-issued credential in any jurisdiction within thirty (30) days of the disciplinary action.

(2) A credential holder who is aware of conduct by another credential holder that violates this code of ethics shall report that conduct to the Kentucky Board of Alcohol and Drug Counselors.

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

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

(1) Be aware of his influential position with respect to a student or supervisee;

(2) Avoid exploiting the trust and dependency of a student or supervisee;

(3) Avoid a social, business, personal, or other dual relationship that could:

(a) Impair professional judgment; and

(b) Increase the risk of exploitation;

(4) Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;

(5) Not provide counseling to a:

(a) Student;

(b) Employee; or

(c) Supervisee;

(6) Not engage in sexual intimacy or contact with a:

(a) Student; or

(b) Supervisee;

(7) Not permit a student or supervisee to perform or represent oneself as competent to perform a professional service beyond his level of:

(a) Training;

(b) Experience; or

(c) Competence;

(8) Not disclose the confidence of a student or supervisee unless:

(a) Permitted or mandated by law;

(b) It is necessary to prevent a clear and immediate danger to a person;

(c) During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the credential holder is a defendant;

(d) In an educational or training setting, of which there are multiple supervisors or professional colleagues who share responsibility for the training of the supervisee; or

(e) In accordance with the terms of a written informed consent agreement.

Section 6. Responsibility to a Research Participant. (1) A credential holder performing research shall comply with federal and state laws and administrative regulations and professional standards governing the conduct of research.

(2) A credential holder performing research shall:

(a) Be responsible for making a careful examination of ethical acceptability in planning a study;

(b) Seek the ethical advice of another qualified professional not directly involved in the investigation, if it is possible that services to a research participant could be compromised; and

(c) Observe safeguards to protect the rights of a participant.

(3) A credential holder requesting a participant's involvement in research shall:

(a) Inform the participant of all aspects of the research that might reasonably affect the participant's willingness to participate; and

(b) Be sensitive to the possibility of diminished consent if the participant:

1. Is also receiving clinical services;

2. Has an impairment which limits understanding or communication; or

3. Is a child.

(4) A credential holder performing research shall respect a participant's freedom to decline participation in, or to withdraw from, a research study at any time.

(5) A credential holder shall avoid a dual relationship with research participants.

(6) Information obtained about a research participant during the course of an investigation shall be confidential unless there is an authorization previously obtained in writing. The following shall be explained to the participant before obtaining written, informed consent:

- (a) A risk that another person, including a family member, could obtain access to the information; and
- (b) The plan to be used to protect confidentiality.

Section 7. Financial Arrangements. A credential holder shall:

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

Section 8. Advertising. (1) A credential holder shall:

- (a) Accurately represent education, training, and experience relevant to the practice of professional alcohol and drug counseling;
- (b) Not use professional identification that includes a statement or claim that is false, fraudulent, misleading, or deceptive, including the following:
 - 1. A business card;
 - 2. An office sign;
 - 3. Letterhead;
 - 4. Telephone or association directory listing; or
 - 5. Webpage or social media.
- (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 is likely to create an unjustified expectation; or
 - (c) Deletes a material fact or information.

Section 9. Environment. A credential holder shall provide a safe, functional environment in which to offer alcohol and drug counseling services. This shall include the following:

- (1) Allowance for privacy and confidentiality; and
- (2) Compliance with any other health and safety requirement according to local, state, and federal agencies.

Section 10. Documentation. A credential holder shall accurately document activity with a client in a timely manner.

Section 11. Interprofessional Relationships. A credential holder shall treat a colleague with respect, courtesy, and fairness and shall afford the same professional courtesy to other professionals.

(1) A credential holder shall not offer professional service to a client in counseling with another professional unless efforts have been made to inform the other professional, or to establish collaborative treatment, or until after the termination of the client's relationship with the other professional.

(2) A credential holder shall cooperate with a duly constituted professional ethics committee and promptly supply necessary information unless constrained by the demands of confidentiality.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: December 15, 2016

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

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2017, at 11:00 a.m. at Division of Occupations and

Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on January 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

- (1) Provide a brief summary of
 - (a) What this administrative regulation does: This administrative regulation establishes the 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 impairment from abuse of alcohol or other substances to merely being under the influence of alcohol or other substances when providing services to a client.
 - (b) The necessity of the amendment to this administrative regulation: The amendments are necessary to address credential holders who engage in the practice of alcohol and drug counseling while under the influence, and refusing to provide a client with information necessary for a client to obtain reimbursement for services rendered.
 - (c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the code of ethics for a credential holder.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment will protect the public.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 467 Licensed Clinical Alcohol and Drug Counselors, three (3) Licensed Clinical Alcohol and Drug Counselor Associates, 816 Certified Alcohol and Drug Counselors, 386 Temporary Certified Alcohol and Drug Counselors, fifty-six (56) Temporary Registered Alcohol and Drug Peer Support Specialists, and one (1) Registered Alcohol and Drug Peer Support Specialist.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: A credential holder will be required to comply with the code of ethics or be subject to possible disciplinary action.

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

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

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

201 KAR 35:050. Curriculum of study.

RELATES TO: KRS 309.083(4), (8)

STATUTORY AUTHORITY: KRS 309.0813(1), (5), (6), 309.083, 309.0831, 309.0832, 309.0833

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.083, 309.0831, 309.0832, and 309.0833 require the Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing curriculum requirements for applicants for a credential. This administrative regulation identifies the areas of study that will satisfy the requirement.

Section 1. (1) Registration. An applicant seeking registration as an alcohol and drug peer support specialist shall:

(a) Complete sixty (60) classroom hours, which shall include:

1. Sixteen (16) hours of interactive[~~face-to-face~~] training in ethics of which eight (8) hours shall consist of face-to-face training;

2. Two (2) hours of training in the transmission, control, treatment, and prevention of the human immunodeficiency virus;

3. Ten (10) hours of advocacy training;

4. Ten (10) hours of training in mentoring and education; and

5. Ten (10) hours of training in recovery support; and

(b) File with the board KBADC Form 5, Peer Support Specialist Alcohol/Drug Training Verification Form[~~of Alcohol/Drug Training~~].

(2) Certification.

(a) An applicant seeking certification as an alcohol and drug counselor shall:

1. Complete 270 classroom hours that are specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies:

a. Understanding addiction;

b. Treatment knowledge;

c. Application to practice;

d. Professional readiness;

e. Clinical evaluation;

f. Treatment planning;

g. Referral;

h. Service coordination;

i. Counseling;

j. Client, family, and community education;

k. Documentation; and

l. Professional and ethical responsibilities; and

2. File with the board KBADC Form 10, Certified Alcohol and Drug Counselor, Verification of Classroom Training.

(b) A minimum of six (6) hours of the total 270 hours shall be interactive, face-to-face ethics training relating to counseling.

(c) Two (2) hours of the total 270 hours shall be specific to transmission, control, and treatment of the human immunodeficiency virus and other sexually transmitted diseases.

(d) Three (3) hours of the total 270 hours shall be specific to domestic violence.

(3)(a) An applicant seeking licensure as a licensed clinical alcohol and drug counselor or associate shall:

1. Complete 180 classroom hours of curriculum that are specifically related to the knowledge and skills necessary to perform the following alcohol and drug counselor competencies:

a. Understanding addiction;

b. Treatment knowledge;

c. Application to practice;

d. Professional readiness;

e. Clinical evaluation;

f. Treatment planning;

g. Referral;

h. Service coordination;

i. Counseling;

j. Client, family, and community education;

k. Documentation; and

l. Professional and ethical responsibilities; and

2. File with the board KBADC Form 11, Verification of

Classroom Training.

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

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

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

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

(a) Is an organized program of learning;

(b) Covers an area listed in Section 1 of this administrative regulation; and

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

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

(3) Publication on a subject relevant to addictions therapy may be submitted to the board. Credit shall be granted as established in this subsection.

(a) A chapter in a book shall be equivalent to ten (10) classroom hours.

(b) 1. Authoring or editing a book relevant to addictions therapy shall be given credit equivalent to thirty (30) classroom hours.

2. An applicant shall submit a copy of the title page, table of contents, and bibliography.

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

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

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

(2) Appropriate documentation of the course shall include:

(a) Date;

(b) Title;

(c) Description;

(d) Sponsoring organization;

(e) Presenter and presenter's credentials;

(f) Number of contact hours attended; and

(g) Certificates of attendance or transcript.

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

(a) "KBADC Form 5, Peer Support Specialist Alcohol/Drug Training Verification Form[of Alcohol/Drug Training]", December 2016[June 2015];

(b) "KBADC Form 10, Certified Alcohol and Drug Counselor Verification of Classroom Training", June 2015; and

(c) "KBADC Form 11, Verification of Classroom Training", June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, Monday through Friday, 8[8-30] a.m. to 4:30[5] p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: December 15, 2016

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

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2017, at 11:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their

intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on January 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

(1) Provide a brief summary of

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: The amendment reduces the total number of face-to-face ethics training for an applicant as an alcohol and drug peer support specialist from sixteen (16) hours to eight (8) hours.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to allow more opportunities for an applicant as an alcohol and drug peer support specialist to satisfy the ethics training requirement as an alcohol and drug peer support specialist.

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

(d) How the amendment will assist in the effective administration of the statutes: The amendment will expand the opportunities for an applicant as an alcohol and drug peer support specialist to obtain training on ethics.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 467 Licensed Clinical Alcohol and Drug Counselors, three (3) Licensed Clinical Alcohol and Drug Counselor Associates, 816 Certified Alcohol and Drug Counselors, 386 Temporary Certified Alcohol and Drug Counselors, fifty-six (56) Temporary Registered Alcohol and Drug Peer Support Specialists, and one (1) Registered Alcohol and Drug Peer Support Specialist.

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

(a) List 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 as an alcohol and drug peer support specialist has no new requirements.

(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 associated to the amendment of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment should provide more opportunities for an applicant as an alcohol and drug peer support specialist to obtain training on ethics.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (5), and (6), 309.083, 309.0831, 309.0832, and 309.0833.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

201 KAR 35:070. Supervision experience.

RELATES TO: KRS 309.083(4), 309.0831, 309.0832, 309.0833

STATUTORY AUTHORITY: KRS 309.0813(1), (3), (5), 309.083, 309.0831, 309.0832, 309.0833, 309.086

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be credentialed. This administrative regulation establishes the standards for the accumulation of required supervised work experience.

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

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

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

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

(b) The methods of clinical supervision include:

- 1. Face-to-face;
- 2. Video conferencing; or
- 3. Teleconferencing.

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

(5) Clinical supervisors shall complete and submit KBADC Form 13, Verification of Clinical Supervision, in the Application for Certification as an Alcohol and Drug Counselor, Application for Licensure as a Clinical Alcohol and Drug Counselor Associate, or Application for Licensure as a Clinical Alcohol and Drug Counselor that documents the 300 hours of supervision that has occurred during the work experience.

(6) If the applicant qualifies for licensure, supervision obtained under KRS 309.083 prior to the effective date of this administrative regulation shall be calculated toward the 300 hour supervision requirement under KRS 309.0832(10).

Section 2. Except as provided by Section 1(6) of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee submitting a Supervisory Agreement to the board. The supervisor and supervisee shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change unless extenuating circumstances prevent the submission the thirty (30) day requirement.

Section 3. (1) All supervision requirements shall:

(a) Be met with face-to-face individual or group weekly contact between supervisor[supervisor] and supervisee except as provided in subsection (2) of this section and Sections 12 and 15 of this administrative regulation;

(b) Consist of not less than two (2) hours, two (2) times a month in the practice of alcohol and drug counseling; and

(c) Include additional supervision sessions, as needed.

(2) An alternative format of supervision, including two (2) way interactive video, may be substituted for the supervisory contact, required by subsection (1) of this section, upon specific approval by the board for certain types of circumstances, such as distance, weather, or serious injury or illness of the supervisor or supervisee.

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

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

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

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

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

(4) A licensed clinical alcohol and drug counselor associate shall only be supervised by a licensed clinical alcohol and drug counselor.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

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

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

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

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

(6) For each person supervised, the supervisor shall maintain a KBADC Form 13, Verification of Clinical Supervision, for each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) The supervisor of record shall submit the Supervisor Log for each supervisee to the board on an annual basis with a KBADC Form 14, Supervision Annual Report or as directed otherwise by the board.

(2) The report shall include:

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

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

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

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

(2) A request to have more than two (2) supervisors at one (1) time shall require a written request to the board, which shall include detailed information as to how the supervisors shall

communicate and coordinate with each other in providing the required supervision.

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

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

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

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

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

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

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

(4) At least semi-annually, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror, or as a cotherapist;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;

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

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

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

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

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

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

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

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

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

(4) At least once every two (2) months, have direct observation of the supervisee's work, which may be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or direct observation;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

(6) Limit and control the caseload, as appropriate, to the supervisee's level of competence;

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

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

Section 10. (1) The supervisee shall:

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

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

(2) The supervisee shall:

(a) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;

(b) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board, in accordance with the reporting schedule established in Section 6(1) of this administrative regulation; and

(c) Report to the board an apparent violation on the part of the supervisor.

(3) Except as provided in Section 11 of this administrative regulation, a supervisee shall not continue to practice alcohol and drug counseling or peer support services if:

(a) The conditions for supervision set forth in the supervisory agreement are not followed;

(b) There is a death or serious illness of the board-approved supervisor, which results in the supervisor not being able to provide supervision; or

(c) The supervisory agreement is terminated by the board, the board-approved supervisor, or the supervisee for any reason.

Section 11. Temporary Supervision. (1) In extenuating circumstances, if a supervisee is without supervision, the supervisee may continue working up to sixty (60) calendar days under the supervision of a qualified mental health provider as defined by KRS 202A.011(12), a certified alcohol and drug counselor, or a licensed clinical alcohol and drug counselor while an appropriate board-approved supervisor is sought and a new 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, the termination of the supervisor's employment, or termination of the supervisory agreement except for a violation of KRS 309.080 to 309.089, or 201 KAR Chapter 35.

(2)(a) Within ten (10) days of the establishment of the temporary supervisory arrangement, the supervisee shall notify the board of the extenuating circumstances, 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 establishment of the temporary supervisory arrangement.

(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.

(3) The temporary supervisory arrangement shall expire after sixty (60) days of the establishment of the temporary supervisory arrangement.

Section 12. Identification of Provider and Supervisor of Record.

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

Section 13[42]. Supervision of a Disciplined Credential Holder.

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

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

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

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision approved by the board; and

4. Review the reporting requirements that shall be met during the period of supervision;

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined credential holder, and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14[43]. Graduate Students in Programs Emphasizing Substance Use Disorders Counseling. Graduate-level students in programs that emphasize alcohol and drug counseling who are providing services in health care settings that provide alcohol and drug counseling including independent practice settings shall:

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

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

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

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

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

Section 15[44]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KBADC Form 3, Supervisory Agreement", June 2015;

(b) "KBADC Form 4, Request to Provide Supervision", June 2015;

(c) "KBADC Form 6, Peer Support Specialist Supervisory Agreement", June 2015;

- (d) "KBADC Form 7, Supervision Evaluation", June 2015;
- (e) "KBADC Form 8, Peer Support Specialist Verification of Supervision", June 2015;
- (f) "KBADC Form 9, Supervision Evaluation for Peer Support Specialist", June 2015;
- (g) "KBADC Form 13, Verification of Clinical Supervision", June 2015; and
- (h) "KBADC Form 14, Supervision Annual Report", June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky, Monday through Friday, 8[8:30] a.m. to 4:30[5] p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: December 15, 2016

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

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2017, at 11:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on January 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

- (1) Provide a brief summary of

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: The amendments will prohibit a supervisee to continue alcohol and drug counseling without a supervisory agreement, and provide for temporary supervision if a supervisory agreement is terminated or ended.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to protect the public and provide a supervisee with an option when to continue being supervised under extenuating circumstances where the supervisory agreement is terminated.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the

authorizing statute gives the board the ability to promulgate regulations regarding the requirements for supervision for registration, certification, and licensure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will provide a supervisee with an option when to continue being supervised under extenuating circumstances where the supervisory agreement is terminated.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 467 Licensed Clinical Alcohol and Drug Counselors, three (3) Licensed Clinical Alcohol and Drug Counselor Associates, 816 Certified Alcohol and Drug Counselors, 386 Temporary Certified Alcohol and Drug Counselors, fifty-six (56) Temporary Registered Alcohol and Drug Peer Support Specialists, and one (1) Registered Alcohol and Drug Peer Support Specialist.

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

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

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

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

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

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

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) **TIERING:** Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (3), (5). 309.083, 309.0831,

309.0832, and 309.0833.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Licensure for Pastoral Counselors
(Amendment)**

201 KAR 38:020. Application.

RELATES TO: KRS 335.620

STATUTORY AUTHORITY: KRS 335.615(1)-(4), (6), 335.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.615(1) requires the board to approve or deny applications for licensure of a Kentucky licensed pastoral counselor. KRS 335.620 establishes application requirements for a Kentucky licensed pastoral counselor. This administrative regulation establishes the application process for certification.

Section 1. An applicant for licensure shall:

(1) Meet the requirements of KRS 335.620;

(2) Pay by check or money order an initial licensure fee as established by 201 KAR 38:040, Fees, made payable to the Kentucky State Treasurer;

(3) Pass the written examination titled "Kentucky Pastoral Counselors Examination" administered and verified by the Kentucky Board of Licensure for Pastoral Counselors, which may include the topics set forth in 201 KAR 38:030, Section 3(1) through (4) and submit documentation of a passing score to the Board.

(4) File a completed, signed, and dated Application for Licensure as a Licensure Pastoral Counselor with the board containing;

(a) Name;

(b) Address;

(c) Home phone;

(d) Work address;

(e) Work phone;

(f) Date of birth;

(g) Criminal convictions;

(h) Misconduct in other positions;

(i) Credentials by other states;

(j) Membership in professional organizations;

(k) Education;

(l) Experience;

(m) Clinical supervision that shall be equally distributed throughout the qualifying period and verification that meets the following requirements:

1. At least 120 hours shall be individual supervision by an approved supervisor; and

2. An approved supervisor shall be an individual who:

a. Holds a diplomate level of certification from the American Association of Pastoral Counselors or its regional affiliates;

b. Holds a fellow level of certification from the American Association of Pastoral Counselors or its regional affiliates and is also under supervision by a diplomate[diplomat];

c. Is licensed as a licensed pastoral counselor in Kentucky with a minimum of four (4) years of experience in the practice of pastoral counseling; or

d. Holds licensure or certification in one (1) of the mental health professions of psychiatry, psychology, social work, professional counseling, or marriage and family therapy with at least five (5) years of clinical experience and two (2) years of supervisory experience;

(n) Endorsement by a denomination or faith group; and

(o) Affidavit.

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

(a)] Form "Application-2", [(June, 1999 edition,)] Board of Licensure of Licensed Pastoral Counselors, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensure for Pastoral Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DONALD CUTTER, Chairperson

APPROVED BY AGENCY: December 15, 2016

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

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2017, at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on January 31, 2017.

CONTACT PERSON: Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Chessica Nation, Board Administrator, Kentucky Board of Licensure for Pastoral Counselors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the requirements for licensure.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the process and qualification of an applicant for licensure.

(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 a qualified applicant.

(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 recognizes a fellow designation and diplomate level of certification has been delegated to American Association of Pastoral Counselors' regional affiliates.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary since the fellow designation and diplomate level of certification has been delegated to American Association of Pastoral Counselors' regional affiliates and American Association of Pastoral Counselors.

(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 a qualified applicant.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the board in keeping up with organizational changes that affect an applicant for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 28 Licensed Pastoral Counselors. The Board is unsure of the number of possible applicants in the future.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will be required to complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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? Board of Licensure for Pastoral Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.615(1)-(4), (6), 335.620.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Pastoral Counselors (Amendment)

201 KAR 38:030. Equivalent course of study.

RELATES TO: KRS 335.620

STATUTORY AUTHORITY: KRS 335.615, (6), [] 335.620(4)-(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.620(4) and (7) provides that the board shall establish a course of study equivalent to a master of divinity degree plus an additional minimum of one (1) year of academic training relative to pastoral counseling. This administrative regulation establishes the criteria for the equivalent course of study.

Section 1. Clinical membership at the fellow level in the American Association for Pastoral Counselors or one (1) of its regional affiliates shall indicate that the applicant has met both the educational and experiential requirements for certification as set forth in KRS 335.620(4) and (7).

Section 2. To qualify as an equivalent course of study, a master's or doctoral degree~~[the basic core areas of study]~~ shall consist ~~[include the completion]~~ of a minimum of sixty (60)~~[fifty-eight (58)]~~ semester hours of coursework~~[work]~~ that meets the requirements of Section 3 of this administrative regulation. The course work may:

(1) Include or extend beyond the one (1) professional degree in a theological or spiritual discipline or a mental health discipline; and

(2) Include unlimited hours earned in:

(a) An American Association of Pastoral Counselors or one (1) of its regional affiliates approved Training Program in pastoral counseling with fifteen (15) contact hours equaling one (1) semester hour; or

(b) Another educational institutional program that~~[which]~~ meets the requirements stipulated by the American Association of Pastoral Counselors' Certification Committee or one (1) of its regional affiliates, or the Institutional Accreditation Committee.

Section 3. A master's or doctoral degree in an equivalent course of study~~[The hours]~~ shall include the following~~[be distributed as follows]~~:

(1) Religious foundations. This area shall consist of a minimum of twenty-one (21)~~[include up to twenty-seven (27)]~~ semester hours in~~[including]~~ the following areas:

(a) Scripture;

- (b) Theology;
 - (c) Religious history;
 - (d) Theological and social ethics;
 - (e) Spirituality; and
 - (f) World religions.
- (2) Core clinical theory. This area shall ~~consist of~~include up to twenty-four (24) semester hours:

(a) A minimum of six (6) semester hours in counseling and psychotherapy techniques, which provides a historically informed theoretical foundation for helping relationships and foundational skills for counselors. Coursework includes:

1. A range of counseling theories that will help them learn to conceptualize client behaviors and make appropriate theoretical choices for interventions;

2. Broad categories of theoretical approaches: cognitive, behavioral, affective, and systemic, with opportunities to explore their differing implications in relation to case material and rationales for employing various models;

3. Particular current models that have established research and practice literatures to assist them in becoming conceptually and clinically grounded in a model of their choice;

4. A conceptual foundation in essential clinical practices such as developing clinical relationships, establishing appropriate goals, designing intervention strategies, evaluating outcomes, and successfully terminating counseling relationship;

5. Self-other awareness related to therapeutic and ethical boundary considerations;

6. Consultation as a related skill, with attention to continuities and discontinuities with counseling;

7. The historical development of current primary models for consultation and a developmental approach to the predictable stages of consultative processes;

8. Relevant technological strategies and applications for clinical practice and consultation; and

9. Ethical and legal considerations relevant to counseling and consultation; and

(b) A minimum of ~~With at least~~ three (3) semester hours in each of the following:

1. ~~Counseling and psychotherapy techniques~~;

2. Group dynamics and techniques, which provide theoretical and experiential understanding of clinical group processes including: the value, predictable stages of development, and dynamics of counseling with groups as well as attention to preparation standards for professional group leaders and related ethical and legal issues. Coursework includes:

a. Reviews a range of counseling methods and approaches including: the principles of group development, process, dynamics, various members' roles and behaviors as well as related therapeutic factors;

b. Considers possible leadership styles and the factors recommending each style;

c. Identifies distinguishing characteristics and recommended contexts for varied theories and methods of group counseling with attention to current literature and relevant research; and

d. Discusses ways of working with non-clinical group processes such as task and psycho-educational groups; and

2. Couples and family systems, which provides a basic introduction to couples and family systems theory and practice. Coursework includes:

a. An overview of general systems and cybernetic models of family functioning;

b. Acquaintance with historic models of family therapy including structural, strategic, object relations, Bowenian;

c. An introduction to emerging post-modern and behavioral understandings of family function and therapy;

d. Attention to couple dynamics and models of couple intervention; and

e. Ethical and legal factors; and

3. Social and cultural diversity, which provides students with a way of understanding the cultural context of relationships and institutions as they contribute to complex social identities in individuals and disclose the necessity of analytical and clinical skills for addressing an increasingly diverse society. The range of

issues related to differences, that we will address, includes: race, ethnicity, class, age, gender, sexual orientation, cognitive and physical characteristics, and religion. The course will address:

a. Helping students identify the complexity of their own social identity in relation to the asymmetrical distribution of power in societies related to various aspects of differences and the implications they pose for effective practice;

b. Developing introductory levels of knowledge about emerging increasingly plural demographic trends related to various racial, ethnic, and religious identities and the implications for relationships within and between those groups;

c. Establishing introductory levels of understanding about each form of difference including experiential strategies;

d. Current literatures to develop competency for working with culturally different client populations including work with individuals, couples, families, groups, and larger community contexts;

e. Several theories of multicultural counseling and theories of multicultural competency for clinicians;

f. Ethical and legal considerations as well as advocacy issues for clinicians that accompany the consequences of prejudice, racism, and other forms of oppression that clients encounter ~~Marriage and family systems theories and techniques~~; and

4. The function and ethics of professional identity as a counselor, which addresses the following aspects of professional identity as a counselor:

a. The history and philosophy of the counseling profession with reference to particular cultural and historical factors of significance;

b. Professional roles, functions, and ways of establishing relationships with other related human service providers;

c. Expected areas of computer and related technological competencies;

d. Primary professional organizations and their priorities as well as identifying benefits and accountabilities related to membership;

e. Professional credentialing, such as certification, licensure, and accreditation practices and standards and their relation to contemporary public policy debates;

f. The role of advocacy on behalf of the profession regarding public and private policy issues as well as advocacy for clients in relation to institutional and social barriers that deny them access to or equity in resources; and

g. The ethical standards of the profession and current legal considerations as well as developing skills in applying these in practice; and

(c) A minimum of six (6) ~~Up to fifteen (15)~~ semester hours taken from the following areas:

1. Professional identity function and ethics;

2. ~~Theories of counseling and psychotherapy~~;

3. Theories of human behavior, learning, personality development, which provides an introduction to developmental theory as it informs our understanding of the nature and needs of individuals and families across the lifespan. While varied theoretical approaches may inform the course, the following topics shall be included:

a. Theoretical approaches to individual and family development across the lifespan and attention to transitions in development;

b. Learning theory;

c. Personality development theories;

d. Proposals for enhancing development;

e. Attention to human behavior in light of varied developmental crises, compulsive behaviors, disability, psychopathology, exceptional behavior, and situational and environmental factors affecting both normal and abnormal behavior; and

f. Ethical and legal issues;

3.4. Career development, which introduces students to ways of approaching career development. The following information shall be addressed:

a. Theoretical approaches for career development and related decision-making models as well as relevant instruments and techniques;

b. Career counseling models including those for particular populations;

c. Career related information systems and media resources in print, visual, electronic, computer, and other forms regarding career, avocation, education, occupation, and labor market information;

d. Models for career development program planning, organization, implementation, administration, and evaluation;

e. Possible relationships intersecting work, family, and other areas of life including forms of diversity such as race, ethnicity, class, and gender;

f. Career and educational planning, placement, follow-up, and evaluation;

g. Technology supported career development applications such as web and computer assisted information systems for career guidance; and

h. Ethical and legal factors;

4.[and-5.] Appraisal, evaluation, and diagnostic procedures to make a current diagnosis, which introduces students to individual and group approaches for assessment and evaluation including all of the following:

a. Historical and conceptual perspectives of assessment;

b. Basic concepts for standardized, non-standardized, group and individual testing and inventory methods; additional assessment techniques including: norm and criterion referenced assessment, environmental and performance assessment; behavioral observations, and computer managed and assisted methods;

c. Statistical concepts (including at least: scales of measurement, measures of central tendency, indices of variability, shapes and types of distributions and correlations);

d. Reliability and validity measurement procedures;

e. Assessment factors related to specific populations and types of diversity;

f. Strategies for determining, administering, and interpreting evaluative instruments and techniques in counseling;

g. Principles and methods for case conceptualization, assessment, and diagnosis of mental and emotional status including use of current Diagnostic and Statistical Manual of Mental Disorders; and

h. Ethical and legal factors;

5.[6.] Abnormal behavior, which provides an overview of psychosocial difficulties in living that disrupt personal, familial, work, or other functioning. It includes:

a. An exploration of cultural differences in defining normalcy and health;

b. Individual and systemic developmental contributions to psychopathology and diagnostic categories as outlined in the current Diagnostic and Statistical Manual of Mental Disorders;

c. Psychodynamic and cognitive-behavioral descriptions of psychopathology; and

d. Introductory discussion of treatment options; and

6. Addictions, which addresses current understandings of the description, etiology, and treatment of addictive disorders including addictions to legal and illegal substances such as alcohol and drugs, as well as sexual, love, gambling, and religious addictions. It includes:

a. An overview of developmental precursors of addictive disorders including neurobiological and psychodynamic factors;

b. Attention to the contextual triggers of addictive behaviors and to their repetitive, compulsive nature, increasing tolerance for the object of addiction;

c. Treatment options including 12-step programs;

d. An awareness of the effects of addictions on the person, children, family system, and the unique role of pastoral interventions;

e. Recognition that addictions may co-occur with mental health disorders (dual diagnosis);

f. Ability to acknowledge and address values, issues, and attitudes regarding alcohol and drug use and dependence in oneself, and in one's own family; and

g. Capacity to shape, form, and educate caring groups and support persons for those affected by alcohol and drugs, in congregations and the wider community; and[-]

(3) Pastoral counseling theory. This area shall include a

minimum of three (3)[up to twelve (12)] semester hours distributed among the following:

(a) Basic pastoral care, which shall include crisis intervention, grief counseling, and hospital ministry;

(b) History of pastoral care and counseling;

(c) Psychology of religion;

(d) Faith development;

(e) Pastoral theology;

(f) Theology of psychotherapy;

(g) Spiritual formation; and

(h) Clinical pastoral education.

(4) Specialized technical studies. This area shall include a minimum of nine (9)[up to fifteen (15)] semester hours[including at least two (2), but not more than three (3),] of the following areas:

(a) Psychodynamic psychotherapies, which provide an overview of the historical roots of dynamic psychotherapy, tracing the key concepts of classical Freudian analysis through modern self-psychology. Attention shall be paid to:

1. The theoretical foundations that support the aims and goals of psychotherapy;

2. Psychotherapeutic methods, strategies, and processes; and

3. Appropriate applicability will be explored and illustrated through case vignettes;

(b) Marriage and family therapy, which provides a basic introduction to family systems theory and practice. While it may focus on one (1) model of therapy for skills competence, it shall also provide:

1. An overview of general systems and cybernetic models of family functioning;

2. Acquaintance with historic models of family therapy, including structural, strategic, object relations, and Bowenian;

3. An introduction to emerging post-modern and behavioral understandings of family function and therapy; and

4. Attention to couple dynamics and models of couple intervention;

(c) Humanistic psychotherapy, which includes courses that explore in breadth or depth the theories and techniques of psychotherapy emerging from the humanistic tradition in psychology and personality theory. This tradition includes the phenomenological, existential, and experiential schools. Major theorists in this area include persons such as R. May, C. Rogers, V. Frankl, S. Maddi, J. Bugental and I. Yalom. Examples of courses that satisfy the requirements of this area include: Client Centered Therapy, Existential Psychotherapy, Experiential Psychotherapy, and Third Force Psychotherapy;

(d) Transpersonal psychotherapy, which provides an overview of the interdisciplinary, "fourth force", field of transpersonal psychotherapy with particular attention to the mutual contributions of Eastern and Western notions of self, wholeness, and consciousness, including particularly the writings of Wilber, Tart, Walsh, and Vaughan. Attention is paid to:

1. Relationships with humanistic, depth psychology and psychodynamic theories;

2. The eclectic integration of those techniques in transpersonal psychotherapy; and

3. Roles and potential risks of specific practices such as meditation, yoga, and other spiritual practices[Jungian-analytic psychotherapy];

(e) Cognitive therapy, which examines the theoretical roots, assumptions, and practices of Cognitive and Cognitive-Behavioral Psychotherapies. From its roots in Behaviorism through the ground-breaking work of Aaron Beck through contemporary Constructivist Cognitive theory, this course shall cover the core concepts and practices of the cognitive approaches. Key topics to be explored include:

1. The role of cognition in the development and maintenance of psychological problems;

2. The process of identifying and testing problematic thinking;

3. The role of culture in forming and maintaining dysfunctional cognitions;

4. The basic practices of Cognitive and Cognitive-Behavioral therapy, especially in the treatment of depression and anxiety; and

5. The use of Cognitive and Cognitive-Behavioral theory in

various modalities of individual, couple, family, and group therapies;

(f) Behavior therapy, which examines a range of therapies, both theory and methods, broadly defined as "Behavior Therapies" based on shared assumptions regarding the nature of human behavior, behavioral change or modification, and the role of environmental factors. The primary shared assumption is that even complex human behavioral problems can be defined in terms of their component parts and that these components can be treated. The course addresses:

1. Treatment approaches based on classical conditioning, such as relaxation training and desensitization, those commonly referred to as behavioral modification, and other current treatments;

2. Critical analysis of the appropriate use of techniques and methodologies as well as their limitations for specific types of problems such as panic disorders and phobias; and

3. Particular populations: women, adolescents, racial or ethnically under-represented groups, panic disorders, and phobias;

(g) Brief therapy, which includes courses that explore in breadth or depth the theories and techniques of short-term or time-limited approaches in psychotherapy. Courses should attend to theoretical foundations, client selection and applicability, treatment techniques, and intervention strategies. Examples of courses satisfying the requirements in this area include: Short-Term Psychotherapy, Solution-Focused Psychotherapy, Brief Family Therapy, Time limited Couples' Therapy;[or]

(h) Group therapy, which examines therapeutic modalities and theory, designed to be used in group therapy settings. A variety of possible psychological frameworks for group therapy shall be reviewed such as Depth Psychology, Gestalt, Transactional Analysis, and supportive or growth-oriented group approaches. Key topics to be addressed include:

1. Group composition and size, group contracting, and goal setting;

2. Heterogeneous versus homogeneous groups;

3. Therapist or counselor role;

4. Structured versus unstructured group work;

5. Open versus closed groups;

6. Physical settings; and

7. Critical analysis of appropriate use of techniques and methodologies as well as their limitations for specific types of problems as well as particular populations, including women, adolescents, racial or ethnically under represented groups; and

(i) Post-modern and Constructivist therapies, which include therapeutic approaches that have emerged out of post-modernist assumptions, especially the assumption that reality is socially constructed. The course shall focus on the theories and methods used to help people explore their life stories and their meanings. The unique focus of building positive, option-rich future stories shall be thoroughly explored. Key topics to be explored include:

1. Post-modernism and post structuralist theory;

2. The role of culture in constructivist therapies;

3. Mutuality and self-disclosure in the counseling relationship;

4. Deconstructive methods in counseling;

5. Methods for generating narratives of possibility and hope;

and

6. Individual, family, and group modes for constructivist therapies; and[.]

(5)[A] Practicum, internship, or residency. This area shall be a minimum of three (3) semester hours[may be included in addition to academic courses not to exceed more than ten (10) hours].

DONALD CUTTER, Chairperson

APPROVED BY AGENCY: December 15, 2016

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

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2017, at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is

open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Licensure for Pastoral Counselors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the renewal and continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the renewal and 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 requires completion of a master's or doctoral degree; changes the semester hours for an equivalent course of study from 58 to 60; requires a practicum; and describes several courses in detail.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the course requirements and competence of licensees.

(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 equivalent course of study.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to clarify the course requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 28 Licensed Pastoral Counselors. The Board is unsure of the number of possible applicants in the future.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will be required to complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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? Board of Licensure for Pastoral 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, 335.615(6), 335.625.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Licensure for Pastoral Counselors (Amendment)

201 KAR 38:070. Renewal of licenses and continuing education.

RELATES TO: KRS 210.366, 335.625, 335.640, 335.650

STATUTORY AUTHORITY: KRS 210.366, 335.615(6), 335.625

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.615(6) requires the board to promulgate administrative

regulations to implement the purposes of KRS 335.600 to 335.699. KRS 335.625(1) requires the board to establish the renewal fee in an administrative regulation. KRS 210.366 requires a board licensee to complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management at least once every six (6) years. This administrative regulation establishes all fees charged by the board necessary for renewal of licenses and establishes all required continuing education necessary for renewal of licenses.

Section 1. Renewal. Each license holder of the board shall renew his or her license as required by KRS 335.625 on or before a date that is three (3) years from the date of his or her original license or last renewal by submitting to the board a completed Renewal Application.

Section 2. Renewal Fees and Penalties. The following fees shall be paid in connection with all renewals of licenses of the board. (1) The renewal fee for licensure shall be \$300.

(2) The late renewal fee, including penalty, for renewal of licensure during the three (3) month grace period shall be \$400.

(3) The reinstatement fee for reinstatement and renewal of licensure after the expiration of the three (3) month grace period and before the expiration of one (1) year after the renewal date, including penalty, shall be \$500.

Section 3. Continuing Education. (1) Each license holder of the board, before his or her license renewal date, shall obtain twenty (20) clock or credit hours of continuing education completed since the date of the last renewal of the license or the date of the original issuance of the license, whichever is later. Continuing education shall be obtained from any of the following providers or for any of the following activities approved by the board:

(a) Individual or group supervision of other license holders of this board at the supervisory level;

(b) Attendance at any educational conferences, continuing education seminars, or educational meetings where seminars are provided in a live or two (2) way video, presentation format and which regard mental health and which are approved for continuing education by:

1. The American Association of Pastoral Counselors;

2. The Kentucky Board of Licensure of Marriage and Family Therapists;

3. The Kentucky Board of Medical Licensure;

4. The Kentucky Board of Examiners of Psychology;

5. The Kentucky Board of Alcohol and Drug Counselors;

6. The Kentucky Board of Licensure for Professional Art Therapists;

7. The Kentucky Board of Licensed Professional Counselors;

8. The Kentucky Board of Social Work;

9. The Kentucky Board of Nursing; or

10. A mental health credentialing agency or board of any other state in the United States for which continuing education credit is awarded in that state;

(c) Writing and publishing professionally-related articles in mental health publications regarding pastoral counseling which shall not be counted for more than five (5) hours.

(2) A person holding a license shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management within the first year of licensure and at least once every six (6) years thereafter as required by KRS 210.366. A person holding a license shall be exempt from the requirement to complete a continuing education course in suicide assessment, treatment, and management at least once every six (6) years if, during the six (6) year requirement, the licensee:

(a) Teaches a graduate-level psychology course in suicide assessment, training, and management; or

(b) Teaches a continuing education course in suicide assessment, training, and management at least once during the six (6) year period.

(3) If audited by the board, the license holder shall within ten (10) days submit written proof of compliance with this section to the board.

Section 4. Expired Licenses. (1) No person holding a license shall represent himself or herself as a licensed pastoral counselor in this state after the renewal date of his or her license unless:

(a) That license has been renewed as provided by this administrative regulation;

(b) The license holder has retained proof of continuing education as set forth by Section 3 of this administrative regulation; and

(c) The prescribed fee has been paid as set forth by Section 2 of this administrative regulation.

(2) All licenses not renewed within three (3) months after the renewal date shall be deemed expired for nonrenewal.

Section 5. Duplicate License Fees. The fee for a duplicate certificate shall be twenty-five (25) dollars.

Section 6. Incorporation by Reference. (1) "Renewal Application for Licensure as a Pastoral Counselor", December 2016[August – 2004], edition,[Kentucky Board of Licensure for Pastoral Counselors,] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Pastoral Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DONALD CUTTER, Chairperson

APPROVED BY AGENCY: December 15, 2016

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

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2017, at 10:00 a.m. Eastern Time at the Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Licensure for Pastoral Counselors, Division of Occupations and Professions, 911 Leawood Drive, P. O. Box 1360, Frankfort, Kentucky 40601, phone (502) 782-8812, fax (502) 696-3925, email Chessica.nation@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chessica Nation

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the renewal and continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the renewal and 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 incorporates a new renewal form.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to incorporate a new renewal form.

(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 renewal process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist the renewal process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 34 Licensed Pastoral Counselors.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder will be required to complete a continuing education course on suicide assessment, treatment, and management within the first year of licensure and then every six years thereafter.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be the charge for the continuing education course.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A credential holder who falls within the allowable exemptions will not be required to take the continuing education course on suicide assessment, treatment, and management.

(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? Board of Licensure for Pastoral 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, 335.615(6), 335.625.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 3:015. Shooting ranges on department-owned or managed lands[Wildlife Management Areas].

RELATES TO: KRS 150.025(1)(h)[150.620]

STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations to acquire or lease land for the operation of public shooting or fishing grounds[areas]. This administrative regulation establishes requirements for[procedures to ensure] the safe operation of department-owned or managed shooting ranges[on the department's property].

Section 1. Definitions. (1) "Archery and crossbow range" means a shooting range that is established for target shooting at stationary targets with archery or crossbow equipment.

(2) "Club-operated shooting range" means a facility that is:

(a) Operated by a department-authorized entity for target shooting; and

(b) Open to the public during club events.

(3) "Firing line" means the[an] area where[from which] a weapon is shot or discharged,[either] as designated by:

(a) Signage;

(b) A shooting bench; or[by]

(c) A range officer.

(4) "Pistol pit" means a shooting range that is established for target shooting with pistols.

(5)[(2)] "Range officer" means an[a designated] individual designated as a National Rifle Association range officer, a National Shooting Sports Foundation range officer, a department hunter education instructor, or a law enforcement range officer, responsible for supervising a shooting range and ensuring compliance with this administrative regulation.

(6) "Safety zone" means an area downrange of a firing line where all public access is prohibited as designated by department signs.

(7) "Self-service trap shooting range" means a shooting range that is established for people to shoot at moving targets with a shotgun.

(8)[(3)] "Shooting range" means a public facility on lands[a Wildlife Management Area, except Central and Lloyd Wildlife Management Areas,] owned or managed[controlled] by the department that[which] is designated:

(a) Established and maintained for target shooting with:

(a) A rifle;

(b) A pistol;

(c) A shotgun;

(d) Archery equipment; or

(e) Crossbow equipment.

(9) "Shooting station" means a location on the firing line for one (1) person to shoot, as designated by:

(a) Signage;

(b) A shooting bench; or

(c) A concrete pad.

(10) "Tube range" means a shooting range established for target shooting through designated steel tubes.

[a rifle, pistol, or shotgun with single projectile ammunition;

(b) Designated by a department sign as a public shooting range; and

(c) Not a trap, skeet or similar facility where shotguns with multiple projectiles are fired at moving targets].

Section 2. (1) If a shooting range exists on department-owned or managed lands[property], then a person shall not target practice, sight in a firearm, or[otherwise] discharge a firearm on any area except[on] the shooting range.

(2) Subsection (1) of this section shall not apply to:

(a) A person legally hunting[hunter shooting at] a[legal] game species;[or]

(b) A department employee, range officer, or certified volunteer hunter education instructor in the performance of an[his] official duty;[or]

(c) A person or group[Individuals] participating in a department-sponsored hunter education class; or

(d) A group participating in a department-approved event pursuant to 301 KAR 3:010.

Section 3. General Shooting Range Requirements. (1) Except as[Unless otherwise] posted by a department sign or[pursuant to] an event permit issued pursuant[according] to 301 KAR 3:010, a person using a shooting range[on department property] shall only shoot from a designated firing line downrange at a department-provided:

(a) Target stand;

(b) Target; or

(c) Shooting berm[sit facing forward on the bench and shoot his or her firearm through the tube].

(2) A person shall not:

(a) Enter a shooting range except at a designated entrance;

(b) Enter a designated safety zone, except as established in subsection (6) of this section;

(c) Discharge a firearm:

1. Before 9 a.m.;[or]

2. After sunset, except on a lighted range during scheduled hours of operation; or

3. At any time prohibited by department signage; or

(d)[-(e)] Be under the influence of alcohol or other intoxicant.

(3) A person shall not use:

(a) [;

(d) Use a target other than a paper target;

(e) Place a target anywhere except in the target frames provided;

(f) Leave a target on a frame after he has finished shooting;

(g) Use or have in his possession

4.-] A tracer bullet;

(b)[2-] Armor piercing ammunition;[or]

(c)[3-] A fully automatic firearm;

(d) A rifle cartridge that is .50 caliber or larger;

(e) A muzzle-loading rifle ball, sabot, or bullet larger than .78 caliber;

(f) A cannon or replica thereof;

(g) A mortar or other explosive device;

(h) A grenade; or

(i) An incendiary.

(4) A person shall not:

(a)[(h)] Leave spent cartridge cases or litter on the range;

(b)[(i)] Point a firearm in an unsafe direction or otherwise carelessly handle a firearm; or

(c) Use a shooting range at any time or in any manner inconsistent with department-posted signage[(j) Engage in

horseplay or other potentially unsafe practices].

(5)[(3)] A person under the age of sixteen (16) shall not discharge a firearm on a shooting range unless[he is] under the direct supervision of a person at least eighteen (18) years old.

(6)[(4)] A spectator or other person not actively engaged in shooting shall not go beyond the firing line.

(5)] A person actively engaged in shooting or a spectator shall not go beyond the firing line]:

(a)] without first clearly communicating to all[stating "cease fire" in a voice loud enough for the] other shooters to cease fire[hear or clearly indicating for the other shooters to understand; and

(b) Waiting until the other shooters have:

1. Ceased firing; and

2. Holstered their firearms or placed them on a table provided].

(7)[(6)] Upon hearing a cease fire["cease fire"] command or seeing a person move beyond the firing line, a person shall:

(a) Immediately cease firing;

(b) Unload all firearms[his firearm];

(c) Leave the[his firearm's] action open on all firearms;

(d) Place all firearms[his firearm]:

1. In a holster;

2. On a table at the shooting station; or

3. On the ground; and

(e) Not handle a firearm while a person is beyond the firing line.

(9) There shall not be[(7)] more than one (1) person[shall not be] at a shooting station at the same time, unless one (1) person is an instructor and the other is a student.

(10)[(8)] A person shall immediately obey the range officer's command.

(11) Any[(9)] A spectator and a person handling a[the] firearm shall wear protective eye and ear wear.

(12) Each person shall be limited to one (1) hour of shooting time if anyone is waiting to use the shooting range.

(13) If a scheduled event or department maintenance activities preclude open public use of a shooting range, then the department shall notify the public by:

(a) Posting the closure on the department's Web site at fw.ky.gov; and

(b) Posting a notice at the shooting range or a kiosk or bulletin board on the department-managed area.

(14)[Section 4.] A shooting range may be reserved for group use, provided that:

(a)[(4)] The group has obtained a department[an] event permit pursuant to[as specified in] 301 KAR 3:010; and

(b)[(2)] The reservation is made thirty (30) days in advance; and

(3)] The group designates a range officer who shall oversee the event and ensure that all participants are in compliance with this administrative regulation.

Section 4. Special Shooting Range Requirements. (1) In addition to the general shooting range requirements established in Section 3 of this administrative regulation, a person shall comply with the special shooting range requirements established in subsections (2) through (8) of this section.

(2) A person using a tube range shall only:

(a) Shoot from a designated shooting station;

(b) Shoot a firearm through the tube provided at a shooting station;

(c) Use the department-provided target frames;

(d) Place target frames in the ground inserts provided on the tube range; and

(e) Attach paper targets to the target frames.

(3) A person using a tube range shall:

(a) Not shoot a pistol;

(b) Close tube doors when any person is downrange of the firing line;

(b) Not smoke or have any open flame;

(c) Not shoot at any objects on the ground; or

(d) Not use the range on a Monday, except if participating in a department-approved event pursuant to 301 KAR 3:010.

(4) A person may target shoot on a club-operated shooting range on Curtis Gates Lloyd WMA, Jones-Keeney WMA, Miller

Welch-Central Kentucky WMA, and West Kentucky WMA if the person:

(a) Attends a regularly scheduled event coordinated and sponsored by a department-authorized club;

(b) Complies with the requirements of this administrative regulation and posted signage on the area; and

(c) Complies with the rules of operation established by the club and the club's range officer.

(5) On a club-operated shooting range, a club or organization shall:

(a) Comply with all WMA event permit requirements pursuant to 301 KAR 3:010;

(b) Post all approved event dates and times that are open to the public:

1. In the WMA clubhouse, if present;

2. On a WMA bulletin board or kiosk; and

3. On the department's Web site at fw.ky.gov; and

(c) Provide a range officer who shall oversee each event to ensure that all participants are in compliance with the requirements of this administrative regulation.

(6) A person who is using an archery and crossbow range shall only use:

(a) The department-provided targets; and

(b) Broadhead-tipped arrows or crossbow bolts on department-provided broadhead targets, and in compliance with area signage.

(7) A person using a pistol pit shall:

(a) Only shoot from a designated firing line;

(b) Only use department-provided target frames;

(c) Only attach paper targets to the target frames;

(d) Only use single projectile ammunition;

(e) Not shoot any firearm except a pistol;

(f) Not shoot at any objects on the ground; and

(g) Not use the range on a Monday, except when participating in a department-approved event pursuant to 301 KAR 3:010.

(8) A person using a self-service trap shooting range shall:

(a) Only use a shotgun with shotshells containing multiple projectile pellets no larger than number two (2);

(b) Provide clay targets and portable target throwers; and

(c) Not target shoot anywhere except at a designated self-service trap shooting station.

[5. Self-service Shooting Range Areas. (1) There shall be self-service shotgun range areas for shotguns with multiple projectiles fired at moving targets on the following Wildlife Management Areas:

(a) Central Wildlife Management Area; and

(b) Lloyd Wildlife Management Area.

(2) A person or group shall seek the permission of a Wildlife Management Area manager to use the self-service shotgun area.

(3) Scheduled WMA events preclude public use of the designated public, self-service shotgun station.

(4) A user shall provide clay targets and portable throwers.

(5) A person shall not:

(a) Use single projectile ammunition;

(b) Use any facilities except at a designated public, self-service shotgun station;

(c) Discharge a firearm inconsistent with posted hours;

(d) Be under the influence of alcohol or other intoxicant;

(e) Leave spent cartridges or litter on the range;

(f) Point a firearm in an unsafe direction or otherwise carelessly handle a firearm; or

(g) Engage in horseplay or other potentially unsafe practices.

(6) A person under the age of sixteen (16) shall not discharge a firearm unless he is under the direct supervision of a person at least eighteen (18) years old.

(7) A spectator or other person not actively engaged in shooting shall not approach the firing line.

(8) While a person is actively engaged in shooting, a person shall not, including the operator of a target thrower, go beyond the firing line.

(9) When shooters are waiting to use the designated public, self-service shotgun range, range time is limited to one (1) hour.

(10) Spectators shall wear protective eye and ear wear at all times.]

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: December 8, 2016

FILED WITH LRC: December 14, 2016 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2017 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rules for use of shooting ranges on department-owned or managed lands.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide for safe and reasonable public use of shooting ranges.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.620 authorizes the department to promulgate administrative regulations to acquire or lease land for the operation of public shooting areas. This administrative regulation establishes procedures to ensure the safe operation of department-owned shooting ranges on the department's property.

(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 defining terms, rules of use, legal weapons, times of use, and methods allowable for the public when using shooting ranges on department-owned or managed lands.

(2) If 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 updated shooting range requirements based partly on recommendations from the National Rifle Association and the National Shooting Sports Foundation. It also defines different types of shooting ranges and establishes specific requirements for each range to assist with the safe operation of each range. The amendment also establishes the prohibited types of firearms, ammunition, and various explosive devices. It has also been modified to conform with administrative regulation style requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reduce potential safety issues that exist through the public use of different types of ranges and to minimize potential user conflicts on department-owned or managed lands. This amendment is also necessary to clarify range requirements, proper use of the various types of shooting ranges, and times of use.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who utilize department ranges for target shooting with firearms, archery equipment and crossbow equipment will be affected by this regulatory amendment. The number of potential users is unknown at this time.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each user of a department-owned or managed shooting range must comply with the weapons restrictions, methods requirements, and allowable times of use for each shooting range.

(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 direct cost to range users as a result of this amendment to the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Users who comply with this administrative regulation will benefit from a safer experience and less user conflict between different constituents and their types of weapons and ammunition.

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

(a) Initially: There will be no administrative cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be a long term cost of establishing pistol pits on some areas at approximately \$20,000 per pit.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the state Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. Tiering was not applied because all range users in Kentucky must abide by the same regulations and rules for use.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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's Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.620

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

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

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

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

year? There will be no administrative cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be an approximate cost of \$20,000 for each pistol pit that is built 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 (+/-): None.

Expenditures (+/-): None.

Other Explanation:

**Education and Workforce Development Cabinet
Kentucky Board of Education
Department of Education
(Amendment)**

703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. Incorporation by Reference. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs", December 2016~~[February 2014]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 5th floor, 300 Building, 300 Sower Boulevard~~[48th Floor, Capitol Plaza Tower, 500 Mero Street]~~, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D., Commissioner of Education
WILLIAM L. TWYMAN, Chairperson

APPROVED BY AGENCY: December 15, 2016

FILED WITH LRC: December 15, 2016 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 26, 2017, at 10 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of

Education, 300 Sower Boulevard, Fifth Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: 703 KAR 5:070, which incorporates by reference "Inclusion of Special Populations in the State-Required Assessment and Accountability Programs," December 2016, establishes procedures for the inclusion of special populations of students in the state-required assessment and accountability system that classifies schools and districts.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95 and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for implementation of the statewide assessment and accountability system. The regulation provides procedures for inclusion of special populations in the requirements of KRS 158.6453, KRS 158.6455 and the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the inclusion of student special populations in the state-required assessment and accountability programs. The regulation defines accommodations permitted with state-required testing for students with education plans (i.e., Individualized Education Program (IEP), 504 Plan and Program Services Plan for English learners) and for students enrolled in particular programs (i.e., alternative programs, state agency, home/hospital settings); and for students participating in the alternate assessment 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 revision removes the need for students to initiate the use of testing accommodations.

(b) The necessity of the amendment to this administrative regulation: This change was implemented, based on requirements of the United States Department of Education, Office of Civil Rights (OCR) beginning with spring 2016 testing. Revising the regulation document formalizes the OCR required change and more clearly communicates the rules for testing accommodations to the public, parents, assessment administrators and testing proctors.

(c) How the amendment conforms to the content of the authorizing statute: The amendment provides guidance on inclusion of special populations in the requirements of KRS 158.6453, KRS 158.6455 and the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides necessary clarification on testing accommodations to ensure valid test results.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The regulation will impact schools and districts by providing guidance on the inclusion of students in special populations in assessment and accountability system used to classify school and district performance.

(a) List 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 in schools and school districts administer the state-required assessment using consistent rules

and procedures. The amendment ensures consistent procedures for the inclusion of students in special populations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Implementation of the changes have been handled within the routine annual training and communication processes. There is no impact to the state budget.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky schools and districts will have clear guidance on the inclusion of students in special populations.

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

(a) Initially: The proposed amendment requires development of new explanatory materials and training that is normal work for staff. No additional costs are expected.

(b) On a continuing basis: The amended regulation does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KDE operating funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Current funding supports implementation of amended 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 appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453, KRS 158.6455 and the federal Every Student Succeeds Act of 2015, Pub. L. No. 114-95

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation. No additional costs to school districts are expected.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs are associated with the amendment.

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

LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:300. General.

RELATES TO: KRS 338.015, 29 C.F.R. 1910.3-1910.7, 1910.9
STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman of the board to adopt established federal standards without board approval if necessary to meet federal time requirements. 29 C.F.R. 1910.3-1910.7 and 1910.9 establish occupational safety and health standards found to be national consensus standards or established federal standards. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.3-1910.7 and 1910.9, revised July 1, 2016[2015]; and

(2) The revisions to 29 C.F.R. 1910.6 as published in the November 18, 2016 Federal Register, Volume 81, Number 223[~~March 25, 2016 Federal Register, Volume 81, Number 58. As approved by the Kentucky Occupational Safety and Health Standards Board.~~]

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2017 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2017. 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: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mike Pettit

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart A, and revises Subpart A related to Subpart D, Walking Working Surfaces as published in the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart A, and revises Subpart A related to Subpart D, Walking Working Surfaces as published in the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations. Section 2 removes provisions to Subpart F-Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms and Subpart N-Materials Handling and Storage while reorganizing and consolidating Subpart D-Walking Working Surfaces.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes

worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment removes paragraph (e)(9) to subpart F and removes paragraphs (h)(8) and (j)(1) in subpart N. This final rule also reorganizes and consolidates Subpart D-Walking Working Surfaces within 1910.6. No additional compliance duties are expected from the revisions to 1910.6.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will prevent 29 fatalities and 5,842 injuries nationwide annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis, and no information provided by OSHA was specific to state or local governments. However, because there are no additional compliance duties based on the revision to 1910.6, OSHA does not expect any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Improved employee protection is likely to result from the promulgation of this amendment in addition to the other amended KARs affected by the November 18, 2016 final rule, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is neither an increase in fees nor an increase in funding necessary to implement these revisions. Implementation of the amendment to the administrative regulation is expected to be accomplished within the Kentucky OSH program's current budget.

(b) On a continuing basis: It is expected that no increase in funding will be necessary 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: Current state and federal funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does

not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information provided by OSHA was not specific to state or local governments.

(d) How much will it cost to administer this program for subsequent years? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information provided by OSHA was not specific to state or local governments.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. Information provided by OSHA was not specific to local governments.

LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:303. Walking-working surfaces.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.051(3) authorizes the chairman of the board to adopt established federal standards without board approval if necessary to meet federal time requirements. Express authority to adopt[incorporate] by reference established federal standards and national consensus standards is also given by KRS 338.061(2)[to the board]. This[The following] administrative regulation establishes[contains] those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, Department of Workplace Standards, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.21-1910.30, revised July 1, 2015; and

(2) The revisions to Subpart D as published in the November 18, 2016 Federal Register, Volume 81, Number 223.[Permanent and Temporary Floor Openings. (1) The language relating to the guarding of permanent and temporary floor openings in subsection (2) of this subsection shall apply in lieu of 29 C.F.R. 1910.23(a)(7);

(2) 29 C.F.R. 1910.23(a)(7) is amended to: "Every temporary or permanent floor opening shall have standard railings, or shall be constantly attended by someone."

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

~~(a) The material in subparagraphs 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archive and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:~~

~~1. 29 C.F.R. 1910.21 through 1910.23(a)(6); and~~

~~2. 29 C.F.R. 1910.23(a)(8) through 29 C.F.R. 1910.32;~~

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

~~(b) The revisions to 29 C.F.R. 1910.30, "Other Working Surfaces", as published in the Federal Register, Volume 61, Number 46, March 7, 1996;~~

~~(c) The removal of 29 C.F.R. 1910.31, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996; and~~

~~(d) The removal of 29 C.F.R. 1910.32, "Standards of Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996.~~

~~(2) The language relating to the guarding of floor openings in Section 2(2) of this administrative regulation shall apply in lieu of 29 C.F.R. 1910.23(a)(7).~~

~~(3) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. – 4:30 p.m. (ET), Monday through Friday.]~~

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2017 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2017. 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: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mike Pettit

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart D, Walking Working Surfaces as published in the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This

administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart D, Walking Working Surfaces as published in the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations. These revisions and additions include scaffold systems, ladders, and rope descent systems and adds new requirements on the design, performance, and use of personal fall protection system. This section

includes anchorage testing and certification provisions that are required by the building owner when rope descent systems are used. This amendment also replaces the specifications in the existing rule with performance-based language to provide the employer greater flexibility.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Employers must comply with new provisions addressing scaffold systems, ladders, rope descent systems, as well as training on fall hazards and fall protection systems. The November 18, 2016 final rule requires employers to inspect and certify anchorages used for rope descent systems within one year, and requires all fixed ladders to be equipped with a fall protection system within 20 years. Employers are also required to train employees who use personal fall protection within six months of the final rule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not known specifically how much it will cost each entity to comply with this regulation. OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries nationwide annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is

likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to the Kentucky OSH Program to implement this regulation. Implementation of the amendment to the administrative regulation is expected to be accomplished within the Kentucky OSH Program's current budget.

(b) On a continuing basis: It is expected that no increase in funding will be necessary 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: Current state and federal funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information provided by OSHA was not specific to state or local governments.

(d) How much will it cost to administer this program for subsequent years? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information provided by OSHA was not specific to state or local governments.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: Information provided by OSHA was not specific to local governments.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and

Training

(Amendment)

803 KAR 2:305. Powered platforms, manlifts, and vehicle-mounted work platforms.

RELATES TO: KRS 338.015(1), (2), 338.051, 338.061, 29 C.F.R. 1910.66-1910.68

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman of the board to adopt established federal standards without board approval if necessary to meet federal time requirements. 29 C.F.R. 1910.66-1910.68 authorizes federal requirements relating to powered platforms, manlifts, and vehicle-mounted work platforms. This administrative regulation establishes the powered platforms, manlifts, and vehicle-mounted work platform standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.66-1910.68 and Appendices, effective July 1, 2016[2014]; and

(2) The amendments to 29 C.F.R. 1910.67 as published in the November 18, 2016 Federal Register, Volume 81, Number 223[July 1, 2014 Federal Register, Volume 79, Number 126].

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2017 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2017. 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: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mike Pettit 502-564-4069

(1) Provide a brief summary of:

(a) what this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart F, and revises Subpart F related to Subpart D, Walking Working Surfaces as published in the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart F, and revises Subpart F related to Subpart D, Walking Working Surfaces as published in

the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations. The amendment removes and revises provisions in Subpart F, Powered Platforms, Manlifts, and Vehicle Mounted Work Platforms and adds requirements to Subpart D, Walking Working Surfaces, and Subpart I -Personal Protective Equipment.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The November 18, 2016 final rule requires employers to inspect and certify anchorages used for rope descent systems within one year, and requires all fixed ladders to be equipped with a fall protection system within 20 years. Employers are also required to train employees who use personal fall protection within six months of the final rule. The revisions use performance based language instead of specification language giving the employer greater flexibility in meeting the standard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment in addition to the other amended KARs affected by the November 18, 2016 final rule, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to the Kentucky OSH program to implement this regulation. Implementation of the amendment to the administrative regulation is expected to be accomplished within the Kentucky OSH program's current budget.

(b) On a continuing basis: It is expected that no increase in funding will be necessary 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: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA

estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information provided by OSHA was not specific to state or local governments.

(d) How much will it cost to administer this program for subsequent years? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information provided by OSHA was not specific to state or local governments.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: Information provided by OSHA was not specific to local governments.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:308. Personal protective equipment.

RELATES TO: 29 C.F.R. 1910.132-1910.138

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt occupational safety and health administrative regulations and authorizes the chairman of the board to adopt established federal standards without board approval if necessary to meet federal time requirements. 29 C.F.R. 1910.132 to 1910.138 and Appendices establish the federal requirements relating to personal protective equipment. This administrative regulation establishes personal protective equipment standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

(4) "Established federal standard" is defined in KRS 338.015(10).

(5) "National consensus standard" is defined in KRS 338.015(9).

(6) "Standard" is defined in KRS 338.015(3).

(7) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.132 through 29 C.F.R. 1910.138, and Appendices, revised July 1, 2016[2045]; and

(2) The amendments to 29 C.F.R. 1910.140 as published in the November 18, 2016 Federal Register Volume 81, Number 223[1910.133 as published in the March 25, 2016 Federal Register Volume 81, Number 58.

~~As approved by the Kentucky Occupational Safety and Health Standards Board].~~

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on January 23, 2017 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2017. 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: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mike Pettit

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart I, and revises Subpart I related to Subpart D, Walking Working Surfaces as published in the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation. This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart A, and revises Subpart A related to Subpart D, Walking Working Surfaces as published in the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations. Section 2 adds a new subsection, 29 C.F.R. 1910.140 to Subpart I, Personal Protective Equipment.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule.

Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Section 2 adds a new subsection, 29 C.F.R. 1910.140 to Subpart I, Personal Protective Equipment as published in the November 18, 2016 Federal Register, Volume 81, Number 223. This new section establishes requirements for the design, performance, use, and inspection of personal fall protection systems in general industry. It also adds two non-mandatory appendices that help employers select, test, use, maintain, and inspect personal fall protection equipment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation. Implementation of the amendment to the administrative regulation is expected to be accomplished within the Kentucky OSH program's current budget.

(b) On a continuing basis: It is expected that no increase in funding will be necessary 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: Current state and federal funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information furnished by OSHA was not specific to state or local governments.

(d) How much will it cost to administer this program for subsequent years? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information

furnished by OSHA was not specific to state or local governments.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: Information provided by OSHA was not specific to local governments.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and

Training

(Amendment)

803 KAR 2:313. Materials handling and storage.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.176-1910.184

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 require the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.051(3) authorizes the chairman of the board to adopt established federal standards without board approval if necessary to meet federal time requirements. This [The following] administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Standard" is defined by KRS 338.015(3).

(4) "U.S. Department of Labor" means the Kentucky Department of Labor or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.176 through 1910.184, revised July 1, 2016[2014]; and

(2) The revisions to Subpart N as published in the November 18, 2016 Federal Register, Volume 81, Number 223 [amendment to 29 C.F.R. 1910.177 as published in the December 27, 2011 Federal Register, Volume 76, Number 248].

~~Section 3. If a truck that falls within the scope of 29 C.F.R. 1910.178 is equipped with vertical only, or vertical and horizontal controls elevatable with the lifting carriage or forks for lifting personnel, the following shall be required:~~

~~(1) Use of a safety platform firmly secured to the lifting carriage or forks;~~

~~(2) Means whereby personnel on the platform can shut off power to the truck; and~~

~~(3) Protection from falling objects as necessary by the operating conditions. As approved by the Kentucky Occupational Safety and Health Standards Board].~~

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2017 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in

writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2017. 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: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mike Pettit

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart N, and revises Subpart N related to Subpart D, Walking Working Surfaces as published in the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart N, and revises Subpart N related to Subpart D, Walking Working Surfaces as published in the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations. Section 2 revises 29 C.F.R. 1910.178 paragraph (J) dockboards, to comply with Subpart D. Also, under 1910.179, all ladders, stairs, and handrails for footwalks used to access Overhead and Gantry cranes must comply with Subpart D.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule.

Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Section 2 revises 29 C.F.R. 1910.178 paragraph (J) dockboards, to comply with Subpart D. Also, under 1910.179, all ladders, stairs, and handrails for footwalks used to access Overhead and Gantry cranes must comply with Subpart D.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Improved employee protection is likely to result from the promulgation of this amendment in addition to the other amended KARs affected by the November 18, 2016 final rule, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is neither an increase in fees nor an increase in funding necessary to implement these revisions. Implementation of the amendment to the administrative regulation is expected to be accomplished within the Kentucky OSH Program's current budget.

(b) On a continuing basis: It is expected that no increase in funding will be necessary 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: Current state and federal funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation

of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information provided by OSHA was not specific to state or local governments.

(d) How much will it cost to administer this program for subsequent years? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information provided by OSHA was not specific to state or local governments.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. Information provided by OSHA was not specific to local

governments.

LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:317. Special industries.

RELATES TO: KRS 338.015, 338.051(3), 338.061, 29 C.F.R. 1910.261-1910.272

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338 and authorizes the chairman of the board to adopt established federal standards without board approval if necessary to meet federal time requirements. 29 C.F.R. 1910.261 to 1910.272 authorize the federal requirements relating to special industries. This administrative regulation establishes the special industries standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" is defined by KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.261-1910.272, effective July 1, 2016 [2015;] and

(2) The revisions to Subpart R, as published in the November 18, 2016 Federal Register, Volume 81, Number 223 [amendments to 29 C.F.R. 1910.269 as published in the October 5, 2015 Federal Register, Volume 80, Number 192].

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2017 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2017. 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: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email Mike.Pettit@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Mike Pettit

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart R, and revises Subpart R related to Subpart D, Walking Working Surfaces as published in the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910 Subpart R, and revises Subpart R related to Subpart D, Walking Working Surfaces as published in the November 18, 2016 Federal Register, Volume 81, Number 223 and updates the C.F.R. to 2016. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations. Section 2 revises several paragraphs in Subpart R, the Pulp, Paper, and Paperboard mills standard, as well as the Textiles, Sawmills, Telecommunications, and the Electric power generation, transmission, and distribution standard. All paragraph changes to these standards must comply with Subpart D-Walking Working Surfaces or Subpart I-Personal Protective Equipment.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule in its state-specific rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all

employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment revises several paragraphs in Subpart R, including the Pulp, Paper, and Paperboard mills standard, as well as the Textiles, Sawmills, Telecommunications, and the Electric power generation, transmission, and distribution standard. All paragraph changes to these standards must comply with Subpart D-Walking Working Surfaces or Subpart I-Personal Protective Equipment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment in addition to the other amended KARs affected by the November 18, 2016 final rule, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is neither an increase in fees nor an increase in funding necessary to implement these revisions. Implementation of the amendment to the administrative regulation is expected to be accomplished within the Kentucky OSH program's current budget.

(b) On a continuing basis: It is expected that no increase in funding will be necessary 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: Current state and federal funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 18, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to

maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by May 18, 2017.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information provided by OSHA was not specific to state or local governments.

(d) How much will it cost to administer this program for subsequent years? OSHA estimates the November 18, 2016 final rule will have a nationwide total annualized cost of \$305 million and a benefit of \$614.5 million with a total net benefit of \$309.5 million. OSHA estimates the final rule will nationwide prevent 29 fatalities and 5,842 injuries annually. OSHA does not estimate the costs and benefits of this program on a state-by-state basis. Information provided by OSHA was not specific to state or local governments.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. Information provided by OSHA was not specific to local governments.

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 10:010. Appointment notification of local[County] alcoholic beverage control administrator.

RELATES TO: KRS 241.110, 241.120, 241.130, 241.160, 241.170, 241.180, 241.220, 241.230, 241.240

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 241.110 permits the county judge/executive or other appointed person to serve as a county alcoholic beverage control administrator for a moist or wet county. KRS 241.160(1) requires wet or moist cities with a population equal to or greater than 3,000, or a consolidated local government, to create by ordinance the office of city alcoholic beverage control administrator. KRS 241.160(2) permits a city with a population less than 3,000 to create by ordinance the office of city alcoholic beverage control administrator. KRS 241.220 requires an urban-county government to create by ordinance the office of urban-county alcoholic beverage control administrator. KRS 241.130, KRS 241.180, and KRS 241.240 require[requires] a local[county] alcoholic beverage control administrator to take an oath and execute a \$1,000 bond as a condition of assuming the role as local[county] alcoholic beverage control administrator. This administrative regulation requires a local government[county] to provide written notification to the department[of Alcoholic Beverage Control] when a local[county] alcoholic beverage control administrator is appointed and to provide proof that the[required] oath was taken and the[required] surety bond was posted.

Section 1. Definition. "Local alcoholic beverage control administrator" means a county alcoholic beverage control administrator, city alcoholic beverage control administrator, or an urban-county alcoholic beverage control administrator.

Section 2. Notification procedure. A local alcoholic beverage control administrator appointed under KRS Chapter 241[A county having a county alcoholic beverage control administrator under the authority of KRS 241.110 or 241.120, shall notify the department of Alcoholic Beverage Control in writing, and] shall submit the following documents to the department within thirty (30) days of appointment:

(1) Written certification that the oath of office has been administered to[A letter from the county judge/executive verifying his or her election to serve as county alcoholic beverage control administrator, or a copy of the appointment letter or resolution which names another person as the county alcoholic beverage control administrator;

(2) A copy of the oath of office that] the local[county] alcoholic beverage control administrator;

(2)[has taken that has been signed by the county alcoholic beverage control administrator; and

(3)] A copy of the surety[required] bond[that provides surety] for the local[county] alcoholic beverage control administrator; and

(3) A letter, resolution, or ordinance evidencing the local alcoholic beverage control administrator's appointment or the county judge/executive's acceptance of the position.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2017 at 1:00 p.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing at least five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on

the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melissa McQueen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the procedures for notifying the department when a local alcoholic beverage control administrator is appointed.

(b) The necessity of this administrative regulation: The regulation is necessary to notify local governments of the procedures for notifying the department when a local alcoholic beverage control administrator is appointed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist local governments in complying with the statutes when a local administrator is appointed.

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

(a) How the amendment will change this existing administrative regulation: This regulation combines the contents of 804 KAR 10:020 and 804 KAR 10:025 into 804 KAR 10:010 so that all regulations concerning local alcoholic beverage administrators are found in one regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment will streamline the regulations relating to local alcoholic beverage control administrators.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment will assist local governments by placing all regulations on this topic into one regulation in order that it may be more easily located.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Alcoholic Beverage Control is impacted by this administrative regulation. Local governments are also affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Because this regulation simply combines three existing regulations into one, local governments and the department of Alcoholic Beverage Control will not be required to take any additional action.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no financial benefit to repeal this administrative regulation. Newly wet or moist territories may find it beneficial to locate this information in one regulation as opposed to reading through three administrative regulations to determine which one applies to their location.

(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 needed to implement and enforce the amendment of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation applies equally to 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? Local governments and the Department of Alcoholic Beverage Control are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs expected to amend this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no future costs expected to amend 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: None is expected.

PUBLIC PROTECTION CABINET Department of Insurance (Amendment)

806 KAR 2:097. Filing of local government premium tax ordinances; notification to insurers.

RELATES TO: KRS 91A.080, 304.4-010

STATUTORY AUTHORITY: KRS[Chapter—13A,] 91A.080, 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the commissioner[Executive—Director—of—Insurance] may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 91A.080 authorizes the commissioner[Executive—Director—of—Insurance] to adopt administrative regulations for the collection and reporting of local government premium taxes. This administrative regulation establishes procedures for notifying[for cities, county, and urban-county governments to file their local government premium tax ordinances with the Executive Director of Insurance and provides

procedures for notification to] insurers of the contents of these local government premium tax ordinances.

Section 1. Definitions. (1) "Commissioner"["~~Executive director~~"] means the Commissioner[~~Executive Director~~] of the Kentucky Department of Insurance.

(2) "Local government premium taxes" means taxes levied pursuant to KRS 91A.080.

Section 2. Filing of Local Government Premium Tax Ordinances. Adopted or amended ordinances shall be submitted by the city, county, or urban county government to the commissioner in accordance with KRS 91A.080[~~In accordance with KRS 91A.080, any city, county, or urban county government which has imposed a local government premium tax shall file a copy of its ordinance with the executive director. Ordinances may adopt or amend a local government premium tax on a prospective basis only. Any adopted or amended ordinance must be filed with the executive director more than 100 days prior to July 1st of each year.~~]. If an adopted or amended ordinance under KRS 91A.080 is received less than 100 days prior to July 1st, the commissioner shall not notify insurers of the adopted or amended ordinance until the next notice of local government premium taxes is published.

Section 3. Notification to Insurers of Local Government Premium Taxes. (1) No less than[~~Approximately~~] eighty-five (85) days prior to July 1[~~1st~~] of each year, the commissioner[~~executive director~~] shall notify[~~mail to~~] insurers[~~notice~~] of those cities, counties, or urban-county governments that[~~which~~] impose or amended a local government premium tax.

(2) The notice shall be mailed or submitted electronically to the current address of the administrative offices of an insurer as on file with the commissioner[~~executive director~~].

(3) One (1) copy of the notice of local government premium taxes shall be provided to insurers free of charge. Additional copies of the notice of local government premium taxes or copies of the notice of local government premium taxes requested by others shall be available only on written request and payment of five (5) dollars fee for filing the request.

[~~Section 4. Effective Date. This administrative regulation shall become effective January 1, 1985.~~]

H. BRIAN MAYNARD, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017 at 11:30 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by January 18, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 pm on January 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.OConnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation amends 806 KAR 2:097 to streamline the notification procedures required by the Commissioner of the Department of Insurance to insurance companies following receipt of local government premium tax ordinances. The Commissioner will have the ability to submit the notice through electronic means. The goal is to provide the Commissioner some discretion to transmit notices faster. While electronic notice is typically more efficient, the use of regular mail may be advisable in other instances. The amended regulation also brings the requirements into conformity with KRS 91A.080.

(b) The necessity of this administrative regulation: The regulation is necessary to improve the Department's efficiency, allow the Department to effectively notify insurers of local government premium tax issues, and comply with statutory provisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amendments bring the regulation into conformity with the time constraints placed on the Department for the required notification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation provides the Department flexibility in determining the manner to submit notices, which will increase the efficiency and speed insurers are notified of relevant tax changes.

(2) If 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 regulation streamlines the notice procedures which may be utilized by the Commissioner, and updates the timeframes for delivery to be in conformity with the statutory requirements.

(b) The necessity of the amendment to this administrative regulation: This amended regulation allows the Commissioner to use discretion in notifying insurers, and bring the regulation into conformity with the statutory requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation provides the Commissioner discretion in how to submit statutorily required notices.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation will allow the Department and insurers to be efficiently notified of changes or amendments to local government premium tax ordinances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Insurance, insurance companies responsible for the collection of local government premium tax, and local governments submitting notice of new or amended local tax ordinances will be impacted by this amended regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary on behalf of the regulated entities.

(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 is expected for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Department of Insurance will have discretion to submit notices electronically or through mail potentially providing savings to the Department. The insurers will receive timely notice of relevant local government premium tax ordinances or changes. The local governments will continue to operate without disruption by submitting the ordinance or changes to the Kentucky Department of Insurance.

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

(a) Initially: No cost to implement the regulation.

(b) On a continuing basis: No cost to implement the regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this regulation apply equally to all insurance companies, corporate sureties, or other 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? Local governments will continue to report ordinances or changes as required under KRS 91A.080(1). This regulation will not change their mandated reporting requirements. The Kentucky Department of Insurance now has discretion on how to send out the notices (mail or electronically) to improve efficiency where possible.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 and KRS 91A.080.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation does not impose any additional fees, and costs are not anticipated. Instead, this will allow the Department to potentially achieve cost savings through the efficient use of communication.

PUBLIC PROTECTION CABINET Department of Insurance (Amendment)

806 KAR 3:210. Privacy of consumer financial information.

RELATES TO:[KRS 304.12-170.] 15 U.S.C. 6801-6810, the Gramm-Leach-Bliley Act, 12 C.F.R. 1016 (Regulation P)

STATUTORY AUTHORITY: KRS 304.2-110, 15 U.S.C. 6801(b), 6805, the Gramm-Leach-Bliley Act

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the commissioner[Executive Director of Insurance] may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. The Gramm-Leach-

Bliley Act, 15 U.S.C.[USC] 6801(b) and 6805 requires[require] state insurance commissioners to establish standards for insurers, agencies, and agents to safeguard the security and confidentiality of consumer records and information. 15 U.S.C. 6804(a)(2) requires agencies to consult with others to ensure "that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies." 15 U.S.C.[USC] 6801 to 6810 applies to financial institutions engaging in financial activities such as "insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for the purpose of the foregoing, in any State." 12 U.S.C.[USC] 1843(k)(4)(B). This administrative regulation adopts the federally mandated privacy notice requirements of the Gramm Leach Bliley Act and 12 C.F.R. 1016 ("Regulation P") and applies them to regulated entities under the Kentucky Insurance Code, KRS Chapter 304. The administrative regulation will satisfy the preference for consistency among the state and federal regulations. The administrative regulation also strikes a balance between appropriately safeguarding a consumer's nonpublic personal financial information, prohibiting discrimination against consumers who opt-out, and not unduly burdening regulated entities[extends the application to protect individuals "who obtain or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes from licensees" in harmony with the regulations of the federal functional regulators. This stricter standard will hold all Kentucky licensees to the same standard, protect the privacy of Kentucky citizens, and promote uniformity of state insurance administrative regulations since this administrative regulation was based on a national model adopted by the National Association of Insurance Commissioners, and all states are imposing similar standards by statute or regulation. The federal law does not prohibit financial institutions from discriminating against individuals who have used their right to opt out or refused to grant authorization to disclose nonpublic personal financial information. This administrative regulation is stricter in that it protects Kentucky citizens who choose to use their rights to opt-out of disclosure from discrimination. This administrative regulation establishes security requirements for an insurer's, agency's or agent's use of consumers' financial information].

Section 1. Definition[Definitions. (1) "Affiliate" means a company that controls, is controlled by, or is under common control with another company.

(2) "Annually" means at least once in a period of twelve (12) consecutive months during which a customer relationship exists.

(3) "Clear and conspicuous" means that a notice that is reasonably understandable and designed to call attention to the nature and significance of information in the notice.

(4) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(5) "Executive Director" means the Commissioner of the Kentucky Office of Insurance.

(6) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization.

(7) "Consumer" means:

(a) An individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information; or

(b) That individual's legal representative.

(8) "Consumer reporting agency" is defined in 15 USC 1681a(f) of the federal Fair Credit Reporting Act.

(9) "Continuing relationship" means a relationship between a customer and a licensee if:

(a) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(b) The consumer obtains financial, investment, or economic

advisory services relating to an insurance product or service from the licensee for a fee.

(10) "Control" means:

(a) Ownership, control, or power to vote twenty-five (25) percent or more of the outstanding shares of any class of voting security of the company, or acting through one (1) or more other persons;

(b) Control over the election of a majority of directors, trustees, or general partners, or individuals exercising similar functions of the company; or

(c) The power to exercise a controlling influence over the management or policies of the company.

(11) "Customer" means a consumer who has a customer relationship with a licensee.

(12) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(13) "Designed to call attention" means that the notice:

(a) Uses a plain-language heading to call attention to the notice;

(b) Uses a typeface and type size that are easy to read;

(c) Provides wide margins and ample line spacing;

(d) Uses boldface or italics for key words; and

(e) Is in a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(f) If a licensee provides a notice on an Internet Web page, "designed to call attention" means that the notice uses text or visual cues to encourage scrolling down the page to view the entire notice, if necessary, and ensures that other elements on the Web site do not distract attention from the notice, and the licensee either:

1. Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

2. Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(14) "Financial institution" means any institution engaging in activities that are financial in nature or incidental to financial activities as described in 12 USC 1843(k).

(15) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity described in 12 USC 1843(k).

(16) "Former customer" means an individual with whom a licensee no longer has a continuing relationship.

(17) "Insurance product or service" means any product or service that is offered by a licensee, pursuant to KRS Chapter 304.

(18) "Joint agreement" means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

(19) "Licensee" means all insurers holding a certificate of authority, licensed producers, companies, or business entities licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Kentucky Insurance Code, KRS Chapter 304.

Section 2. General. (1) The department adopts the privacy of consumer financial information requirements set forth in 15 U.S.C. 6801 through 6810 ("Gramm Leach Bliley Act"), and the regulatory requirements established in 12 C.F.R. 1016.1 through 1016.16 ("Regulation P").

(2) Any reference to "financial products or services" in the adopted sections of the Gramm Leach Bliley Act and Regulation P shall mean "insurance products or services" for purposes of this administrative regulation.

(3) The requirements of this administrative regulation shall apply to all licensees subject to the Gramm Leach Bliley Act and Regulation P.

(4) Compliance with the adopted federal provisions shall be

deemed compliance with Kentucky's requirements by the department.

Section 3. Additional Exception to Notice and Opt Out Requirements for Disclosure of Non-Public Personal Financial Information. This administrative regulation specifically incorporates the exceptions identified in 12 C.F.R. 1016.15. In addition, licensees in liquidation or rehabilitation according to KRS Chapter 304.33 shall also be exempt from the notice provisions of this administrative regulation and as dictated by 12 C.F.R. 1016.15.

Section 4. Nondiscrimination. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer opts out of the disclosure or does not grant authorization for the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this administrative regulation.

Section 5. Violation. A violation of this administrative regulation shall constitute an unfair trade practice in the business of insurance and shall subject the licensee to a civil penalty authorized by KRS 304.99-020. (20) "Necessary to effect, administer, or enforce a transaction" means that the disclosure is:

(a) Required, or is one (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is a usual, appropriate, or acceptable method:

1. To carry out the transaction, the product, or the service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service;

2. To administer or service benefits or claims relating to the transaction, product, or service business of which it is a part;

3. To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

4. To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

5. To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance:

a. Account administration;

b. Reporting;

c. Investigating or preventing fraud or material misrepresentation;

d. Processing premium payments;

e. Processing insurance claims;

f. Administering insurance benefits, such as utilization review activities;

g. Participating in research projects; or

h. As otherwise required or specifically permitted by federal or state law; or

6. In connection with:

a. The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check or account number, or by other payment means;

b. The transfer of receivables, accounts, or interests; or

c. The audit of debit, credit, or other payment information.

(21) "Nonaffiliated third party" means any person who is not:

(a) A licensee's affiliate; or

(b) Employed jointly by a licensee and a company that is not the licensee's affiliate.

(22) "Nonpublic personal financial information" means:

(a) Personally-identifiable financial information; and

(b) Any list, description, or other grouping of consumers, and publicly-available information pertaining to them that is derived using personally-identifying financial information that is not publicly available.

(23) "Opt out" means a direction by the consumer that the

~~licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 15, 16, and 17 of this administrative regulation.~~

~~(24) "Personally identifiable financial information" means information:~~

~~(a) That a consumer provides to a licensee to obtain an insurance product or service from the licensee;~~

~~(b) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or~~

~~(c) That the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to a consumer.~~

~~(25) "Publicly-available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:~~

~~(a) Federal, state, or local government records;~~

~~(b) Widely-distributed media; or~~

~~(c) Disclosures to the general public that are required to be made by federal, state, or local law.~~

~~(26) "Reasonable basis" to believe that information is lawfully made available to the general public means the licensee has taken steps to determine:~~

~~(a) That the information is the type that is available to the general public; and~~

~~(b) Whether an individual may direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.~~

~~(27) "Reasonably understandable" means a notice:~~

~~(a) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;~~

~~(b) Uses short explanatory sentences or bullet lists, if possible;~~

~~(c) Uses definite, concrete, everyday words and active voice, if possible;~~

~~(d) Avoids multiple negatives;~~

~~(e) Avoids legal and highly technical business terminology, if possible; and~~

~~(f) Avoids explanations that are imprecise and readily subject to different interpretations.~~

~~Section 2. This administrative regulation governs the treatment of nonpublic personal financial information about individuals by all licensees of the state insurance office. This administrative regulation:~~

~~(1) Requires a licensee to provide notice to individuals about its privacy policies and practices;~~

~~(2) Describes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties;~~

~~(3) Provides methods for individuals to prevent a licensee from disclosing that information; and~~

~~(4) Applies to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This administrative regulation shall not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes.~~

~~Section 3. A licensee domiciled in this state that is in compliance with this administrative regulation in a state that has not enacted laws or regulations that meet the requirements of 15 USC 6801 to 6810 of the Gramm-Leach-Bliley Act may be deemed to be in compliance with 15 USC 6801 to 6810 of the Gramm-Leach-Bliley Act in such other state.~~

~~Section 4. The examples and sample clauses in the material incorporated by reference are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, shall constitute compliance with this administrative regulation.~~

~~Section 5. Requirements. (1) Consumer.~~

~~(a) A "consumer" shall include:~~

~~1. An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment, or economic advisory services relating to an insurance product or service, regardless of whether the licensee establishes an ongoing advisory relationship;~~

~~2. An applicant for insurance prior to the inception of insurance coverage;~~

~~3. An individual subject to disclosure by a licensee of nonpublic personal financial information to a nonaffiliated third party, other than as permitted under Sections 15, 16, and 17 of this administrative regulation, if:~~

~~a. The individual is a beneficiary of a life insurance policy underwritten by the licensee;~~

~~b. The individual is a claimant under an insurance policy issued by the licensee;~~

~~c. The individual is an insured or annuitant under an insurance policy or an annuity issued by the licensee; or~~

~~d. The individual is a mortgagor of a mortgage covered under a mortgage insurance policy.~~

~~(b) An individual shall not be a "consumer" solely on the basis that:~~

~~1. An individual is a consumer of another financial institution and the licensee is acting as agent for, or provides processing or other services to, that financial institution;~~

~~2. An individual is a beneficiary of a trust for which the licensee is a trustee;~~

~~3. An individual has designated the licensee as trustee for a trust; or~~

~~(c) An individual shall not be a "consumer" solely based on the status listed in subparagraph 2a through c of this paragraph, if:~~

~~1. The licensee provides the initial, annual, and revised notices under Sections 6, 7, and 10 of this administrative regulation to the plan sponsor, group, or blanket insurance policyholder or group annuity contract holder, workers' compensation plan participant; and~~

~~2. The licensee does not disclose to a nonaffiliated third party nonpublic personal financial information, other than as permitted under Sections 15, 16, and 17 of this administrative regulation, about an individual who is:~~

~~a. A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary;~~

~~b. Covered under a group or blanket life insurance policy or group annuity contract issued by the licensee; or~~

~~c. A beneficiary in a workers' compensation plan.~~

~~(d) The individuals described in paragraph (c)2a through c of this subsection shall be consumers of a licensee if the licensee fails to meet all the conditions of paragraph (c)1 and 2 of this subsection.~~

~~(2) Nonpublic personal financial information.~~

~~(a) "Nonpublic personal financial information" shall include any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.~~

~~(b) "Nonpublic personal financial information" shall not include:~~

~~1. Health information;~~

~~2. Publicly-available information, except as included on a list described in Section 1(22)(b) of this administrative regulation or paragraph (a) of this subsection; or~~

~~3. Any list, description, or other grouping of consumers and publicly-available information pertaining to them that is derived without using any personally identifiable financial information that is not:~~

~~a. Publicly available, including any list of individuals' names and addresses that contains only publicly-available information;~~

~~b. Derived in whole or in part using personally identifiable financial information that is not publicly available; and~~

~~c. Disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.~~

~~(3) "Nonaffiliated third party" shall include:~~

~~(a) Any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or~~

its affiliate in conducting merchant banking or investment banking activities of the type described in 12 USC 1843(k)(4)(H) and (I) of the federal Bank Holding Company Act; and

(b) A company that is not the licensee's affiliate that jointly employs a person who is also employed by the licensee.

(4) "Financial institution" shall not include:

(a) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under 7 USC 1 to 27f of the Commodity Exchange Act;

(b) The federal Agricultural Mortgage Corporation or any entity charged and operating under 12 USC 2001-2279cc of the Farm Credit Act of 1971; or

(c) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales, including sales of servicing rights, or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(5) "Financial service" shall include a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(6) "Insurance service" shall include a licensee's evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

(7) Personally identifiable financial information.

(a) "Personally identifiable financial information" shall include:

1. Information a consumer provides to a licensee on an application to obtain an insurance product or service;

2. Account balance information and payment history;

3. The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

4. Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

5. Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

6. Any information the licensee collects through an Internet cookie, an information-collecting device from a Web server; and

7. Information from a consumer report.

(b) "Personally identifiable financial information" shall not include:

1. Health information;

2. A list of names and addresses of customers of an entity that is not a financial institution; and

3. Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(8) Licensee.

(a) A licensee shall not be subject to the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if the licensee is an employee, agent, or other representative of another licensee, "the principal", and:

1. The principal otherwise complies with, and provides the notices required by, the provisions of this administrative regulation; and

2. The licensee does not disclose any nonpublic personal financial information to any person other than the principal or its affiliates in a manner permitted by this administrative regulation.

(b) Subject to paragraph (a) of this subsection, "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus broker in Kentucky, but only in regard to the surplus lines placements placed pursuant to KRS 304.10.

(c) A surplus lines broker or surplus lines insurer shall be in compliance with the notice and opt-out requirements for nonpublic personal financial information established in this administrative regulation if:

1. The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third

parties for any purpose, including joint servicing or marketing under Section 15 of this administrative regulation, except as permitted by Section 16 or 17 of this administrative regulation; and

2. The broker or insurer delivers a notice to a consumer when a customer relationship is established on which the following is printed in sixteen (16) point type:

"PRIVACY NOTICE – NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

(d) A licensee shall not include registered service contract makers as defined in 806 KAR 5:060.

(9) Continuing relationship. A consumer shall not be deemed to have a continuing relationship with the licensee if:

(a) The consumer applies for insurance but does not purchase the insurance;

(b) The licensee sells the consumer airline travel insurance in an isolated transaction;

(c) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(d) The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a settlement option involving an ongoing relationship with the licensee;

(e) The consumer is a beneficiary or claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(f) The customer's policy has lapsed, expired, or is otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or administrative regulation, communication at the direction of a state or federal authority, or promotional materials;

(g) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(h) The individual's last known address according to the licensee's records is deemed invalid. An address of record shall be deemed invalid if mail sent to that address by the licensee is returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual are unsuccessful.

Section 6. Initial Privacy Notice to Consumers Required. (1) Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to a:

(a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection (5) of this section; and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 16 and 17 of this administrative regulation.

(2) When initial notice to a consumer is not required. A licensee shall not be required to provide an initial notice to a consumer under subsection (1)(b) of this section if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 16 and 17 of this administrative regulation, and the licensee does not have a customer relationship with the consumer; or

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) When the licensee establishes a customer relationship:

(a) General rule. A licensee establishes a customer

relationship when the licensee and the consumer enter into a continuing relationship.

(b) Establishing customer relationship examples are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(4) Existing customers. If an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of subsection (1) of this section as follows:

(a) The licensee may provide a revised policy notice, under Section 10 of this administrative regulation, that covers the customer's new insurance product or service; or

(b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee shall not be required to provide a new privacy notice under subsection (1) of this section.

(5) Exceptions to allow subsequent delivery of notice.

(a) A licensee may provide the initial notice required by subsection (1)(a) of this section within a reasonable time after the licensee establishes a customer relationship if:

1. Establishing the customer relationship is not at the customer's election; or

2. Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) Examples of exceptions are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 11 of this administrative regulation. If the licensee uses a short-form initial notice for noncustomers according to Section 8(4) of this administrative regulation, the licensee may deliver its privacy notice according to Section 8(4)(c) of this administrative regulation.

Section 7. Annual Privacy Notice to Customers Required. (1)(a) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. A licensee may define the twelve (12) consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(b) An example of an annual privacy notice is contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(2)(a) Termination of customer relationship. A licensee shall not be required to provide an annual notice to a former customer.

(b) Examples of customer terminations are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(3) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 11 of this administrative regulation.

Section 8. Information to be Included in Privacy Notices. (1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 6, 7, and 10 of this administrative regulation shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 16 and 17 of this administrative regulation;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses

and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 16 and 17 of this administrative regulation;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 15 of this administrative regulation, and no other exception in Sections 16 and 17 of this administrative regulation applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Section 12 of this administrative regulation to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under 15 USC 1681a(d)(2)(A)(iii) of the federal Fair Credit Reporting Act, notices regarding the ability to opt out of disclosures of information among affiliates;

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(i) Any disclosure that the licensee makes under subsection (2) of this section.

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 16 and 17 of this administrative regulation, the licensee shall not be required to list those exceptions in the initial or annual privacy notices required by Sections 6 and 7 of this administrative regulation. If describing the categories of parties to whom disclosure is made, the licensee shall state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee shall satisfy the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

1. Information from the consumer;

2. Information about the consumer's transactions with the licensee or its affiliates;

3. Information about the consumer's transactions with nonaffiliated third parties; and

4. Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

1. A licensee shall satisfy the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subparagraph 3 of this paragraph, as applicable, and provides a few examples to illustrate the types of information in each category. These may include:

a. Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and Social Security number;

b. Transaction information, such as information about balances, payment history and parties to the transaction; and

c. Information from consumer reports, such as a consumer's creditworthiness and credit history.

2. A licensee shall not categorize the information that it discloses by using only general terms, such as transaction information about the consumer.

3. If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

1. A licensee shall satisfy the requirement to categorize the

affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

2. Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term "financial products or services" if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

3. A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

4. Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 15 of this administrative regulation to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee shall satisfy the disclosure requirement of subsection (1)(e) of this section if it:

a. Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subsection (1)(b) of this section, as applicable; and

b. States whether the third party is a service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or a financial institution with whom the licensee has a joint marketing agreement.

5. Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 16 and 17 of this administrative regulation, the licensee may simply state that fact, in addition to the information it shall provide under subsections (1)(a), (h), (i), and (2) of this section.

6. Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

a. Describes in general terms who is authorized to have access to the information; and

b. States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee shall not be required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt-out notice for noncustomers.

(a) A licensee may satisfy the initial notice requirements in Sections 6(1)(b) and 9(3) of this administrative regulation for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt-out notice as required in Section 9 of this administrative regulation.

(b) A short-form initial notice shall:

1. Be clear and conspicuous;

2. State that the licensee's privacy notice is available upon request; and

3. Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to Section 11 of this administrative regulation. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 11 of this administrative regulation.

(d) Examples of obtaining privacy notice are contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does

not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

Section 9. Form of Opt-out Notice to Consumers and Opt-out Methods. (1)(a) Form of opt-out notice. If a licensee is required to provide an opt-out notice under Section 12(1) of this administrative regulation, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

1. That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

2. That the consumer has the right to opt out of that disclosure; and

3. A reasonable means by which the consumer may exercise the opt-out right.

(b)1. Adequate opt-out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

a. Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Section 8(1)(b) and (c) of this administrative regulation, and states that the consumer may opt out of the disclosure of that information; and

b. Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt-out direction would apply.

2. Reasonable opt-out means. A licensee provides a reasonable means to exercise an opt-out right if it:

a. Designates check-off boxes in a prominent position on the relevant forms with the opt-out notice;

b. Includes a reply form together with the opt-out notice;

c. Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's Web site, if the consumer agrees to the electronic delivery of information; or

d. Provides a toll-free telephone number that consumers may call to opt out.

3. Unreasonable opt-out means. A licensee does not provide a reasonable means of opting out if:

a. The only means of opting out is for the consumer to write his or her own letter to exercise that opt-out right; or

b. The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

4. Specific opt-out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt-out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 6 of this administrative regulation.

(3) Initial notice required when opt-out notice delivered subsequent to initial notice. If a licensee provides the opt-out notice later than required for the initial notice in accordance with Section 6 of this administrative regulation, the licensee shall also include a copy of the initial notice with the opt-out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt-out notice. The licensee's opt-out notice shall explain how the licensee will treat an opt-out direction by a joint consumer.

(b) Any of the joint consumers may exercise the right to opt

out. The licensee may either:

1. Treat an opt-out direction by a joint consumer as applying to all of the associated joint consumers; or

2. Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one (1) of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt-out direction.

(e) Example of joint consumers opt out is contained in the list of Sample Clauses and Examples (Edition, 11/01), PVCY-01.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt-out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt-out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt-out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt-out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt-out notice by this section, the licensee shall deliver it according to Section 11 of this administrative regulation.

Section 10. Revised Privacy Notices. (1) General rule. Except as otherwise authorized in this administrative regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 6 of this administrative regulation, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt-out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2)(a) Except as otherwise permitted by Sections 15, 16, and 17 of this administrative regulation, a licensee shall provide a revised notice before it:

1. Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

2. Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

3. Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt-out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 11 of this administrative regulation.

Section 11. Delivery. (1) How to provide notices. A licensee shall provide any notices that this administrative regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Illustrations of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

1. Hand-delivers a printed copy of the notice to the consumer;

2. Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

3. For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service; or

4. For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Illustrations of unreasonable expectation of actual notice. A licensee shall not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

1. Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

2. Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a consumer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's Web site to access insurance products and services electronically and agrees to receive notices at the Web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the Web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this administrative regulation solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Section 6(1)(a) of this administrative regulation, the annual notice required by Section 7(1) of this administrative regulation, and the revised notice required by Section 10 of this administrative regulation so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

1. Hand-delivers a printed copy of the notice to the customer;

2. Mails a printed copy of the notice to the last known address of the customer; or

3. Makes its current privacy notice available on a Web site, or a link to another Web site, for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the Web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one (1) or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Sections 6(1), 7(1), and 10 of this administrative regulation, respectively, by providing one (1) notice to those consumers jointly.

Section 12. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties. (1)(a) Conditions for disclosure. Except as otherwise authorized in this administrative regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

1. The licensee has provided to the consumer an initial notice as required under Section 5 of this administrative regulation;
2. The licensee has provided to the consumer an opt-out notice as required in Section 8 of this administrative regulation;
3. The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
4. The consumer does not opt out.

(b) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

1. By mail. The licensee mails the notices required in paragraph (a) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

2. By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in paragraph (a) of this subsection electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

3. Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in paragraph (a) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee shall not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Section 13. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information. (1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Section 16 or 17 of this administrative regulation, the licensee's disclosure and use of that information shall be limited as follows:

1. The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

2. The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

3. The licensee may disclose and use the information pursuant to an exception in Section 16 or 17 of this administrative regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee shall disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Section 16 or 17 of this administrative regulation, the licensee may disclose the information only:

1. To the affiliates of the financial institution from which the licensee received the information;

2. To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

3. To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Section 16 or 17 of this administrative regulation:

1. The licensee may use that list for its own purposes; and

2. The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt-out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Section 16 or 17 of this administrative regulation, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Section 16 or 17 of this administrative regulation, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in Section 16 or 17 of this administrative regulation in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Section 16 or 17 of this administrative regulation, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

Section 14. Limits on Sharing Account Number Information for Marketing Purposes. (1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. Subsection (1) of this section shall not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3) Examples.

(a) Policy number. A policy number, or similar form of access

number or access code, shall not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) ~~Policy or transaction account.~~ A policy or transaction account shall be any account other than a deposit account or a credit card account. A policy or transaction account shall not include an account to which third parties cannot initiate charges.

Section 15. ~~Exception to Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.~~ (1) ~~General rule.~~

(a) ~~The opt-out requirements in Sections 9 and 12 of this administrative regulation shall not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:~~

1. ~~Provides the initial notice in accordance with Section 6 of this administrative regulation; and~~

2. ~~Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Section 16 or 17 of this administrative regulation in the ordinary course of business to carry out those purposes.~~

(b) ~~Example.~~ If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution shall meet the requirements of paragraph (a)2 of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Section 16 or 17 of this administrative regulation in the ordinary course of business to carry out that joint marketing.

(2) ~~Service may include joint marketing.~~ The services a nonaffiliated third party performs for a licensee under subsection (1) of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one (1) or more financial institutions.

Section 16. ~~Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.~~ Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 6(1)(b) of this administrative regulation, the opt out in Sections 9 and 12 of this administrative regulation, and service providers and joint marketing in Section 15 of this administrative regulation shall not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) ~~Servicing or processing an insurance product or service that a consumer requests or authorizes;~~

(2) ~~Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;~~

(3) ~~A proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer; or~~

(4) ~~Reinsurance or stop loss or excess loss insurance.~~

Section 17. ~~Other Exceptions to Notice and Opt-out Requirements for Disclosure of Nonpublic Personal Financial Information.~~ (1) ~~Exceptions to opt-out requirements.~~ The requirements for initial notice to consumers in Section 6(1)(b) of this administrative regulation, the opt out in Sections 9 and 12 of this administrative regulation, and service providers and joint marketing in Section 15 of this administrative regulation shall not apply if a licensee discloses nonpublic personal financial information:

(a) ~~With the consent or at the direction of the consumer, if the consumer has not revoked the consent or direction;~~

(b)1. ~~To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;~~
2. ~~To protect against or prevent actual or potential fraud or unauthorized transactions;~~

3. ~~For required institutional risk control or for resolving consumer disputes or inquiries;~~

4. ~~To persons holding a legal or beneficial interest relating to the consumer; or~~

5. ~~To persons acting in a fiduciary or representative capacity on behalf of the consumer;~~

(c) ~~To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;~~

(d) ~~To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978, 12 USC 3401 to 3422, to law enforcement agencies, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 USC 5311 to 5330, Records and Reports on Monetary Instruments and Transactions, and 12 USC 1951 to 1959, Financial Recordkeeping, a state insurance authority, and the Federal Trade Commission, self-regulatory organizations or for an investigation on a matter related to public safety;~~

(e)1. ~~To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act, 15 USC 1681 to 1681u; or~~

2. ~~From a consumer report reported by a consumer reporting agency;~~

(f) ~~In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;~~

(g)1. ~~To comply with federal, state or local laws, rules and other applicable legal requirements;~~

2. ~~To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;~~

3. ~~To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or~~

4. ~~For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.~~

(2) ~~Example of revocation of consent.~~ A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 9(6) of this administrative regulation.

(3) ~~Licensees in liquidation or rehabilitation according to KRS Chapter 304.33 shall be exempt from the notice provisions of this administrative regulation.~~

Section 18. ~~Protection of Fair Credit Reporting Act.~~ This administrative regulation shall not be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act, 15 USC 1681 to 1681u, and an inference shall not be drawn on the basis of the provisions of this administrative regulation regarding whether information is transaction or experience information under 15 USC 1681a of the Fair Credit Reporting Act.

Section 19. ~~Nondiscrimination.~~ A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure or has not granted authorization for the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this administrative regulation.

Section 20. ~~Violation.~~ A violation of this administrative regulation shall constitute an unfair trade practice in the business of insurance and shall subject the licensee to a civil penalty

authorized by KRS 304.99-020.

~~Section 21. Severability. If any section or portion of a section of this administrative regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of this administrative regulation or the applicability of the provision to other persons or circumstances shall not be affected.~~

~~Section 22. Effective Date. (1) Effective date. This administrative regulation is effective upon approval.~~

~~(2) Two (2) year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Section 15(1)(a)2 of this administrative regulation of this administrative regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.~~

~~Section 23. Incorporation by Reference. (1) The following material is incorporated by reference: PVCY-01, "Sample Clauses and Examples (Edition 11/01)".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

H. BRIAN MAYNARD, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017 at 10:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by January 18, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 pm on January 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.OConnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the requirements applicable to insurers, producers, and their affiliates related to the privacy of consumer information. The regulation adopts the requirements set forth in the Gramm Leach Bliley Act and the corresponding federal regulation ("Regulation P"). Taken together, the Gramm Leach Bliley Act and Regulation P define how a consumer's personal information is safeguarded, detail the permissible disclosure of such information and required opt-out provisions afforded to consumers, and require impacted entities to disclose their privacy policies to consumers initially, annually, and as revised. By adopting the federal requirements, the Kentucky requirements are now consistent with the federal benchmarks; thus entities are not

required to comply with a multitude of differing regulatory requirements. Additionally, the regulation fulfills the requirements of KRS 13A.120 because it is not more stringent than the federal law or regulation.

(b) The necessity of this administrative regulation: The amendment is necessary because the Gramm Leach Bliley Act was amended to reduce the requirements specific to the annual privacy notice provisions. In 2014, the Bureau of Consumer Financial Protection, the federal regulatory body with authority to promulgate regulations under the Gramm Leach Bliley Act, found such annual notices to be wasteful and simply overloading consumers with unnecessary information. In 2015, Gramm Leach Bliley was amended to add an exception to the requirement to provide annual notices where specific elements are met. The exception would apply to the vast majority of regulated entities. Thus, the Department's amendment to the administrative regulations brings Kentucky law into conformity with the Gramm Leach Bliley Act amendment and removes an unduly burdensome and wasteful requirement on regulated entities. It also provides clarity for both the Department and regulated entities on the applicable Kentucky requirements to make them uniform with the benchmark federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation adopts the requirements as mandated by the Gramm Leach Bliley Act and corresponding federal regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides clarity on the requirements in Kentucky regarding privacy policies and the submission of privacy notices to impacted consumers. By adopting the federal standard, the requirements are consistent promoting streamlined compliance for regulated entities.

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

(a) How the amendment will change this existing administrative regulation: The amendment substantially reduces the length of the administrative regulation, which, as previously drafted, was simply a restatement, with some subtle differences, of the existing federal regulation. The Department has chosen to incorporate the applicable sections of the Gramm Leach Bliley Act and 12 C.F.R. §1016 which have been amended to provide an exception to the annual privacy notice submission requirement. Thus, regulated entities will no longer have to submit the annual privacy notices if they satisfy the elements of the exception. This will result in a substantial reduction in administrative time and expenses for the regulated entities by reducing the unnecessary mailings deemed of little value by consumers. Additionally, this amendment, by incorporating the federal provisions, will automatically be updated in the event relevant portions of Gramm Leach Bliley Act or 12 C.F.R. §1016 are amended. Previously, the Kentucky administrative regulation was not amended and therefore subjected regulated entities to additional requirements which were deemed unnecessary or unduly burdensome for the regulated entities.

(b) The necessity of the amendment to this administrative regulation: Based on the nationwide investigation performed by the Bureau of Consumer Financial Protection and as described in 79 Fed. Reg. 208, 64057 (October 28, 2014) and 81 Fed. Reg. 132, 44801 (July 11, 2016), the annual notice requirements, as considered in the previous version of this regulation, provide little benefit to consumers and in many cases overload the consumers with unwanted mail. Thus, this amendment is necessary to remain consistent with the federal requirements which have since been amended to reduce these unduly burdensome and unnecessary compliance measures.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms Kentucky's regulations to the federal authority by specifically incorporating the requirements of the Gramm Leach Bliley Act and 12 C.F.R. §1016.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by providing greater clarity for the Department. Additionally, future amendments to the federal benchmark will be automatically

incorporated into the Kentucky regulation reducing the need for subsequent Department action.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amended regulation will impact all entities subject to KRS Chapter 304 that are licensed and authorized to perform insurance business within Kentucky. It will impact those policyholders who seek to obtain or obtain insurance products and services from those entities pursuant to KRS Chapter 304.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not have to take any additional actions. By incorporating the federal provisions, the regulated entities will be relieved of the requirements to submit annual privacy notices in the event they satisfy certain conditions as enumerated in the Gramm Leach Bliley Act §503(f), as amended on December 4, 2015, and the regulations promulgated thereunder. Insureds and policyholders will continue to be adequately notified of the regulated entity's privacy policies, and will be apprised of any changes. However, they will not receive any unnecessary or unwanted mailings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated to each of the regulated entities by the amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities, who satisfy the elements for the annual notice exception, will no longer be forced to go through the administrative burden and expense to submit an annual notice of their privacy policy to their consumer and customers. The Department anticipates this will result in significant annual savings to those regulated entities. For instance, one small insurer has indicated this change will achieve an annual savings of approximately \$50-60,000. The regulated entities will also benefit from the streamlined requirements of the federal provisions which serve as the benchmark for compliance.

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

(a) Initially: No cost is anticipated in the implementation of this administrative regulation.

(b) On a continuing basis: No cost is anticipated in 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: No funding will be used or is necessary for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not used as this regulation will apply to all regulated entities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 15 U.S.C. 6801-6810, the Gramm-Leach-Bliley Act, 12 C.F.R. 1016 (Regulation P).

2. State compliance standards. The Department has adopted the Federal requirements in their entirety. The Department has only added provisions which exempt entities in rehabilitation and liquidation under KRS Chapter 304 from the notice requirements, and has preserved the "nondiscrimination" provision preventing

entities from discriminating against those individuals who choose to opt-out of their disclosure provisions.

3. Minimum or uniform standards contained in the federal mandate. The standards included in 15 U.S.C. 6801-6810, the Gramm-Leach-Bliley Act, and 12 C.F.R. 1016 (Regulation P) have been adopted. This federal mandate stipulates the requirements for the collection and disclosure of nonpublic personal financial information by financial and insurance companies, the privacy notices provided by such entities to their consumers and customers, and the ability of consumers and customers to opt-out of the disclosure of their private information.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate requirement is adopted in its entirety. This regulation does not impose stricter requirements except to state that regulated entities shall not discriminate to individuals who opt-out. This provision could be read as already applicable pursuant to the unfair trade practices law, but it was preserved for clarity purposes.

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. Insurers are not permitted to discriminate against individuals who elect to opt-out of the disclosure of their non-public personal financial information to non-affiliated parties. This is beneficial as it will prevent these regulated entities from charging extra fees or denying products and services to consumers who simply assert their right to opt-out. This provision is necessary to protect Kentucky consumers, and provides clear notice to the regulated entities of this prohibited practice.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 15 U.S.C. 6801-6810, the Gramm-Leach-Bliley Act, 12 C.F.R. 1016 (Regulation P), KRS 304.2-110.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 for state or local government will be generated.

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

(c) How much will it cost to administer this program for the first year? No cost will be incurred to administer this amended regulation.

(d) How much will it cost to administer this program for subsequent years? No cost will be incurred to administer this amended regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
(Amendment)

806 KAR 18:020. Preferred and exclusive provider arrangements.

RELATES TO: KRS 304.12-010, 304.18-040, 304.32-080
 STATUTORY AUTHORITY: KRS[Chapter 13A,] 304.2-110, 304.32-250, 304.14-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 and KRS 304.32-250 provide[provides] that the ~~commissioner~~[Executive Director of Insurance] may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.[KRS 304.32-250 provides that the Executive Director of Insurance may promulgate reasonable administrative regulations that he deems necessary for the proper administration of KRS Chapter 304.32.] This administrative regulation establishes guidelines for the use of preferred provider arrangements for group health insurers[and nonprofit hospital, medical-surgical, dental, and health service corporations].

Section 1. Definitions.[As used in this administrative regulation:] (1) "Alternative delivery system" means a health care delivery system characterized by alliances between selected health care providers and insurers, employers, or both, managed care through greater utilization controls, or discounted fee or capitation payment arrangements with health care providers, as distinguished from the traditional fee-for-service delivery approach.

(2) "Exclusive provider arrangement" means an alternative delivery system in which an insurer contracts with health care providers for alternative rates of payment and requires insureds or subscribers to use the health care providers under contract with the insurer.

(3) "Insurer" is defined by KRS 304.17A-005(27)[means health insurers and nonprofit hospital, medical-surgical, dental, and health service corporations delivering or issuing for delivery contracts under KRS Chapter 304].

(4) "Preferred provider arrangement" means an alternative delivery system under which an insurer contracts with health care providers for alternative rates of payment and allows insureds or subscribers to choose between contract health care providers and noncontract health care providers.

Section 2. Contract Guidelines.[Health] Insurers shall not:

(1) Issue contracts of insurance offering any preferred provider arrangement under which the difference between the benefit payable for services rendered by noncontract health care providers and the benefit payable for services rendered by contract health care providers exceeds twenty-five (25) percent; or

(2) Issue contracts of insurance offering any exclusive provider arrangement.

Section 3. Exception. Section 2 of this administrative regulation shall not apply to health maintenance organizations, limited health service organizations, and non-profit hospital, medical-surgical, dental, and health service corporations[Health insurers shall not issue contracts offering any exclusive provider arrangement].

H. BRIAN MAYNARD, Commissioner
 DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017 at 9:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by January 18, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to

the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 pm on January 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.OConnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clarifies the requirements for preferred provider arrangements and exclusive provider arrangements and the entities capable of offering such arrangement within their policies. The regulation permits insurers to offer preferred provider arrangements if the difference in the benefit payable for service does not exceed 25%. It also prohibits insurers from offering exclusive provider arrangements. The administrative regulation does not apply to health maintenance organizations, limited health service organizations, and non-profit hospital, medical-surgical, dental, and health service corporations. These entities either currently offer plans that only provide benefits if contracted providers are used or the plans are limited demographically (e.g., only one non-profit hospital, medical-surgical, dental and health service corporation exists in Kentucky).

(b) The necessity of this administrative regulation: The amendment is necessary to clarify the regulated entities subject to this administrative regulation to promote both compliance and enforcement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 304.14-130, the Commissioner is vested with the authority to determine whether the benefits provided by an insurer are unreasonable in relation to the premium charged. The regulation upholds the integrity of health plans that utilize and are marketed as preferred provider organizations (PPO). It caps the maximum difference between "in network" and "out of network" to ensure that insureds receive an actual benefit for the premiums paid for such options. It also restricts such plans from entering into exclusive provider arrangements as a method to defeat the maximum difference prohibition.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation dictates the maximum difference between benefits for utilizing contract and non-contract providers.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies what is an unreasonable benefit based upon the nature of the organization seeking to offer that benefit.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to promote clarity in the application of the administrative regulation in light of KRS 304.14-130 and to reduce the regulatory impact on those entities not contributing significantly to the problem which the regulation was intended to address.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 304.14-130, the Commissioner is vested with the authority to determine whether the benefits provided by an insurer are unreasonable in relation to the premium charged. This amendment ensures the integrity of health plans that utilize and are marketed as preferred provider organizations (PPO), and clarifies the types of organizations to

which the regulations applies.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides clarity for regulated entities and Department staff. It clearly dictates the maximum difference between benefits for utilizing contract and non-contract providers to define what is "unreasonable" in KRS 304.14-130(1)(d). This amendment also clarifies what is "unreasonable" pursuant to KRS 304.14-130(1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Health maintenance organizations, limited health service organizations, and non-profit hospital, medical-surgical, dental, and health service corporations. Health maintenance organizations and limited health service organizations have previously been acting in accordance with amended regulation through the Department interpretation. There is only one non-profit hospital, medical-surgical, dental, and health service corporations operating 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: Health maintenance organizations and limited health service organizations have generally been acting in accordance with the amended regulation. No additional action will be necessary on their part. Non-profit hospital, medical-surgical, dental and health service corporations can begin offering exclusive provide arrangements and preferred provider arrangements that are not restricted by the prohibitions in Section 2 of the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amended administrative regulation will not impose any cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be able to freely contract with providers as necessary to satisfy the plans they offer.

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

(a) Initially: The Department does not anticipate that there is any cost to implement this amendment.

(b) On a continuing basis: The Department does not anticipate any continuing costs.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The Department does not anticipate additional fees or funding will be required to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? KRS 13A.210 requires that administrative regulations be drafted to reduce disproportionate impacts on certain classes of regulated entities and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. The regulation, prior to the amendment, was intended to address and prevent inadequacies in group health policies, namely those preferred provider organization plans which offer and market plans with "out of network" benefits. The goal was to ensure that insureds seeking these plans and paying premium, often increased premium, for such plans receive an actual benefit even if they seek care "out of network." The regulation, prior to this amendment, was drafted and applied in such a manner to regulate entities outside of the statutory authority and included entities not contributing to the "out of network" problem, which the regulation was designed to

address. The amended regulation carves out these specific regulated entities not significantly contributing to the problem the regulation was designed to confront. These regulated entities include health maintenance organizations, limited health service organizations, and non-profit hospital, medical-surgical, dental and health service corporations. All of these entities either currently offer statutorily approved plans which only provide benefits if contracted providers are used, or are limited demographically (e.g., only one non-profit hospital, medical-surgical, dental and health service corporation exists in Kentucky) such that they do not impact the problem of restricting access to providers. The regulation has been tiered to regulate the entities who substantially contribute to the problem which the regulation was intended to address.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.32-166 provides the statutory authority for non-profit hospital, medical-surgical, dental, and health service corporations to enter into exclusive provider arrangements. Pursuant to KRS 13A.210, the amendment is necessary to properly tier application of this administrative regulation.

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not result in any costs for state or local government agencies in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not result in any costs for state or local government agencies in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Financial Institutions Division of Depository Institutions (Amendment)

808 KAR 3:020. Recordkeeping requirements[Records retention-schedule].

RELATES TO: KRS 286.6-070, 286.6-100, 286.6-405[290.070], 12 C.F.R. Part 749

STATUTORY AUTHORITY: KRS 286.1-020(1), 286.6-070[290.070]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) and 286.6-070 authorize the commissioner to promulgate administrative[290.070 requires the Office of Financial Institutions to ~~prescribe rules and~~ regulations for the proper conduct and

regulation of credit unions. This administrative regulation establishes recordkeeping requirements~~[the records retention schedule]~~ for all~~[state-chartered]~~ credit unions.

Section 1. Definitions. (1) "Credit union" is defined by KRS 286.6-005(1).

~~(2)[Definition:]~~ "Record" means any books of account or other books, journals, ledgers, statements, instruments, documents, files, messages, writings, or~~[other internal or]~~ other data or~~[other]~~ information made or received by a credit union~~[in the regular course of its business or otherwise]~~, regardless of the mode in which it is recorded.

Section 2. Record retention. (1) Unless a longer retention period is required by subsection (2) of this section or other law,~~[Except as provided in this administrative regulation, state-chartered]~~ credit unions shall comply with the records retention guidelines set forth in Appendix A to 12 C.F.R. Part 749.

(2) ~~A~~~~[state-chartered]~~ credit union shall retain all records for at least twenty-four (24) months after the close of the~~[fiscal or]~~ calendar year during which the record was generated.

~~(3)[All records shall be retained for a period of time that is consistent with the reasonable business practices for a financial institution.~~

~~(4) All records shall be retained for a period of time that is consistent with state and federal laws or regulations.~~

~~(5)[Records required to be retained may be maintained in retrievable electronic format.~~

Section 3. Access to records~~[Examination]~~. All records required to be maintained~~[under this administrative regulation or applicable state or federal law]~~ shall be:

(1) Current and accurate;

(2) Retained in a format that is capable of being transmitted or reproduced; and

(3) Immediately accessible and retrievable~~[readily available within a reasonable time period]~~ upon request by the commissioner or any person designated by the commissioner~~[executive director]~~ for examination, investigation, or other authorized purposes.

Section 4. Vital Records Preservation Program. Credit unions shall maintain a vital records preservation program in compliance with 12 C.F.R. Part 749.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 15, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017, at 1:00 p.m., at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the calendar day, 11:59 p.m., January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Deborah Crocker, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Reggs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deborah Crocker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clarifies, simplifies, and consolidates the recordkeeping requirements for credit unions chartered pursuant to KRS Chapter 286.6.

(b) The necessity of this administrative regulation: This regulation is necessary in order to clarify and streamline the recordkeeping requirements for state-chartered credit unions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) and 286.6-070 authorize the commissioner of the Department of Financial Institutions to promulgate administrative regulations for the proper conduct and regulation of credit unions. KRS 286.6-100 provides that credit unions shall be subject to examination and for this purpose, shall make their books and records accessible to the commissioner. KRS 286.6-405 requires credit unions to maintain insurance on its shares and deposits. This regulation conforms to the content of these statutes by establishing recordkeeping requirements necessary to enable the proper examination of credit unions and to maintain necessary insurance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will consolidate redundant regulations and clarify recordkeeping requirements for state-chartered credit unions.

(2) If 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 existing administrative regulation by clarifying vague language, simplifying out of date language, and consolidating accessibility requirements into a single regulation.

(b) The necessity of the amendment to this regulation: This amendment is necessary to clarify the recordkeeping requirements for credit unions and to eliminate out of date and duplicative regulations.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the content of the authorizing statutes by establishing clear and consolidated recordkeeping requirements to enable state-chartered credit unions to quickly and easily comply with the requirements of KRS Chapter 286.6.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will streamline two (2) redundant regulations and simplify regulatory requirements for the credit union industry.

(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 the 24 credit unions currently chartered in Kentucky by the Department of Financial Institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment imposes no new requirements on regulated credit unions.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will provide entities with clear and consolidated recordkeeping requirements to ensure compliance with KRS Chapter 286.6.

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

(a) Initially: No cost anticipated.

(b) On a continuing basis: No cost anticipated.

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

implementation and enforcement of this administrative regulation: No additional source of funding will be required.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 286.1-020(1) and 286.6-070.

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

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

(c) How much will it cost to administer this program for the first year? It is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? It is anticipated that there will be no additional net 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 (+/-): None.

Expenditures (+/-): None anticipated.

Other Explanation: None.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

811 KAR 1:215. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802, 230.990

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.770(1) establishes the Kentucky standardbred development fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1)

establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) authorizes the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions. (1) "Commission" means the Kentucky Horse Racing Commission.

(2) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sires Stakes Program.

(3) "Kentucky-bred" means, for the purposes of this administrative regulation, a standardbred horse that is:

(a) Foaled out of a standardbred mare that is registered with the commission and is a resident of Kentucky as provided in this administrative regulation; or

(b) Sired by a standardbred stallion that meets the requirements of this administrative regulation.

(4) "Kentucky Sires Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year old Kentucky-bred fillies and colts, both trotting and pacing, and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders' Incentive Fund.

(5) "Kentucky Standardbred Breeders' Incentive Fund" or "KSBI" means the trust and revolving fund as set out in KRS 230.802.

(6) "Kentucky Standardbred Development Fund" or "KSDF" means the trust and revolving fund as set out in KRS 230.770.

(7) "Stallion residing in Kentucky" means a stallion physically located and standing in Kentucky for 180 days of the calendar year in which the stallion is registered that does not service mares in any other state, jurisdiction, or country outside of Kentucky during the calendar year in which the stallion is registered.

(8) "USTA" means the United States Trotting Association.

Section 2. Domicile Requirements. (1) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion for breeding purposes and to have his progeny eligible for the KSDF or KSBI shall register the stallion with the commission by December 31st of the year of conception of the horse sought to be eligible. Standardbred stallions not residing in Kentucky do not need to register with the commission.

(2) All standardbred stallions shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency whether residing in Kentucky or not.

(a) A standardbred stallion shall be registered on the KSDF/KSBI Stallion Certificate of Eligibility Form, KHRC 215-2, 12/16/7/13. ~~A stallion owner may appoint an authorized agent to complete the KSDF/KSBI Stallion Certificate of Eligibility Form, KHRC 215-2, 7/13, by completing and filing with the commission the KSDF/KSBI Authorized Agent Form, KHRC 215-3, 7/13.~~

(b) A standardbred stallion that satisfies the provisions of this section shall be considered a registered stallion for purposes of this administrative regulation.

(3) An owner, lessee, manager, or syndicate manager of a standardbred mare who desires to use the mare for breeding purposes and to have her progeny eligible for the KSDF or KSBI shall register the mare by December 31st of the year of conception of the horse sought to be eligible.

(a) Beginning January 1, 2017, in order to be eligible for registration, the mare shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall have resided in Kentucky for a period of not less than 180[consecutive] days in the calendar year of conception of the horse sought to be eligible.

(b) The mare shall be registered on the KSDF/KSBI Mare Certificate of Eligibility Form, KHRC 215-3, 12/16/215-4, 7/13.

(c) A standardbred mare that satisfies the provisions of this

section shall be considered a registered mare for purposes of this administrative regulation.

(4) Registrations shall be physically received by the commission by the close of business or postmarked on the deadline established in this section in order to be eligible.

(5) An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBIF shall be responsible for:

(a) The registrations and records of the farm where the stallion stands or the mare resides; and

(b) Complying with the requirements of this administrative regulation.

Section 3. Eligibility. (1) In order to qualify for the Kentucky Sire Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred and maintain eligibility for the KSDF and KSBIF.

(2)(a) Except as provided by paragraph (b) of this subsection, only a foal that is the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo/ovum transplant (ET), shall be eligible for harness racing in Kentucky.

(b) Natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare shall also be eligible.

(3) Any future offspring of foals ineligible for racing under this section shall be ineligible for harness racing in Kentucky.

Section 4. Disputes. (1) If the commission determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion or mare contains false or misleading information, or that an owner, lessee, stallion manager, manager, or syndicate manager of a registered stallion or registered mare has failed to furnish information the commission has requested relating to the registration or renewal of a stallion or mare, the commission shall:

(a) Temporarily suspend or deny the registration of the stallion or mare; and

(b) Summon the person who committed a violation listed in this subsection, and any person who has knowledge relating to the violation, to appear before the commission at a hearing pursuant to 811 KAR 1:105.

(2) After the hearing, the commission shall determine whether the violation was willful.

(a) If the commission finds the violation was willful, the commission shall do one (1) or more of the following, based on the degree of seriousness of the willful violation:

1. Deny the registration;
2. Suspend the registration;
3. Revoke the registration; or

4. Bar the owner, lessee, stallion manager, manager, or syndicate manager who willfully committed the violation from further registering stallions or mares to the KSDF and KSBIF.

(b) If the commission finds the violation was not willful, the commission shall rescind the temporary denial, suspension, or revocation of the registration.

(3) If a person summoned by the commission fails to respond to the summons, the commission:

(a) Shall suspend or deny the registration;

(b) Shall notify the person in writing of the action taken by the commission; and

(c) May bar the owner, lessee, stallion manager, manager, or syndicate manager who committed the violation from further registering stallions or mares to the KSDF and KSBIF, based on the degree of seriousness of the violation.

Section 5. Rules of Racing.~~[An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBIF shall be responsible for:~~

- ~~(1) The registrations and records of the farm; and~~
- ~~(2) Complying with the requirements of the KSDF and KSBIF.~~

~~Section 6.] Kentucky Sires Stakes races in which any part of the purse is provided by the KSDF or KSBIF, the requirements for which races are established in Sections 6[7] through 24[27] of this~~

administrative regulation, shall be subject to 811 KAR Chapter 1.

~~[Section 7. A participant in a Kentucky Sires Stakes race shall:~~

- ~~(1) Be a two (2)- or three (3)-year-old Kentucky-bred; and~~
- ~~(2) Maintain eligibility for the KSDF and KSBIF.]~~

Section 6[8]. Distance. Each race shall be a one (1) mile dash.

Section 7[9]. Post Positions. Post positions for the final and all preliminary legs shall be an open draw with two (2) horses drawn for the final race that are designated as "also eligibles" under Section 8(6)[10(6)] of this administrative regulation.

Section 8[10]. Eligibility for the Final. (1) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final.

(2) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements set forth in subsection (1) of this section and toward determining tiebreaker status as set forth in subsection (5)(b) of this section.

(3) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements set forth in subsection (1) of this section.

(4) A horse, in order to start in the final, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(5)(a) If the number of horses eligible and declared into any final event exceeds the maximum number specified by the KSDF or KSBIF or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;
2. 2nd place - twenty-five (25) points;
3. 3rd place - twelve (12) points;
4. 4th place - eight (8) points;
5. 5th place - five (5) points;
6. 6th place and all other starters - one (1) point; and
7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to paragraph (a) of this subsection, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final is not declared, the horse with the next highest point total, pursuant to paragraph (a) of this subsection, that is declared shall be eligible for the final.

(6) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (5) of this section, that are declared into the final, but do not qualify for the final, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final as a replacement after the official scratch time deadline that is in effect at the host track.

Section 9[11]. Final Order of Finish. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

Section 10[42]. Detention. All starters shall be subject to the detention policy of the racetrack.

Section 11[43]. Number of Starters. (1) There shall not be more than:

- (a) Ten (10) starters in each final race on a mile track; and
- (b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

Section 12[44]. Declaration Fees. (1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of \$500. If a preliminary leg splits into two (2) or more divisions, the declaration fee shall be \$500 per division. For each horse declared to race in the final, there shall be a declaration fee of one (1) percent of the total purse.

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the KSDF and KSBIF shall consist of money from:

- (a) Nominating fees;
- (b) Sustaining fees;
- (c) Declaration fees; and
- (d) Added money from the Commonwealth of Kentucky.

(4)(a) Distribution of revenue for Kentucky Sires Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel appointed by the chairman of the commission and consisting of [at least] one (1) representative from each of the following:

1. The commission, who shall serve as the chairman of the panel;

2. The Kentucky Harness Horseman's Association;

3. The host racetrack;

4. The commission recognized [Kentucky] Standardbred Breeders Association [and any other recognized standardbred breeding association] organized in Kentucky; and

5. A participant in the fund that is nominated by the chairman of the commission from a group of up to four (4) nominees recommended by each of the above four (4) members having one (1) nomination each [The owner of a stallion registered to the KSDF and KSBIF].

(b) Each member of the panel shall serve from July 1 through June 30 of the following year and shall be a resident of Kentucky.

(c) The final determination regarding distribution of revenue shall be made by the commission.

Section 13[45]. Divisions of Preliminary Legs. (1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

1. Twelve (12) horses or less entered - one (1) division race.

2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.

3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.

4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.

5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.

6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.

~~[7. If the need exists for seven (7) or more divisions of preliminary legs, eligibility to the final shall be determined in a manner consistent with the published conditions.]~~

(b) One-half (1/2) and five-eighths (5/8) mile track:

1. Nine (9) to ten (10) horses entered - one (1) division.

2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.

3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.

4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.

5. Thirty-three (33) to forty (40) horses entered - five (5)

divisions.

6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.

~~(c)[7.] If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.~~

Section 14[46]. Gait. (1) Gait shall be specified by the owner of the horse on or before [by] the first two (2) year old payment.

(2) Change of gait:

(a) May be made at the time of declaration at the track; and

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 15[47]. Divisions. A race shall be raced in separate divisions as follows:

(1) Colt/gelding/ridgeling divisions; and

(2) Filly divisions.

Section 16[48]. Purse Distributions. (1) The purses awarded for all races shall be distributed as follows [on the following percentage basis]:

(a) Five (5) starters – fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent [50-25-12-8-5: five (5) starters or more];

(b) Four (4) starters – fifty (50) percent, twenty-five (25) percent, fifteen (15) percent, and ten (10) percent [50-25-15-10: four (4) starters];

(c) Three (3) starters – sixty (60) percent, thirty (30) percent, and ten (10) percent [60-30-10: three (3) starters];

(d) Two (2) starters - sixty-five (65) percent and thirty-five (35) percent [65-35: two (2) starters]; and

(e) One (1) starter - 100 percent [100: one (1) starter].

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

(3) In addition to the purses set forth in subsection (1) of this section, \$25,000 shall be awarded in each division of the finals to the owner of the stallion or stallions residing in Kentucky that sired the first, second, or third place finisher, as follows:

(a) First place: \$15,000;

(b) Second place: \$7,500; and

(c) Third place: \$2,500.

Section 17[49]. Cancellations. (1) If circumstances prevent the racing of an event, and the race is not drawn, all funds that have been allocated to the division in each of the preliminary legs or the final shall be refunded and pro-rated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 22[25] of this administrative regulation.

(3) The added moneys [monies] provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section 12(4)[14(4)] of this administrative regulation.

~~[Section 20. Starters shall declare in at each track on or before the time specified and advertised by the association conducting the event.]~~

Section 18[24]. Qualifying. (1) Any horse declared into a Kentucky Sires Stakes race [races] shall:

(a) Show at least one (1) charted race line with no breaks within thirty (30) days prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. On a track larger than five-eighths (5/8) of a mile:

a. A two (2) year old trotter shall have been timed in 2:08 or faster;

b. A two (2) year old pacer shall have been timed in 2:06 or faster;

c. A three (3) year old trotter shall have been timed in 2:04 or

faster; and

d. A three (3) year old pacer shall have been timed in 2:02 or faster.

2. On a five-eighths (5/8) mile track:

a. A two (2) year old trotter shall have been timed in 2:09 or faster;

b. A two (2) year old pacer shall have been timed in 2:07 or faster;

c. A three (3) year old trotter shall have been timed in 2:05 or faster; and

d. A three (3) year old pacer shall have been timed in 2:03 or faster.

3. On a one-half (1/2) mile track:

a. A two (2) year old trotter shall have been timed in 2:10 or faster;

b. A two (2) year old pacer shall have been timed in 2:08 or faster;

c. A three (3) year old trotter shall have been timed in 2:06 or faster; and

d. A three (3) year old pacer shall have been timed in 2:04 or faster.

(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

Section 19[22]. Purse Allocations. (1) At a scheduled meeting of the commission, the commission:

(a) Shall establish the distribution of funds for stakes races for the upcoming year; and

(b) Shall authorize expenditures at a time it designates.

(2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 20[23]. Promotions. The KSDF or KSBIF shall provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund.

Section 21[24]. Nomination Fees. (1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year. The KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form, KHRC 215-1, 12/16[7/13], shall be filed with the commission along with the nomination and sustaining fees.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible to the KSDF and KSBIF as a three (3) year old.

(3)[Section 25]. Nomination and sustaining payments shall be made to the KSDF/KSBIF[KSDF] in U.S. funds by a money order or a check drawn on a U.S. bank account.

Section 22[26]. Nomination Schedule. (1) Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.

(2) For yearlings sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, the nomination fee shall be forty (40) dollars per yearling. For yearlings sired by a standardbred stallion not residing in Kentucky, the nomination fee shall be eighty (80) dollars[140] per yearling.

(3) Nominated horses shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall be properly identified to the satisfaction of the commission at the time of the nomination. Identification shall be determined by the official registration maintained by the USTA, Standardbred Canada, or other appropriate international harness racing governing agency.

(4) If a horse is not nominated during its yearling year, the horse may be nominated prior to March 15 of its two (2) year old year if:

(a) For horses sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, a nomination fee of \$500 is made by March 15 of the horse's two (2) year old

year, along with the sustaining payment required by subsection (5)(a) of this section; or

(b) For horses sired by a standardbred stallion not residing in Kentucky, a nomination fee of \$600 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section.

(5) Sustaining payments shall be as follows:

(a) TWO (2) YEAR OLD PAYMENTS	
March 15	\$300
April 15	\$300
May 15	\$300
March 15 payment shall be mandatory to make entry eligible as a three (3) year old.	

(b) THREE (3) YEAR OLD PAYMENTS	
February 15	\$300
March 15	\$300
April 15	\$300

Section 23[27]. Early Closing Events. The commission, during any given year, may provide for separate early closing events for Kentucky-bred horses.

Section 24[28]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 215-1, 12/16[7/13];

(b) "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 215-2, 12/16; and[7/13];

(c)[KSDF/KSBIF Authorized Agent Form", KHRC 215-3, 7/13; and

(d)] "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 215-3, 12/16[215-4, 7/13].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 13, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2017 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by January 17, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard 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 11:59 p.m., January 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the conditions under which standardbred racing shall be conducted in Kentucky. Specifically, KRS 230.230.770(6) authorizes the commission to promulgate regulations establishing eligibility requirements for horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund ("KSDF/KSBIF"). This regulation establishes the eligibility requirements to receive funds from the KSDF/KSBIF.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the eligibility requirements for those breeders and owners desiring to receive distributions from the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund ("KSDF/KSBIF").

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is necessary to exercise the statutory authority of the KHRC set forth in KRS 230.215(2) to "promulgate administrative regulations prescribing conditions under which all legitimate standardbred horse racing and wagering thereon is conducted in the Commonwealth of Kentucky."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by outlining the requirements a horse owner and breeder need to follow to be eligible to receive KSDF/KSBIF moneys.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to update the text of the administrative regulation to reflect the current realities of standardbred horse racing and the corresponding eligibility requirements to receive KSDF/KSBIF funds. Specifically, this amendment:

- * Add section titles to make the regulations more accessible and easier to read;

- * Eliminates duplicative language;

- * Replace the "stallion owner" member of the Kentucky Sire Stakes "KYSS" advisory panel with a member nominated by each of the other four members of the advisory panel and appointed by the chairman of the commission;

- * Establish a timeline of service after appointed to the KYSS advisory panel that is consistent with the appointment schedule of other agency committees;

- * Reduces the yearling nominating fee from \$140 to \$80; and

- * Clarify mare residence requirements.

(b) The necessity of the amendment to this regulation: This amendment is necessary to clarify mare residency requirements, reduce yearling nomination fees, and establish the advisory panel in a manner consistent with other agency committees.

(c) How the amendment conforms to the content of the authorizing statute: KRS 230.770 (2) requires the commission "to use the development fund to promote races, and to provide purses for races, for Kentucky-bred Standardbred horses." KRS 230.802 (2)(a) requires the commission to "use moneys deposited in the Kentucky Standardbred breeders incentive fund to administer the fund and provide rewards for breeders or owners of Kentucky-bred standardbred horses." This amendment fulfills that statutory mandate by implementing the changes outlined in (2)(a) above to enhance the efficient functioning of the fund.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.770 and KRS 230.802 require the Kentucky Horse Racing Commission to use the moneys deposited in the KSDF and KSBIF fund to administer the fund and provide purses, promote races, and provide rewards for breeders or owners of Kentucky-bred Standardbred horses. The amendments set forth the rules regarding eligibility to receive funds from the KSDF/KSBIF, reduces the fee to nominate as a yearling, and clarifies and alters the advisory panel membership.

(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

standardbred breeders; owners; boarding farm owners and employees; Kentucky veterinarians and equine healthcare facilities; horse transportation companies; farriers; farmers and suppliers of hay, feed and grain; equine supply companies; daily maintenance care and tack; Kentucky Standardbred sale companies; equine tourism generating state/local room taxes for lodging, gasoline tax on travel and transportation of horses; farm equipment, retail stores and maintenance services; and state and local payroll tax.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Breeders will have an additional option to acquire eligibility for mares to participate in the program, and owners will benefit from a reduced fee to nominate a Kentucky-bred yearling to the fund. The remainder of the entities identified in question (3) will not acquire any responsibilities, but will reap the benefits of a bigger and stronger breeding industry in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in question (3) will incur any costs in complying with the amendment. Instead, this amendment reduces the yearling nomination fee to participate in the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund. There is no fee to nominate a mare or stallion. Fees for two-and-three-year-old fees will not change.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will provide breeders the ability to nominate mares that have resided in Kentucky for 180 days, and will reduce the fee paid by owners to participate in the Kentucky Standardbred Development Fund and the Kentucky Standardbred Breeders' Incentive Fund. Additional mares in the state will result in additional foals eligible to participate in the fund.

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

(a) Initially: No cost is anticipated as the administration of this program is currently established.

(b) On a continuing basis: No cost is anticipated as the administration of this program is currently established.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The nomination fees are used for the implementation and enforcement of this regulation. No additional funding is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment reduces the yearling nomination fee to participate in the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund. The amendment does not establish any new fees.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation

is found in KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b).

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

(a) How much 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 specific dollar estimates cannot be determined, the greatest impact of this regulation to the state and local government will be the increase in payroll taxes by all participants noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Continued growth and participation in the program will increase payroll taxes by all participants noted in the Regulatory Impact Analysis & Tiering Statement, Section (3).

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net 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. The KSDF/KSBIF requires mares and stallions to reside in the Commonwealth of Kentucky for 180 days during the year of conception in order for the resulting foal to be eligible to compete in the Kentucky Sire Stakes. This requirement provides economic support to all businesses and individuals who provide services necessary for the breeding and racing of Standardbred horses. See Regulatory Impact Analysis and Tiering Statement, Section (3).

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

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

811 KAR 1:220. Harness racing at county fairs.

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.310, 230.398

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.398

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.398 authorizes the commission to promulgate administrative regulations governing~~as may be necessary for~~ the conduct of county fair races. This administrative regulation establishes conditions, races, purses, and payments in races conducted at county fairs in which funds for purses are provided by the commission, and regulates eligibility for participation in harness racing at county fairs.

Section 1. Definitions. (1) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(2) "Individual or Person domiciled in Kentucky" means:

(a) An individual who has his permanent residence in Kentucky; ~~or~~and

(b) A person organized under the laws of Kentucky or registered to do business in Kentucky with the Kentucky Secretary

of State.

(3) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

Section 2. Domicile. (1) The commission shall determine all questions of domicile.

(2) In determining questions of domicile, the commission shall weigh:

(a) The eligibility factors set forth in Section 3 of this administrative regulation; and

(b) Factors which indicate domicile and intent, including:

1. The amount of time the individual spends in Kentucky each year as compared to the amount of time spent elsewhere;

2. Whether the individual or person owns real estate in Kentucky;

3. Whether the individual is registered to vote in Kentucky;

4. Whether the person is organized under Kentucky law;

5. The permanent residence of the individual or principal place of business of the person, as indicated by the records of the commission and the United States Trotting Association; and

6. Whether the individual has a Kentucky automobile driver's license.

Section 3. Eligibility. A horse is eligible to participate in a two (2) or three (3) year old stakes~~[stake]~~ race at a county fair if:

(1)~~(a)~~ Beginning January 1, 2017, the horse is ~~[-(a)] a~~[two (2) or] three (3) year old~~[that is]~~ sired by a stallion that was registered with the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund as defined~~[provided]~~ in 811 KAR 1:215 at the time of conception;

~~(b)~~ Beginning January 1, 2017, the horse is a ~~two (2) or] three (3) year old~~ whose dam was partially or wholly owned by an individual or person domiciled in Kentucky at the time of conception;~~[or]~~

~~(c)~~ Beginning January 1, 2017, the horse is a ~~two (2) or] three (3) year old~~ that is owned by an individual or person domiciled in Kentucky;

~~(d)~~ Beginning January 1, 2017, the horse is a two (2) year old that is "Kentucky-bred" as defined in 811 KAR 1:215; or

~~(e)~~ Beginning January 1, 2018 and thereafter, the horse is a two (2) year old or a three (3) year old that is "Kentucky-bred" as defined in 811 KAR 1:215;

(2) All owners~~[An owner]~~ of the participating horse are~~[is a]~~ current members~~[member]~~ of the Kentucky Colt Racing Association, Inc.;

(3) All owners~~[An owner]~~ of the participating horse hold~~[holds]~~ a current license with the commission; and

(4) The trainer and driver of the participating horse hold~~[a]~~ current licenses~~[license]~~ with the commission.

Section 4. Track Requirements. (1) A fair shall have a safe and adequate track, and the entire track, including start and finish lines, shall be visible to judges and spectators.

(2) The track shall be inspected and approved by a representative of the commission.

~~(3)~~[Section 5.] A track shall have a hub rail or pylons approved by the commission.

~~(4)~~(a)~~[Section 6.(4)]~~ A fair shall have safe and adequate stalls for participating horses.

~~(b)~~(2) If permanent stalls are not available, ~~either on or off the fairgrounds,~~ tents or other tie-in type stalls may be used.

~~(c)~~(3)(a) Except as provided by paragraph ~~(d)~~(b) of this subsection, a county fair shall not charge stall rent for horses racing at the fair.

~~(d)~~(b) A county fair may charge stall rent if the fair is held on state-owned property.

Section ~~5~~7. Fair Fees. (1) The Kentucky Colt Racing Association ~~fees~~[county fair fee] shall be as follows:

(a) A nomination fee of fifty (50) dollars per horse due on or before February 15 of each racing year~~the year in which the fair is~~

being conducted];

(b) A sustaining fee of \$200 per horse due on or before April 15 of each racing year;

(c) A starting fee of fifty (50) dollars per horse, per fair, due at the time of entry for the fair; and

(d) A twenty-five (25) dollar fee per horse for starting in an overnight race, due at the time of entry for the fair.

(2) A \$200 payment shall be due at the time of entry for a horse eligible for the fair finals.

Section 6[8]. Officials[at County Fairs]. (1) The Kentucky Colt Racing Association shall submit to the commission, at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.

(2) At a county fair, there shall be at least one (1) presiding judge approved by the commission in the judges' stand. In addition, at a meeting in which races are charted, the association member shall provide both a licensed charter and licensed clerk of the course.

(3) A fair shall use licensed United States Trotting Association judges to preside over the racing.

(4) The judges shall review the ownership of any horse that is entered in order to ensure the horse's eligibility to race.

(5) The judges may determine the validity for racing purposes of any lease, transfer, or agreement pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.

(6) The judges may declare a horse ineligible to race if the ownership or control of the horse is in question.

(7) Officials shall be paid by the Kentucky Colt Racing Association.

Section 7[9]. Starter. A fair shall use a licensed starter with adequate equipment.

Section 8[40]. Use of Entry Fees. (1) The entry fees established in Section 5(1)(c) and (d)[7] of this administrative regulation shall be retained by each fair as compensation for conducting its harness racing program and in reimbursement of the expenses incurred[collected by a fair and used:

(a) To pay racing officials;

(b) To provide purses for overnight racing events; and

(c) To promote fair racing as otherwise needed].

(2) A fair shall, upon request, make a full accounting of the entry fees to the commission.

Section 9[44]. Application for a License. A fair shall apply to the commission for a license to conduct a harness racing event and for approval of funds by December 15 of the year prior to the year of the event. At the time of application, the request for pari-mutuel wagering shall be included.

Section 10[42]. Changes in Racing Program. A fair shall have the right to change the order of its program and to postpone or cancel an event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, entry fees shall be refunded.

Section 11[43]. Early Closers. (1) An early closing event, and all divisions of that event, shall race a single heat at a distance of one (1) mile and shall be contested for a purse approved by the commission on an annual basis[annually].

(2) An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries.

Section 12[44]. Division of Races. There shall be no more than two (2) trailers in any race at a county fair.

(1) Beginning January 1, 2017, if a two (2) year old race is divided into divisions, each division shall race for the entire amount of the advertised purse for the race.

(2) Beginning January 1, 2017, if a three (3) year old race is divided into divisions, each division shall race for a purse of

\$2,500.

(3) Beginning January 1, 2018 and thereafter, if a race is divided into divisions, each division shall race for the entire amount of the advertised purse for the race[There shall not be more than nine (9) starters in any race. If a race is divided into divisions, the purse shall be divided so that each division races for an equal portion of the purse].

(4) The purse for each race[The purses] shall be divided as follows:

(a)[(4)] Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b)[(2)] Four (4) starters - fifty (50) percent, twenty-five (25) percent, fifteen (15) percent, and ten (10) percent;

(c)[(3)] Three (3) starters - fifty-five (55) percent, thirty (30) percent, and fifteen (15) percent;

(d)[(4)] Two (2) starters - sixty-five (65) percent and thirty-five (35) percent; and

(e)[(5)] One (1) starter - 100 percent.

Section 13[45]. Points Distribution. (1) Points shall be awarded in an early closing race, and any division of an early closing race, as follows:

(a) First place finisher - fifty (50) points;

(b) Second place finisher - twenty-five (25) points;

(c) Third place finisher - twelve (12) points;

(d) Fourth place finisher - eight (8) points;

(e) Fifth place finisher - five (5) points; and

(f) Each starter that finishes out of the money - one (1) point.

(2) If two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for that position and one-half (1/2) of the points awarded for the next lower position. The same procedure shall be used for the allocation of points if there is a dead-heat of three (3) or more horses.

(3) A horse that is declared in and then is the subject of a judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision shall be final.

(4) A horse that starts in a Kentucky Sires Stake race within three (3) days of a scheduled county fair race of the same class shall be awarded a county fair start and one (1) point.

(5) If there is a tie among two (2) or more horses with the same number of points, the tie shall be resolved in favor of the horse with the higher earnings in the early closing fair events in which the horses have competed.

(6) If any division of a race is rained out before the completion of all other divisions of that race, the points for distribution set forth in 811 KAR 1:220, Section 13, shall not apply and instead, one (1) point shall be awarded to each horse entered in each division of that race that was rained out.

Section 14[46]. Entry Limitation. A horse shall not be allowed to compete in more than one (1) race at any fair.

Section 15[47]. Change in Ownership. In order for a three (3) year old horse, for whom the nomination fee has been paid, to remain eligible to race at a county fair during the calendar year of 2017 after there has been a transfer of ownership, the following payments shall be required:

(1) \$300 the first time ownership is transferred from the owner at the time of nomination; and

(2) An additional \$600 thereafter if the same horse is again transferred.

Section 16[48]. Drug Testing. (1) The winning horse at a fair race and any other horse or horses as selected by the judges may be subjected to a drug test as set forth in 811 KAR 1:090 and 811 KAR 1:260.

(2) A fair shall provide two (2) enclosed stalls and bedding to be used by the commission veterinarian for drug testing.

(3) The stalls required by subsection (2) of this section shall be located as close to the race track as possible.

(4) The stalls shall be positioned[so as] to allow the track announcer to be heard.

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

Section ~~17~~[49]. Coggins Test. A current negative Coggins test shall be required for each horse racing at a fair.

Section ~~18~~[20]. Drivers. A driver shall wear full colors, white pants, a safety vest that meets the standards set forth in 811 KAR 1:075, Section 21, and a safety helmet that meets the standards set forth in 811 KAR 1:075, Section 20, if on the track less than one (1) hour before the start of a fair racing program.

Section ~~19~~[24]. Trophies. A fair shall provide a trophy or blanket to the winner of a race. If a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.

~~[Section 22. An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries.]~~

Section ~~20~~[23]. Early Deadlines. The deadline for entries at a fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.

Section ~~21~~[24]. Programs. A county fair track holding races for purses shall provide a printed program available to the public containing the following information for:

- (1) Non pari-mutuel tracks:
 - (a) Horse's name and sex;
 - (b) Color and age of horse;
 - (c) Sire and dam of horse;
 - (d) Owner's name ~~and colors~~;
 - (e) Driver's name ~~and colors~~;
 - (f) Trainer's name; and
 - (g) Summary of starts in purse races, earnings, and the best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race; and
- (2) Pari-mutuel tracks:
 - (a) All of the program information required by subsection (1) of this section:
 - ~~(b) Horse's name and sex;~~
 - ~~(b) Color and age of horse;~~
 - ~~(c) Sire and dam of horse;~~
 - ~~(d) Owner's name;~~
 - ~~(e) Driver's name and colors;~~
 - ~~(f) Trainer's name;~~
 - ~~(g) Summary of starts in purse races, earnings, and best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race;~~
 - (h) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:
 1. Date of race;
 2. Location of race;
 3. Size of track if other than a one-half (1/2) mile track;
 4. Symbol for free-legged pacers;
 5. Track condition;
 6. Type of race;
 7. Distance;
 8. The fractional times of the leading horse including race times;
 9. Post position;
 10. Position of the one-quarter (1/4) marker, the one-half (1/2) marker, and the three-quarters (3/4) marker;
 11. Stretch with lengths behind leader;
 12. Finish with lengths behind leader;
 13. Individual time of the horse;
 14. Closing dollar odds;
 15. Name of the driver;
 16. Names of the horses that placed first, second, and third by the judges; and
 17. Standard symbols for breaks and park-outs, if applicable;
 - (c) ~~(i)~~ Indicate drivers racing with a provisional license; and
 - (d) ~~(j)~~ Indicate pacers that are racing without hobbles.

Section ~~22~~[25]. Payments. Nomination and sustaining

payments shall be made to the Kentucky Colt Racing Association. Entry fees shall be paid to the fair for which the entry is taken.

Section ~~23~~[26]. Violations. A person or association that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095.

FRANKLIN S. KLING, JR., Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 13, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2017 at 10:00 a.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 405011. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by January 17, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard 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 11:59 p.m., January 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation prescribes the conditions under which harness racing is conducted at county fairs. The regulation establishes eligibility for horses, conditions for races, purses, and payment in races held at the fairs.

(b) The necessity of this administrative regulation: This regulation is necessary to change the race eligibility requirements of horses now eligible to race in the county fairs as a two (2) or three (3) year old. These amendments are necessary to reflect 2014 amendments to regulations that allowed foals born out-of-residency mares the ability to race in the Kentucky Sire Stakes. The increase in horse population resulted in more horses entering in the county fairs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the statutory authority of the KHRC set forth in KRS 230.215(2) to "promulgate administrative regulations prescribing conditions under which all legitimate Standardbred horse racing and wagering thereon is conducted in the Commonwealth of Kentucky" and the statutory authority set forth in KRS 230.240(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will eliminate duplicative language, add section headings to make the regulation easier to read, and clarify eligibility requirements for Standardbred horses racing at county fairs in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment is necessary to update the text of the administrative regulation to reflect the current realities of Standardbred horse racing at county fairs. Specifically, this amendment:

* Adds section titles to make the regulations easier to read and understand;

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

* Eliminates duplicative language;

* Changes the race eligibility requirements for horses now eligible to race in the two (2) and three (3) year old categories to reflect 2014 amendments to the regulations that allowed foals out-of-residency mares the ability to race in the Kentucky Sire Stakes; and

* Shifts the burden of paying race officials from the county fair to the Kentucky Colt Racing Association.

(b) The necessity of the amendment to this regulation: This amendment is necessary to provide eligibility requirements for horses now eligible to race in the two (2) and three (3) year old categories at county fairs. This reflects 2014 amendments to the regulations that allowed foals out-of-residency mares the ability to race in the Kentucky Sire Stakes.

(c) How the amendment conforms to the content of the authorizing statute: The amendment will assist in the effective administration of the statutes by ensuring that the regulation reflects current realities and methods of operation at Kentucky's Standardbred racetracks and harness racing occurring at county fairs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment creates eligibility requirements for Standardbred horses racing at county fairs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will effect owners and trainers participating in the county fairs as well as the Kentucky Colt Association which administers the program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment expands the opportunities for owners and trainers racing in the county fairs as well as shifts the burden of paying race officials from the county fairs to the Kentucky Colt Association.

(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 changes in fees to participate in the county fairs and the Kentucky Colt Association will shift the use of nomination fees collected to pay the race officials.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will provide more racing opportunities at the county fairs and allow Kentucky Colt Association to provide the county fairs with incentive to host the race since burden of race official payment has shifted to the Kentucky Colt Association.

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

(a) Initially: No cost anticipated.

(b) On a continuing basis: No cost anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional source of funding will be required.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Racing Commission and the counties that conduct harness racing as part of their annual county fairs will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 230.215, 230.260, 230.398.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Although there are no fees that would generate revenue, the regulation shifts the burden of paying race officials at the county fair to the Kentucky Colt Racing Association. This, in turn, has the potential to generate more revenue for local counties.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Please refer to the above answer.

(c) How much will it cost to administer this program for the first year? There will be no cost to the agency administer this program because the program is administered by the Kentucky Colt Association. The Kentucky Colt Association is not a state agency.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to the agency to administer this program in subsequent years because the program is administered by the Kentucky Colt Association. The Kentucky Colt Association is not a state agency.

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 anticipated.

Other Explanation: None.

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

900 KAR 6:055. Certificate of need forms.

RELATES TO: KRS 216B.015

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the forms necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized ~~for a~~ on a previously issued certificate of need project.

(2) "Cabinet" is defined by KRS 216B.015(6).

Section 2. Forms. (1) ~~[OHP - Form 1, Letter of Intent, shall be filed by an applicant for a certificate of need pursuant to the requirements established in 900 KAR 6:065.~~

~~(2) OHP - Form 2A, Certificate of Need Application, shall be filed by an applicant for a certificate of need unless the application is for ground ambulance services, change of location, replacement, cost escalation, or acquisition.~~

~~(3) OHP - Form 2B, Certificate of Need Application For Ground Ambulance Service, shall be filed by an applicant for a certificate of need for a ground ambulance service.~~

~~(4) OHP - Form 2C, Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition,~~

shall be filed by an applicant for a certificate of need for change of location, replacement, cost escalation, or acquisition.

(4) [(5)] OHP - Form 3, Notice of Appearance, shall be filed by a person who wishes to appear at a hearing.

(5) [(6)] OHP - Form 4, Witness List, shall be filed by a person who elects to call a witness at a hearing.

(6) [(7)] OHP - Form 5, Exhibit List, shall be filed by a person who elects to introduce evidence at a hearing.

(7) [(8)] OHP - Form 6, Cost Escalation Form, shall be filed by a facility that elects to request an administrative escalation.

(8) [(9)] OHP - Form 7, Request for Advisory Opinion, shall be filed by anyone electing to request an advisory opinion.

(9) [(10)] OHP - Form 8, Certificate of Need Six Month Progress Report, shall be filed by a holder of a certificate of need whose project is not fully implemented.

(10) [(11)] OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, shall be submitted by a person proposing to acquire an existing licensed health facility or service.

(11) [(12)] OHP - Form 10A, Notice of Addition or Establishment of a Health Service or Equipment, shall be filed by any health facility that adds equipment or makes an addition to a health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required.

(12) [(13)] OHP - Form 10B, Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity, shall be filed by a health facility that reduces or terminates a health service or reduces bed capacity.

(13) [(14)] OHP - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC), shall be filed by a facility to obtain a certificate of compliance as a continuing care retirement community.

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

- (a) [(a)] "OHP - Form 1, Letter of Intent", 05/2009;
- (b) [(b)] "OHP - Form 2A, Certificate of Need Application", 07/2015;
- (c) [(c)] "OHP - Form 2B, Certificate of Need Application For Ground Ambulance Service", 05/2009;
- (d) [(d)] "OHP - Form 2C, Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition", 05/2009;
- (e) [(e)] "OHP - Form 3, Notice of Appearance", 10/2015;
- (f) [(f)] "OHP - Form 4, Witness List", 10/2015;
- (g) [(g)] "OHP - Form 5, Exhibit List", 10/2015;
- (h) [(h)] "OHP - Form 6, Cost Escalation Form", 12/2016 [05/2009];
- (i) [(i)] "OHP - Form 7, Request for Advisory Opinion", 05/2009;
- (j) [(j)] "OHP - Form 8, Certificate of Need Six Month Progress Report", 07/2015;
- (k) [(k)] "OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service", 07/2015;
- (l) [(l)] "OHP - Form 10A, Notice of Addition or Establishment of a Health Service or Equipment", 05/2009;
- (m) [(m)] "OHP - Form 10B, Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity", 07/2015; and
- (n) [(n)] "OHP - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC)", 05/2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL A. COOMES, Ph.D., Executive Director

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 7, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017 at 9:00 a.m. in Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort,

Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 2017, 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 January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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, Office of Health Policy, phone (502) 564-9592, email Diona.mullins@ky.gov; Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference certificate of need forms necessary for the orderly administration of the certificate of need program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute KRS 216B.040(2)(a)1. "OHP-Form 1, Letter of Intent" is deleted to conform with a proposed change to 902 KAR 6:065, which eliminates the requirement for a letter of intent for formal review applications. "OHP-Form 6, Cost Escalation Form" is revised to simplify the required information to request a cost escalation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates by reference certificate of need forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference certificate of need forms.

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

(a) How the amendment will change this existing administrative regulation: "OHP-Form 1, Letter of Intent" is deleted to conform with a proposed change to 902 KAR 6:065, which eliminates the requirement for a letter of intent for formal review applications. "OHP-Form 6, Cost Escalation Form" is revised to simplify the required information to request a cost escalation.

(b) The necessity of the amendment to this administrative regulation: "OHP-Form 1, Letter of Intent" is deleted to conform with a proposed change to 902 KAR 6:065, which eliminates the requirement for a letter of intent for formal review applications. "OHP-Form 6, Cost Escalation Form" is revised to simplify the required information to request a cost escalation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation incorporates by reference certificate of need forms necessary for the orderly administration of the certificate of need program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation incorporates by reference certificate of need forms necessary for the orderly administration of the certificate of need program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually approximately 150 certificate of need applications are submitted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: CON holders requesting an administrative cost escalation will be required to complete the revised "OHP-Form 6, Cost Escalation Form".

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): "OHP-Form 1, Letter of Intent" will no longer be required and "OHP-Form 6, Cost Escalation Form" has been simplified.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county or city are required to complete certificate of need forms as appropriate.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statute is KRS 216B.040(2)(a)1.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

900 KAR 6:060. Timetable for submission of certificate of need applications.

RELATES TO: KRS 216B.015, 216B.040, 216B.095(3)(a)-(f)
STATUTORY AUTHORITY: KRS 216B.040(2)(a)1, 216B.062(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.062(1) and (2) require the cabinet to promulgate administrative regulations to establish timetables and batching groups for applications for certificates of need. This administrative regulation establishes the timetable for submission of application requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(3) "Formal review" means the review of an application for certificate of need which is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(4) "Long-term care beds" means nursing home beds, intermediate care beds, [skilled nursing beds,] nursing facility beds, and Alzheimer nursing home beds.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18).

Section 2. Timetable for Submission of an Application for Formal Review. (1) Prior to July 1, 2017, the cabinet's timetable for giving public notice for an application deemed complete for formal review shall be as established in this subsection.

(a) Public notice for an application for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, a Level I psychiatric residential treatment facility (Level I PRTF), a Level II psychiatric residential treatment facility (Level II PRTF), and a new technological development shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. January; and

2. July.

(b) Public notice for an application for a residential hospice facility, a hospice service, and a home health agency shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. February; and

2. August.

(c) Public notice for an application for a Class I, II, III and VI ground ambulance service and a private duty nursing service shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. March; and

2. September.

(d) Public notice for an application for a day health care program shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. April; and

2. October.

(e) Public notice for an application for long-term care beds, an acute care hospital including all other State Health Plan covered services to be provided within the proposed acute care hospital, acute care hospital beds, psychiatric hospital beds, special care

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

neonatal beds, comprehensive physical rehabilitation beds, chemical dependency treatment beds, and an ambulatory surgical center[, and an outpatient health care center] shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. May; and
2. November.

(f) Public notice for an application for an intermediate care facility for individuals with an intellectual disability shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. June; and
2. December.

(g) A proposal not included in paragraphs (a) through (f) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.

(2) After July 1, 2017, the cabinet's timetable for giving public notice for an application deemed complete for formal review shall be as established in this subsection.

(a) Public notice for an application for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, a Level I psychiatric residential treatment facility (Level I PRTF), a Level II psychiatric residential treatment facility (Level II PRTF), and a new technological development shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. January;
2. April;
3. July; and
4. October.

(b) Public notice for an application for long-term care beds, intermediate care beds for individuals with an intellectual disability, a residential hospice facility, a hospice service, a private duty nursing service, and a home health agency shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. February;
2. May;
3. August; and
4. November.

(c) Public notice for an application for an acute care hospital including all other State Health Plan covered services to be provided within the proposed acute care hospital, acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency treatment beds, an ambulatory surgical center, and a Class I, II, III and VI ground ambulance service shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. March;
2. June;
3. September; and
4. December.

(d) A proposal not included in paragraphs (a) through (c) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.

(3) An application for formal review shall be filed with the cabinet at least fifty (50) calendar days, but not more than eighty (80) calendar days, prior to the date of the desired public notice. An initial application filed more than eighty (80) days prior to the desired public notice shall be returned to the applicant along with the fee submitted pursuant to 900 KAR 6:020.

Section 3. Timetable for Submission of an Application for Nonsubstantive Review. (1) The cabinet shall give public notice for an application deemed complete and granted nonsubstantive review status pursuant to KRS 216B.095(3)(a) through (f) in the Certificate of Need Newsletter published on the third Thursday of each month.

(2) An application for nonsubstantive review shall be filed with

the cabinet at least fifty (50) calendar days prior to the date of the desired public notice.

PAUL A. COOMES, Ph.D., Executive Director
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 7, 2016

FILED WITH LRC: December 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017 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 January 13, 2017, 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 January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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, Office of Health Policy, phone (502)564-9592, email Diona.mullins@ky.gov; Tricia Orme.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary for the orderly submission of certificate of need applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes KRS 216B.040(2)(a)1 and 216B.062(1), (2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the timetable for submissions of certificate of need applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the timetable for submission of certificate of need applications. The proposed revision will allow public notice for formal review applications to be given quarterly instead of semi-annually.

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

(a) How the amendment will change this existing administrative regulation: After July 1, 2017, public notice for formal review certificate of need applications shall be given quarterly in the published Certificate of Need Newsletter. These applications will no longer be required to be batched semi-annually for review purposes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to simplify the certificate of need process and reduce the time between formal review batching cycles. Formal review applications will now be batched quarterly instead of semi-annually.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for the orderly submission of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need process, including the

timetable for submission of certificate of need applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually approximately 150 certificate of need applications are submitted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: After July 1, 2017, public notice for formal review certificate of need applications shall be given quarterly in the published Certificate of Need Newsletter instead of semi-annually. These applications will continue to be batched with the same or similar types of services for review purposes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public notice for formal review certificate of need applications shall be given quarterly in the published Certificate of Need Newsletter instead of semi-annually. These applications will continue to be batched with the same or similar types of services for review purposes in accordance with KRS 216B.062.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county or city shall be permitted to file formal review applications quarterly instead of semi-annually.

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 216B.040(2)(a)1 and 216B.062(1), (2).

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

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

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

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

year? No additional costs are necessary to administer this program during the first year

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

900 KAR 6:065. Certificate of need application process.

RELATES TO: KRS 216B.015, 216B.040, 216B.062(1), 216B.085, 216B.095

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, and reconsideration process.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>.

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of an application for certificate of need which is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18).

(6) "Owner" means a person as defined in KRS 216B.015(22) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(7) "Proposed service area" means the geographic area the applicant proposes to serve.

(8) "Secretary" is defined by KRS 216B.015(26).

(9) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

~~Section 2.[Letter of Intent. (1) Except for an applicant requesting nonsubstantive review under the provisions of KRS 216B.095(3)(a) through (f), OHP Form 1, Letter of Intent, incorporated by reference in 900 KAR 6:055, shall be filed with the cabinet by an applicant for a certificate of need.~~

~~(2) Upon receipt of a letter of intent, the cabinet shall within three (3) days provide the sender with written acknowledgment of receipt of the letter and shall publish notice of the receipt in the next published Certificate of Need Newsletter.~~

~~(3) An application for a certificate of need shall not be processed until the letter of intent has been on file with the cabinet for thirty (30) days.~~

~~Section 3.] Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate certificate of need application form: OHP - Form 2A, OHP - Form 2B, or OHP - Form 2C, incorporated by reference in 900 KAR 6:055.~~

~~(2) To file an application for certificate of need, the applicant~~

shall file an original and one (1) copy of the appropriate certificate of need application form together with the prescribed fee set forth in 900 KAR 6:020 on or before the deadlines established by 900 KAR 6:060.

(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall deem an application complete if the applicant has:

(a) Provided the cabinet with all of the information necessary to complete the application; or

(b) Declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been deemed complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been deemed complete, it shall not be amended to:

- (a) Increase the scope of the project;
- (b) Increase the amount of the capital expenditure;
- (c) Expand the size of the proposed service area;
- (d) Change the location of the health facility or health service;

or

(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been deemed complete may be amended at a public hearing to:

- (a) Decrease the scope of the project;
- (b) Decrease the amount of the capital expenditure; or
- (c) Decrease the proposed service area.

(8) An applicant which has had a certificate of need approved under the nonsubstantive review provisions of KRS 216B.095(3)(a) through (f) may request that the cabinet change the specific location to be designated on the certificate of need if:

(a) The facility has not yet been licensed;

(b) The location is within the county listed on the certificate of need application; and

(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.

~~(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.~~

~~(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.~~

~~(11) An application that is not deemed complete within one (1) year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.~~

Section 3[4]. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, an application for certificate of need shall be reviewed for completeness pursuant to Section 5 of this administrative regulation.

(2) Unless granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial according to the formal review criteria set forth in 900 KAR 6:070.

(3) If granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth in 900 KAR 6:075.

Section 4[5]. Completeness Review. (1) Fifteen (15) days after the deadline for filing an application in the next appropriate batching cycle, the cabinet shall conduct an initial review to determine if the application is complete for formal review or nonsubstantive review requested pursuant to KRS 216B.095(3)(a) through (f).

(2) If the cabinet finds that the application for formal review is

complete, the cabinet shall:

(a) Notify the applicant in writing within one (1) day that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing within ten (10) days that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that status has been granted and that review of the application for approval or denial of a certificate of need has begun.

(6) If the cabinet finds that the application is incomplete, the cabinet shall:

(a) Provide the applicant with written notice of the information necessary to complete the application; and

(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet's request for additional information:

1. The applicant submits the information necessary to complete the application by the date specified in the request; or

2. The applicant requests in writing that the cabinet review its application as submitted.

(7) If, upon the receipt of the additional information requested, the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that review of the application for approval or denial of a certificate of need has begun.

(8) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application has been deemed complete;

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

3. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, for applications granted nonsubstantive review status under the provisions of KRS 216B.095 (3)(a) through (f) that status has been granted and that review of the application for approval or denial of a certificate of need has begun.

(9) If the information submitted in response to the cabinet's request for additional information is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(10) Once an application has been deemed complete, an applicant shall not submit

additional information to be made part of the public record unless:

(a) The information is introduced at a public hearing;

(b) For a deferred application for formal review, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice; or

(c) For a deferred application for nonsubstantive review, the additional information is submitted at least ten (10) days prior to the date that the deferred application is placed on public notice.

(11) A determination that an application is complete shall:

(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval.

Section 5[6]. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application within three (3) days.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, if applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An identical application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a change in circumstances.

Section 6[7]. Deferral of an Application. (1)(a) Except as described in paragraphs (b) and (c) of this subsection, an applicant may defer review of an application a maximum of two (2) times by notifying the cabinet in writing of its intent to defer review.

(b) An applicant shall not defer review of an application filed pursuant to 900 KAR 6:080 to alleviate an emergency circumstance.

(c) If an application has been deferred prior to the effective date of this administrative regulation, an applicant may defer review of the application a maximum of one (1) additional time.

(d)1. If the application has been granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f), the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than six (6) days prior to the date of the hearing.

(e)1. If the application is being reviewed under formal review, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090, no later than eight (8) days prior to the date of the hearing.

(f) If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If a notice to defer an application for formal review is filed, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set

forth in 900 KAR 6:060.

(3) If an application for formal review is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) If a notice to defer an application which has been granted nonsubstantive review is filed, the application shall be deferred and shall be placed on public notice in the Certificate of Need Newsletter published the following month.

(5) If an application for nonsubstantive review is deferred, an applicant may update its application by providing additional information to the cabinet at least ten (10) days prior to the date that the deferred application is placed on public notice.

(6) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 7[8]. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need by notifying the cabinet in writing of the decision to withdraw the application prior to the entry of a decision to deny or approve the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

(3) If an applicant withdraws a deferred application between the effective date of this administrative regulation and June 30, 2015 and submits a new application for the same proposed health facility or service within five (5) years from the date of withdrawal, the cabinet shall apply the application fee which was submitted for the withdrawn application toward the fee assessed pursuant to 900 KAR 6:020 for the new application.

Section 8[9]. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 9[10]. Requests for Reconsideration. (1) Requests for reconsideration shall be filed, pursuant to 900 KAR 6:090, within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing;

(c) Revocation of a certificate of need; or

(d) A show cause hearing conducted in accordance with 900 KAR 6:090.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) If a hearing was held pursuant to subsection (1)(a), (b), or (c) of this section, the hearing officer that presided over the hearing shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If a hearing was held pursuant to subsection (1)(d) of this section, the secretary shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(6) If reconsideration is granted, the hearing shall be held by the cabinet in accordance with the applicable provisions of 900 KAR 6:090, Section 3 or 4, within thirty (30) days of the date of the decision to grant reconsideration, and a final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(7) If reconsideration is granted on the grounds that a public

hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation.

PAUL A. COOMES, Ph.D., Executive Director

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 7, 2016

FILED WITH LRC: December 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017 at 9:00 a.m. in Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 2017, 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 January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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, Office of Health Policy, phone (502)564-9592, email Diona.mullins@ky.gov; Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, and reconsideration process.

(b) The necessity of this administrative regulation: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, and reconsideration process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, and reconsideration process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, and reconsideration process.

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

(a) How the amendment will change this existing administrative regulation: The amendment deletes the requirement for submission of a letter of intent.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to simplify the certificate of need formal review process.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, and reconsideration process.

(d) How the amendment will assist in the effective

administration of the statutes: Deletion of the requirement for a letter of intent improves the efficiency of the certificate of need process. Applicants will no longer be required to submit a letter of intent prior to the submission of the certificate of need application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually approximately 150 certificate of need applications are submitted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required. Letters of intent would no longer be required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities would no longer be required to submit letters of intent.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county or city shall be permitted to file formal review applications without filing letters of intent.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statute is KRS 216B.040(2)(a)1.

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

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

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

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

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

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

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

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

900 KAR 6:095. Certificate of need administrative escalations.

RELATES TO: KRS 216B.015(6), (31), 216B.061(1)(e), 216B.990(2)[216B.040, 216B.061, 216B.990]

STATUTORY AUTHORITY: KRS[194A.030, —194A.050,] 216B.040(2)(a)1, 216B.061(4)[216B.06(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.061(4) requires the cabinet to establish the requirements for administrative escalations. This administrative regulation establishes the requirements for an administrative escalation[necessary for the orderly administration of the Certificate of Need Program].

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized for a[on a previously issued] certificate of need project.

(2) "Cabinet" is defined by KRS 216B.015(6)(5).

(3) "Substantial change in a project" is defined by KRS 216B.015(31).

Section 2. Administrative Escalations. (1) A person shall not obligate a capital expenditure in excess of the amount authorized by an existing certificate of need or a previously approved administrative escalation unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) A request[Requests] for an administrative escalation[escalations] shall be submitted to the cabinet on the OHP - Form 6, Cost Escalation Form, incorporated by reference in 900 KAR 6:055.

(3) The cabinet shall authorize an administrative escalation[escalations] for funds that have not been obligated and that[which] do not exceed the following limits if there is not a substantial change in the project:

(a) \$100,000, if the capital expenditure authorized by[on] the certificate of need or a previously approved cost escalation is less than \$500,000; and

(b) Twenty-five (25)[Twenty (20)] percent of the capital expenditure if the capital expenditure authorized by[on] the certificate of need or a previously approved cost escalation is \$500,000 or more [to \$4,999,999;

(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for projects if the capital expenditure authorized on the certificate of need is \$5,000,000 to \$24,999,999;

(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, if the capital expenditure authorized on the certificate of need is \$25,000,000 to \$49,999,999; and

(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, if the capital expenditure authorized on the certificate of need is \$50,000,000 or more].

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure pursuant to 900 KAR 6:020.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section shall:

(a) Constitute a substantial change in a project; and

(b) Require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized for a certificate of need project[on a certificate of need] shall be:

(a) Presumed to be a willful violation of KRS Chapter 216B; and

(b) Subject to the penalties set forth at KRS 216B.990(2).

PAUL A. COOMES, Ph.D., Executive Director

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 7, 2016

FILED WITH LRC: December 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017 at 9:00 a.m. in Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 2017, 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 January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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, Office of Health Policy, phone (502)564-9592, email Diona.mullins@ky.gov; Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements necessary for an administrative escalation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes KRS 216B.040(2)(a)1 and 216B.061(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for an administrative cost escalation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for an administrative cost escalation.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation simplifies the requirements necessary for an administrative escalation. A cost escalation of twenty-five (25) percent is proposed for CON projects with approved expenditures of \$500,000 or more, allowing these projects to have higher escalations and to qualify for administrative escalations instead of having to submit a CON application for the escalation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to simplify the requirements necessary for an administrative escalation. A cost escalation of twenty-five (25) percent is proposed for CON projects with approved expenditures of \$500,000 or more, allowing these projects to have higher escalations and to qualify for administrative escalations instead of having to submit a CON application for the escalation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements necessary for an administrative escalation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for an administrative escalation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually approximately 150 certificate of need applications are submitted.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Action is not required of a CON holder unless there is an escalation in their proposed capital expenditure. A CON holder shall not obligate a capital expenditure in excess of the amount authorized by an existing CON or a previously approved administrative escalation unless the CON holder has received an administrative escalation from the cabinet as prescribed by this regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cabinet has simplified the formula for determining whether an escalation qualifies for an administrative escalation. A twenty-five (25) percent cost escalation is proposed for CON projects with approved expenditures of \$500,000 or more, allowing projects with higher escalations to now qualify for administrative escalations instead of having to submit a CON application for the escalation.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not directly increase any fees. The CON holder will continue to be required to pay the CON application fee for any authorized administrative escalation.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county or city may request administrative escalations if projected CON capital expenditures escalate.

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 216B.040(2)(a)1 and 216B.061(4).

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amendment)

902 KAR 20:081. Operations and services; home health agencies.

RELATES TO: KRS 216.935, 216B.010-216B.130, 216B.990, 311.560(4), 314.011(8), 314.042(8), 320.210(2), 45 C.F.R. 160.164, 42 U.S.C. 1320d

STATUTORY AUTHORITY: KRS 216B.042, 216B.105
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require[that] the[Kentucky] Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient[regulate] health facilities and health services. This administrative regulation establishes the minimum[provides] licensure requirements for the operation of and services provided by home health agencies.

Section 1. Definitions. (1) "Coordination agreement[agreements]" means an agreement[agreements] to coordinate health care services within the service area of the agency.

(2) "Home health agency" is defined by KRS 216.935(2).

(3) "Home health aide" is defined by KRS 216.935(1)[means a person who provides personal care and other related health services, as ordered by the attending physician.

(a) ~~Selection of home health aides shall take into account the ability to:~~

~~1. Read and write;~~

~~2. Understand and carry out instructions;~~

~~3. Record messages; and~~

~~4. Keep simple records.~~

~~(b) Other factors to consider:~~

~~1. Emotional and mental maturity; and~~

~~2. Interest in and sympathetic attitude toward caring for the sick at home].~~

(4)[(3)] "Intermittent nursing service" means skilled nursing care provided less than eight (8) hours each day and fewer than seven (7) days each week except in special circumstances[service up to a few hours a day, one (1) day or several days per week or month. On occasion, service may be provided more frequently for more time per day up to seven (7) days per week].

(5)[(4)] "Medical social worker" means an individual who:

~~(a)[a person who] Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work;~~

~~(b)[and]~~ Has at least one (1) year of social work experience in a health care setting; and

~~(c) Is licensed by the Kentucky Board of Social Work.[Such person shall be appropriately licensed, if required, by the State Board of Examiners of Social Work of Kentucky.]~~

~~(6)[(5)] "Occupational therapist" is defined by KRS 319A.010(3) [means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association].~~

~~(7)[(6)] "Physical therapist" is defined by KRS 327.010(2) [means a person who is currently licensed by the Kentucky State Board of Physical Therapy].~~

~~(8)[(7)] "Qualified medical social worker" means an individual who:~~

~~(a)[a person who] Has a master's degree from a school of social work accredited by the Council on Social Work Education;~~

~~(b)[and who] Has social work experience in a hospital, outpatient clinic, medical rehabilitation, medical care or mental health program; and~~

~~(c) Is licensed by the Kentucky Board of Social Work.[Such person shall be appropriately licensed, if required, by the State Board of Examiners of Social Work of Kentucky.]~~

~~(9)[(8)] "Speech-language pathologist" is defined by KRS 334A.020(3)[means a person who:~~

~~(a) Meets the education and experience requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or~~

~~(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification].~~

Section 2. Scope. A home health agency shall provide~~is a public agency or private organization, or a subdivision of such an agency or organization which provides~~ intermittent health and health related services~~[,] to a patient in his or her[patients in their]~~ place of residence, either singly or in combination as required by a plan of care[treatment] prescribed by a licensed physician.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for:

~~(a) The operation of the home health agency; and~~

~~(b)[for] Compliance with federal, state, and local laws and regulations pertaining to the operation of the service.~~

~~(2) The licensee shall establish policies for the administration and operation of the service. The policies shall include the following:~~

~~(a) Acceptance of patients. The policy shall assure that the acceptance of patients is based on medical, nursing, and social information provided by the:~~

~~1. Physician[physicians] responsible for the patient's care;~~

~~2.[, by] Institutional personnel; and~~

~~3.[by] Staff of the home health agency.~~

~~(b) Establishment and review of the plan of care[treatment]. The policy shall assure that services and items~~[to be]~~ provided are specified under a plan of care:~~

~~1.[treatment] Established, signed, and[regularly] reviewed by the physician who is responsible for the care of the patient; and~~

~~2. Developed by the physician and appropriate professional staff [or other personnel] acting within the limits of his or her[their] statutory scope of practice.~~

~~(3) Home health services shall be available to the total population regardless of age, sex, and ethnic background.~~

~~(4)(a) The status of each patient and the[total] plan of care shall be reviewed[by the attending physician, or other personnel acting within the limits of their statutory scope of practice, in consultation with agency professional personnel] at such intervals as the severity of the patient's illness requires[,] but no less frequently than[in any instance, at least once] every two (2)~~

months, with a maximum of sixty (60) days, by home health agency staff and the physician.

~~(b) Verbal authorization to change the plan of care[treatment] shall be:~~

~~1. Put in writing, signed, and dated with the date of receipt by the registered nurse or other appropriate professional staff responsible for furnishing or supervising the order services; and~~

~~2.[reviewed and] Signed by the physician within twenty-one (21) days after the verbal order is issued.~~

~~(5) Clinical records.~~

~~(a) The home health agency shall maintain a clinical record for each patient that:~~

~~1.[which] Covers the services the agency provides directly and those provided through arrangements with another agency; and~~

~~2.[which] Contains pertinent past and current medical, nursing, and social information, including the plan of care.~~

~~(b) Ownership.~~

~~1. Medical records shall be the property of the home health agency.~~

~~2. The original medical record shall not be removed except by court order.~~

~~3. Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.~~

~~(c) Confidentiality and Security: Use and Disclosure.~~

~~1. The agency 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 home health agency may use and disclose clinical 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 agency from establishing higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164[treatment. All records must be confidential].~~

~~(6) Original drug orders and changes in orders. The following shall be signed by the physician or other prescribing practitioner acting within the statutory scope of his or her license[ordering personnel acting within the limits of their statutory scope of practice] and incorporated in the patient record maintained by the agency:~~

~~(a) The original drug order[orders for drugs]; and~~

~~(b) Changes in orders for the administration of[these] drugs subject to federal and state controlled substance acts, and other legend drugs[, i.e., requiring prescriptions].~~

~~(7) Verbal authorization for an original order for drugs or a change order[to change drug orders] shall be reviewed and signed by the same prescribing practitioner[ordering personnel] within twenty-one (21) days after the order is issued.~~

~~(8)[(7)] Evaluation.~~

~~(a) The agency shall have procedures that[which] provide for a systematic evaluation of the agency's[its] program at least once every two (2) years.~~

~~(b) The agency staff shall conduct the evaluation.~~

~~(c) The program evaluation shall include[- (a)] measures to determine whether the policies established are followed, including:~~

~~1.[in providing services. These shall include] A review of patient records on a sample basis[in order] to determine that services are being used appropriately and the extent to which the needs of the patients the agency serves are being met both quantitatively and qualitatively; and~~

~~2.[(b)] A mechanism for reviewing overall management aspects of the agency's services[its service] to assure economy and efficiency of operations.~~

~~(9)[(8)] Planning. Each agency shall develop and annually review a long range plan which includes:~~

~~(a) Assessment of needs for services in the service area of the agency;[-]~~

- (b) Identification of agency's role in meeting those needs;[.]
- (c) Staff expansion for a two (2) year period;[.]
- (d) Establishment of goals and objectives; and[.]
- (e) Coordination of volunteer services, community education, and community development activities if these services are provided by the agency.

(10)[(9)] Subdivision operating as home health agency.

(a) If ~~When~~ a subdivision of an agency, including ~~(e.g.,)~~ the home care department of a hospital or the nursing division of a health department, ~~(.)~~ applies for a license, the subdivision shall:

1. ~~rather than the parent organization must~~ Be licensed as a home health agency; and

2. Maintain records of the subdivision's ~~(in such a way that subdivision) activities, ensuring that (and)~~ expenditures attributable to the services provided are identifiable.

(b) The parent organization shall determine who:

1. Signs ~~each (the)~~ coordination agreement ~~(agreements)~~ and other official documents;[.] and

2. Receives and disburses ~~(receive and disburse)~~ funds.

Section 4. Personnel; Supervision and Training. (1) Personnel policies. The agency shall have written policies available to staff concerning qualifications, responsibilities, and conditions of employment for each type of personnel (including whether licensure ~~where this~~ is required by state law). The policies shall ~~be written and available to staff and~~ cover:

(a) Wage scales, hours of work, vacation, and sick leave;

(b) ~~Preemployment criminal conviction information;~~

(c) A plan for a preemployment ~~(and periodic)~~ medical examination and follow-up medical examination no less than every ~~three (3) years thereafter;~~

(d) Annual ~~(.)~~ tuberculin screening conducted pursuant to 902 KAR 20:205 ~~(test and/or chest x-ray,)~~ and other appropriate tests;

(e) Plans for orientation and for on-the-job training ~~(, where necessary);~~

(f) Annual ~~(Periodic)~~ evaluation of employee performance; ~~(and)~~

(g) Job descriptions for each category of health personnel which are specific ~~to (and include)~~ the type of activity each may carry out;

(h) Pre-employment abuse registry checks conducted pursuant to KRS 216.937 and KRS 209.032; and

(i) Pre-employment criminal background checks in which the agency shall not employ an individual in a position that involves providing direct services if the individual has been convicted of a:

1. Felony offense related to:

a. Theft;

b. Abuse, possession, or sale of illegal drugs;

c. Abuse, neglect, or exploitation of a child or an adult; or

d. A sexual crime; or

2. Misdemeanor offense related to abuse, neglect, or exploitation of an adult.

(2) Agency supervision. The home health agency shall designate a physician or registered nurse to supervise the agency's performance in providing home health services in accordance with the:

(a) Orders of the physician responsible for the care of the patient; and

(b) ~~(under a)~~ Plan of ~~care (treatment)~~ established by ~~the (such)~~ physician.

(3) Supervision of therapy services.

(a) If ~~the (When)~~ services of aides or other personnel providing supplementary services are utilized in providing home health services, ~~the staff (they)~~ shall be trained and supervised by appropriate professional personnel.

(b) If ~~(When such)~~ supervision is less than full-time, ~~(e.g., for a limited number of hours or days each week,)~~ the supervision shall:

1. Be provided on a planned basis; and

2. ~~(shall be frequent enough to)~~ Assure adequate review of ~~each individual plan of care (treatment plans)~~ and progress.

(4) Supervision of home health aides.

(a) A registered nurse shall provide direct supervision as ~~described in this subsection (necessary)~~ and be readily available at other times by telephone.

(b) The supervisor shall ~~evaluate (be constantly evaluating)~~ the home health aide closely to ensure the aide's competence in ~~providing care, including the aide's ability to:~~

1. ~~(in terms of the aide's ability to)~~ Carry out assigned duties;

2. ~~(, to)~~ Relate well to the patient;[.] and

3. ~~(to)~~ Work effectively as a member of a team of health workers.

(c) If the patient receives skilled nursing care or another skilled service, the registered nurse ~~(, if other services are provided,)~~ shall make a supervisory visit to the patient's residence at least every two (2) weeks ~~(either)~~ when the aide is:

1. Present to observe and assist;[.] or

2. ~~(when the aide is)~~ Absent to assess relationships and determine whether goals are being met.

(d) If home health aide services are provided to a patient who is not receiving skilled nursing care or another skilled service, the registered nurse shall make a supervisory visit to the patient's residence at least every sixty (60) days and the supervisory visit shall occur while the home health aide is providing patient care.

(5) Training of home health aides. The home health agency shall ~~ensure (require)~~ that each home health aide successfully completes the aide training and competency evaluation program, including training in ~~(aides receive or have received a basic training program for home health aides. A home health aide shall be trained in):~~

(a) Methods of assisting patients to achieve maximum self-reliance;

(b) Principles of nutrition and meal preparation;

(c) The aging process and the emotional problems of illness;

(d) Procedures for maintaining a clean, healthful, and pleasant environment;

(e) Awareness of changes in the patient's condition that should be reported;

(f) Work of the agency and the health team; and

(g) Ethics, confidentiality, and recordkeeping.

Section 5. Provision of Services. (1) The home health agency shall provide:

(a) Intermittent skilled nursing services; and

(b) Other services for restoring, maintaining, and promoting health ~~or (and/or)~~ rehabilitation with minimum disruption of daily living, including:

1. At least one (1) other therapeutic service (physical, speech, or occupational therapy);

2. Medical social services; or

3. Home health aide services.

(2) ~~(Services shall range from skilled nursing services to basic health-related services to unskilled supportive services.)~~

(3) Services shall be available five (5) days a week with back-up arrangements for weekend and emergency services.

(3) ~~(4)~~ In addition to ~~the (intermittent skilled nursing)~~ services described in subsection (1) of this section, the agency ~~may (shall)~~ provide:

(a) ~~(home health aide services,)~~ Medical supplies; or

(b) ~~(and)~~ Equipment services.

(4) The following conditions shall be met for the provision of ~~(When a home health agency provides)~~ therapeutic and medical social services ~~(, the following conditions shall be met):~~

(a) Physical, speech, or occupational therapy. ~~(When)~~ An agency ~~that~~ provides or arranges for physical, speech, or occupational therapy directly or under a contractual arrangement shall provide the service ~~(, shall be given)~~ in accordance with a physician's written order ~~(orders)~~ by or under the supervision of a therapist defined by ~~(meeting the respective qualifications as set forth in)~~ Section 1 ~~(5,)~~ (6), (7), or (9) ~~(and (8))~~ of this administrative regulation.

(b) Respiratory therapy. ~~(When)~~ An agency ~~that~~ provides or arranges for respiratory therapy directly or under a contractual arrangement shall provide the service ~~(, services shall be given)~~ in accordance with a physician's written order ~~(,)~~ by or under the supervision of a licensed nurse with experience ~~and (and/or)~~ training in the field of respiratory therapy.

(c) Medical social services. ~~When~~ An agency that provides or arranges for medical social services directly or under a contractual arrangement shall provide the service, ~~services shall be given~~ in accordance with a physician's written order by a ~~qualified~~ medical social worker or a qualified medical social worker as defined by Section 1(5) or (8) ~~meeting the qualifications set out in Section 2~~ of this administrative regulation.

(5) Home health aide services. A visit by a ~~Visits of the~~ home health aide for the provision of ~~providing~~ personal care and other related health services shall ~~must~~ be:

(a) Ordered by a ~~the~~ physician; and

(b) Included in a plan of care ~~treatment~~ approved by the physician.

(6) Services arranged ~~for~~ with another ~~licensed~~ provider. ~~When~~ A home health agency that makes arrangements for the provision of home health services by another agency shall establish ~~which is a licensed provider of services, there shall be~~ a written agreement that ~~which~~:

(a) Identifies each service provided under the agreement;

(b) Ensures that the ~~Designates the services which are being arranged for~~ services shall be ~~provided~~ ~~are to be~~ within the scope and limitations set forth in the plan of care;

(c) Allows for ~~treatment~~. Such services to ~~may~~ be altered only upon the specific order ~~orders~~ of the initiating home health agency ~~issued~~ as the ~~a~~ result of a change made by the physician in the patient's plan of care ~~treatment~~;

(d) ~~(b)~~ Describes how the contracted personnel shall ~~where applicable, are to~~ be supervised;

(e) Requires contract personnel to record ~~and (c) Provides for the recording of the~~ progress notes and observations ~~of the contracted personnel~~ in the home health agency records for purposes of planning and evaluating patient care;

(f) Assures that the contract agency's staff and services meet the requirements established in this administrative regulation for personnel qualifications, functions, supervision, orientation, and training; and

(g) Specifies the period of time the written agreement shall be in effect and how frequently the agreement shall be reviewed.

(7) ~~Services arranged for with a nonlicensed provider. When a home health agency arranges for services with an agency that is not a licensed provider of services, a contract shall be written. The contract shall:~~

(a) ~~Designate the services which are being arranged;~~

(b) ~~Specify the period of time the contract is to be in effect and how frequently it is to be reviewed;~~

(c) ~~Describe how the contracted personnel are to be supervised;~~

(d) ~~State that home health services provided to the patient are in accordance with a plan established by the patient's physician in conjunction with home health agency staff and, when appropriate, others involved in the patient's care. Services provided shall be within the scope and limitations set forth in the plan and shall not be altered in type, scope, or duration by the secondary agency; and~~

(e) ~~Assure that personnel and services contracted for meet the same requirements as those specified for home health agency personnel and services, including personnel qualifications, functions, supervision, orientation, basic training program for home health aides, and in-service training.~~

(8) Service agreements with other health care facilities. A home health agency shall establish a coordination agreement defined by Section 1(1) ~~agreements as defined in Section 2~~ of this administrative regulation ~~shall be developed~~ with ~~the major~~ health care providers in the agency's service area including ~~hospitals and long-term care facilities~~ ~~skilled, intermediate and personal care facilities and family care homes~~.

ROBERT S. SILVERTHORN, JR., Inspector General
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 18, 2016

FILED WITH LRC: December 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on January 23, 2017, at 9:00 a.m. in Conference Suite A & 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 January 16, 2017, 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 January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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, Internal Policy Analyst, Office of Inspector General, phone 502-564-2888, email stephanie.brammer@ky.gov.; Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by home health agencies.

(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 licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(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 minimum licensure requirements for the operation of and services provided by home health agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements for the operation of and services provided by home health 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: Currently, a registered nurse or other appropriate professional staff is required to make a supervisory visit to a patient's residence at least every two (2) weeks to observe and assist a home health aide or otherwise assess whether goals are being met in the aide's absence. This amendment aligns 902 KAR 20:081 with federal certification standards for home health agencies by eliminating the more stringent state requirement related to the frequency of supervisory visits. Specifically, this amendment removes the requirement for the supervisory visit to occur at least every two (2) weeks and replaces such with a requirement for the visit to occur at least every sixty (60) days if the patient does not receive skilled nursing care or another skilled service. A supervisory visit must continue to be made at least every two (2) weeks if the patient receives skilled nursing care or another skilled service. This distinction in the frequency of supervisory visits is consistent with the requirement in federal certification standards for home health agencies. This amendment further clarifies that "periodic" medical examinations required of home health agency staff must occur no less than every three (3) years, establishes the criminal offenses resulting in a prohibition against employment in a home health agency, and makes technical changes to comply with the drafting requirements of KRS

Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to align 902 KAR 20:081 for consistency with federal certification standards related to how often supervisory visits are performed on home health aides.

(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 the minimum licensure requirements for the operation of and services provided by home health agencies.

(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 the requirements for licensure as a home health agency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts home health agencies. There are currently 114 licensed home health agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Home health agencies will be allowed to perform the home health aide supervisory visit at least every sixty (60) days rather than every two (2) weeks if the patient does not receive skilled nursing care or another skilled service. This provision is consistent with the federal certification standard for supervisory visits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): By allowing home health agencies to perform the home health aide supervisory visit at least every sixty (60) days rather than every two (2) weeks if a patient does not receive skilled nursing care or another skilled service, home health agencies may experience a cost savings.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As stated previously, this amendment aligns 902 KAR 20:081 with federal certification standards for home health agencies by removing a more stringent state requirement related to the frequency of supervisory visits.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement this amendment.

(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 amendment will not result in 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 increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities which elect to be regulated by it.

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? No additional costs are necessary to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to implement this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 C.F.R. Part 484.1 - 484.55 establish the requirements for federal certification of home health agencies.

2. State compliance standards. This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations, 42 C.F.R. Part 484.1 - 484.55, establish requirements considered necessary to ensure the health and safety of home health agency patients.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment aligns 902 KAR 20:081 with federal certification standards for home health agencies by eliminating the more stringent state requirement related to the frequency of supervisory visits. Specifically, this amendment removes the requirement for the supervisory visit to occur at least every two (2) weeks and replaces such with a requirement for the visit to occur at least every sixty (60) days if the patient does not receive skilled nursing care or another skilled service. A supervisory visit must continue to be made at least every two (2) weeks if the patient receives skilled nursing care or another skilled service. This distinction in the frequency of supervisory visits is consistent with the requirement in federal certification standards for home health agencies, see 42 C.F.R. 484.36(d).

5. Justification for 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? This amendment impacts home health agencies. There are currently 114 licensed home health agencies.

2. Identify each state or federal statute or federal regulation

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(Amendment)

907 KAR 17:015. Managed care organization requirements and policies relating to providers.

RELATES TO: 194A.025(3), 42 U.S.C. 1396n(c), 42 C.F.R. 438

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to providers.

Section 1. Provider Network. (1) An MCO shall:

(a) Enroll providers of sufficient types, numbers, and specialties in its network to satisfy the:

1. Access and capacity requirements established in Section 2 of this administrative regulation; and

2. Quality requirements established in 907 KAR 17:025, Section 5;

(b) Attempt to enroll the following providers in its network:

1. A teaching hospital;

2. A rural health clinic;

3. The Kentucky Commission for Children with Special Health Care Needs;

4. A local health department; and

5. A community mental health center;

(c) Demonstrate to the department the extent to which it has enrolled providers in its network who have traditionally provided services to Medicaid recipients;

(d) Have at least one (1) FQHC in a region where the MCO operates in accordance with 907 KAR 17:020, if there is an FQHC that is licensed to provide services in the region; and

(e) Exclude, terminate, or suspend from its network a provider or subcontractor who engages in an activity that results in suspension, termination, or exclusion from a Medicare or Medicaid program.

(2) The length of an exclusion, termination, or suspension referenced in subsection (1)(e) of this section shall equal the length of the exclusion, termination, or suspension imposed by a Medicare or Medicaid program.

(3) If an MCO is unable to enroll a provider specified in subsection (1)(b) or (c) of this section, the MCO shall submit to the department for approval, documentation which supports the MCO's conclusion that adequate services and service sites as required in Section 2 of this administrative regulation shall be provided without enrolling the specified provider.

(4) If an MCO or the department determines that the MCO's provider network is inadequate to comply with the access standards established in Section 2 of this administrative regulation for ninety-five (95) percent of the MCO's enrollees, the MCO shall:

(a) Notify the department; and

(b) Submit a corrective action plan to the department.

(5) A corrective action plan referenced in subsection (4)(b) of this section shall:

(a) Describe the deficiency in detail; and

(b) Identify a specific action to be taken by the MCO to correct the deficiency, including a time frame.

Section 2. Provider Access Requirements. (1) The access standards requirements established in 42 C.F.R. 438.206 through 438.210 shall apply to an MCO.

(2) An MCO shall make available and accessible to an enrollee:

(a) Facilities, service locations, and personnel sufficient to provide covered services consistent with the requirements specified in this section;

(b) Emergency medical services twenty-four (24) hours a day, seven (7) days a week; and

(c) Urgent care services within forty-eight (48) hours of request.

(3)(a) An MCO's primary care provider delivery site shall be within:

1. Thirty (30) miles or thirty (30) minutes from an enrollee's residence in an urban area; or

2. Forty-five (45) miles or forty-five (45) minutes from an enrollee's residence in a non-urban area.

(b) An MCO's primary care provider shall not have an enrollee to primary care provider ratio greater than 1,500:1.

(c) An appointment wait time at an MCO's primary care delivery site shall not exceed:

1. Thirty (30) days from the date of an enrollee's request for a routine or preventive service; or

2. Forty-eight (48) hours from an enrollee's request for urgent care.

(4)(a) An appointment wait time for a specialist, except for a specialist providing a behavioral health service as provided in paragraph (b) of this subsection, shall not exceed:

1. Thirty (30) days from the referral for routine care; or

2. Forty-eight (48) hours from the referral for urgent care.

(b)1. A behavioral health service requiring crisis stabilization shall be provided within twenty-four (24) hours of the referral.

2. Behavioral health urgent care shall be provided within forty-eight (48) hours of the referral.

3. A behavioral health service appointment following a discharge from an acute psychiatric hospital shall occur within fourteen (14) days of discharge.

4. A behavioral health service appointment not included in subparagraph 1, 2, or 3 of this paragraph shall occur within sixty (60) days of the referral.

(5) An MCO shall have:

(a) Specialists available for the subpopulations designated in 907 KAR 17:010, Section 17; and

(b) Sufficient pediatric specialists to meet the needs of enrollees who are less than twenty-one (21) years of age.

(6) An emergency service shall be provided at a health care facility most suitable for the type of injury, illness, or condition, whether or not the facility is in the MCO network.

(7)(a) A hospital located in Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within:

1. Thirty (30) miles or thirty (30) minutes from an enrollee's residence in an urban area; or

2. Sixty (60) minutes of an enrollee's residence in a non-urban area.

(b) A hospital located in Region 3 shall be within:

1. Thirty (30) miles or thirty (30) minutes of an enrollee's residence in an urban area; or

2. Sixty (60) miles or sixty (60) minutes of an enrollee's residence in a non-urban area.

(8) A behavioral or physical rehabilitation service in:

(a) Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

(b) Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(9)(a) A dental service in:

1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(b) A dental appointment wait time shall not exceed:

1. Three (3) weeks for a regular appointment; or

2. Forty-eight (48) hours for urgent care.

(10)(a) A general vision, laboratory, or radiological service in:

1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(b) A general vision, laboratory, or radiological appointment wait time shall not exceed:

1. Three (3) weeks for a regular appointment; or

2. Forty-eight (48) hours for urgent care.

(11)(a) A pharmacy service in:

1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(b) A pharmacy delivery site, except for a mail-order pharmacy, shall not be further than fifty (50) miles from an enrollee's residence.

(c) Transport time or distance threshold shall not apply to a mail-order pharmacy except that it shall:

1. Be physically located within the United States of America; and

2. Provide delivery to the enrollee's residence.

(12)(a) Prior authorization shall not be required for a physical emergency service or a behavioral health emergency service.

(b) In order to be covered, an emergency service shall be:

1. Medically necessary;

2. Authorized after being provided if the service was not prior authorized; and

3. Covered in accordance with 907 KAR 17:020.

Section 3. MCO Provider Enrollment. (1) A provider enrolled with an MCO shall:

(a) Be credentialed by the MCO in accordance with the standards established in Section 4 of this administrative regulation; and

(b) Be eligible to enroll with the Kentucky Medicaid Program in accordance with 907 KAR 1:672.

(2) An MCO shall:

(a) Not enroll a provider in its network if:

1. The provider has an active sanction imposed by the Centers for Medicare and Medicaid Services or a state Medicaid agency;

2. A required provider license or a certification is not current;

3. Based on information or records available to the MCO:

a. The provider owes money to the Kentucky Medicaid program; or

b. The Kentucky Office of the Attorney General has an active fraud investigation of the provider; or

4. The provider is not credentialed;

(b) Have and maintain documentation regarding a provider's qualifications; and

(c) Make the documentation referenced in paragraph (b) of this subsection available for review by the department.

(3)(a) A provider shall not be required to participate in Kentucky Medicaid fee-for-service to enroll with an MCO.

(b) If a provider is not a participant in Kentucky Medicaid fee-for-service, the provider shall obtain a Medicaid provider number from the department in accordance with 907 KAR 1:672.

Section 4. Provider Credentialing and Recredentialing. (1) An MCO shall:

(a) Have policies and procedures that comply with 907 KAR 1:672; KRS 205.560; and 42 C.F.R. 455 Subpart E, 455.400 to 455.470, regarding the credentialing and recredentialing of a provider;

(b) Have a process for verifying a provider's credentials and malpractice insurance that shall include:

1. Written policies and procedures for credentialing and recredentialing of a provider;

2. A governing body, or a group or individual to whom the governing body has formally delegated the credentialing function; and

3. A review of the credentialing policies and procedures by the

governing body or its delegate;

(c) Have a credentialing committee that makes recommendations regarding credentialing;

(d) If a provider requires a review by the credentialing committee, based on the MCO's quality criteria, notify the department of the facts and outcomes of the review;

(e) Have written policies and procedures for:

1. Excluding, terminating, or suspending a provider; and

2. Reporting a quality deficiency that results in an exclusion, suspension, or termination of a provider;

(f) Document its monitoring of a provider;

(g) Verify a provider's qualifications through a primary source that includes:

1. A current valid license or certificate to practice in the Commonwealth of Kentucky;

2. A Drug Enforcement Administration certificate and number, if applicable;

3. If a provider is not board certified, proof of graduation from a medical school and completion of a residency program;

4. Proof of completion of an accredited nursing, dental, physician assistant, or vision program, if applicable;

5. If a provider states on an application that the provider is board certified in a specialty, a professional board certification;

6. A previous five (5) year work history;

7. A professional liability claims history;

8. If a provider requires access to a hospital to practice, proof that the provider has clinical privileges and is in good standing at the hospital designated by the provider as the primary admitting hospital;

9. Malpractice insurance;

10. Documentation, if applicable, of a:

a. Revocation, suspension, or probation of a state license or Drug Enforcement Agency certificate and number;

b. Curtailment or suspension of a medical staff privilege;

c. Sanction or penalty imposed by the United States Department of Health and Human Services or a state Medicaid agency; or

d. Censure by a state or county professional association; and

11. The most recent provider information available from the National Practitioner Data Bank;

(h) Obtain access to the National Practitioner Data Bank as part of its credentialing process;

(i) Have:

1. A process to recredential a provider at least once every three (3) years that shall be in accordance with subsection (3) of this section; and

2. Procedures for monitoring a provider sanction, a complaint, or a quality issue between a recredentialing cycle;

(j) Have or obtain National Committee for Quality Assurance (NCQA) accreditation for its Medicaid product line:

1. By November 1, 2015, for an MCO that began participating November 1, 2011;

2. By January 1, 2017, for an MCO that began participating January 1, 2013; or

3. Within four (4) years of the date an MCO begins participation, for an MCO that did not begin participating by the effective date of this administrative regulation; and

(k) Continuously maintain NCQA accreditation for its Medicaid product line after obtaining the accreditation.

(2) If an MCO subcontracts a credentialing or recredentialing function, the MCO and the subcontractor shall have written policies and procedures for credentialing and recredentialing.

(3) A provider shall complete a credentialing application, in accordance with 907 KAR 1:672, that includes a statement by the provider regarding:

(a) The provider's ability to perform essential functions of a position, with or without accommodation;

(b) The provider's lack of current illegal drug use;

(c) The provider's history of a:

1. Loss of license or a felony conviction;

2. Loss or limitation of a privilege; or

3. Disciplinary action;

(d) A sanction, suspension, or termination by the United States

Department of Health and Human Services or a state Medicaid agency;

- (e) Clinical privileges and standing at a hospital designated as the primary admitting hospital of the provider;
 - (f) Malpractice insurance maintained by the provider; and
 - (g) The correctness and completeness of the application.
- (4) The department shall be responsible for credentialing and recredentialing a hospital-based provider.

Section 5. Provider Services. (1) An MCO shall have a provider services function responsible for:

- (a) Enrolling, credentialing, recredentialing, and evaluating a provider;
 - (b) Assisting a provider with an inquiry regarding enrollee status, prior authorization, referral, claim submission, or payment;
 - (c) Informing a provider of the provider's rights and responsibilities;
 - (d) Handling, recording, and tracking a provider grievance and appeal;
 - (e) Developing, distributing, and maintaining a provider manual;
 - (f) Provider orientation and training, including:
 - 1. Medicaid covered services;
 - 2. EPSDT coverage;
 - 3. Medicaid policies and procedures;
 - 4. MCO policies and procedures; and
 - 5. Fraud, waste, and abuse;
 - (g) Assisting in coordinating care for a child or adult with a complex or chronic condition;
 - (h) Assisting a provider with enrolling in the Vaccines for Children Program in accordance with 907 KAR 1:680; and
 - (i) Providing technical support to a provider regarding the provision of a service.
- (2) An MCO's provider services staff shall:
- (a) Be available at a minimum Monday through Friday from 8:00 a.m. to 6:00 p.m. Eastern Time; and
 - (b) Operate a provider call center.

Section 6. Provider Manual. (1) An MCO shall provide a provider manual to a provider within five (5) working days of enrollment with the MCO.

(2) Prior to distributing a provider manual or update to a provider manual, an MCO shall procure the department's approval of the provider manual or provider manual update.

(3) The provider manual shall be available in hard copy and on the MCO's Web site.

Section 7. Provider Orientation and Education. An MCO shall:

- (1) Conduct an initial orientation for a provider within thirty (30) days of enrollment with the MCO to include:
 - (a) Medicaid coverage policies and procedures;
 - (b) Reporting fraud and abuse;
 - (c) Medicaid eligibility groups;
 - (d) The standards for preventive health services;
 - (e) The special needs of enrollees;
 - (f) Advance medical directives;
 - (g) EPSDT services;
 - (h) Claims submission;
 - (i) Care management or disease management programs available to enrollees;
 - (j) Cultural sensitivity;
 - (k) The needs of enrollees with mental, developmental, or physical disabilities;
 - (l) The reporting of communicable diseases;
 - (m) The MCO's QAPI program as referenced in 907 KAR 17:025, Section 5;
 - (n) Medical records;
 - (o) The external quality review organization; and
 - (p) The rights and responsibilities of enrollees and providers;
- and

(2) Ensure that a provider:

- (a) Is informed of an update on a federal, state, or contractual requirement;

(b) Receives education on a finding from its QAPI program if deemed necessary by the MCO or department; and

(c) Makes available to the department training attendance rosters that shall be dated and signed by the attendees.

Section 8. Primary Care Provider Responsibilities. (1) A PCP shall:

- (a) Maintain:
 - 1. Continuity of an enrollee's health care;
 - 2. A current medical record for an enrollee in accordance with Section 12 of this administrative regulation; and
 - 3. Formalized relationships with other PCPs to refer enrollees for after-hours care, during certain days, for certain services, or other reasons to extend their practice;
 - (b) Refer an enrollee for specialty care or other medically necessary services:
 - 1. Within the MCO's network; or
 - 2. If the services are not available within the MCO's network, outside the MCO's network;
 - (c) Discuss advance medical directives with an enrollee;
 - (d) Provide primary and preventive care, including EPSDT services;
 - (e) Refer an enrollee for a behavioral health service if clinically indicated; and
 - (f) Have an after-hours phone arrangement that ensures that a PCP or a designated medical practitioner returns the call within thirty (30) minutes.
- (2) An MCO shall monitor a PCP to ensure compliance with the requirements established in this section.

Section 9. Provider Discrimination. An MCO shall:

- (1) Comply with the anti-discrimination requirements established in:
 - (a) 42 U.S.C. 1396u-2(b)(7);
 - (b) 42 C.F.R. 438.12; and
 - (c) KRS 304.17A-270; and
- (2) Provide written notice to a provider denied participation in the MCO's network stating the reason for the denial.

Section 10. Release for Ethical Reasons. An MCO shall:

- (1) Not require a provider to perform a treatment or procedure that is contrary to the provider's conscience, religious beliefs, or ethical principles in accordance with 42 C.F.R. 438.102;
 - (2) Not prohibit or restrict a provider from advising an enrollee about health status, medical care, or a treatment:
 - (a) Whether or not coverage is provided by the MCO; and
 - (b) If the provider is acting within the lawful scope of practice;
- and
- (3) Have a referral process in place if a provider declines to perform a service because of an ethical reason.

Section 11. Provider Grievances and Appeals. (1) An MCO shall have written policies and procedures for the filing of a provider grievance or appeal.

- (2) A provider shall have the right to file:
 - (a) A grievance with an MCO; or
 - (b) An appeal with an MCO regarding:
 - 1. A provider payment issue; or
 - 2. A contractual issue.
- (3)(a) A provider grievance or appeal shall be resolved within thirty (30) calendar days.
 - (b)1. If a grievance or appeal is not resolved within thirty (30) days, an MCO shall request a fourteen (14) day extension from the provider.
 - 2. The provider shall approve the extension request from the MCO.
 - (c) If a provider requests an extension, the MCO shall approve the extension.
 - (4) In accordance with KRS 205.646, a provider who has exhausted an MCO's internal grievance or appeal process may request an external independent third-party review pursuant to 907 KAR 17:035 on any final decision that denies in whole or in part a health care service to an enrollee or a claim for reimbursement.

Section 12. Medical Records. (1) An MCO shall:

(a) Require a provider to maintain an enrollee medical record on paper or in an electronic format; and

(b) Have a process to systematically review provider medical records to ensure compliance with the medical records standards established in this section.

(2) An enrollee medical record shall:

(a) Be legible, current, detailed, organized, and signed by the service provider;

(b) 1. Be kept for at least five (5) years from the date of service unless a federal statute or regulation requires a longer retention period; and

2. If a federal statute or regulation requires a retention period longer than five (5) years, be kept for at least as long as the federally-required retention period;

(c) Include the following minimal detail for an individual clinical encounter:

1. The history and physical examination for the presenting complaint;

2. A psychological or social factor affecting the patient's physical or behavioral health;

3. An unresolved problem, referral, or result from a diagnostic test; and

4. The plan of treatment including:

a. Medication history, medications prescribed, including the strength, amount, and directions for use and refills;

b. Therapy or other prescribed regimen; and

c. Follow-up plans, including consultation, referrals, and return appointment.

(3) A medical chart organization and documentation shall, at a minimum, contain the following:

(a) Enrollee identification information on each page;

(b) Enrollee date of birth, age, gender, marital status, race or ethnicity, mailing address, home and work addresses, and telephone numbers (if applicable), employer (if applicable), school (if applicable), name and telephone number of an emergency contact, consent form, language spoken, and guardianship information (if applicable);

(c) Date of data entry and of the encounter;

(d) Provider's name;

(e) Any known allergies or adverse reactions of the enrollee;

(f) Enrollee's past medical history;

(g) Identification of any current problem;

(h) If a consultation, laboratory, or radiology report is filed in the medical record, the ordering provider's initials or other documentation indicating review;

(i) Documentation of immunizations;

(j) Identification and history of nicotine, alcohol use, or substance abuse;

(k) Documentation of notification of reportable diseases and conditions to the local health department serving the jurisdiction in which the enrollee resides or to the Department for Public Health pursuant to 902 KAR 2:020;

(l) Follow-up visits provided secondary to reports of emergency room care;

(m) Hospital discharge summaries;

(n) Advance medical directives for adults; and

(o) All written denials of service and the reason for each denial.

Section 13. Provider Surveys. (1) An MCO shall:

(a) Conduct an annual survey of provider satisfaction of the quality and accessibility to a service provided by an MCO;

(b) Annually assess the need for conducting other surveys to support quality and performance improvement initiatives;

(c) Submit to the department for approval the survey tool used to conduct the survey referenced in paragraph (a) of this subsection; and

(d) Provide to the department:

1. A copy of the results of the provider survey referenced in paragraph (a) of this subsection;

2. A description of a methodology to be used to conduct surveys;

3. The number and percentage of providers surveyed;

4. Provider survey response rates;

5. Provider survey findings; and

6. Interventions conducted or planned by the MCO related to activities in this section.

(2) The department shall:

(a) Approve provider survey instruments prior to implementation; and

(b) Approve or disapprove an MCO's provider survey tool within fifteen (15) days of receipt of the survey tool.

Section 14. Cost Reporting Information. The department shall provide to the MCO the calculation of Medicaid allowable costs as used in the Medicaid Program.

Section 15. Centers for Medicare and Medicaid Services Approval and Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 18, 2016

FILED WITH LRC: December 1, 2016 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing January 13, 2017, 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 January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation adds the reference to 907 KAR 17:035, which establishes the requirements regarding external independent third-party reviews in accordance with KRS 205.646. An external independent third-party review is an appeal option for a Medicaid provider that has received an adverse final decision from a managed care organization (MCO) that "denies, in whole or in part, a health care service rendered by the provider to an enrollee of the Medicaid managed care organization." The party that receives an adverse decision from the review, whether it be the provider or the MCO, will then have the option to request an administrative hearing conducted by the Cabinet for Health and Family Services. A separate administrative regulation (907 KAR 17:040) is being promulgated concurrently with this administrative regulation to establish the administrative hearing provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a mandate, established in KRS 205.646, to establish the Medicaid external independent third-party review option for Medicaid providers who

have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.646 by establishing the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(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 authorizing statutes by establishing the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(2) If 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 just adds the reference to 907 KAR 17:035 to allow providers the right to an external independent third-party review.

(b) The necessity of the amendment to this administrative regulation: This amendment establishes the provider's right to an external independent third-party appeal.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing the policy of the external independent third-party review.

(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 creating the external independent third-party review to allow providers to appeal adverse decisions by the managed care organizations.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid providers and all five (5) managed care organizations will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will have to develop procedures to adhere to this Administrative Regulation. Medicaid providers will need to create an internal process that determines who, within their office, will request the external independent third-party review. Medicaid managed care organizations will have to create a new process, internally, which allows providers to submit the request for the external independent third-party review to the MCO. Medicaid managed care organizations will also need to revise all of their adverse determination letters and be prepared to submit denial documentation to the Department upon request from the providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Medicaid Services is unable to determine the cost to the physician's or MCOs. For providers, it will be an added administrative step. For managed care organization, there will be an added administrative step as well as the added cost of revising all adverse determination letters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the provider wins the appeal, they will receive reimbursement for a previously denied claim.

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

(a) Initially: DMS estimates that this administrative regulation will increase DMS's costs by \$4.95 million (\$3.71 million federal funds/\$1.24 million state funds) annually. In order to estimate a

partial potential cost estimate for the external third-party review, the Department reviewed the number of similar appeals that were upheld against the MCOs in favor of the appealing providers which was approximately 30,000 per year. The Department has modified its existent contract with the contractor Island Peer Review Organization (IPRO) based on approximately one-third of the given number of similar appeals made the year before. The contract modification will pay IPRO \$495 per case review; thus the contract modification for the SFY 2017 contract allows for 10,000 case reviews for a total increase in the budget of \$4,950,000. This increase is funded at a 75/25 split with CMS paying the larger federal share.

Further, there are two positions being created for administrative assistants within DMS.

Finally, the Department is using two nurses from Community Alternatives for the independent reviews initiated for plan delivery rules and coverage denials review. These two medical professionals, if needed full time, will require a \$45,000 base salary plus 67% for state benefits per year for each positions. The total cost of both medical professionals can also be funded using 75% federal funds and 25% state funds.

(b) On a continuing basis: The response to the question in (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, 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: DMS was not allocated any funds to implement the administrative regulation. However, the DMS contract with IPRO, the external quality review organization, has been increased to allow for IPRO to conduct the external independent third-party reviews related to medical necessity. Additionally, DMS will be hiring additional staff to administer the additional administrative work.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration 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 Department for Medicaid Services will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.646.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue for state or local government will result from the amendment.

(c) How much will it cost to administer this program for the first year? DMS estimates that this administrative regulation will increase DMS's costs by \$4.95 million (\$3.71 million federal

funds/\$1.24 million state funds) annually. In order to estimate a partial potential cost estimate for the external third-party review, the Department reviewed the number of similar appeals that were upheld against the MCOs in favor of the appealing providers which was approximately 30,000 per year. The Department has modified its existent contract with the contractor Island Peer Review Organization (IPRO) based on approximately one-third of the given number of similar appeals made the year before. The contract modification will pay IPRO \$495 per case review; thus the contract modification for the SFY 2017 contract allows for 10,000 case reviews for a total increase in the budget of \$4,950,000. This increase is funded at a 75/25 split with CMS paying the larger federal share.

Further, there are two positions being created for administrative assistants within DMS.

Finally, the Department is using two nurses from Community Alternatives for the independent reviews initiated for plan delivery rules and coverage denials review. These two medical professionals, if needed full time, will require a \$45,000 base salary plus 67% for state benefits per year for each positions. The total cost of both medical professionals can also be funded using 75% federal funds and 25% state funds.

(d) How much will it cost to administer this program for subsequent years? The response in (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS Chapter 194A, 202A.011(12), 209.020(4), 216.530, 216.557(1), 216.750(2), 216.765(2), Chapter 216B, 514, 20 C.F.R. 416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.

(3) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative regulation.

(4) "Department" means the Department for Community Based Services or its designee.

(5) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(6) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(7) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 20:001.

(8) "Qualified mental health professional" is defined by KRS 202A.011(12).

(9) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.

(10) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Behavioral Health, Developmental and Intellectual Disabilities to employ a mental health professional who has specialized training in the care of a resident with mental illness or intellectual disability.

(11) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b) 1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 7, 8, and 9 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 11;

(c) 907 KAR 20:020, Section 2(4)(a);

(d) 907 KAR 20:025; and

(e) 907 KAR 20:040, Section 1.

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and

(c) 1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);

3. Receives caretaker services and is at least eighteen (18) years of age; or

4. a. Resides in a private residence;

b. Is at least eighteen (18) years of age; and

c. Has SMI.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131;

(c) A situation in which a caretaker is required to be hired to provide care other than room and board; or

(d) A private residence, which shall:

1. Be permanent housing with:

a. Tenancy rights; and

b. Preference given to single occupancy; and

2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or

b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation. (1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

(a) Not include a primary diagnosis of Alzheimer's disease or dementia;

(b) Be described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), fourth (4th) edition or edition currently in use;

(c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and

(d) Be unlikely to improve without treatment, services, or supports.

(2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant, recipient, or care coordinator to establish how:

(a) Often services are provided;

(b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and

(c) Payment is made for the services.

(3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:

(a) Licensed or registered in accordance with KRS Chapter 216B; or

(b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:020, Section 2(4)(a);

(c) 907 KAR 20:025; and

- (d) 907 KAR 20:040, Section 1.
 (2) An individual or couple shall not be eligible if countable resources exceed the limit of:
 (a) \$2,000 for an individual; or
 (b) \$3,000 for a couple.

Section 8. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

- (a) 907 KAR 20:001;
 (b) 907 KAR 20:020, Section 2(4)(a);
 (c) 907 KAR 20:025; and
 (d) 907 KAR 20:040, Section 1.
 (2) The optional supplementation payment shall be determined by:
 (a) Adding:
 1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and
 2. A payment made to a third party on behalf of an applicant or recipient; and
 (b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 9 of this administrative regulation.
 (3) Income of an ineligible spouse shall be:
 (a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
 (b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:
 1. The applicant or recipient; and
 2. Each minor dependent child.
 (4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.
 (5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.
 (6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.
 (7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.
 (8) The SSI twenty (20) dollar general exclusion shall not be an allowable deduction from income.

Section 9. Standard of Need. (1) To the extent funds are available, the standard of need is as follows:

- (a) For a resident of a personal care home on or after January 1, 2017, \$1,255[:
 1. January 1, 2014, \$1,241; or
 2. ~~January 1, 2015, \$1,253~~;
 (b) For a resident of a family care home on or after January 1, 2017, \$907[:
 1. January 1, 2014, \$893; or
 2. ~~January 1, 2015, \$905~~;
 (c) For individuals who receive caretaker services:
 1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after January 1, 2017, \$797[:
 a. ~~January 1, 2014, \$783; or~~
 b. ~~January 1, 2015, \$795~~;
 2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after January 1, 2017, \$1,164[:
 a. ~~January 1, 2014, \$1,143; or~~
 b. ~~January 1, 2015, \$1,161~~;
 3. An eligible couple, both aged, blind or have a disability and both requiring care on or after January 1, 2017, \$1,218[:
 a. ~~January 1, 2014, \$1,197; or~~
 b. ~~January 1, 2015, \$1,215~~;
 (d) For an individual who resides in a private residence and has SMI on or after January 1, 2017, \$1,255[:
 1. January 1, 2014, \$1,241; or

~~2. January 1, 2015, \$1,253~~].

- (2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.
 (b) One-half (1/2) of the deficit shall be payable to each.
 (3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollar personal needs allowance that shall be retained by the client.
 (4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollar personal needs allowance that shall be retained by the client.

Section 10. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

- (a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;
 (b) Social Security Administration notifies the department that the admission shall be temporary; and
 (c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.
 (2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:
 (a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;
 (b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and
 (c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:
 1. Notification of the temporary admission; and
 2. The physician statement specified in paragraph (b) of this subsection.
 (3) A temporary admission shall be limited to the following health care facilities:
 (a) Hospital;
 (b) Psychiatric hospital; or
 (c) Nursing facility.
 (4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 11. Citizenship requirements. An applicant or recipient shall be a:

- (1) Citizen of the United States; or
 (2) Qualified alien.

Section 12. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13. Mental Illness or Intellectual Disability (MI/ID) Supplement Program. (1) A personal care home:

- (a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;
 (b) Shall not be eligible for a payment for a Type A Citation that is not ~~abated~~~~(corrected)~~; and
 (c) Shall meet the following certification criteria for eligibility to participate in the MI/ID Supplement Program:
 1. Be licensed in accordance with KRS 216B.010 to 216B.131;
 2. Care for a population that is thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and who have a:
 a. Primary or secondary diagnosis of intellectual disability

including mild or moderate, or other ranges of intellectual disability whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician or Kentucky medication aide training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of Inspector General in accordance with Section 15(2) through (4) of this administrative regulation; and

6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July, and October.

b. Unless mental illness or intellectual disability supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 15(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form, that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or intellectual disability diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or intellectual disability diagnosis and is a recipient of state supplementation; and

(b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:

1. Mail;

2. Fax; or

3. Electronically.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 14. Mental Illness or Intellectual Disability (MI/ID) Training. (1)(a) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall attend the mental illness or intellectual disability training workshop provided through the

Department for Behavioral Health, Developmental and Intellectual Disabilities.

(b) Other staff may attend the training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or intellectual disability training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability.

(3) Initial training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician or Kentucky medication aide training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4) To assure that a staff member who has received training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training; and

2.a. Has received mental illness or intellectual disability training; or

b. Is enrolled in the next scheduled mental illness or intellectual disability training workshop at the closest location.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the training workshop; and

(b) Listing to the department of staff who completed the training workshop.

(6) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/ID Supplement Program; and

(b) For each staff member receiving training up to the maximum of five (5) staff per year.

(7) Attendance of the training workshop shall be optional for a specialized personal care home.

Section 15. MI/ID Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program.

(a) The personal care home's initial MI/ID Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial MI/ID Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2 of this subsection.

(c) The department shall notify the Office of Inspector General

that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of training, as specified in Section 14(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability training workshop; and

b. Maintains documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training:

a. Demonstrates a knowledge of psychotropic drug side effects; and

b. Is on duty as specified in Section 13(1)(c)3 of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID Supplement Program Certification Survey process.

(4) If thirty-five (35) percent of the population is mental illness or intellectual disability clients, as specified in Section 13(1)(c)2 of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or intellectual disability population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is issued.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section

13(1)(c)6 of this administrative regulation, for the next following quarter.

Section 16. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits", 01/15;

(b) "STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home", 01/15;

(c) "STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form", 01/13/14; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/17[04/13/14].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, 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: December 7, 2016

FILED WITH LRC: December 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017, 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 January 13, 2017, 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 January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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 (elizabeth.caywood@ky.gov), (502) 564-3703), Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons who are aged, blind, or have a disability in accordance with KRS 205.245 and the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the MI/ID Supplement Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, to maintain the state's eligibility for

federal Medicaid funding.

(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 eligibility requirements and standards of need for the State Supplementation Program for persons who are aged, blind, or have a disability.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will increase the standards of need in the State Supplementation Program to reflect the 0.3% cost of living adjustment (a.k.a., COLA) to be implemented in calendar year 2017 by the Social Security Administration for Supplemental Security Income (SSI) recipients. In addition, the amendment recognizes Kentucky medication aide training for the Mental Illness or Intellectual Disability (MI/ID) Supplement Program and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the agreement between the Commonwealth of Kentucky and the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, to pass along the cost of living adjustment in Supplemental Security Income (SSI) benefits to State Supplementation Program recipients. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The amendment is also necessary to recognize other training that meets the MI/ID Supplement Program's requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes by complying with an agreement between Kentucky and the U.S. Department of Health and Human Services to pass along the cost of living adjustment for Supplemental Security Income to State Supplementation Program through an increase in the program's standard of need for all recipients.

(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 passing along the 2017 0.3% cost of living adjustment for the Supplemental Security Income benefit by modifying the standard of need for all levels of care for the State Supplementation Program and making other technical corrections.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of September 2016, there were 2,569 individuals who received State Supplementation Program benefits. As of fall 2016, there are 26 personal care homes participating in the MI/ID Supplement Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required 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): There will be no new or additional cost to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The recipients of the State Supplementation payment will receive the 0.3% cost of living adjustment implemented by the Social Security Administration. Other staff training will fulfill MI/ID Supplement Program requirements.

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

(a) Initially: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the 2014 SSI cost of living adjustment. Not complying

with the federal pass-through mandate would jeopardize the state's federal Medicaid funding.

(b) On a continuing basis: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the 2014 SSI cost of living adjustment. Not complying with the federal pass-through mandate would jeopardize the state's federal Medicaid funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds and agency funds are used to implement and enforce the State Supplementation Program.

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

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

(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. 1382 e-g, 20 C.F.R. Part 416

2. State compliance standards. KRS 194A.050 (1), 205.245

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1382 e-g, 20 C.F.R. Part 416

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, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 (1), 205.245, 42 U.S.C. 1382e-g, 20 C.F.R. Part 416

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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? This administrative regulation will not generate any additional revenue in the subsequent year.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

922 KAR 5:120. Caregiver misconduct registry and appeals.

RELATES TO: KRS Chapter 13B, 209

STATUTORY AUTHORITY: KRS 194A.050(1), 209.032(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.032(5) requires the cabinet to promulgate administrative regulations necessary to implement a central registry of substantiated findings. This administrative regulation establishes the caregiver misconduct registry, due process prior to the addition of an individual to the registry, and error resolution for correction of the cabinet's records.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Employee" is defined by KRS 209.032(1)(a).

(5) "Exploitation" is defined by KRS 209.020(9).

(6) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal, including:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

(7) "Investigation" is defined by KRS 209.020(10).

(8) [(7)] "Near fatality" means an injury or condition, as certified by a physician, that places an adult in serious or critical condition.

(9) [(8)] "Neglect" is defined by KRS 209.020(16).

(10) [(9)] "Records" is defined by KRS 209.020(15).

(11) [(10)] "Secure methodology" means the deployment of technology to protect the application's authenticity and to keep user communications, browsing, and identity private in accordance with KRS 209.032.

(12) [(11)] "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

(13) [(12)] "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Caregiver Misconduct Registry. (1) The cabinet shall establish a caregiver misconduct registry that contains an individual:

(a) Who was providing care to an adult as an employee or a person acting with the expectation of compensation;

(b) Who was the perpetrator of adult abuse, neglect, or exploitation:

1. Pursuant to 922 KAR 5:070; and

2. Substantiated on or after July 15, 2014; and

(c) With a validated substantiated finding of adult abuse, neglect, or exploitation.

(2) An individual with a validated substantiated finding of adult

abuse, neglect, or exploitation shall:

(a) Remain on the caregiver misconduct registry for a period of at least seven (7) years; and

(b) Be removed from the caregiver misconduct registry:

1. In accordance with the error resolution process described in Section 6[5] of this administrative regulation if an error is confirmed; or

2. After a period of seven (7) years if:

a. No additional validated substantiated finding of adult abuse, neglect, or exploitation has occurred since the last finding for which the individual's name was placed on the caregiver misconduct registry; and

b. Cabinet records indicate that the incident for which the individual's name was placed on the caregiver misconduct registry did not relate to[:

(i)] an adult fatality or near fatality related to adult abuse or neglect[;

(ii)] ~~A criminal conviction related to the incident for which the individual's name was placed on the caregiver misconduct registry; or~~

(iii)] ~~A civil judicial determination related to adult abuse, neglect, or exploitation].~~

(3) The caregiver misconduct registry shall be available for a web-based query using a secure methodology by:

(a) A vulnerable adult services provider in accordance with KRS 209.032(2); and

(b) An individual in accordance with KRS 209.032(3).

(4) The caregiver misconduct registry shall be accessible through:

(a) The department's main webpage; or

(b) Another cabinet system, such as the Kentucky Applicant Registry and Employment Screening (KARES) Program established in accordance with 906 KAR 1:190.

(5) If an individual or a vulnerable adult service provider described in KRS 209.032(1)(c)11 does not have access to the internet, the individual or provider shall submit a signed and completed DPP-246, Caregiver Misconduct Registry Self-Query, to conduct a self-query in accordance with KRS 209.032(2) or (3).

Section 3. Notification of Finding. (1) If the cabinet finds that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation in accordance with 922 KAR 5:070, the cabinet shall[:

(a)] send notice of the finding to the perpetrator by certified mail to the perpetrator's last known address[; or

(b)] ~~Give notice of the finding to the perpetrator, in person, with a witness signature to document that the perpetrator received the notice].~~

(2) The cabinet's notice of a finding of adult abuse, neglect, or exploitation to an employee or a person acting with the expectation of compensation shall include:

(a) The factual basis for the finding of adult abuse, neglect, or exploitation;

(b) The results of the investigation;

(c) The perpetrator's right to appeal the substantiated finding[~~Due process requirements~~] in accordance with[KRS Chapter 13B and] KRS 209.032 and this administrative regulation;

(d) A statement that a finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation in accordance with KRS 209.032 and Section 5 of this administrative regulation; and

(e) A statement that a perpetrator of[~~the individual subject to~~] a validated substantiated finding of adult abuse, neglect, or exploitation shall be added to the caregiver misconduct registry.

(3) The cabinet shall reserve the right, in its sole discretion, to amend, modify, or reverse its investigative finding of adult abuse, neglect, or exploitation at any time based upon:

(a) A review of the cabinet's records; or

(b) Subsequent discovery of additional information.

Section 4. Request for Appeal[~~Appeals~~]. (1) In accordance with KRS 209.032, if the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation

of compensation has committed adult abuse, neglect, or exploitation, the individual shall have the right to appeal the substantiated finding through~~[be afforded an opportunity for]~~ an administrative hearing.

(2) A request for appeal shall:

(a) Be submitted:

1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and

2. To the cabinet no later than thirty (30) calendar days from the individual's receipt of the notice in accordance with Section 3(1) of this administrative regulation;

(b) Describe the nature of the investigative finding;

(c) Specify the reason the individual disputes the cabinet's substantiated finding; and

(d) Include a copy of the notice of a substantiated finding in accordance with Section 3 of this administrative regulation if available.

(3) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.

(4) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue or an unsubstantiated finding of adult abuse, neglect, or exploitation shall not be subject to review through an administrative hearing.

Section 5. Administrative Hearing. (1) An administrative hearing conducted by the cabinet or its designee shall be in accordance with KRS Chapter 13B and 209.032.

(2) The cabinet's investigative finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation if the perpetrator:

(a) Does not request an administrative hearing in accordance with Section 4 of this administrative regulation; or

(b) Fails to:

1. Participate in any stage of the proceedings after requesting an appeal in accordance with Section 4 of this administrative regulation; and

2. Demonstrate good cause.

(3) The secretary or designee shall issue the final order in accordance with KRS 13B.120 and 209.032.

(4) A party aggrieved by the secretary's decision shall have the right to pursue judicial review in accordance with KRS 13B.140, 13B.150, and 209.032(1)(b).

(5) The proceedings of the administrative hearing shall be disclosed only by the authority of state or federal law.

(6) If the matter is not subject to the requirements of this section, the cabinet shall inform the person that the matter may be pursued through:

(a) A service complaint process described in 920 KAR 1:030 or 922 KAR 1:320; or

(b) The error resolution process in accordance with Section 6[5] of this administrative regulation.

Section 6[5]. Error Resolution. (1) In accordance with KRS 209.032(5)(a), an individual seeking error resolution shall:

(a) Submit a written request for record correction to the Commissioner of the Department for Community Based Services, 275 East Main Street (3W-A), Frankfort, Kentucky 40621;

(b) Specify the:

1. Date of the caregiver misconduct registry query which resulted in the error being identified; and

2. Error contained in the caregiver misconduct registry query results; and

(c) Provide documentation that verifies the error, if available.

(2) Within thirty (30) days of receipt of a request in accordance with subsection (1) of this section, the commissioner or designee shall:

(a) Determine whether an error exists; and

(b) 1. If the cabinet confirms an error:

a. Correct the records; and

b. Notify the requesting individual that the records have been corrected; or

2. If the cabinet cannot confirm an error:

a. Notify the individual that an error cannot be confirmed based upon the information and documentation submitted with the request; and

b. Outline information or documentation that may verify an error pursuant to the individual's request, if any.

Section 7[6]. Incorporation by Reference. (1) The "DPP-246, Caregiver Misconduct Registry Self-Query", 11/14, is incorporated by reference.

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

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 18, 2016

FILED WITH LRC: December 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017, 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 January 16, 2017, 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 January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov.; Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the caregiver misconduct registry, due process prior to the addition of an individual to the registry, and error resolution for correction of the cabinet's records.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the operation of the caregiver misconduct registry, including due process and error resolution for correction of the cabinet's records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing a caregiver misconduct registry for individuals who have a substantiated adult abuse, neglect, or exploitation finding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of a caregiver misconduct registry.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will require that a perpetrator request an appeal, rather than automatically be granted an administrative hearing. If the perpetrator fails to request an appeal or participate in the administrative hearing process after requesting an appeal, the investigative finding becomes a validated substantiated finding of

adult abuse, neglect or exploitation. In addition, this amendment will modify provisions pertaining to a perpetrator remaining permanently on the registry to those whose abuse or neglect was associated with an adult fatality or near fatality. The amendment also makes changes in accordance with the drafting and format requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to eliminate the requirement that an administrative hearing be conducted prior to each perpetrator being added to the caregiver misconduct registry. Many perpetrators do not wish to appeal the cabinet's finding; thus, requiring a hearing in these cases results in poor stewardship of limited resources and unnecessary delays in the perpetrator's placement on the caregiver misconduct registry. Elimination of this requirement will preserve administrative hearing resources within the cabinet and will ensure more timely addition of the perpetrator to the registry while still affording adequate due process to perpetrators. In addition, the amendment is necessary to remove criteria used in determining whether a perpetrator remains permanently on the caregiver misconduct registry; the criteria being removed cannot be practically and consistently applied.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute through its improvements of appeal processes afforded to perpetrators of adult abuse, neglect, or exploitation and through its correction of criteria used to retain a perpetrator's name on the caregiver misconduct registry permanently.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its update of due process requirements and retention policies used for the caregiver misconduct registry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Vulnerable adult service providers are impacted by this administrative regulation. From July 2014 through June 2016, the cabinet's Ombudsman's Office processed 429 caregiver misconduct issues. As of October 19, 2016, there were 166 individuals on the caregiver misconduct registry.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Rather than being given an automatic administrative hearing, a perpetrator qualifying for placement on the caregiver misconduct registry will be required to request appeal. In addition, the criteria for a perpetrator's permanent retention on the caregiver misconduct registry will entail abuse or neglect associated with a child fatality or near fatality.

(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 or additional cost borne by the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative hearings associated with the caregiver misconduct registry will be more efficient, thereby preserving and best utilizing available resources and improving timeliness. Perpetrators retained permanently on the registry will be associated with adult abuse or neglect that resulted in an adult fatality or near fatality, thereby ensuring consistent application by the cabinet.

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

(a) Initially: There will be no new or additional cost borne by the administrative body.

(b) On a continuing basis: There will be no new or additional cost borne by the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The implementation and enforcement of this administrative regulation are funded through state general funds and the federal Social Services Block Grant.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services 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 Chapter 13B, 209

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 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 not generate any revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative body does not project any new or additional cost associated with the amendment to this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative body does not project any new or additional cost associated with the amendment to this administrative regulation for subsequent years.

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

Revenues: (+/-)

Expenditures: (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(New Administrative Regulation)

16 KAR 4:080. Out-of-State Recency.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030, 161.046, 161.048, 161.053

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of educator preparation prescribed by Kentucky's Education Professional Standards Board; furthermore, an educator preparation provider is required to be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 establishes additional testing and internship requirements for Kentucky certification. This administrative regulation establishes the recency requirements for the issuance of an initial Kentucky certificate to an out-of-state applicant.

Section 1. Teacher certification issued initially under the provisions of 16 KAR 2:010 or 16 KAR 2:020 shall comply with the provisions of KRS 161.030 and the requirements and procedures established in this section.

(1) There shall be a recency of preparation prerequisite for the issuance of a certificate.

(a) Except as provided in paragraphs (b) and (c) of this subsection, an out-of-state applicant for initial Kentucky certification shall have prepared as a teacher or completed six (6) semester hours of graduate credit within the five (5) years preceding application.

(b) An out-of-state applicant for initial Kentucky certification who has completed a planned fifth-year program shall be exempt from taking the six (6) additional hours, if the applicant has completed two (2) years of successful teaching experience within the last ten (10) years.

(c)1. A certificate shall be issued for a one (1) year period ending June 30 of the next calendar year if the applicant:

a. Does not meet the recency of preparation requisite;

b. Has not previously held a Kentucky teaching certificate;

c. Otherwise qualifies for certification; and

d. Agrees that six (6) semester hours of credit applicable toward the usual renewal requirement shall be completed by September 1 of the year of expiration.

2. To renew a certificate issued under subparagraph 1. of this paragraph, the applicant shall comply with the requirements for renewal established in subsection (2) of this section.

(2)(a) A teaching certificate described in this section shall be issued for a duration period of five (5) years and with provisions for a subsequent five (5) year renewal, as established in 16 KAR 4:060.

(b) Semester hour credit for certificate renewal shall be earned after the issuance of the certificate. Credit earned in excess of the minimum requirement for a renewal period shall accumulate and be carried forward to apply toward a subsequent renewal.

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

FILED WITH LRC: December 13, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2017, at 10:00 a.m. at 100 Airport Road, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish

to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2017 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email LisaK.Lang@ky.gov, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of 16 KAR 4:080

(a) What this administrative regulation does: This administrative regulation establishes the recency requirements for the issuance of an initial Kentucky certificate to an out-of-state applicant.

(b) The necessity of this administrative regulation:

KRS 161.020, 161.027, 161.028, 161.030 and 161.048 require that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation, internship and appropriate assessments prescribed by the Education Professional Standards Board (EPSB); KRS 161.028(1)(f) requires that the EPSB issue certification to educators.

This administrative regulation establishes requirements for the issuance of a certificate for initial Kentucky certification to an out-of-state applicant in addition to the requirements set forth in 16 KAR 2:010 or 16 KAR 2:020 and KRS 161.030.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.027, 161.028, 161.030 and 161.048 require that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation, internship and appropriate assessments prescribed by the EPSB; KRS 161.028(1)(f) requires that the EPSB issue certification to educators. This administrative regulation establishes recency requirement for out-of-state applicants for certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the recency requirements for the issuance of a certificate to an out-of-state applicant. This regulation is applicable to all certificates issued under KRS 161.010-161.100.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: N/A

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: While this is a new regulation, the language contained therein is transferred from an existing regulation so there will be no new impact on the entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): While this is a new regulation, the language contained

therein is transferred from an existing regulation so there will be no new cost on the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): While this is a new regulation, the language contained in this new regulation is transferred from an existing regulation so there are no new benefits accrued to the entities identified in question (3).

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

(a) Initially: While this is a new regulation, the language contained therein is transferred from an existing regulation so there will be no new cost to implement this regulation.

(b) On a continuing basis: While this is a new regulation, the language contained therein is transferred from an existing regulation so there is no new continuing cost to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: While this is a new regulation, the language contained therein is transferred from an existing regulation so there is no new funding needed to implement and enforcement 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: There is no fee or funding implication so no response is required.

(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 or directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because it applies to educators in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Education Professional Standards Board (EPSB) only to the extent that the EPSB will be referencing a new regulation when processing applications for Kentucky certification which have been submitted by out-of-state applicants.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.027, 161.028, 161.030 and 161.048 require that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation, internship and appropriate assessments prescribed by the EPSB; KRS 161.028 requires that the EPSB issue Kentucky certification. This administrative regulation establishes recency requirements EPSB requires for the issuance of Kentucky certificates for out-of-state applicants.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 EPSB does not believe that this administrative regulation will have any impact on expenditures and revenues of a state or 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 EPSB does not believe this administrative regulation will generate revenue for the state or local government (including cities, counties, fire departments, or school districts) for the first year.

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

subsequent years.

(c) How much will it cost to administer this program for the first year? The EPSB does not believe this administrative regulation will cost anything to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The EPSB does not believe this administrative regulation will cost anything to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Education Professional Standards Board (New Administrative Regulation)

16 KAR 4:090. Reissuance.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030, 161.046, 161.048, 161.053

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of educator preparation prescribed by Kentucky's Education Professional Standards Board (board); furthermore, an educator preparation provider is required to be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the board. KRS 161.030 establishes additional testing and internship requirements for Kentucky certification. This administrative regulation establishes the reissuance requirements for a Kentucky certification that has lapsed.

Section 1. (1)(a) If a certificate has lapsed as a result of the applicant's failure to meet the renewal requirements, the certificate shall be reissued at a later date for a one (1) year period if the applicant completes at least six (6) semester hours of graduate credit applicable toward the planned fifth-year program.

(b) The applicant shall complete an additional nine (9) semester hours of credit applicable toward the planned fifth-year program by September 1 of the year of expiration to qualify for extending the certificate for the remaining four (4) years of the first five (5) year renewal period.

(c) At the end of the renewal period established in paragraph (b) of this subsection, the applicant shall have completed a planned fifth-year program that meets the requirements of 16 KAR 8:020 to qualify for the next five (5) year renewal. After the renewal period established in this paragraph, the regular renewal schedule of three (3) years of successful teaching experience with evidence of continuing growth documented in a portfolio as required by 16 KAR 4:060 or six (6) semester hours of additional graduate credit each five (5) year period shall apply.

(2) An applicant who has already completed the planned fifth-year program and whose certificate lapses shall have the certificate reissued after completing another six (6) semester hours of graduate credit. The certificate shall be issued for a five (5) year period and subject to the renewal schedule of three (3) years of successful teaching experience or completion by September 1 of the year of expiration of at least six (6) semester hours of additional credit for each five (5) year period.

(3) Successful teaching experience shall be in a position directly corresponding to the type of certificate for which the application is being made and employment shall be at least on a half-time basis.

(a) A full year of experience shall include at least 140 days of employment performed within the academic year; and

(b) A half year of experience shall include at least seventy (70) days of employment performed within an academic semester.

DAVID WHALEY, Board Chair

APPROVED BY AGENCY: December 12, 2016

FILED WITH LRC: December 13, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 23, 2017, at 10:00 a.m. at 100 Airport Road, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2017 at 11:59 p.m. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa K. Lang, General Counsel, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email LisaK.Lang@ky.gov, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa K. Lang

(1) Provide a brief summary of 16 KAR 4:090

(a) What this administrative regulation does: This administrative regulation establishes requirements for the reissuance of a Kentucky certificate that has lapsed.

(b) The necessity of this administrative regulation:

KRS 161.020, 161.027, 161.028, 161.030 and 161.048 require that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation, internship and appropriate assessments prescribed by the Education Professional Standards Board (EPSB); KRS 161.028(1)(f) requires that the EPSB issue and reissue certification to educators. This administrative regulation establishes requirements for the reissuance of a Kentucky certificate that has lapsed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.027, 161.028, 161.030 and 161.048 require that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation, internship and appropriate assessments prescribed by the EPSB; KRS 161.028(1)(f) requires that the EPSB issue and reissue certification to educators. This administrative regulation establishes reissuance requirements for a certificate that has lapsed.

(d) How this administrative regulation currently assists or will assist in the effective

administration of the statutes: This administrative regulation establishes the requirements for the reissuance of a certificate that has lapsed. This regulation is applicable to all certificates issued under KRS 161.010-161.100.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will impact those certificate holders who have allowed their certification to lapse.

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

(a) List 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 should be no new impact on the regulated entities identified in question (3) because the language in this new regulation has been taken out of 16 KAR 4:040 and inserted in this new regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no new cost on the regulated entities identified in question (3) because the language in this new regulation has been taken out of 16 KAR 4:040 and inserted in this new regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There should be no new benefit that will accrue to the benefit of the regulated entities identified in question (3) because the language in this new regulation has been taken out of 16 KAR 4:040 and inserted in this new regulation.

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

(a) Initially: There should be no new initial cost to implement this regulation because the language in this new regulation has been taken out of 16 KAR 4:040 and inserted in this new regulation.

(b) On a continuing basis: There should be no new cost to implement this regulation on a continuing basis because the language in this new regulation has been taken out of 16 KAR 4:040 and inserted in this new regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no new funding needed so no response 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 will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because it applies to educators in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Education Professional Standards Board (EPSB) only to the extent that the EPSB will be referencing a new regulation when reissuing applications that have lapsed.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, 161.027, 161.028, 161.030 and 161.048 require that educators hold a certificate of legal qualification for his or her respective position to be issued upon completion of a program of preparation, internship and appropriate assessments prescribed by the EPSB; KRS 161.028 requires that the EPSB reissue Kentucky certification. This administrative regulation establishes requirements for reissuance when a certification has lapsed.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 EPSB does not believe this administrative regulation will have any impact on expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(4) How much 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 EPSB does not believe this administrative regulation will

generate new revenues for the state or local government (including cities, counties, fire departments, or school districts) for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The EPSB does not believe this administrative regulation will generate new revenues for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years.

(c) How much will it cost to administer this program for the first year? The EPSB does not believe this administrative regulation will cost anything to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The EPSB does not believe this administrative regulation will cost anything to administer this program in subsequent years.

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

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)

103 KAR 5:121. Repeal of 103 KAR 5:120.

RELATES TO: KRS 134.160

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.160(6) provides that the Department of Revenue shall direct each county sheriff to keep his books and records in a manner and form so that all collections and disbursements from whatever source may be easily audited. 103 KAR 5:120 was promulgated in 1975 and has not been updated since. Advances in technology in the last 40 years have made that administrative regulation obsolete and no longer needed. Therefore, this administrative regulation repeals 103 KAR 5:120.

Section 1. 103 KAR 5:120, Sheriff's cash book, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: December 14, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2017, at 10:00am in Room 382, Capitol Annex Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Finance and Administration Cabinet, 702 Capital Avenue, Room 383, Frankfort, Kentucky 40601, phone (502) 782-5705, fax (502) 564-2541, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals 103 KAR 5:120, a regulation promulgated in 1975 to set forth the documentation of cash received by Sheriff's for audit purposes. With the advance of technology over 40 years, a cash book is no longer used. Therefore this regulation is obsolete.

(b) The necessity of this administrative regulation: KRS 13A requires a regulation that will no longer be updated or effective to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation filing is required per the provisions of KRS 13A to repeal regulations that will no longer be in effect.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS Chapter 13A.

(2) If 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: None.

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

(a) List 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): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budgetary funding and personnel within the Finance Cabinet.

(7) Provide an assessment of whether an 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 change.

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

(9) TIERING: Is tiering applied? Tiering was not applied for this regulation because it is repealing an existing regulation that is no longer needed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 county Sheriff's and the Finance and Administration Cabinet will primarily be affected.

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

regulation. KRS Chapter 13A

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effect on expenditures and revenues for state or local government agencies.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)

103 KAR 15:021. Repeal of 103 KAR 15:020, 103 KAR 15:080, and 103 KAR 15:100.

RELATES TO: KRS 131.081, 131.110, 141.010(24), 141.0101, 141.020, 141.0205, 141.040, 141.200, 141.420

STATUTORY AUTHORITY: KRS 131.130(1), 141.018, 141.040(9)(b), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: Three administrative regulations (103 KAR 15:020, 103 KAR 15:080, and 103 KAR 15:100) only applied to the tax years on or after December 31, 2005 and before January 1, 2007. Therefore, those administrative regulations are no longer needed. This administrative regulation repeals 103 KAR 15:020, 103 KAR 15:080, and 103 KAR 15:100.

Section 1. The following administrative regulations are hereby repealed:

(1) 103 KAR 15:020, Election to pay share of tax on behalf of corporation;

(2) 103 KAR 15:080, Depreciation; calculation and recognition of "transition amount"; and

(3) 103 KAR 15:100, Nonrefundable and refundable corporate income tax credits.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: December 14, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2017, at 10:00 a.m. in Room 382, Capitol Annex Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted

through January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Finance and Administration Cabinet, 702 Capital Avenue, Room 383, Frankfort, Kentucky 40601, phone (502) 782-5705, fax (502) 564-2541, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals 103 KAR 15:020, 103 KAR 15:080 and 103 KAR 15:100. These regulations only applied to the tax years on or after December 31, 2005 and before January 1, 2007. Therefore these regulations are obsolete and no longer needed.

(b) The necessity of this administrative regulation: KRS Chapter 13A requires a regulation that will no longer be updated or effective to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation filing is required per the provisions of KRS Chapter 13A to repeal regulations that will no longer be in effect.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will ensure that the Department of Revenue is in compliance with KRS Chapter 13A.

(2) If 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: None.

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

(a) List 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): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 change.

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

(9) TIERING: Is tiering applied? Tiering was not applied for this regulation because it is repealing an existing regulation that is no longer needed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effect on expenditures and revenues for state or local government agencies.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)

103 KAR 16:031. Repeal of 103 KAR 16:030.

RELATES TO: KRS 141.012

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: 103 KAR 16:030 explains the requirements for, and computation of, the limited net operating loss carry forward authorized by KRS 141.012. Current administration of net operating loss deductions are regulated in 103 KAR 16:250. Thus, that administrative regulation is obsolete and no longer needed. Therefore, this administrative regulation repeals 103 KAR 16:030.

Section 1. 103 KAR 16:030, Net operating loss deductions of corporations, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: December 14, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2017, at 10:00 a.m. in Room 382, Capitol Annex Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted

through January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Finance and Administration Cabinet, 702 Capital Avenue, Room 383, Frankfort, Kentucky 40601, phone (502) 782-5705, fax (502) 564-2541, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals 103 KAR 16:030 which was first filed in 1974 and never amended. The current administration of net operating loss deductions is regulated via 103 KAR 16:250. Therefore this regulation is obsolete and no longer needed.

(b) The necessity of this administrative regulation: KRS Chapter 13A requires a regulation that will no longer be updated or effective to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation filing is required per the provisions of KRS Chapter 13A to repeal regulations that will no longer be in effect.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS Chapter 13A.

(2) If 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: None.

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

(a) List 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): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budgetary funding and personnel within the Finance Cabinet.

(7) Provide an assessment of whether an 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 change.

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

(9) TIERING: Is tiering applied? Tiering was not applied for this regulation because it is repealing an existing regulation that is no longer needed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effect on expenditures and revenues for state or local government agencies.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)**

103 KAR 16:221. Repeal of 103 KAR 16:220 and 103 KAR 16:300.

RELATES TO: KRS 141.010, 141.040, 141.208

STATUTORY AUTHORITY: KRS 131.130, 141.050

NECESSITY, FUNCTION, AND CONFORMITY: 103 KAR 16:220 and 103 KAR 16:300 only applied to the tax years on or after December 31, 2005 and before January 1, 2007. Therefore, those administrative regulations are obsolete and no longer needed. This administrative regulation repeals 103 KAR 16:220 and 103 KAR 16:300.

Section 1. The following administrative regulations are hereby repealed:

(1) 103 KAR 16:220, Alternative minimum calculation; and

(2) 103 KAR 16:300, Calculation of taxable net income for disregarded single member LLCs.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: December 14, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2017, at 10:00 a.m. in Room 382, Capitol Annex Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public

hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Finance and Administration Cabinet, 702 Capital Avenue, Room 383, Frankfort, Kentucky 40601, (502) 782-5705 (telephone), (502) 564-2541 (fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals 103 KAR 16:220 and 103 KAR 16:300 that apply to the tax years on or after December 31, 2005 and before January 1, 2007. Therefore, these regulations are obsolete and no longer needed.

(b) The necessity of this administrative regulation: KRS 13A requires a regulation that will no longer be updated or effective to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation filing is required per the provisions of KRS 13A to repeal regulations that will no longer be in effect.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will ensure that the Department of Revenue is in compliance with KRS 13A.

(2) If 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: None.

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

(a) List 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): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 change.

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

(9) TIERING: Is tiering applied? Tiering was not applied for this regulation because it is repealing an existing regulation that is no longer needed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, KRS 131.130, and KRS 141.050.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)

103 KAR 19:031. Repeal of 103 KAR 19:030.

RELATES TO: KRS 141.010, 141.206

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: 103 KAR 19:030 provides instructions for filing information returns required by KRS 141.150. That administrative regulation was promulgated and last updated in 1975. This information can now be obtained from other modern sources of information. Therefore, that administrative regulation is obsolete and no longer needed. This administrative regulation repeals 103 KAR 19:030.

Section 1. 103 KAR 19:030, Income tax information returns, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: December 14, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2017, at 10:00 a.m. in Room 382, Capitol Annex Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted

through January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Department of Revenue, Finance and Administration Cabinet, 501 High Street, Station 9, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-2541, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals 103 KAR 19:030, Income tax information returns, which was first filed and promulgated in 1975. It was never updated or amended. Information obtained from these returns can now be obtained from other modern sources and this regulation is no longer needed.

(b) The necessity of this administrative regulation: KRS Chapter 13A requires a regulation that will no longer be updated or effective to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation filing is required per the provisions of KRS Chapter 13A to repeal regulations that will no longer be in effect.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will ensure that the Department of Revenue is in compliance with KRS Chapter 13A.

(2) If 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: None.

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

(a) List 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): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 change.

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

(9) TIERING: Is tiering applied? Tiering was not applied for this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effect on expenditures and revenues for government agencies.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Repealer)**

103 KAR 20:011. Repeal of 103 KAR 20:010, 103 KAR 20:020, and 103 KAR 20:035.

RELATES TO: KRS 136.070

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: Corporate license tax was repealed in 2005, making certain administrative regulations (103 KAR 20:010, 103 KAR 20:020, and 103 KAR 20:035) obsolete and no longer needed. This administrative regulation repeals 103 KAR 20:010, 103 KAR 20:020, and 103 KAR 20:035.

Section 1. The following administrative regulations are hereby repealed:

- (1) 103 KAR 20:010, Definition of gross income;
- (2) 103 KAR 20:020, Items for capital for corporation license tax; and
- (3) 103 KAR 20:035, Corporation license tax policies and circulars.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: December 14, 2016

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2017, at 10:00 a.m. in Room 382, Capitol Annex Building, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of

the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Staff Assistant, Finance and Administration Cabinet, 702 Capital Avenue, Room 383, Frankfort, Kentucky 40601, phone (502) 782-5705, fax (502) 564-2541, email Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals 103 KAR 20:010, 103 KAR 20:020 and 103 KAR 20:035 which relates to corporation license tax. This license tax was repealed in 2005. Therefore these regulations are obsolete and no longer needed.

(b) The necessity of this administrative regulation: KRS Chapter 13A requires a regulation that will no longer be updated or effective to be repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation filing is required per the provisions of KRS Chapter 13A to repeal regulations that will no longer be in effect.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will ensure that the Department of Revenue is in compliance with KRS Chapter 13A.

(2) If 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: None.

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

(a) List 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): None.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 change.

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

(9) TIERING: Is tiering applied? Tiering was not applied for this regulation because it is repealing an existing regulation that is no longer needed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effect on expenditures and revenues for state or local government agencies.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET
Board of Alcohol and Drug Counselors
(Repealer)**

201 KAR 35:016. Repeal of 201 KAR 35:015.

RELATES TO: KRS 309.0832, 309.084(2)(a)

STATUTORY AUTHORITY: KRS 309.0813(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) and (5) authorize the Board of Alcohol and Drug Counselors to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. The content of 201 KAR 35:015 is no longer necessary as it only sets forth licensure requirements for a one (1) year period of time for a current certified alcohol and drug counselor to satisfy all the requirements for licensure as a clinical drug and alcohol counselor. The one (1) year period expired on August 25, 2016. Therefore, this administrative regulation repeals 201 KAR 35:015.

Section 1. 201 KAR 35:015, Grandparenting of Certification to Licensure, is repealed.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: December 15, 2016

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

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2017, at 11:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish

to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on January 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation repeals a regulation that governs the one (1) year period of time for a current certified alcohol and drug counselors to satisfy all the requirements for licensure as a clinical drug and alcohol counselor.

(b) The necessity of this administrative regulation: This regulation is repealing 201 KAR 35:015, which is now deemed unnecessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute, which gives the board the authority to promulgate administrative regulations pursuant to KRS Chapter 13A for the administration and enforcement of KRS 309.080 to 309.089.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation removes an unnecessary regulation and will therefore assist in the effective administration of 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: 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 no individuals affected by the repealer.

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

(a) List 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 is no impact by the repeal of 201 KAR 35:015.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Not applicable.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable.

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

(a) Initially: Not applicable.

(b) On a continuing basis: Not applicable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

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

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

201 KAR 35:025. Examinations.

RELATES TO: KRS 309.083(5), 309.0831(5), 309.0832(4), 309.0833

STATUTORY AUTHORITY: KRS 309.0813(1), (4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(4) requires the board to promulgate an administrative regulation governing the administration and grading of the written examination, which applicants shall be required to successfully complete. This administrative regulation establishes those fees.

Section 1. Comprehensive Examination. (1) An applicant for registration as an alcohol and drug peer support specialist shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(2) An applicant for certification shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

(3) An applicant for licensure shall take the comprehensive examination offered by the International Certification and Reciprocity Consortium.

Section 2. Remediation Plan. (1) If an applicant fails the examination, the applicant shall:

(a) Not retake the examination within ninety (90) days of the failed examination date;

(b) Submit a KBADC Form 19, Re-Examination Application;

and

(c) Submit the examination fee for the respective examination listed in 201 KAR 35:020, Section 2.

(2) If the applicant fails the examination twice or more, the applicant shall submit a remediation plan after each failed examination:

(a) To address the deficiencies cited in the examination results; and

(b) Cosigned by the board-approved supervisor.

(3) Upon completion of the remediation plan approved by the board, the applicant may request permission to retake the examination by filing a KBADC Form 19, Re-Examination Application, and submitting the examination fee for the respective examination listed in 201 KAR 35:020, Section 2.

Section 3. Incorporation by Reference. (1) "KBADC Form 19, Re-Examination Application", December 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. 4:30 p.m.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: December 15, 2016

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

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 27, 2017, at 11:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on January 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Walls, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the comprehensive examination requirement for each applicant and the process that an applicant must satisfy if the applicant fails the examination.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedure for the examination and the process that an applicant must satisfy if the applicant fails the examination.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the comprehensive examination requirement for each applicant and the process that an applicant must satisfy if the applicant fails the examination.

(2) If 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 467 Licensed Clinical Alcohol and Drug Counselors, three (3) Licensed Clinical Alcohol and Drug Counselor Associates, 816 Certified Alcohol and Drug Counselors, 386 Temporary Certified Alcohol and Drug Counselors, fifty-six (56) Temporary Registered Alcohol and Drug Peer Support Specialists, and one (1) Registered Alcohol and Drug Peer Support Specialist.

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

(a) List 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 is required to successfully pass an examination and if fails must apply to retake the examination. After the second failed examination, an applicant shall submit a remediation plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): All fees are set out in 201 KAR 35:020. The examination fee for a registration is \$150.00. The examination fee for certification or licensure is \$200.00. The fee must be paid each time an individual takes the examination.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation hopefully provides an applicant the opportunity to successfully pass the required examination.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (4), (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. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The board is uncertain the amount of revenue this regulation will generate because it is impossible to predict the number of registrants and licensees, late renewals, and services from the board.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The board is uncertain the amount of revenue this regulation will generate because it is impossible to predict the number of registrants and licensees, late renewals, and services from the board.

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

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

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

Revenues (+/-): +

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Repealer)

804 KAR 10:021. Repeal of 804 KAR 10:020 and 804 KAR 10:025.

RELATES TO: KRS 241.060

STATUTORY AUTHORITY: KRS 241.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to promulgate administrative regulations regarding matters over which the board has jurisdiction. This administrative regulation repeals 804 KAR 10:020 and 804 KAR 10:025 because the provisions of those administrative regulations have been incorporated into 804 KAR 10:010 to streamline all administrative regulations relating to local alcoholic beverage control administrators into one (1) administrative regulation.

Section 1. The following administrative regulations are hereby repealed:

(1) 804 KAR 10:020, City alcoholic beverage control administrator; and

(2) 804 KAR 10:025, Urban-county alcoholic beverage control administrator.

CHRISTINE TROUT, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 31, 2017 at 1:00 p.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing at least five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted

through 11:59 p.m. on January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melissa McQueen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 804 KAR 10:020 and 804 KAR 10:025.

(b) The necessity of this administrative regulation: With the filing of this administrative regulation, the above-listed regulations have been simultaneously incorporated into 804 KAR 10:010 to streamline the regulations relating to local alcoholic beverage control administrators. As the material will be contained within 804 KAR 10:010, the two separate regulations are no longer needed. This administrative regulation repeals those administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate administrative regulations. Information in the regulations being repealed has been consolidated and incorporated into another existing regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of these administrative regulations will streamline the regulations by addressing all local alcoholic beverage control administrators in to promote a better, clearer, and less repetitive regulatory scheme.

(2) If 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 Department of Alcoholic Beverage Control is impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Department of Alcoholic Beverage Control will not be required to take any additional action to implement this repealer.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no financial benefit to repeal these administrative regulations. Local alcoholic beverage control administrators may find it beneficial to reference all provisions in one clear and stream-lined 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 the implementation and enforcement of this administrative regulation: No funding is needed to implement and enforce the repeal of these administrative regulations.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary to repeal these administrative regulations.

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

(9) TIERING: Is tiering applied? No tiering is applied because this regulation repeals earlier regulations and applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control is impacted by this administrative regulation. There is no change in procedures local governments follow, so there is not expected to be any impact to them as a result of this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs expected to repeal these administrative regulations.

(d) How much will it cost to administer this program for subsequent years? There are no costs expected to repeal these administrative regulations.

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: None is expected.

PUBLIC PROTECTION CABINET Department of Insurance Commissioner's Office (Repealer)

806 KAR 2:011. Repeal of 806 KAR 2:010, 806 KAR 2:020, 806 KAR 2:030, 806 KAR 2:040, and 806 KAR 2:050.

RELATES TO: KRS 91A.080, 304.2-040, 304.2-080, 304.2-110, 304.2-150, 304.2-160, 304.4-010

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations to aid in the effectuation of any provision of the Insurance Code, as defined in KRS 304.1-010. This administrative regulation repeals 806 KAR 2:010, Seal facsimile, which is no longer necessary due to changes in technology and the manner in which licenses are issued, and the Department of Insurance has adopted the Commonwealth of Kentucky seal; 806 KAR 2:020, Interests and rewards prohibited, which primarily restates the statutory prohibitions of direct and indirect interests of Department

of Insurance employees, unnecessarily requires the completion of an affidavit disclosing prohibited interests that disqualify an individual from being considered or maintaining employment under KRS 304.2-080, and exceeds the limits of KRS 304.2-080 by prohibiting an individual's family members from having a connection or financial interest in an insurance related entity or transaction; 806 KAR 2:030, Copies of administrative regulations; fee, which conflicts with the requirements of KRS 304.4-010; 806 KAR 2:040, Records of certificates of authority; licenses, which is no longer necessary because KRS 369.107 mandates legal effect and enforceability for electronic records and signatures by specifically providing "[i]f a law requires a record to be in writing, an electronic record satisfies the law" with a similar provision for signatures; and 806 KAR 2:050, Complaints, which restates the statutorily required duties of the commissioner under KRS 304.2-160 and KRS 304.2-165 to review complaints and make findings, includes an unnecessary statement of judicial authority, and requires the commissioner to use a standard of review ("guided by the common and accepted practice in the insurance industry"), which conflicts with current statutes and administrative regulations that should ultimately be determinative of the justification of a complaint.

Section 1. The following administrative regulations are hereby repealed:

- (1) 806 KAR 2:010, Seal facsimile;
- (2) 806 KAR 2:020, Interests and rewards prohibited,
- (3) 806 KAR 2:030, Copies of administrative regulations; fee;
- (4) 806 KAR 2:040, Records of certificates of authority; licenses; and
- (5) 806 KAR 2:050, Complaints.

H. BRIAN MAYNARD, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017 at 11:00 a.m. Eastern Time at the Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the Kentucky Department of Insurance in writing by January 18, 2017, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted if received at or before 11:59 pm on January 31, 2017. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.OConnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick D. O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 806 KAR 2:010, 806 KAR 2:020, 806 KAR 2:030, 806 KAR 2:040, and 806 KAR 2:050.

(b) The necessity of this administrative regulation: As described in the body of the "repealer," this administrative regulation repeals regulations which are unnecessary due to technological advances, restate statutory provisions without any meaningful additional explanation or requirements, or that conflict with express statutory provisions by including additional

requirements or simply go beyond the bounds of the statute. Through this repealer, the Department will achieve gains in efficiency by allowing for electronic communication and storage already available and recognized as having legal affect, and also will remove outdated and unnecessary regulations making industry review and compliance easier.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 13A.310 states that an administrative regulation shall only be repealed by the promulgation of an administrative regulation. This administrative regulation is repealing five (5) administrative regulations which either fail to aid in the effectuation of the Insurance Code or conflict with express statutory requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals five (5) administrative regulations that are obsolete, in conflict with statutory provisions, or fail to add any insightful details to the duties required by statute. Thus, the repeal of these regulations will promote the efficient review of regulatory duties by entities regulated by 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: 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: This administrative regulation will not have a direct impact on insurers or other regulated entities because it repeals obsolete regulations and does not change existing business practices of the Department of Insurance. However, entities requesting copies of administrative regulations will have to pay an additional 5 cents to conform with the requirements of 806 KAR 2:030. Department employees will no longer be required to complete an unnecessary affidavit disclosing interests which prohibit them from initial consideration or continued employment.

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

(a) List 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 be required to take any action as a result of this repealer regulation, with the exception of paying slightly more for rarely requested copies which are widely available online.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals requesting copies of administrative regulations will pay an extra 5 cents per page. Due to the minimal nature of requests for documents impacted by this repeal, and the availability of such documents online, the costs are anticipated to be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those entities will benefit from overall increased efficiency.

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

(a) Initially: There will not be an initial cost to implement this repealer regulation.

(b) On a continuing basis: There will not be a continuing cost related to this repealer regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

No funding will be necessary.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation did not directly or indirectly establish any fees, but it will increase copying fees to be consistent with the statutory requirements.

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements of this regulation apply equally to all insurance companies, corporate sureties, or other 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? Kentucky Department of Insurance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110 and KRS 13A.310.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department anticipates the revenue generated will be minimal. Although requests for "administrative regulations" will now cost 30 cents per page (fee set by statute) instead of 25 cents, the Department has only received one such request over the past three years. Thus, this is not seen as a revenue generator, nor is it intended to be.

(b) How 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 Department anticipates the revenue generated will be minimal. Although requests for "administrative regulations" will now cost 30 cents per page (fee set by statute) instead of 25 cents, the Department has only received one such request over the past three years. Thus, this is not seen as a revenue generator, nor is it intended to be.

(c) How much will it cost to administer this program for the first year? The Department does not anticipate the repeal of these regulations will cost anything.

(d) How much will it cost to administer this program for subsequent years? The Department does not anticipate the repeal of these regulations will cost anything.

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 Financial Institutions Division of Depository Institutions (Repealer)

808 KAR 1:111. Repeal of 808 KAR 1:110.

RELATES TO: KRS 286.3-100(7)

STATUTORY AUTHORITY: KRS 286.1-020(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to repeal any administrative regulation necessary to interpret and carry out the provisions and intent of KRS Chapter 286. Subject to certain requirements, KRS 286.3-100(7) permits banks to purchase, hold, and convey their

shares of any open end registered investment company registered under the Investment Act of 1940, or a series of the company, subject to certain limitations. This administrative regulation repeals 808 KAR 1:110, which is unnecessarily duplicative of KRS 286.3-100(7).

Section 1. 808 KAR 1:110, Investment of bank funds, is repealed.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017, at 1:00 p.m., at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the calendar day, 11:59 p.m., January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Deborah Crocker, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Reg@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deborah Crocker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 1:110, Investment of bank funds.

(b) The necessity of this administrative regulation: This regulation is necessary because 808 KAR 1:110 was rendered obsolete by legislative amendments made to KRS 286.3-100(7) that permitted banks to invest funds in a particular series of a mutual fund if that series met the requirements of KRS 286.3-100(7).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) provides that the commissioner may repeal any administrative regulation to carry out the provisions and intent of KRS Chapter 286. Due to the amendments to KRS 286.3-100(7), 808 KAR 1:110 is no longer necessary.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation will repeal an obsolete administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: 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 administrative 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: Because the statute upon which the regulation was based was amended, there are no individuals, businesses, organizations, or state and local governments affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will not require compliance from regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since this regulation will not require compliance by regulated entities, there are no costs associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue as a result of compliance because compliance is not required.

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

(a) Initially: No cost anticipated.

(b) On a continuing basis: No cost anticipated.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to similarly situated parties in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 286.1-020(1).

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

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

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

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

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

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

Revenues (+/-): None.

Expenditures (+/-): No cost.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Depository Institutions
(Repealer)

808 KAR 3:031. Repeal of 808 KAR 3:030.

RELATES TO: KRS 286.6-100

STATUTORY AUTHORITY: KRS 286.1-020(1), 286.6-070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to repeal any administrative regulation necessary to interpret and carry out the provisions and intent of KRS Chapter 286. 808 KAR 3:020 is being amended to consolidate the recordkeeping requirements for credit unions into a single administrative regulation. This administrative regulation repeals 808 KAR 3:030 because it is outdated and will be rendered obsolete upon the amendment of 808 KAR 3:020.

Section 1. 808 KAR 3:030, Conduct of examination of records, is repealed.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017, at 1:00 p.m., at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the calendar day, 11:59 p.m., January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Deborah Crocker, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deborah Crocker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 3:030.

(b) The necessity of this administrative regulation: This regulation is necessary because 808 KAR 3:030 is outdated and will be rendered obsolete upon the amendment of 808 KAR 3:020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) provides that the commissioner may repeal any administrative regulation to carry out the provisions and intent of KRS Chapter 286. 808 KAR 3:030 is no longer necessary to carry out the provisions and intent of KRS Chapter 286 because it is outdated and will be rendered obsolete upon the amendment of 808 KAR 3:020.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation will repeal an obsolete regulation.

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

(a) How the amendment will change this existing administrative regulation: 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 administrative of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the 24 credit unions currently chartered in Kentucky by the Department of Financial Institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will not require compliance from regulated entities.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Since this regulation will not require compliance by regulated entities, no benefits will accrue as a result of compliance.

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

(a) Initially: No cost anticipated.

(b) On a continuing basis: No cost anticipated.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is KRS 286.1-020(1).

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

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

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

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

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

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

Revenues (+/-): None.

Expenditures (+/-): No cost.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Nondepository Institutions
(Repealer)**

808 KAR 5:011. Repeal of 808 KAR 5:010, 808 KAR 5:020, and 808 KAR 5:030.

RELATES TO: KRS 286.7-440, 286.7-520(5), 286.7-550, 286.7-590

STATUTORY AUTHORITY: KRS 286.1-020(1), 286.7-530(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to repeal any administrative regulation necessary to interpret and carry out the provisions and intent of KRS Chapter 286. This administrative regulation repeals 808 KAR 5:010, 808 KAR 5:020, and 808 KAR 5:030, which are outdated and no longer necessary for regulatory supervision of the industry.

Section 1. The following administrative regulations are repealed:

(1) 808 KAR 5:010, Conduct in soliciting business;

(2) 808 KAR 5:020, Restrictions; and

(3) 808 KAR 5:030, Advertising.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 15, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017, at 1:00 p.m., at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the calendar day, 11:59 p.m., January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Catherine Falconer, Staff Attorney, or Deborah Crocker, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Catherine Falconer or Deborah Crocker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 5:010, 808 KAR 5:020, and 808 KAR 5:030.

(b) The necessity of this administrative regulation: This regulation is necessary because 808 KAR 5:010 to 808 KAR 5:030 are outdated and no longer relevant or necessary for regulatory supervision of the industry. There is one remaining Kentucky-licensed industrial loan company, which is only providing servicing of an existing loan.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 286.1-020(1) provides that the commissioner may repeal any administrative regulation to carry out the provisions and intent of KRS Chapter 286. Due to the lack of licensees operating as industrial loan companies, these regulations are no longer necessary for the regulatory supervision of the industry.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation will repeal regulations that are outdated and no longer necessary for the regulatory supervision of the industry.

(2) If 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 administrative of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the one remaining industrial loan company licensed by the Kentucky Department of Financial Institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will not require compliance from the regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Since this regulation will not require compliance by the regulated entity, no benefits will accrue as a result of compliance.

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

(a) Initially: No cost anticipated.

(b) On a continuing basis: No cost anticipated.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is KRS 286.1-020(1) and KRS 286.7-530(2).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

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

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

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

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

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

Revenues (+/-): None.

Expenditures (+/-): No cost.

Other Explanation: None.

PUBLIC PROTECTION CABINET Department of Financial Institutions Division of Depository Institutions (Repealer)

808 KAR 7:031. Repeal of 808 KAR 7:030 and 808 KAR 7:040.

RELATES TO: KRS 286.5-081, 286.5-441, 286.5-451, 286.5-905, 286.5-910

STATUTORY AUTHORITY: KRS 286.1-020(1), 286.5-705.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.1-020(1) authorizes the commissioner to repeal any administrative regulation necessary to interpret and carry out the provisions and intent of KRS Chapter 286. This administrative regulation repeals 808 KAR 7:030 and 808 KAR 7:040, which are outdated and no longer necessary for the regulatory supervision of the industry.

Section 1. The following administrative regulations are repealed:

(1) 808 KAR 7:030, State-chartered savings and loan associations; operating parity; and

(2) 808 KAR 7:040, Acquisition of savings and loan associations.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 15, 2016

FILED WITH LRC: December 15, 2016 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2017, at 1:00 p.m., at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the calendar day, 11:59 p.m., January 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Catherine Falconer, Staff Attorney, or Deborah Crocker, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200,

Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Catherine Falconer or Deborah Crocker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 7:030 and 808 KAR 7:040.

(b) The necessity of this administrative regulation: There have not been any associations regulated pursuant to KRS Chapter 286.5 since 2002. Therefore, this regulation is necessary because 808 KAR 7:030 and 808 KAR 7:040 are outdated and no longer necessary for regulatory supervision of the industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.1-020(1) provides that the commissioner may repeal any administrative regulation to carry out the provisions and intent of KRS Chapter 286. Due to the lack of associations operating pursuant to KRS Chapter 286.5, these regulations are no longer necessary for the regulatory supervision of the industry.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation will repeal regulations that are outdated and no longer necessary for the regulatory supervision of the industry.

(2) If 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 administrative 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 no individuals or entities affected by this administrative regulation.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Since this regulation will not require compliance by regulated entities, no benefits will accrue as a result of compliance.

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

(a) Initially: No cost anticipated.

(b) On a continuing basis: No cost anticipated.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to similarly situated entities in an

equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is KRS 286.1-020(1) and 286.5-705.

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

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

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

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

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

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

Revenues (+/-): None.

Expenditures (+/-): No cost.

Other Explanation: None.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Prevention and Quality Improvement
(New Administrative Regulation)

902 KAR 21:020. Kentucky Colon Cancer Screening Program.

RELATES TO: KRS 205.520, 211.090(3), 211.180(1), 214.540-214.544, 304.17A

STATUTORY AUTHORITY: KRS 194A.050(1), 214.542(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 214.542(6) requires the cabinet to promulgate administrative regulations to implement the Kentucky Colon Cancer Screening Program. This administrative regulation establishes the eligibility criteria, services, and requirements for participation in the colon cancer screening program.

Section 1. Definitions. (1) "Applicant" means an individual desiring services paid in part by the screening program.

(2) "Contractor" means a person or facility that agrees to the terms of participation of the screening program in contract and ensures services are delivered pursuant to the screening program terms.

(3) "Department" means the Department for Public Health or its designated representative.

(4) "Screening program" means the Kentucky Colon Cancer Screening Program administered by the department.

Section 2. Eligibility Criteria. (1) In order to receive a service established in Section 3 of this administrative regulation, an applicant shall:

(a) Meet the eligibility for screening pursuant to the current

American Cancer Society Colorectal Cancer Screening Guidelines;

- (b) Be a legal resident of Kentucky;
- (c) Have an individual income at or below 300 percent of the federal poverty level; and
- (d) If covered by health insurance, have out-of-pocket medical expenses that are five (5) percent or more of the individual's annual income.

(2) A service received without prior authorization from the screening program is not eligible to be covered.

Section 3. Services. If funding is available, the services to be paid in part by the screening program shall include colon cancer screening tests and may include:

- (1) Referral, examination, and rescreening for individuals for whom further examination or treatment is indicated by the colon cancer screening;
- (2) Surveillance; and
- (3) Treatment.

Section 4. Contractor Responsibility. A contractor shall:

- (1) Complete a KCCSP 101, Kentucky Colon Cancer Screening Program Eligibility and Enrollment, form with the applicant;
- (2) Review the completed KCCSP 102, Kentucky Colon Cancer Screening Program Affidavit, form;
- (3) Determine applicant eligibility;
- (4) If the applicant is eligible, provide service or referral for service; and
- (5) Report program data into the data collection system pursuant to Section 6 of this administrative regulation.

Section 5. Payment. (1) A contractor may charge a fee for a service provided through the screening program in accordance with the guideline document to be provided by the department and agreed upon through contract.

(2) The screening program shall reimburse the contractor an amount for specific and determined services as agreed in contract.

Section 6. Data Collection System. The department shall establish a data collection system to record the:

- (1) Number of individuals screened;
- (2) Demographic characteristics of the individuals screened; and
- (3) Type of services performed under the screening program.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form "KCCSP 101, Kentucky Colon Cancer Screening Program Eligibility and Enrollment", 12/2016; and
- (b) Form "KCCSP 102, Kentucky Colon Cancer Screening Program Affidavit", 12/2016.

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

HIRAM C. POLK, JR., MD

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 14, 2016

FILED WITH LRC: December 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017, 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 January 16, 2017, 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 close of business January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40602, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin, Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility criteria, services, and requirements for participation in the Kentucky Colon Cancer Screening Program, as required by KRS 214.542(6).

(b) The necessity of this administrative regulation: KRS 214.540 establishes the Colon Cancer Screening Program for the purpose of increasing colon cancer screening, reducing morbidity and mortality from colon cancer, and reducing the cost of treating colon cancer among citizens of the Commonwealth. KRS 214.542(6) requires the Department for Public Health in the Cabinet for Health and Family Services to promulgate administrative regulations to implement the provisions of these statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the Kentucky Colon Cancer Screening Program in regulation, as created by KRS 214.540 and contains the requirements of KRS 214.542.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the process and requirements for enrolling people in the Kentucky Colon Cancer Screening Program, which works to increase colon cancer screening, reduce morbidity and mortality from colon cancer, and reduces the cost of treating colon cancer among citizens of the Commonwealth, as funding is available.

(2) If 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, created by the promulgation of KRS 214.540-544 and the Regular Session 2016 amendment to KRS 214.542.

(b) The necessity of the amendment to this administrative: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes, amended in the 2016 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Uninsured and underinsured individuals between the ages of 50 and 75 are the target audience of this regulation. Since the passage of the Affordable Care Act, the number of uninsured and underinsured individuals is unknown. In past variations of the Kentucky Colon Cancer Screening Program, many local health departments were funded by this program. These local health departments in turn contracted with various providers within their local communities to provide the clinical services of the program. In the redesign of this program, various healthcare facilities will have the option of participating. Various partner organizations impacted by this regulation include the Kentucky Cancer Program, Kentucky Cancer Consortium, Colon Cancer Prevention Project, and American Cancer Society.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative

regulation or amendment: The Kentucky Colon Cancer Screening Program is a voluntary participation program that works to increase colon cancer screening, reduce morbidity and mortality from colon cancer, and reduces the cost of treating colon cancer among citizens of the Commonwealth, as funding is available. A contractor shall review applications for acceptance to the Program and, if the applicant is eligible, shall navigate them to the appropriate services or provide those services, have those services paid for at least in part by the Program, and report data into a data collection system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The Kentucky Colon Cancer Screening Program is a voluntary participation program that works to increase colon cancer screening, reduce morbidity and mortality from colon cancer, and reduces the cost of treating colon cancer among citizens of the Commonwealth, as funding is available. Costs are variable and depend upon the contractors participating in this program. This administrative regulation does not require costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Colon Cancer Screening Program is a voluntary participation program that works to increase colon cancer screening, reduce morbidity and mortality from colon cancer, and reduces the cost of treating colon cancer among citizens of the Commonwealth.

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

(a) Initially: The Kentucky Colon Cancer Screening Program is limited to the amount of General Fund appropriations to the Department for Public Health for the Colon Cancer Screening Program and private or public awards of funds. Costs will not exceed the funding received by the program.

(b) On a continuing basis: The Kentucky Colon Cancer Screening Program is limited to the amount of General Fund appropriations to the Department for Public Health for the Colon Cancer Screening Program and private or public awards of funds. Costs will not exceed the funding received by the program. Services offered are dependent on, "If funding is available".

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund appropriations to the Department for Public Health for the Colon Cancer Screening Program and private or public awards of 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 or increase any fees.

(9) TIERING: Is tiering applied? No. This administrative regulation is applicable to contractors with the Kentucky Colon Cancer Screening Program and applicants meeting the eligibility 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? Local health departments may be affected if they contract with the Kentucky Colon Cancer Screening Program to provide the services of the Program or navigate eligible applicants to services. The Kentucky Department for Public Health operates this program if funding is available pursuant to KRS 214.540.

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) and 214.542(6)

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

(a) How much 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.

(b) How 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.

(c) How much will it cost to administer this program for the first year? The Kentucky Colon Cancer Screening Program is limited to the amount of General Fund appropriations to the Department for Public Health for the Colon Cancer Screening Program and private or public awards of funds. Costs will not exceed the funding received by the program. Services offered are dependent on, "If funding is available".

(d) How much will it cost to administer this program for subsequent years? The Kentucky Colon Cancer Screening Program is limited to the amount of General Fund appropriations to the Department for Public Health for the Colon Cancer Screening Program and private or public awards of funds. Costs will not exceed the funding received by the program. Services offered are dependent on, "If funding is available".

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Commissioner's Office

(New Administrative Regulation)

907 KAR 17:035. External Independent Third-Party Review.

RELATES TO: KRS 194A.025(3), 205.646, 42 C.F.R. 438

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.646, 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. In accordance with KRS 205.646, this administrative regulation establishes provisions regarding a Medicaid provider's right to an external independent third-party review of a managed care organization's adverse final decision of a provider's appeal of a denial of a claim for reimbursement or a service.

Section 1. Managed Care Organization Notice to Provider. (1) If an MCO issues an adverse final decision to a provider of a denial, in whole or in part, of a health care service, or claim for reimbursement as referenced in KRS 205.646(2), the MCO shall notify the provider in writing of the provider's right to an external independent third-party review pursuant to KRS 205.646.

(2) The MCO's notice shall:

(a) Comply with the requirements established in KRS 205.646(3) regarding an external independent third-party review; and

(b) State the reason for the adverse decision.

Section 2. External Independent Third-Party Review Preliminary Requirements. (1)(a) To request an external independent third-party review afforded to a provider pursuant to KRS 205.646(2), a provider shall submit a written request for external independent third-party review to the MCO within sixty (60) calendar days of receiving the MCO's final decision resulting from the MCO's internal appeal process.

(b) The sixty (60) day count shall begin on the:

1. Date that the notice was received electronically, if received

electronically;

2. Date that the notice was received via fax, per the date and time documented on the fax transmission, if the notice was faxed; or

3. Post mark date on the envelope containing the notice, if the notice was sent via postal mail. An additional three (3) days shall be added when the service is by mail.

(c) A request for an external independent third-party review shall be sent to the MCO:

1. Electronically;
2. By fax; or
3. By postal mail.

(2) A provider's request for an external independent third-party review shall:

(a) Identify each specific issue and dispute directly related to the adverse final decision issued by the MCO;

(b) State the basis on which the MCO's decision on each issue is believed to be erroneous; and

(c) State the provider's designated contact information, including name, phone number, mailing address, fax number, and email address.

(3) Within five (5) business days of receiving a provider's request for an external independent third-party review, the MCO shall:

(a) Confirm in writing to the provider's designated contact the MCO's receipt of the external independent third-party review request from the provider;

(b) Notify the department of the provider's request for an external independent third-party review; and

(c) Notify the enrollee of the provider's request for an external independent third-party review, if related to the denial of a health care service.

(4)(a) An external independent third-party review shall not be granted regarding a claim about which the enrollee has already requested an administrative hearing pursuant to 907 KAR 17:010.

(b) If an enrollee files a request for an administrative hearing pursuant to 907 KAR 17:010 regarding a claim about which a provider has already filed a request for an external independent third-party review, the external independent third-party review shall be held in abeyance until the enrollee's appeal has been fully adjudicated.

(5) Upon receiving a request for an external independent third-party review, the department shall:

(a) Assign the review to an external independent third-party reviewer; and

(b) Notify the:

1. MCO of the external independent third-party reviewer; and
2. Provider's designated contact of the external independent third-party reviewer.

(6) The department shall deny a request to initiate the external independent third-party review process, or a part thereof, if a party fails to:

(a) Exhaust the MCO's internal appeal process in accordance with 907 KAR 17:015; or

(b) Submit a timely request for an external independent party review in accordance with this administrative regulation.

(7) Within fifteen (15) business days of a provider's request for an external independent third-party review, the MCO shall:

(a) Submit to the department all documentation submitted by the provider in the provider's MCO internal appeal process, in addition to any other information related to the MCO's final decision; and

(b) Designate a contact, including name, phone number, mailing address, fax number, and email address.

Section 3. External Independent Third-Party Review. (1) The following shall be the categories of external independent third-party reviews:

(a) Medical necessity. A claim involving a medical necessity determination; or

(b) Service coverage requirements including:

1. A claim involving whether the given service is covered by the Medicaid program; or

2. A claim involving whether the provider followed the MCO requirements for the covered service.

(2)(a) A claim involving a medical necessity determination shall be reviewed by a clinician or clinicians who:

1. Have clinical expertise regarding the subject matter; and
2. Are currently licensed regarding the subject matter.

(b) A claim involving service coverage requirements shall be reviewed by the department.

(3) There shall be no more than one (1) claim reviewed per external independent third-party review unless the department determines that reviewing multiple claims related to one (1) member is expedient and appropriate.

(4) The documentation to be reviewed by an external independent third-party reviewer shall be limited to the documentation referenced in Section 2(7) of this administrative regulation.

(5)(a) An external independent third-party reviewer shall:

1. Except as established in paragraph (c) of this subsection, conduct an external independent third-party review and issue a final decision within thirty (30) calendar days from the receipt of the documentation referenced in Section 2(7) of this administrative regulation; and

2. Issue the final decision to:

- a. The provider's designated contact;
- b. The MCO's designated contact; and
- c. The department.

(b) Within ten (10) business days of receiving the final decision of the external independent third party reviewer, the MCO shall notify the enrollee of the final decision, if related to the denial of a health care service.

(c) An extension of up to fourteen (14) calendar days on a final decision of an external independent third-party review may be allowed upon agreement of both parties.

Section 4. Right to an Administrative Hearing. (1) Upon the issuance of a final decision by an external independent third-party reviewer, the department shall notify in writing the MCO and the provider's designated contact of the right of the party that received an adverse final decision to appeal the decision by requesting an administrative hearing pursuant to 907 KAR 17:040.

(2)(a) A request for an appeal referenced in subsection (1) of this section shall be sent to the department within thirty (30) calendar days of receipt of the department's written notice referenced in subsection (1) of this section.

(b) The request for an appeal shall be sent to the department:

1. Electronically;
2. By fax; or
3. By postal mail.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 18, 2016

FILED WITH LRC: December 1, 2016 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing January 13, 2017, 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 January 31, 2017. 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.orne@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Sharley Hughes (sharleyj.hughes@ky.gov); phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements regarding external independent third-party reviews in accordance with KRS 205.646. An external independent third-party review is an appeal option for a Medicaid provider that has received an adverse final decision from a managed care organization (MCO) that "denies, in whole or in part, a health care service rendered by the provider to an enrollee of the Medicaid managed care organization." The party that receives an adverse decision from the review, whether it be the provider or the MCO, will then have the option to request an administrative hearing conducted by the Cabinet for Health and Family Services. A separate administrative regulation (907 KAR 17:040) is being promulgated concurrently with this administrative regulation to establish the administrative hearing provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a mandate, established in KRS 205.646, to establish the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.646 by establishing the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(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 authorizing statutes by establishing the Medicaid external independent third-party review option for Medicaid providers who have received an adverse final decision from a managed care organization (MCO) regarding a claim for reimbursement or related.

(2) If 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 government affected by this administrative regulation: All Medicaid providers and all five (5) managed care organizations will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will have to develop procedures to adhere to this Administrative Regulation. Medicaid providers will need to create an internal process that determines who, within their office, will request the external independent third-party review. Medicaid managed care organizations will have to create a new process, internally, which allows providers to submit the request for the external independent third-party review to the MCO. Medicaid managed care organizations will also need to

revise all of their adverse determination letters and be prepared to submit denial documentation to the Department upon request from the providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Medicaid Services is unable to determine the cost to the provider or MCO. For providers, it will be an added administrative step. For managed care organization, there will be an added administrative step as well as the added cost of revising all adverse determination letters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the provider wins the appeal, they will receive reimbursement for a previously denied claim.

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

(a) Initially: DMS estimates that this administrative regulation will increase DMS's costs by \$4.95 million (\$3.71 million federal funds/\$1.24 million state funds) annually. In order to estimate a partial potential cost estimate for the external third-party review, the Department reviewed the number of similar appeals that were upheld against the MCOs in favor of the appealing providers which was approximately 30,000 per year. The Department has modified its existent contract with the contractor Island Peer Review Organization (IPRO) based on approximately one-third of the given number of similar appeals made the year before. The contract modification will pay IPRO \$495 per case review; thus the contract modification for the SFY 2017 contract allows for 10,000 case reviews for a total increase in the budget of \$4,950,000. This increase is funded at a 75/25 split with CMS paying the larger federal share.

Further, there are two positions being created for administrative assistants within DMS.

Finally, the Department is using two nurses from Community Alternatives for the independent reviews initiated for plan delivery rules and coverage denials review. These two medical professionals, if needed full time, will require a \$45,000 base salary plus 67% for state benefits per year for each positions. The total cost of both medical professionals can also be funded using 75% federal funds and 25% state funds.

(b) On a continuing basis: The response to the question in (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, 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: DMS was not allocated any funds to implement the administrative regulation. However, the DMS contract with IPRO, the external quality review organization, has been increased to allow for IPRO to conduct the external independent third-party reviews related to medical necessity. Additionally, DMS will be hiring additional staff to administer the additional administrative work.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration 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 Department for Medicaid Services will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.646.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue for state or local government will result from the amendment.

(c) How much will it cost to administer this program for the first year? DMS estimates that this administrative regulation will increase DMS's costs by \$4.95 million (\$3.71 million federal funds/\$1.24 million state funds) annually. In order to estimate a partial potential cost estimate for the external third-party review, the Department reviewed the number of similar appeals that were upheld against the MCOs in favor of the appealing providers which was approximately 30,000 per year. The Department has modified its existent contract with the contractor Island Peer Review Organization (IPRO) based on approximately one-third of the given number of similar appeals made the year before. The contract modification will pay IPRO \$495 per case review; thus the contract modification for the SFY 2017 contract allows for 10,000 case reviews for a total increase in the budget of \$4,950,000. This increase is funded at a 75/25 split with CMS paying the larger federal share.

Further, there are two positions being created for administrative assistants within DMS.

Finally, the Department is using two nurses from Community Alternatives for the independent reviews initiated for plan delivery rules and coverage denials review. These two medical professionals, if needed full time, will require a \$45,000 base salary plus 67% for state benefits per year for each positions. The total cost of both medical professionals can also be funded using 75% federal funds and 25% state funds.

(d) How much will it cost to administer this program for subsequent years? The response in (c) also applies here.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Commissioner's Office

(New Administrative Regulation)

907 KAR 17:040. Appeal and administrative hearing post external independent third-party review.

RELATES TO: KRS 194A.025(3), 205.646, 42 C.F.R. 438

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.646, 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. In accordance with KRS 205.646, this administrative regulation establishes provisions regarding a Medicaid provider's and managed care organization's right to an administrative hearing following an external independent third-party review.

Section 1. Administrative Hearing Notice and Preliminary

Requirements. (1) Upon the issuance of a final decision by an external independent third-party reviewer pursuant to 907 KAR 17:035, the department shall notify in writing the MCO and the provider of the right of the party that received an adverse final decision to appeal the decision by requesting an administrative hearing pursuant to this administrative regulation.

(2)(a) A written request for an administrative hearing referenced in subsection (1) of this section shall be sent to the department within thirty (30) calendar days of receipt of the department's written notice referenced in subsection (1) of this section.

(b) The request for an administrative hearing shall be sent to the department:

1. Electronically;
2. By fax; or
3. By postal mail.

(3) A provider or MCO request for an administrative hearing shall:

(a) Identify each specific issue and dispute directly related to the adverse final decision issued by the external independent third-party reviewer;

(b) State the basis on which the external independent third-party reviewer's decision on each issue is believed to be erroneous;

(c) State the name, mailing address, and telephone number of individuals who may be contacted about the request for an administrative hearing; and

(d) State the mailing address, fax number, email address, or other contact information to which the MCO's confirmation of receipt of the request shall be sent.

(4) The department shall forward to the hearing officer an administrative record that shall include:

- (a) The notice of action taken;
- (b) The statutory or regulatory basis for the action taken;
- (c) The decision following the external third party review; and
- (d) All documentary evidence provided by:
 1. The provider;
 2. The provider's billing agent;
 3. The provider's subcontractor;
 4. The provider's fiscal agent; or
 5. Another provider-authorized individual.

(5) The department shall deny a request to initiate the administrative hearing appeal process, or a part thereof, if a party fails to:

- (a) Exhaust the external third-party review process in accordance with 907 KAR 17:035; or
- (b) Submit a timely request for administrative hearing in accordance with subsection (2) of this section.

Section 2. Administrative Hearing. (1)(a) A hearing officer shall establish the date, time, and location of an administrative hearing.

(b) The administrative hearing shall be held in Frankfort, Kentucky.

(c) The hearing officer shall comply with the notice requirements established in KRS 13B.050.

(d) An administrative hearing date shall be scheduled to occur no later than sixty (60) calendar days from the date that the administrative hearing request was received by the department.

(e) An administrative hearing date may be extended beyond sixty (60) calendar days upon agreement of both parties.

(2) If a pre-hearing conference is requested by a party and granted by the hearing officer, the conference shall comply with KRS 13B.070.

(3) An administrative hearing may be withdrawn if:

(a) The hearing officer receives a written statement from the appealing party requesting the withdrawal; or

(b) The appealing party makes a statement on the record at the hearing withdrawing the request for an administrative hearing.

(4) Upon the agreement of all parties, an administrative hearing may be conducted telephonically or by other electronic means.

(5) A hearing officer shall preside over an administrative hearing and shall conduct the administrative hearing in accordance

with:

- (a) KRS 13B.080; and
- (b) KRS 13B.090.

(6) The issue considered at the hearing shall be limited to the specific records and disputes raised or presented in the provider's initial appeal to the MCO.

(7) The hearing officer's decision shall be issued within sixty (60) calendar days after the close of the official record of the administrative hearing and shall include:

- (a) The findings of facts, conclusions of law, and the final order solely based on the evidence on the record;
- (b) The party that shall pay an administrative hearing fee in accordance with Section 3 of this administrative regulation; and
- (c) Notice that judicial review on a final order is available to the parties in accordance with Section 4 of this administrative regulation.

(8) A hearing officer's decision shall constitute the final order in the matter for purposes of appeal.

Section 3. Administrative Hearing Fee. The party that receives an adverse final order shall pay a fee of \$600 to the department within thirty (30) calendar days of the issuance of the final order.

Section 4. Judicial Review of the Final Order. (1) Judicial review of the hearing officer's final order is available pursuant to KRS 13B.140 and KRS 13B.150.

(2) Within twenty (20) days after the service of the petition for judicial review under subsection (1) of this section, the administrative hearings branch shall transmit a certified copy of the official record of the proceeding under review.

STEPHEN P. MILLER, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: November 18, 2016

FILED WITH LRC: December 1, 2016 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017, at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing January 13, 2017, 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 January 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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: Sharley Hughes (sharleyj.hughes@ky.gov; phone (502) 564-4321, ext. 2010) and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements regarding administrative hearings conducted by the Cabinet for Health and Family Services following an external independent third-party review. An external independent third-party review is an appeal option for a Medicaid provider that has received an adverse final decision from a managed care organization (MCO) that "denies, in whole or in part, a health care service rendered by the provider to an enrollee of the Medicaid managed care organization." The party that receives an adverse decision from the external independent

third-party review, whether it be the provider or the MCO, will then have the option to request an administrative hearing conducted by the Cabinet for Health and Family Services. This administrative regulation is being promulgated concurrently with the administrative regulation (907 KAR 17:035) that establishes external independent third-party review provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a mandate, established in KRS 205.646, to grant administrative hearings to either Medicaid providers or MCOs who receive an adverse decision from an external independent third-party review.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.646 by establishing an option for a Medicaid provider or MCO that receives an adverse decision from an external independent third-party review to receive an administrative hearing regarding the same matter.

(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 authorizing statutes by establishing an option for a Medicaid provider or MCO that receives an adverse decision from an external independent third-party review to receive an administrative hearing regarding the same matter.

(2) If 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 government affected by this administrative regulation: Medicaid providers and all five managed care organizations will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A Medicaid provider or MCO that receives an adverse decision from an external independent third-party review and that wishes to appeal the decision may do so by submitting a request to the Department for Medicaid Services (DMS) – within thirty (30) days of receiving from DMS a notice of the right to such an administrative hearing – for an administrative hearing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Department for Medicaid Services is unable to determine the cost to the provider or MCO to file an appeal, i.e. – staff to gather the necessary information. However, the losing party in every appeal will have to pay \$600 to the state.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): If the provider wins the appeal, they will receive reimbursement for a previously denied claim.

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

(a) Initially: Depending on the volume of appeals, the Department for Medicaid Services and the Administrative Hearing Branch could have to hire additional staff to handle the volume of appeals. However, we are optimistic that the majority of the disputes will be resolved before reaching this step.

(b) On a continuing basis: Depending on the volume of appeals, the Department for Medicaid Services and the Administrative Hearing Branch could have to hire additional staff to handle the volume of appeals. However, we are optimistic that the majority of the disputes will be resolved before reaching this step.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, 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: DMS was not allocated any funds to implement the functions required by this administrative regulation. KRS 205.646(6) allows the Department to establish reasonable fees, not to exceed one thousand dollars (\$1,000), to defray expenses associated with an administrative hearing. The Department has set the fee at \$600, which will be paid by the party that does not prevail, which will help offset the added costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: KRS 205.646(6) allows the Department to establish reasonable fees, not to exceed one thousand dollars (\$1,000), to defray expenses associated with an administrative hearing. The Department has set the fee at \$600, which will be paid by the party that does not prevail.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services and the Division of Administrative Hearings will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.646.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Because the bill only allows the Department to charge through the administrative hearing process established in 907 KAR 17:040, the Department estimated that party receiving an adverse determination should pay \$600.00 to defray some of the cost associated with increasing the number of hearings in the Administrative Hearings Branch of CHFS. As the actual number of cases is at this time only an estimate, the Department made an initial assessment that something less than \$1000.00 would help cover costs while not chilling the parties right to appeal the external third party reviewer's determination.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Because the bill only allows the Department to charge through the administrative hearing process established in 907 KAR 17:040, the Department estimated that party receiving an adverse determination should pay \$600.00 to defray some of the cost associated with increasing the number of hearings in the Administrative Hearings Branch of CHFS. As the actual number of cases is at this time only an estimate, the Department made an initial assessment that something less than \$1000.00 would help cover costs while not chilling the parties right to appeal the external third party reviewer's determination.

(c) How much will it cost to administer this program for the first year? The Department was not allocated any funds for this program. However, without knowing the number of appeals to be filed, it the Department is not able to determine a cost.

(d) How much will it cost to administer this program for subsequent years? The Department was not allocated any funds

for this program. However, without knowing the number of appeals to be filed, it the Department is not able to determine a cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

922 KAR 3:011. Repeal of 922 KAR 3:010 and 922 KAR 3:020.

RELATES TO: KRS Chapters 194A, 199, 209, 209A, 620, 42 U.S.C. 1397-1397h

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. This administrative regulation repeals 922 KAR 3:010 and 922 KAR 3:020. These administrative regulations are not necessary due to the Social Services Block Grant being a funding source rather than a particular program and to the block grant's oversight in accordance with KRS Chapter 45A.350-45A.359. A program funded by the Social Services Block Grant is governed by the program's respective administrative regulation.

Section 1. The following administrative regulations are hereby repealed:

- (1) 922 KAR 3:010, Limitations on use of grant funds; and
- (2) 922 KAR 3:020, Grant services and eligibility.

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 7, 2016

FILED WITH LRC: December 14, 2016 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 23, 2017, 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 January 16, 2017, 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 January 31, 2016. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov; Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

VOLUME 43, NUMBER 7 – JANUARY 1, 2017

administrative regulation repeals 922 KAR 3:010 and 3:020.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as a result of 922 KAR 3:010 and 3:020 due to the Social Services Block Grant being a funding source rather than a particular program and to oversight of the block grant in accordance with KRS 45A.350-45A.359.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 3:020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 3:020.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 3:020 due to the Social Services Block Grant being a funding source rather than a particular program and to the grant's oversight in accordance with KRS 45A.350-45A.359. No other block grant administered by this department has a like administrative regulation. Programs funded through the block grant are governed by their own administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 3:020. Service provision to Kentucky's citizenry is unchanged.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 3:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 3:020.

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

(a) Initially: There is no cost associated with the repeal of 922 KAR 3:010 and 3:020.

(b) On a continuing basis: There is no ongoing cost associated with the repeal of 922 KAR 3:010 and 3:020.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 922 KAR 3:010 and 3:020 governs Kentucky's award of the federal Social Services Block Grant. The block grant and its uses are not impacted by the repeal of this administrative regulation. There is no funding source associated with the repeal of 922 KAR 3:010 and 3:020.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 3:020. There is no fee or funding impact.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no fee associated with the repeal of 922 KAR 3:010 and 3:020.

(9) TIERING: Is tiering applied? There is no tiering applied in the repeal of 922 KAR 3:010 and 3:020.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 1397-1397h

2. State compliance standards. KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1397-1397h

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 3:020.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 3:020.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services will no longer have these obsolete administrative regulations under its purview.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 3:020.

(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 only purpose of this administrative regulation is to repeal 922 KAR 3:010 and 3:020. This repealer will generate no new revenue in its first year.

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

(c) How much will it cost to administer this program for the first year? This repealer will create no new costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This repealer will create no new costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of December 13, 2016

Members: Senators Julie Raque Adams, Alice Forgy Kerr, and Ernie Harris; and Representatives Linda Belcher, and Tommy Turner.

LRC Staff: Sarah Amburgey, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Klaber, and Donna Little.

The Administrative Regulation Review Subcommittee met on Tuesday, December 13, 2016, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

GOVERNOR'S OFFICE: Early Childhood Development Authority

10 KAR 6:010. Duties of the Early Childhood Advisory Council. Linda Hampton, acting director; Wayne Lewis, executive director of education programs; and Patrick Shirley, staff attorney, represented the authority.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete citations to repealed statutes; (2) to amend Section 3: (a) to make a technical correction; and (b) for clarity; and (3) to amend Sections 4 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions

13 KAR 2:060. Degree program approval; equal opportunity goals. Caroline Atkins, senior associate; Robert King, council president; Sarah Levy, director of postsecondary licensing; and Jay Morgan, council vice president, represented the council.

In response to a question by Co-Chair Harris, Mr. King stated that the statewide diversity policy addressed challenges such as disparity in graduation rates between minority students and the larger population. This administrative regulation established strategies for public educational institutions to promote and enhance minority graduation rates. Approximately forty (40) years ago, Kentucky was cited for having policies that intentionally limited minority access to public educational institutions, which resulted in a special order from the U.S. Department of Education to address those imbalances. The special order was lifted; however, the council had an ongoing obligation to monitor issues of diversity at all public educational institutions. Additionally, a Kentucky statute was in place to require the council to conduct this monitoring and to address imbalances discovered by the monitoring. For example, the council may prohibit an institution from offering new academic programs until that institution complied with statewide diversity policies. This administrative regulation clarifies standards and enhances oversight.

In response to questions by Senator Kerr, Mr. King stated that each public educational institution developed distinct diversity strategies. Strategies were then evaluated uniformly by the council using results-based criteria. The council would share strategies with proven outcomes to other public educational institutions. There was a committee that served with the council to provide oversight and ensure transparency. Ms. Atkins stated that the committee used separate rubrics for two (2) year and four (4) year institutions to qualitatively and quantitatively evaluate diversity programs.

In response to a question by Representative Belcher, Mr. King stated that graduation rate data were available on the council's Web site, and the council would provide specific data to members of the subcommittee.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to change a definition term from "diversity policy" to "policy" for consistency throughout the administrative regulation; and (2) 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.

Interstate Reciprocity Agreements

13 KAR 4:010 & E. State Authorization Reciprocity Agreement. In response to questions by Co-Chair Harris, Ms. Levy stated that this agreement was new for Kentucky. Except for six (6) states, all states had joined as member states. Kentucky was a later state to join the agreement. The agreement allowed a student who was a resident of Kentucky to take courses from institutions in other member states. In order to be approved as a participating institution in the agreement, the institution was required to be authorized by the member state and accredited by an accrediting agency recognized by the U.S. Department of Education, meet faculty qualification standards, have certain curriculum standards, and comply with truth-in-advertising requirements. In addition, a nonpublic institution was required to demonstrate financial stability, as shown by the financial responsibility score determined by the U.S. Department of Education. Mr. King stated that the agreement allowed institutions of member states to offer courses to students in other states without the institutions being licensed in those states. The agreement was not necessarily a course quality-assurance program. Becoming a member state to the agreement required Kentucky to waive some quality-assurance requirements. The council was tasked with consumer-protection responsibilities.

In response to questions by Representative Belcher, Mr. King stated that this administrative regulation did not affect the transferability of credits from institutions within Kentucky. Due to legislation from the 2010 or 2011 Regular Session of the General Assembly, there was broader and more consistent transferability of credits, largely from two (2) year institutions to four (4) year institutions. Transferability of credits from four (4) year to four (4) year institutions was broad for standard core courses with well-established learning outcomes but varied for more specialized or advanced courses.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete a term that is not used in the administrative regulation; (2) to amend Sections 2 and 3 to reference the Web site for the National Council for State Authorization Reciprocity Agreements (NC-SARA) for the purpose of obtaining forms required by NC-SARA; and (3) to amend Sections 2, 3, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Travel Expense and Reimbursement

200 KAR 2:006 & E. Employees' reimbursement for travel. Carey Bishop, staff attorney, represented the office.

In response to a question by Co-Chair Harris, Mr. Bishop stated that travel reimbursement rates were available on the controller's Web site. This administrative regulation established the forms required to apply for reimbursement.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete a superfluous definition; (2) to amend Section 2 to specify when the Travel Voucher Prepaid Registration Fees: Multiple Cost Distribution document is used; (3) to amend Section 6 to clarify reimbursement procedures if using state park facilities; and (4) to amend Sections 1, 2, 4, 7, 10, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Chiropractic Examiners: Board

201 KAR 21:025. Board; officers, duties. Keith Poynter, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE for clarity; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to

clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:041. Licensing; standards, fees.

Board of Durable Medical Equipment Suppliers: Board

201 KAR 47:010 & E. Home medical equipment and supplier licenses, requirements, and fees. Larry Brown, commissioner; Carson Kerr, executive advisor; and Tammy Johnson, vice-chair, represented the board.

In response to questions by Co-Chair Harris, Mr. Brown stated that this subject area was formerly part of the Board of Pharmacy, under which the yearly licensure fee was \$200. These administrative regulations established a two (2) year licensure fee of \$350; therefore, the yearly cost was less. The fee amount was based on an estimate, but because this was a new board, it was difficult to determine a specific estimate of needed revenue.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 10 to add a citation; (2) to amend Section 2 to allow licensure if an applicant is exempted from accreditation by a national accreditation organization; (3) to amend Section 2 to remove the per se suspension provision in accordance with KRS 13B.125; (4) to amend Section 4 to include the reciprocal license fee that is listed in the application form; (5) to amend Section 5 to establish refund procedures for denied or incomplete applications; (6) to amend Sections 5 and 8 to clarify annual training requirements; (7) to amend Section 10 to require the board, rather than the Office of Occupations and Professions, to grant or deny licenses and to discipline licensees, in accordance with statute; (8) to amend Section 11 to make conforming changes to the licensure form and to require the applicant's email address; and (9) to amend Sections 4, 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 47:020 & E. Inspections, discipline, reinstatement, and administrative appeals.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph and Section 1 to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to: (a) clarify that the inspection and investigation procedures apply to applicants and licensees; (b) delete the inspection fee as initial licensure and other inspection fees are already established by statute; and (c) delete credit history procedures because they are not clearly authorized by statute. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas. Karen Waldrop, deputy commissioner, and David Wicker, general counsel, represented the department.

In response to a question by Co-Chair Harris, Ms. Waldrop stated that the initially proposed administrative regulations exempted trappers from hunter orange requirements during firearms seasons; however, the agency amendments replaced hunter orange requirements during firearms seasons.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the definition for "youth;" (2) to amend Sections 3, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 3(2) to delete the hunter orange exemption for furbearer trappers, as cross referenced in 301 KAR 2:251. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the definition for "youth;" (2) to amend Sections 1, 7, 8, 9, and 11 through 16 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Section 8's water set requirements to establish that a body-gripping trap greater than twenty (20) inches in width shall be set so that the trap is completely submerged underwater; (4) to amend Section 9 to establish that, except for box or cage live traps or properties five (5) acres or less, a person trapping on private land shall not place traps used as dry land sets any closer than ten (10) feet apart unless possessing written permission from the landowner or designee, except that there shall not be more than three (3) traps set within any ten (10) foot spacing; and (5) deletes Section 10, which exempted furbearer trappers from hunter orange requirements. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:150. Eastern Kentucky Correctional Complex. Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend EKCC 01-07-03, 02-01-02, 06-03-01, 11-05-01, 11-07-01, 13-01-01, 13-01-02, 13-02-05, 13-08-01, and 13-08-03: (a) for clarity; (b) to correct citations; and (c) to make technical corrections; and (2) to amend Section 1 to update the edition dates of the revised policies. Without objection, and with agreement of the agency, the amendments were approved.

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. Robin Kinney, associate commissioner; Lisa Moore, staff assistant; and Amy Peabody, staff attorney, represented the board.

Instructional Programs

705 KAR 4:231. General program standards for secondary career and technical education programs.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a citation; (2) to amend Section 14 to add criteria for program assessments; and (3) to amend Sections 2 through 7, 10, 14, and 16 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Instructional Programs

780 KAR 4:012. Repeal of 780 KAR 4:010.

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. Steve Humphress, general counsel, and Melissa McQueen, staff attorney, represented the department.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Intellectual and Developmental Disabilities: Mental Health

908 KAR 2:040. Hospital district assignments. Justin Dearing, regulation coordinator, and Tanya Dickenson, director, represented the division.

In response to questions by Senator Raque-Adams, Ms. Dickenson stated that Kentucky Correctional Psychiatric Center was the only forensic psychological institution, meaning that the facility was criminal-justice oriented. Policies were being repealed because the contents had been absorbed into other administrative regulations. Mr. Dearing stated that out-of-state referrals were rare and may include an out-of-state resident being referred to a Kentucky facility or a Kentucky resident being referred to an out-of-

state facility.

In response to a question by Senator Kerr, Mr. Dearinger stated that this administrative regulation broadened flexibility regarding which facility a patient would be assigned based on family proximity. This was a step toward the proposed Tim's Law and would be another policy tool to assist families dealing with mental illness.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 3 to delete provisions that are already established by statute; (4) to amend Section 4 to clarify requirements for out of district hospital admittance; and (5) to amend Section 5 to clarify requirements for admittance to a psychiatric unit in a local general hospital. Without objection, and with agreement of the agency, the amendments were approved.

Division of Program Integrity: Institutional Care

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.

Department for Income Support: Child Support Enforcement: Family Support

921 KAR 1:001. Definitions for 921 KAR Chapter 1. Elizabeth Caywood, executive advisor, and Todd Trapp, branch manager, represented the department.

Department for Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 3:030. Application process.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 6 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 3:050. Claims and additional administrative provisions.

Division of Protection and Permanency: Child Welfare

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

Other Business: Co-Chair Harris thanked Representative Linda Belcher who was leaving the General Assembly. A resolution had been prepared.

Co-Chair Harris stated that Representative Belcher would be missed by the subcommittee. She performed on the subcommittee as a nonpartisan legislator, and her work was deeply appreciated.

Senator Kerr stated that Representative Belcher would be missed, especially as a colleague and friend to other female legislators because female legislators were in the minority in the General Assembly, regardless of party affiliation. Representative Belcher maintained grace under pressure and was very knowledgeable and well prepared for legislative issues.

Senator Raque-Adams stated that she agreed with Senator Kerr's remarks. It was nice to be on a subcommittee in which half of the members were female. Representative Belcher's work was appreciated and she would be missed.

A motion was made and seconded to adopt the resolution prepared for Representative Linda Belcher.

Representative Belcher stated that working for the General Assembly was a wonderful experience. She was very busy in her community and, after two (2) weeks to rest, she would be moving forward with her endeavors. She looked forward to continue working with legislative friends and policymakers in the future.

The following administrative regulations were deferred to the January 6, 2017, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Licensed Professional Counselors: Board

201 KAR 36:045. Distance counseling.

201 KAR 36:055. Administrative subpoena.

Board of Licensure for Massage Therapy: Board

201 KAR 42:020. Fees.

201 KAR 42:040. Renewal.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Health Services and Facilities

902 KAR 20:013. Repeal of 902 KAR 20:014.

Office of Inspector General

906 KAR 1:151. Repeal of 906 KAR 1:150.

Department for Income Support: Child Support Enforcement: Family Support

921 KAR 1:001. Definitions for 921 KAR Chapter 1.

The Subcommittee adjourned at 2 p.m. until January 6, 2017, 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.

NONE

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

G - 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

G - 12

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

G - 22

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

G - 25

The Subject Index is a general index of administrative regulations published in VOLUME 43 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
VOLUME 42					
The administrative regulations listed under VOLUME 42 are those administrative regulations that were originally published in Volume 42 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2016 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			200 KAR 30:060		
* Statement of Consideration not filed by deadline			Repealed	2997	10-7-2016
** Withdrawn before being printed in Register			200 KAR 30:070		
*** Emergency expired after 180 days			Amended	2919	
‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))			Withdrawn		7-29-2016
(r) Repealer regulation: KRS 13A.310 - on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			201 KAR 9:016		
			Amended	2796	7-20-2016
			201 KAR 9:025		
			Amended	2798	See 43 Ky.R.
			201 KAR 9:081		
			Amended	2800	See 43 Ky.R.
			201 KAR 9:240		
			Amended	2804	See 43 Ky.R.
			201 KAR 9:250		
			Amended	2807	See 43 Ky.R.
			201 KAR 13:040		
			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.
			201 KAR 14:030		
			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.
			201 KAR 14:110		
			Amended	2926	See 43 Ky.R.
			201 KAR 14:125		
			Amended	2927	
			Withdrawn		7-12-16
			201 KAR 14:150		
			Amended	2929	See 43 Ky.R.
			201 KAR 14:180		
			Amended	2930	See 43 Ky.R.
			201 KAR 18:020		
			Amended	2810	8-5-2016
			201 KAR 20:240		
			Amended	2626	
			As Amended	2887	6-15-2016
			201 KAR 20:520	2684	See 43 Ky.R.
			201 KAR 23:055	2845	See 43 Ky.R.
			201 KAR 23:070		
			Amended	2251	
			AmComments	2591	
			As Amended	2888	6-15-2016
			201 KAR 23:075		
			Amended	2812	See 43 Ky.R.
			201 KAR 29:015		
			Amended	2628	See 43 Ky.R.
			201 KAR 32:030		
			Amended	2817	See 43 Ky.R.
			201 KAR 44:020		
			Repealed	2685	7-1-2016
			201 KAR 44:021(r)	2685	7-1-2016
			201 KAR 44:030		
			Repealed	2685	7-1-2016
			201 KAR 45:110		
			Amended	855	See 43 Ky.R.
			201 KAR 46:020		
			Amended	2932	See 43 Ky.R.
			201 KAR 46:070		
			Amended	2933	See 43 Ky.R.
EMERGENCY ADMINISTRATIVE REGULATIONS:					
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)					
9 KAR 1:040E	2866	5-13-2016			
Replaced		See 43 Ky.R.			
301 KAR 2:221E	1699	11-3-2015			
Resubmitted	2868	5-11-2016			
Replaced		See 43 Ky.R.			
301 KAR 2:222E	1701	11-3-2015			
Resubmitted	2870	5-11-2016			
Replaced		See 43 Ky.R.			
301 KAR 2:225E	1111	8-21-2015			
Resubmitted	2875	5-11-2016			
Replaced	2944	8-4-2016			
401 KAR 31:040E	2877	4-26-2016			
Replaced		See 43 Ky.R.			
601 KAR 2:030E	1114	9-1-2015			
Resubmitted	2702	3-29-2016			
Expired		10-25-2016			
921 KAR 3:035E	2708	4-1-2016			
Replaced		See 43 Ky.R.			
922 KAR 1:320E	2530	2-26-2016			
Replaced		See 43 Ky.R.			
922 KAR 2:020E	2534	2-26-2016			
Replaced		See 43 Ky.R.			
922 KAR 2:160E	2540	2-26-2016			
Replaced		See 43 Ky.R.			
922 KAR 2:260E	2550	2-26-2016			
Replaced		See 43 Ky.R.			
ORDINARY ADMINISTRATIVE REGULATIONS:					
9 KAR 1:040					
Amended	2911	See 43 Ky.R.			
11 KAR 4:080					
Amended	2611	7-1-2016			
11 KAR 5:145					
Amended	2612	7-1-2016			
103 KAR 3:050					
Amended	2614				
As Amended	2881	7-1-2016			
200 KAR 30:010					
Amended	2913	See 43 Ky.R.			
200 KAR 30:020					
Amended	2914	See 43 Ky.R.			
200 KAR 30:030					
Amended	2916	See 43 Ky.R.			
200 KAR 30:040					
Amended	2918	See 43 Ky.R.			
200 KAR 30:050					
Repealed	2997	10-7-2016			
200 KAR 30:051(r)	2997	10-7-2016			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
301 KAR 2:095			Repealed	2999	9-2-2016
Amended	2819	7-19-2016	780 KAR 4:031	2999	9-2-2016
301 KAR 2:122			780 KAR 7:060		
Amended	2820	See 43 Ky.R.	Amended	2951	See 43 Ky.R.
301 KAR 2:176			780 KAR 7:070		
Amended	2935	See 43 Ky.R.	Repealed	3000	9-2-2016
301 KAR 2:221			780 KAR 7:071(r)	3000	9-2-2016
Amended	2937	See 43 Ky.R.	803 KAR 2:300		
301 KAR 2:222			Amended	2953	9-2-2016
Amended	2940	See 43 Ky.R.	803 KAR 2:307		
301 KAR 2:225			Amended	2955	See 43 Ky.R.
Amended	2944	8-4-2016	803 KAR 2:308		
301 KAR 2:226			Amended	2957	9-2-2016
Amended	2822	See 43 Ky.R.	803 KAR 2:317		
301 KAR 5:040			Amended	2958	9-2-2016
Amended	2947	See 43 Ky.R.	803 KAR 2:318		
401 KAR 31:040			Amended	2960	9-2-2016
Amended	2949	See 43 Ky.R.	803 KAR 2:320		
401 KAR 51:010			Amended	2962	9-2-2016
Amended	2824	See 43 Ky.R.	803 KAR 2:400		
401 KAR 53:010			Amended	2968	See 43 Ky.R.
Amended	2830	See 43 Ky.R.	803 KAR 2:403		
501 KAR 6:020			Amended	2970	9-2-2016
Amended	2630		803 KAR 2:404		
AmComments	2908	See 43 Ky.R.	Amended	2972	9-2-2016
501 KAR 6:170			803 KAR 2:421		
Amended	2632		Amended	2974	9-2-2016
As Amended	2890	7-1-2016	803 KAR 2:425		
600 KAR 1:030			Amended	2976	9-2-2016
Repealed	2846	8-2-2016	803 KAR 2:500		
600 KAR 1:031(r)	2846	8-2-2016	Amended	2978	9-2-2016
600 KAR 1:045			803 KAR 25:010		
Repealed	2846	8-2-2016	Amended	2634	See 43 Ky.R.
600 KAR 2:010			803 KAR 25:009		
Repealed	2847	8-2-2016	Repealed	2686	10-7-2016
600 KAR 2:011(r)	2847	8-2-2016	803 KAR 25:014(r)	2686	10-7-2016
600 KAR 2:020			803 KAR 25:089		
Repealed	2847	8-2-2016	Amended	2980	10-7-2016
600 KAR 2:030			804 KAR 4:400		
Repealed	2847	8-2-2016	Amended	2839	
600 KAR 2:040			Withdrawn		7-13-2016
Repealed	2847	8-2-2016	804 KAR 9:040		
601 KAR 1:030			Amended	2648	9-2-2016
Repealed	2849	8-2-2016	808 KAR 9:050	2852	See 43 Ky.R.
601 KAR 1:031			815 KAR 6:010		
Repealed	2849	8-2-2016	Amended	2265	
601 KAR 1:032(r)	2849	8-2-2016	AmComments	2596	
601 KAR 1:045			As Amended	2891	7-1-2016
Repealed	2849	8-2-2016	815 KAR 6:040		
601 KAR 1:050			Amended	2269	
Repealed	2849	8-2-2016	As Amended	2894	7-1-2016
601 KAR 1:065			815 KAR 6:080		
Repealed	2849	8-2-2016	Amended	2270	
601 KAR 1:070			As Amended	2895	7-1-2016
Repealed	2849	8-2-2016	815 KAR 6:090		
601 KAR 2:030			Amended	2272	
Amended	2833		AmComments	2600	
Withdrawn by agency		10-27-2016	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		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date	Regulation Number	42 Ky.R. Page No.	Effective Date
Amended	2661				
As Amended	2904	6-22-2016			
902 KAR 4:120					
Amended	2982	See 43 Ky.R.			
902 KAR 100:030					
Amended	2985	See 43 Ky.R.			
902 KAR 100:080					
Amended	2990	See 43 Ky.R.			
902 KAR 100:085					
Amended	2993	See 43 Ky.R.			
921 KAR 3:035					
Amended	2841	See 43 Ky.R.			
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.			

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:			922 KAR 2:160E		See 42 Ky.R.
* Statement of Consideration not filed by deadline			Replaced	225	8-17-2016
** Withdrawn before being printed in Register			922 KAR 2:260E		See 42 Ky.R.
*** Emergency expired after 180 days			Replaced	65	8-17-2016
‡ 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.			ORDINARY ADMINISTRATIVE REGULATIONS:		
EMERGENCY ADMINISTRATIVE REGULATIONS:			2 KAR 2:010		
(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	69	10-7-2016
9 KAR 1:040E		See 42 Ky.R.	2 KAR 2:020		
Replaced	392	10-7-2016	Amended	70	
13 KAR 4:010E	657	10-14-2016	AsAmended	390	10-7-2016
101 KAR 2:034E	873	11-15-2016	2 KAR 2:040		
101 KAR 2:180E	877	11-15-2016	Amended	72	
101 KAR 3:045E	880	11-15-2016	AsAmended	390	10-7-2016
101 KAR 2:210E	517	9-15-2016	2 KAR 2:050	145	
103 KAR 15:180E	168		AsAmended	391	10-7-2016
Replaced	266	11-4-2016	2 KAR 2:060	146	
200 KAR 2:006E	659	9-15-2016	AsAmended	391	10-7-2016
201 KAR 47:010E	519	8-25-2016	2 KAR 2:070	148	10-7-2016
201 KAR 47:020E	522	8-25-2016	9 KAR 1:010		
202 KAR 10:030E	885	11-14-2016	Amended	997	
301 KAR 2:221E		See 42 Ky.R.	9 KAR 1:040		See 42 Ky.R.
Replaced	202	8-4-2016	AsAmended	392	10-7-2016
301 KAR 2:222E		See 42 Ky.R.	9 KAR 1:060		
Replaced	203	8-4-2016	Amended	754	
401 KAR 31:040E		See 42 Ky.R.	10 KAR 6:010		
Replaced	207	8-4-2016	Amended	756	
601 KAR 2:030E	888	10-27-2016	As Amended	1161	
804 KAR 4:400E	171	7-15-2016	11 KAR 4:080		
Replaced	546	11-4-2016	Amended	998	
804 KAR 4:410E	172	7-15-2016	11 KAR 15:090		
Replaced	547	11-4-2016	Amended	73	
804 KAR 11:010E	174	7-15-2016	AsAmended	525	11-4-2016
806 KAR 9:360E	894	10-25-2016	12 KAR 1:116		
900 KAR 5:020E	665	9-27-2016	Amended	428	12-2-2016
900 KAR 10:200E	896	11-1-2016	12 KAR 1:140		
902 KAR 2:020E	5	6-15-2016	Amended	429	12-2-2016
Replaced	568	11-16-2016	12 KAR 1:155		
902 KAR 20:091E	901	11-1-2016	Amended	431	
902 KAR 55:015E	912	11-15-2016	AsAmended	673	12-2-2016
907 KAR 1:045E	915	11-1-2016	13 KAR 2:060		
907 KAR 1:047E	921	11-1-2016	Amended	758	
907 KAR 7:010E	176	6-30-2016	As Amended	1162	
Withdrawn		9-15-2016	13 KAR 4:010	833	
907 KAR 7:015E	187	6-30-2016	As Amended	1163	
Withdrawn		9-15-2016	16 KAR 1:010		
907 KAR 15:005E	925	11-1-2016	Amended	1205	
907 KAR 15:010E	928	11-1-2016	16 KAR 1:030		
907 KAR 15:015E	941	11-1-2016	Amended	585	
907 KAR 17:015E	1144	12-1-2016	AmComments	1185	
907 KAR 17:035E	1149	12-1-2016	16 KAR 4:040		
907 KAR 17:040E	1152	12-1-2016	Amended	1207	
922 KAR 1:360E	666	9-28-2016	16 KAR 4:080	1330	
921 KAR 2:015E	1154	12-14-2016	16 KAR 4:090	1331	
921 KAR 3:035E		See 42 Ky.R.	16 KAR 6:010		
Replaced	218	8-17-2016	Amended	588	
922 KAR 1:320E		See 42 Ky.R.	AmComments	1188	
Replaced	45	8-17-2016	16 KAR 7:010		
922 KAR 2:020E		See 42 Ky.R.	Amended	592	
Replaced	221	8-17-2016	AmComments	1192	
			30 KAR 7:010		
			Amended	250	11-4-2016
			30 KAR 7:020	1113	
			31 KAR 4:170		
			Amended	1000	
			40 KAR 2:145	358	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
AsAmended	674	12-2-2016	201 KAR 1:015		
40 KAR 2:150			Amended	600	
Amended	251		201 KAR 1:065		
AmComments	556		Amended	601	
AsAmended	675	12-2-2016	AsAmended	949	
40 KAR 2:250			201 KAR 1:100		
Recodified as 40 KAR 2:155		6-30-2016	Amended	603	
101 KAR 1:325			AsAmended	950	
Amended	1001		201 KAR 2:045		
101 KAR 2:034			Amended	606	
Amended	1004		AsAmended	952	
101 KAR 2:180			201 KAR 2:050		
Amended	1008		Amended	607	
101 KAR 2:210			AsAmended	953	
Amended	599		201 KAR 2:076		
101 KAR 3:045			Amended	609	
Amended	1011		Withdrawn		11-7-2016
101 KAR 5:016(r)	1114		201 KAR 2:351(r)	639	
102 KAR 1:165			201 KAR 9:025		See 42 Ky.R.
Amended	258		AsAmended	12	7-20-2016
AsAmended	528	11-4-2016	201 KAR 9:081		See 42 Ky.R.
102 KAR 1:290			AsAmended	12	7-20-2016
Amended	260		201 KAR 9:240		See 42 Ky.R.
AsAmended	530	11-4-2016	AsAmended	15	7-20-2016
102 KAR 1:320			201 KAR 9:250		See 42 Ky.R.
Amended	262		AsAmended	192	8-17-2016
AsAmended	530	11-4-2016	201 KAR 13:040		See 42 Ky.R.
103 KAR 3:011(r)	1115		AsAmended	17	7-20-2016
103 KAR 5:121(r)	1333		201 KAR 13:050		See 42 Ky.R.
103 KAR 8:160	360		AsAmended	19	7-20-2016
AmComments	563	12-2-2016	201 KAR 14:015		See 42 Ky.R.
103 KAR 15:021(r)	1334		AsAmended	194	9-2-2016
103 KAR 15:180			201 KAR 14:030		See 42 Ky.R.
Amended	266	11-4-2016	AsAmended	195	9-2-2016
103 KAR 16:031(r)	1335		201 KAR 14:045		See 42 Ky.R.
103 KAR 16:221(r)	1336		AsAmended	195	9-2-2016
103 KAR 19:031(r)	1337		201 KAR 14:090		See 42 Ky.R.
103 KAR 20:011(r)	1338		AsAmended	195	9-2-2016
103 KAR 28:041(r)	636		201 KAR 14:110		See 42 Ky.R.
AsAmended	947		AsAmended	196	9-2-2016
103 KAR 41:021(r)	637		201 KAR 14:125		
AsAmended	947		Amended	269	
103 KAR 44:131(r)	638		AmComments	566	
AsAmended	947		AsAmended	681	12-2-2016
106 KAR 1:081			201 KAR 14:150		See 42 Ky.R.
Amended	1211		AsAmended	197	9-2-2016
106 KAR 1:091			201 KAR 14:180		See 42 Ky.R.
Amended	1224		AsAmended	198	9-2-2016
106 KAR 1:101			201 KAR 18:051(r)	640	
Amended	1229		201 KAR 20:215		
106 KAR 1:111			Amended	1015	
Amended	1231		201 KAR 20:220		
106 KAR 1:121			Amended	1018	
Amended	1232		201 KAR 20:411		
106 KAR 1:131			Amended	433	11-16-2016
Amended	1234		201 KAR 20:520		See 42 Ky.R.
200 KAR 2:006			AsAmended	19	7-20-2016
Amended	761		201 KAR 21:025		
As Amended	1164		Amended	766	
200 KAR 5:355	477		As Amended	1169	
AmComments	704		201 KAR 21:041		
AsAmended	947		Amended	768	
200 KAR 30:010		See 42 Ky.R.	201 KAR 22:020		
AsAmended	393	10-7-2016	Amended	1237	
200 KAR 30:020		See 42 Ky.R.	201 KAR 22:053		
AsAmended	394	10-7-2016	Amended	1240	
200 KAR 30:030		See 42 Ky.R.	201 KAR 22:045		
AsAmended	395	10-7-2016	Amended	270	
200 KAR 30:040		See 42 Ky.R.	AsAmended	533	10-19-2016
AsAmended	395	10-7-2016	201 KAR 23:055		See 42 Ky.R.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
AmComments	234		201 KAR 36:030		
AsAmended	395	9-21-2016	Amended	771	
201 KAR 23:075		See 42 Ky.R.	201 KAR 36:040		
AmComments	235		Amended	774	
Withdrawn		7-29-2016	201 KAR 36:045	837	
Amended	1021		201 KAR 36:050		
201 KAR 27:005			Amended	781	
Amended	273		201 KAR 36:055	838	
AmComments	706		201 KAR 36:060		
201 KAR 27:007			Amended	783	
Amended	275		201 KAR 36:065	840	
AmComments	708		201 KAR 36:070		
201 KAR 27:008			Amended	786	
Amended	276		201 KAR 36:075	841	
AmComments	710		201 KAR 36:090	843	
AsAmended	953		201 KAR 38:020		
201 KAR 27:011			Amended	1254	
Amended	280		201 KAR 38:030		
AmComments	713		Amended	1255	
AsAmended	955		201 KAR 38:070		
201 KAR 27:012			Amended	1259	
Amended	291		201 KAR 42:020		
AmComments	724		Amended	790	
201 KAR 27:016			201 KAR 42:040		
Amended	294		Amended	792	
AmComments	727		201 KAR 43:110	149	10-7-2016
AsAmended	965		201 KAR 45:110		See 42 Ky.R.
201 KAR 27:017			AsAmended	537	11-4-2016
Amended	304		201 KAR 46:020		See 42 Ky.R.
AmComments	737		AsAmended	199	8-17-2016
AsAmended	974		201 KAR 46:070		See 42 Ky.R.
201 KAR 27:020			AsAmended	200	8-17-2016
Amended	309		201 KAR 47:010	641	
AmComments	741		As Amended	1170	
201 KAR 27:021	364		201 KAR 47:020	644	
AmComments	744		As Amended	1172	
AsAmended	978		202 KAR 7:501		
201 KAR 27:036(r)	366		Amended	78	
201 KAR 27:040			Withdrawn		9-15-2016
Amended	311		202 KAR 7:520		
AmComments	746		Amended	94	
201 KAR 27:105	367		Withdrawn		9-15-2016
AmComments	748		202 KAR 7:810	1118	
AsAmended	979		202 KAR 10:010	844	
201 KAR 28:090			AmComments	1199	
Amended	1026		202 KAR 10:020	847	
201 KAR 28:200			202 KAR 10:030	1120	
Amended	1028		301 KAR 1:015		
201 KAR 28:230	1116		Amended	315	10-6-2016
201 KAR 29:015		See 42 Ky.R.	301 KAR 1:201		
AsAmended	198	8-17-2016	Amended	317	
201 KAR 30:030			AsAmended	538	10-6-2016
Amended	312		301 KAR 2:049		
AsAmended	535	11-4-2016	Amended	436	
201 KAR 32:030		See 42 Ky.R.	As Amended	1173	
AmComments	240		301 KAR 2:122		See 42 Ky.R.
AsAmended	536	10-19-2016	AsAmended	20	7-19-2016
201 KAR 35:016(r)	1339		301 KAR 2:132		
201 KAR 35:020			Amended	322	10-6-2016
Amended	1243		301 KAR 2:176		See 42 Ky.R.
201 KAR 35:025	1340		AsAmended	200	8-4-2016
201 KAR 35:030			301 KAR 2:221		See 42 Ky.R.
Amended	1245		AsAmended	202	8-4-2016
201 KAR 35:050			301 KAR 2:222		See 42 Ky.R.
Amended	1248		AsAmended	203	8-4-2016
201 KAR 35:070			301 KAR 2:226		See 42 Ky.R.
Amended	1250		AsAmended	21	7-19-2016
201 KAR 36:005	835		301 KAR 2:251		
201 KAR 36:020			Amended	440	
Amended	770		As Amended	1176	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
301 KAR 3:015 Amended	1261		601 KAR 2:030 Amended	1049	
301 KAR 5:040 AsAmended	206	See 42 Ky.R. 8-4-2016	601 KAR 9:010 Repealed	483	12-2-2016
302 KAR 39:020 Amended	1031		601 KAR 9:020 Repealed	483	12-2-2016
401 KAR 4:070	848		601 KAR 9:060 Repealed	483	12-2-2016
401 KAR 31:040 AsAmended	207	See 42 Ky.R. 8-4-2016	601 KAR 9:065 Repealed	483	12-2-2016
401 KAR 45:010 Amended	794		601 KAR 9:095 Repealed	483	12-2-2016
401 KAR 45:060 Amended	796		601 KAR 9:105 Repealed	483	12-2-2016
401 KAR 46:101	850		601 KAR 9:111(r)	483	12-2-2016
401 KAR 46:110	852		601 KAR 40:010 Repealed	484	12-2-2016
401 KAR 46:120	854		601 KAR 40:011(r)	484	12-2-2016
401 KAR 51:010 AmComments	242	See 42 Ky.R. 10-6-2016	602 KAR 15:011(r)	486	11-2-2016
401 KAR 53:010 AsAmended	396	See 42 Ky.R. 7-19-2016	602 KAR 20:090 Repealed	487	12-2-2016
401 KAR 60:005 Amended	1033		602 KAR 20:091(r)	487	12-2-2016
401 KAR 63:002 Amended	1037		603 KAR 1:030 Repealed	488	12-2-2016
401 KAR 63:060 Amended	1043		603 KAR 1:031(r)	488	12-2-2016
501 KAR 6:020 AsAmended	24	See 42 Ky.R. 8-5-2016	603 KAR 2:020	856	
Amended	444		603 KAR 4:045 Repealed	489	12-2-2016
AmComments	749		603 KAR 4:046(r)	489	12-2-2016
AsAmended	980		603 KAR 5:020 Repealed	684	12-2-2016
501 KAR 6:110 Amended	99		603 KAR 5:030 Repealed	684	12-2-2016
AsAmended	402	10-7-2016	603 KAR 5:080 Repealed	684	12-2-2016
501 KAR 6:150 Amended	797		603 KAR 5:090 Repealed	684	12-2-2016
As Amended	1179		603 KAR 5:301 Repealed	684	12-2-2016
501 KAR 6:160 Amended	101	10-7-2016	603 KAR 5:311(r) AsAmended	490 684	12-2-2016
503 KAR 5:090 Amended	446		603 KAR 7:010 Repealed	491	12-2-2016
AsAmended	682	12-2-2016	603 KAR 7:040 Repealed	491	12-2-2016
600 KAR 5:011(r) Withdrawn	479	10-4-2016	603 KAR 7:050 Repealed	491	12-2-2016
600 KAR 6:061(r) Withdrawn	480	9-22-2016	603 KAR 7:060 Repealed	491	12-2-2016
601 KAR 1:029 Repealed	684	12-2-2016	603 KAR 7:070 Repealed	491	12-2-2016
601 KAR 1:060 Repealed	684	12-2-2016	603 KAR 7:071(r)	491	12-2-2016
601 KAR 1:075 Repealed	684	12-2-2016	603 KAR 8:011(r) Withdrawn	492	10-4-2016
601 KAR 1:095 Repealed	684	12-2-2016	603 KAR 9:021(r) Withdrawn	493	11-2-2016
601 KAR 1:101 Repealed	684	12-2-2016	605 KAR 1:010 Repealed	494	12-2-2016
601 KAR 1:110 Repealed	684	12-2-2016	605 KAR 1:011(r)	494	12-2-2016
601 KAR 1:145 Repealed	684	12-2-2016	702 KAR 3:171(r)	495	
601 KAR 1:190 Repealed	684	12-2-2016	702 KAR 7:065 Amended	102	
601 KAR 1:230 Repealed	684	12-2-2016	AmComments	418	
601 KAR 1:231(r) AsAmended	481 684	12-2-2016	AsAmended	542	10-10-2016
601 KAR 2:010 Repealed	482	12-2-2016	703 KAR 4:040 Repealed	150	11-4-2016
601 KAR 2:011(r)	482	12-2-2016	703 KAR 4:041(r)	150	11-4-2016
			703 KAR 5:070 Amended	1264	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
704 KAR 3:340			Amended	334	
Repealed	152	11-4-2016	AsAmended	546	11-4-2016
704 KAR 3:342(r)	152	11-4-2016	804 KAR 4:410		
705 KAR 4:231			Amended	336	
Amended	449		AsAmended	547	11-4-2016
As Amended	1180		804 KAR 5:030		
739 KAR 2:040			Repealed	501	12-2-2016
Amended	327		804 KAR 5:031(r)	501	12-2-2016
AsAmended	981		804 KAR 5:050		
739 KAR 2:140	153		Repealed	501	12-2-2016
AsAmended	403	9-28-2016	804 KAR 7:050		
755 KAR 1:080	369	11-14-2016	Repealed	502	12-2-2016
780 KAR 4:012(r)	496		804 KAR 7:051(r)	502	12-2-2016
780 KAR 7:060		See 42 Ky.R.	804 KAR 8:040		
AsAmended	208	9-2-2016	Repealed	503	12-2-2016
787 KAR 1:070			804 KAR 8:041(r)	503	12-2-2016
Amended	612		804 KAR 8:060		
789 KAR 1:010			Repealed	503	12-2-2016
Amended	613		804 KAR 9:010		
AsAmended	983		Amended	1055	
803 KAR 2:180			804 KAR 9:020		
Amended	330		Repealed	504	12-2-2016
AsAmended	685	12-2-2016	804 KAR 9:021(r)	504	12-2-2016
803 KAR 2:300			804 KAR 9:030		
Amended	1265		Repealed	504	12-2-2016
803 KAR 2:303			804 KAR 10:010		
Amended	1267		Amended	1277	
803 KAR 2:305			804 KAR 10:021(r)	1341	
Amended	1269		804 KAR 11:010		
803 KAR 2:308			Amended	338	
Amended	1271		AmComments	752	
803 KAR 2:313			804 KAR 11:020		
Amended	1273		Repealed	505	12-2-2016
803 KAR 2:317			804 KAR 11:021(r)	505	12-2-2016
Amended	1275		806 KAR 2:011(r)	1342	
803 KAR 2:307		See 42 Ky.R.	806 KAR 2:097		
AsAmended	209	9-2-2016	Amended	1278	
803 KAR 2:400		See 42 Ky.R.	806 KAR 3:210		
AsAmended	210	9-2-2016	Amended	1280	
803 KAR 2:412			806 KAR 9:360	1123	
Amended	106		806 KAR 18:020		
AsAmended	985		Amended	1291	
803 KAR 25:010		See 42 Ky.R.	808 KAR 1:080		
AmComments	28		Repealed	371	11-4-2016
AsAmended	404	10-7-2016	808 KAR 1:081(r)	371	11-4-2016
804 KAR 1:071(r)	498		808 KAR 1:100		
AmComments	996		Repealed	371	11-4-2016
804 KAR 3:080			808 KAR 1:111(r)	1344	
Repealed	499	12-2-2016	808 KAR 1:160	372	
804 KAR 3:081(r)	499	12-2-2016	AsAmended	547	11-4-2016
804 KAR 4:040			808 KAR 3:020		
Repealed	500	12-2-2016	Amended	1292	
804 KAR 4:041(r)	500	12-2-2016	808 KAR 3:031(r)	1345	
804 KAR 4:050			808 KAR 4:020		
Repealed	500	12-2-2016	Repealed	375	11-4-2016
804 KAR 4:150			808 KAR 4:021(r)	375	11-4-2016
Repealed	500	12-2-2016	808 KAR 5:011(r)	1346	
804 KAR 4:310			808 KAR 7:031(r)	1347	
Repealed	500	12-2-2016	808 KAR 9:050		See 42 Ky.R.
804 KAR 4:340			AsAmended	25	8-5-2016
Repealed	500	12-2-2016	808 KAR 11:010		
804 KAR 4:380			Repealed	376	11-4-2016
Repealed	370	11-4-2016	808 KAR 11:011(r)	376	11-4-2016
804 KAR 4:381(r)	370	11-4-2016	808 KAR 12:021		
804 KAR 4:385			Amended	110	11-4-2016
Repealed	500	12-2-2016	808 KAR 12:055	155	
804 KAR 4:390			AsAmended	548	11-4-2016
Amended	332		810 KAR 1:009		
AsAmended	545	11-4-2016	Amended	114	9-9-2016
804 KAR 4:400			811 KAR 2:190		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	118	10-7-2016	907 KAR 4:020		
811 KAR 2:215			Amended	1077	
Amended	1294		907 KAR 4:030		
811 KAR 2:220			Amended	1080	
Amended	1299		907 KAR 7:010		
815 KAR 7:120			Amended	339	
Amended	452		Withdrawn		9-15-2016
Withdrawn		8-24-2016	907 KAR 7:015		
815 KAR 20:010			Amended	351	
Amended	615		Withdrawn		9-15-2016
AsAmended	987		907 KAR 15:005		
815 KAR 20:020			Amended	1082	
Amended	455		907 KAR 15:010		
AsAmended	685	11-16-2016	Amended	1085	
815 KAR 20:060			907 KAR 15:015		
Amended	621		Amended	1098	
815 KAR 20:080			907 KAR 17:015		
Amended	460	11-16-2016	Amended	1316	
815 KAR 20:090			907 KAR 17:035	1350	
Amended	461	11-16-2016	907 KAR 17:040	1353	
815 KAR 20:120			908 KAR 2:040		
Amended	466		Amended	813	
AsAmended	689	11-16-2016	As Amended	1182	
815 KAR 20:130			908 KAR 3:081(r)	861	
Amended	624		910 KAR 1:210		
900 KAR 5:020			Amended	136	
Amended	800		AmComments	421	
900 KAR 6:055			AsAmended	550	10-19-2016
Amended	1302		920 KAR 2:040		
900 KAR 6:060			Amended	1103	
Amended	1304		921 KAR 1:001		
900 KAR 6:065			Amended	815	
Amended	1306		921 KAR 1:380		
900 KAR 6:095			Amended	473	
Amended	1310		AsAmended	701	11-16-2016
900 KAR 10:200	1125		921 KAR 1:410		
902 KAR 2:020			Amended	631	
Amended	122		AsAmended	992	
AmComments	568	11-16-2016	921 KAR 1:420		
902 KAR 4:120		See 42 Ky.R.	Amended	354	10-19-2016
AsAmended	210	8-17-2016	921 KAR 2:015		
902 KAR 20:008			Amended	1321	
Amended	801		921 KAR 3:030		
902 KAR 20:013(r)	858		Amended	817	
902 KAR 20:058			As Amended	1182	
Amended	129		921 KAR 3:035		See 42 Ky.R.
AmComments	575		AmComments	42	
AsAmended	695	11-16-2016	AsAmended	218	8-17-2016
902 KAR 20:081			921 KAR 3:050		
Amended	1311		Amended	819	
902 KAR 20:091			921 KAR 4:118		
Amended	1057		Repealed	157	10-6-2016
902 KAR 21:020	1348		921 KAR 4:119(r)	157	10-6-2016
902 KAR 55:015			922 KAR 1:140		
Amended	1068		Amended	823	
902 KAR 55:035			AmComments	1201	
Amended	629		922 KAR 1:150		
902 KAR 100:030		See 42 Ky.R.	Repealed	377	11-16-2016
AsAmended	212	8-17-2016	922 KAR 1:151(r)	377	11-16-2016
902 KAR 100:080		See 42 Ky.R.	922 KAR 1:170		
AsAmended	216	8-17-2016	Repealed	377	11-16-2016
902 KAR 100:085		See 42 Ky.R.	922 KAR 1:210		
AsAmended	217	8-17-2016	Repealed	377	11-16-2016
906 KAR 1:151(r)	859		922 KAR 1:230		
906 KAR 1:190			Repealed	377	11-16-2016
Amended	806		922 KAR 1:320		See 42 Ky.R.
907 KAR 1:045			AmComments	45	8-17-2016
Amended	1071		922 KAR 1:360		
907 KAR 1:047	1130		Amended	826	
907 KAR 3:031(r)	1133		922 KAR 1:500		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
Amended	142				
AmComments	582	11-16-2016			
922 KAR 2:020		See 42 Ky.R.			
AmComments	50				
AsAmended	221	8-17-2016			
922 KAR 2:160		See 42 Ky.R.			
AmComments	55				
AsAmended	225	8-17-2016			
922 KAR 2:260		See 42 Ky.R.			
AmComments	65	8-17-2016			
922 KAR 3:011(r)	1355				
922 KAR 3:040					
Recodified as 922 KAR 6:045		11-17-2016			
922 KAR 5:080					
Repealed	159	9-21-2016			
922 KAR 5:081(r)	159	9-21-2016			
922 KAR 5:120					
Amended	1327				
922 KAR 6:010					
Amended	1108				
922 KAR 6:045					
Recodified from 922 KAR 3:040		11-17-2016			

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.

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
2.015	922 KAR 1:140		106 KAR 1:111
6.611	2 KAR 2:040		106 KAR 1:131
	2 KAR 2:050	39E.050	106 KAR 1:081
	2 KAR 2:060		106 KAR 1:121
	2 KAR 2:070		106 KAR 1:091
6.666	2 KAR 2:010		106 KAR 1:101
	2 KAR 2:040		106 KAR 1:111
6.681	2 KAR 2:070		106 KAR 1:131
6.686	2 KAR 2:050	39E.080	106 KAR 1:111
	2 KAR 2:070		106 KAR 1:131
6.787	2 KAR 2:020	39E.110	106 KAR 1:081
6.793	2 KAR 2:020		106 KAR 1:111
6.807	2 KAR 2:010	39E.120	106 KAR 1:081
	2 KAR 2:040		106 KAR 1:131
6.821	2 KAR 2:010	39E.130	106 KAR 1:081
	2 KAR 2:040		106 KAR 1:131
6.824	2 KAR 2:010	39E.140	106 KAR 1:081
6.827	2 KAR 2:010		106 KAR 1:111
	2 KAR 2:040	39E.150	106 KAR 1:081
6.829	2 KAR 2:010		106 KAR 1:111
	2 KAR 2:040	39E.160	106 KAR 1:081
6.691	2 KAR 2:060	39E.170	106 KAR 1:081
11A	600 KAR 6:061	39E.190	106 KAR 1:081
11A.010	9 KAR 1:010		106 KAR 1:131
	9 KAR 1:060	39E.200	106 KAR 1:131
11A.045	9 KAR 1:060	39E.210	106 KAR 1:131
11A.050	9 KAR 1:010	39E.220	106 KAR 1:081
11A.055	9 KAR 1:060		106 KAR 1:131
12.355	201 KAR 22:045	39E.230	106 KAR 1:081
13B	10 KAR 6:010		106 KAR 1:091
	201 KAR 36:030		106 KAR 1:101
	906 KAR 1:190	39E.990	106 KAR 1:131
	920 KAR 2:040	44.060	200 KAR 2:006
	922 KAR 5:081	45.101	200 KAR 2:006
	922 KAR 1:320	45.237-45.241	922 KAR 2:020
	922 KAR 1:360	45.357	922 KAR 6:010
	922 KAR 1:500	45.360	603 KAR 1:031
	922 KAR 2:020	45A	202 KAR 10:010
	922 KAR 2:260		601 KAR 2:030
	922 KAR 5:120	45A.030	200 KAR 5:355
13B.010	921 KAR 1:410	45A.070	603 KAR 2:020
	921 KAR 1:420	45A.077	200 KAR 5:355
13B.170	921 KAR 1:420		603 KAR 2:020
15.055	921 KAR 1:410	45A.085	200 KAR 5:355
15.440	503 KAR 5:090		202 KAR 10:020
15.450	503 KAR 5:090		603 KAR 2:020
17.165	920 KAR 2:040	45A.090	200 KAR 5:355
17.500	201 KAR 47:010	45A.180	200 KAR 5:355
	201 KAR 47:020	45A.183	200 KAR 5:355
	902 KAR 20:091	45A.455	922 KAR 6:010
18A.005	101 KAR 1:325	45A.494	603 KAR 2:020
18A.030	101 KAR 2:034	45A.800-45A.835	600 KAR 6:061
	101 KAR 2:210	61.315	202 KAR 7:810
18A.110	101 KAR 2:034		739 KAR 2:040
	101 KAR 2:180	61.805-61.850	702 KAR 7:065
	101 KAR 3:045	61.870-884	922 KAR 6:010
18A.111	101 KAR 1:325	65.245	202 KAR 10:030
18A.155	101 KAR 3:045	67.750	30 KAR 7:010
18A.165	101 KAR 2:034		30 KAR 7:020
18A.202	101 KAR 3:045	67.767	30 KAR 7:010
18A.225	101 KAR 2:210		30 KAR 7:020
18A.2254	101 KAR 2:210	67A.620	921 KAR 1:410
18A.0751	101 KAR 1:325	95.620	921 KAR 1:410
23A.010	922 KAR 1:320	95.878	921 KAR 1:410
	922 KAR 2:020	91A.080	806 KAR 2:097
	922 KAR 2:260	95A	739 KAR 2:040
39E.010	106 KAR 1:131		739 KAR 2:140
39E.020	106 KAR 1:081	96A	603 KAR 7:071
39E.030	106 KAR 1:081	116.048	921 KAR 3:030
39E.040	106 KAR 1:081	117.015	31 KAR 4:170
	106 KAR 1:091	117.235	31 KAR 4:170

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
131.081	103 KAR 15:021	150.620	301 KAR 1:201
131.110	103 KAR 15:021	150.625	301 KAR 1:015
131.130	103 KAR 3:011	150.990	301 KAR 1:015
	103 KAR 41:021		301 KAR 1:201
	103 KAR 44:131		301 KAR 2:049
131.131	103 KAR 3:011		301 KAR 2:251
	103 KAR 15:180	150.995	301 KAR 2:049
131.570	921 KAR 1:410		301 KAR 2:251
132.010	815 KAR 7:120	151.110	401 KAR 4:070
	815 KAR 20:010	151.125	401 KAR 4:070
132.020	103 KAR 8:160	151.250	401 KAR 4:070
132.200	103 KAR 8:160	151B.450-151B.475	789 KAR 1:010
134.160	103 KAR 5:120	154.1-750	202 KAR 10:020
136.070	103 KAR 20:011	154.45-096	601 KAR 1:231
136.320	103 KAR 15:180	154A.130	11 KAR 15:090
136.330	103 KAR 15:180	156.01	11 KAR 15:090
136.340	103 KAR 15:180	156.029	705 KAR 4:231
136.350	103 KAR 15:180	156.031	702 KAR 3:171
136.370	103 KAR 15:180	156.070	704 KAR 3:342
136.390	103 KAR 15:180	156.074	702 KAR 3:171
136.392	739 KAR 2:040	156.101	16 KAR 7:010
138.130	103 KAR 41:021	156.160	704 KAR 3:342
138.207	103 KAR 41:021	156.802	705 KAR 4:231
138.455-138.470	601 KAR 1:231		780 KAR 4:012
138.510	811 KAR 2:190	156.850	780 KAR 4:012
138.4602	103 KAR 44:131	156.852	780 KAR 4:012
138.4603	103 KAR 44:131	157.070	702 KAR 7:065
139.050	103 KAR 28:041	158.007	11 KAR 15:090
139.100	103 KAR 28:041	158.030	703 KAR 4:041
141.010	103 KAR 15:021	158.031	703 KAR 4:041
	103 KAR 26:221	158.115	600 KAR 5:011
	103 KAR 19:031	158.6451	703 KAR 4:041
141.0101	103 KAR 15:021		703 KAR 5:070
141.012	103 KAR 16:031	158.6453	703 KAR 5:070
141.020	103 KAR 15:021	158.6455	703 KAR 5:070
	103 KAR 15:180	160.380	702 KAR 7:065
141.0205	103 KAR 15:021	160.445	702 KAR 7:065
141.040	103 KAR 15:021	161.020	16 KAR 1:010
	103 KAR 15:180		16 KAR 4:040
	103 KAR 16:221		16 KAR 4:080
141.0401	103 KAR 15:180		16 KAR 4:090
141.050	103 KAR 3:011		16 KAR 6:010
	103 KAR 15:180	161.027	16 KAR 4:040
141.068	103 KAR 3:011		16 KAR 4:080
141.200	103 KAR 15:021		16 KAR 4:090
141.206	103 KAR 19:031	161.028	16 KAR 1:010
141.420	103 KAR 15:021		16 KAR 1:030
141.432	103 KAR 15:180		16 KAR 4:040
141.433	103 KAR 15:180		16 KAR 4:080
141.434	103 KAR 15:180		16 KAR 4:090
146.200-146.990	401 KAR 4:070		16 KAR 6:010
150.010	301 KAR 1:201		16 KAR 7:010
	301 KAR 2:049	161.030	16 KAR 1:010
	301 KAR 2:132		16 KAR 4:040
150.025	301 KAR 3:015		16 KAR 4:080
150.090	301 KAR 1:015		16 KAR 4:090
150.092	301 KAR 2:049		16 KAR 6:010
150.170	301 KAR 1:201		16 KAR 7:010
	301 KAR 2:049	161.046	16 KAR 4:040
	301 KAR 2:132		16 KAR 4:080
	301 KAR 2:251		16 KAR 4:090
150.175	301 KAR 1:201	161.048	16 KAR 1:010
150.180	301 KAR 2:132		16 KAR 4:040
	301 KAR 2:251		16 KAR 4:080
150.190	301 KAR 2:132		16 KAR 4:090
150.340	301 KAR 1:201	161.053	16 KAR 4:040
150.370	301 KAR 2:049		16 KAR 4:080
	301 KAR 2:251		16 KAR 4:090
150.399	301 KAR 2:049		16 KAR 7:010
	301 KAR 2:251	161.120	16 KAR 1:010
150.415	301 KAR 2:251		16 KAR 1:030
150.416	301 KAR 2:251	161.095	16 KAR 1:010

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
161.220	102 KAR 1:320	175B.095	202 KAR 10:010
161.520	102 KAR 1:165		202 KAR 10:020
161.661	102 KAR 1:290	176	603 KAR 8:011
161.700	102 KAR 1:320	176.050	603 KAR 7:071
	921 KAR 1:410	176.070	603 KAR 1:031
161.716	102 KAR 1:320	176.080	603 KAR 2:020
164.001	13 KAR 2:060	176.130	603 KAR 1:031
164.002	11 KAR 15:090	176.140	603 KAR 1:031
164.020	13 KAR 2:060		603 KAR 2:020
	13 KAR 4:010	176.240	603 KAR 7:071
164.518	11 KAR 4:080	177.220-177.240	603 KAR 5:311
164.772	804 KAR 4:400	183.090	602 KAR 20:091
164.744	11 KAR 4:080		603 KAR 9:021
164.748	11 KAR 4:080	183.200-183.213	602 KAR 15:011
164.753	11 KAR 4:080	186	601 KAR 2:011
164.769	11 KAR 4:080		601 KAR 9:111
164.780	11 KAR 4:080	186.010	601 KAR 2:030
164.785	11 KAR 4:080	186.053	601 KAR 9:111
164.945	13 KAR 4:010	186.276	601 KAR 9:111
164.946	13 KAR 4:010	186.281	601 KAR 1:231
164.947	13 KAR 4:010		601 KAR 9:111
164.992	13 KAR 4:010	186.440	601 KAR 2:030
164.2847	922 KAR 1:500	186.442	601 KAR 2:030
164.7535	11 KAR 4:080	186.480	601 KAR 2:030
164.772	201 KAR 22:020	186.531	601 KAR 2:030
164.7871	11 KAR 15:090	186.560	601 KAR 2:030
164.7874	11 KAR 15:090	186.570	601 KAR 2:030
164.7877	11 KAR 15:090		921 KAR 1:410
164.7879	11 KAR 15:090	186.650	601 KAR 9:111
164.7881	11 KAR 15:090	186A.145	601 KAR 9:111
164.7885	11 KAR 15:090	186A.160	601 KAR 9:111
164.7889	11 KAR 15:090	189.010	603 KAR 4:046
164.7890	11 KAR 4:080	189.221	603 KAR 5:311
164.7894	11 KAR 4:080	189.222	603 KAR 5:311
164A.560	755 KAR 1:080	189.231	603 KAR 5:311
164A.565	755 KAR 1:080	189.337	603 KAR 4:046
164A.575	755 KAR 1:080	189.338	603 KAR 5:311
164A.580	755 KAR 1:080	189A.005	601 KAR 2:030
164A.585	755 KAR 1:080	189A.010	601 KAR 2:030
164A.590	755 KAR 1:080	189A.040	601 KAR 2:030
164A.595	755 KAR 1:080	189A.070	601 KAR 2:030
164A.600	755 KAR 1:080	189A.085	601 KAR 2:030
165A.320-165A.450	13 KAR 4:010	189A.090	601 KAR 2:030
168.100	702 KAR 3:171	189A.103	601 KAR 2:030
174.080	603 KAR 7:071	189A.105	601 KAR 2:030
174.400-174.425	601 KAR 1:231	189A.107	601 KAR 2:030
174.450	601 KAR 40:011	189A.200	601 KAR 2:030
175B.005	202 KAR 10:010	189A.240	601 KAR 2:030
	202 KAR 10:020	189A.250	601 KAR 2:030
	603 KAR 2:020	189A.340	601 KAR 2:030
175B.010	202 KAR 10:010	189A.345	601 KAR 2:030
	202 KAR 10:020	189A.400	601 KAR 2:030
	202 KAR 10:030	189A.410	601 KAR 2:030
	603 KAR 2:020	189A.420	601 KAR 2:030
175B.015	202 KAR 10:010	189A.440	601 KAR 2:030
	202 KAR 10:030	189A.500	601 KAR 2:030
175B.020	202 KAR 10:010	190.058	605 KAR 1:011
	202 KAR 10:020	194A	921 KAR 2:015
	603 KAR 2:020		922 KAR 1:151
175B.030	202 KAR 10:010		922 KAR 3:011
	202 KAR 10:020	194A.005	922 KAR 1:320
	603 KAR 2:020		922 KAR 2:260
175B.035	202 KAR 10:010	194A.025	907 KAR 15:005
	202 KAR 10:020		907 KAR 17:015
	202 KAR 10:030		907 KAR 17:035
	603 KAR 2:020		907 KAR 17:040
175B.037	202 KAR 10:010	194A.030	921 KAR 4:119
	202 KAR 10:020		922 KAR 1:320
	603 KAR 2:020		922 KAR 2:260
175B.040	202 KAR 10:010	194A.050	900 KAR 10:200
	202 KAR 10:020		921 KAR 1:001
	202 KAR 10:030	194A.060	922 KAR 2:020

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	922 KAR 2:160		907 KAR 17:040
	922 KAR 6:010	205.705	921 KAR 1:380
194A.540	201 KAR 36:030	205.710-205.800	921 KAR 1:001
196	501 KAR 6:020		921 KAR 1:380
	501 KAR 6:110		921 KAR 1:410
	501 KAR 6:150	205.712	601 KAR 2:030
	501 KAR 6:160	205.720	921 KAR 1:420
	501 KAR 6:999	205.750	921 KAR 1:420
197	501 KAR 6:020	205.755	921 KAR 1:420
	501 KAR 6:110	205.795	921 KAR 1:420
	501 KAR 6:150	205.992	921 KAR 1:380
	501 KAR 6:160	205.7685	921 KAR 1:410
	501 KAR 6:999	209	201 KAR 47:010
198B.010	815 KAR 7:120		201 KAR 47:020
198B.040	815 KAR 7:120		922 KAR 3:011
198B.050	815 KAR 7:120		922 KAR 5:120
198B.060	815 KAR 7:120	209.020	921 KAR 2:015
198B.080	815 KAR 7:120		922 KAR 1:320
198B.110	815 KAR 7:120	209.200	922 KAR 5:081
198B.260	815 KAR 7:120	209A	922 KAR 3:011
	902 KAR 20:091	209A.020	922 KAR 1:320
198B.990	815 KAR 7:120	210	908 KAR 3:081
199	922 KAR 1:151	210.300	908 KAR 2:040
	922 KAR 3:011	210.366	201 KAR 28:200
199.011	922 KAR 1:140		201 KAR 36:030
	922 KAR 1:360		201 KAR 38:070
199.555	101 KAR 3:045	210.370	902 KAR 20:091
	922 KAR 1:140		907 KAR 1:045
	922 KAR 1:320	210.410	902 KAR 20:091
199.557	922 KAR 1:140		907 KAR 1:047
	922 KAR 1:320	210.450	902 KAR 20:091
199.640-199.680	922 KAR 1:360	211.090	902 KAR 21:020
199.801	922 KAR 1:140	211.180	902 KAR 2:020
	922 KAR 1:360		902 KAR 21:020
199.892	922 KAR 2:160	213.046	921 KAR 1:380
199.894	922 KAR 2:160	214.010	902 KAR 2:020
199.896	922 KAR 2:160	214.036	922 KAR 2:160
199.898	922 KAR 2:160	214.540-214.544	902 KAR 21:020
199.899	922 KAR 2:160	214.645	902 KAR 2:020
199.8982	922 KAR 2:160	216.2925	902 KAR 20:008
199.8994	922 KAR 2:160	216.530	902 KAR 20:008
199.8996	10 KAR 6:010		921 KAR 2:015
200.151	10 KAR 6:010	216.557	921 KAR 2:015
200.700	10 KAR 6:010	216.750	921 KAR 2:015
200.703	10 KAR 6:010	216.765	921 KAR 2:015
200.705	10 KAR 6:010	216B	921 KAR 2:015
200.707	10 KAR 6:010	216B.010	902 KAR 20:008
200.709	10 KAR 6:010		902 KAR 20:013
200.711	10 KAR 6:010		902 KAR 20:058
202A	908 KAR 2:040		902 KAR 20:091
	908 KAR 3:081	216B.010-216B.130	900 KAR 5:020
202A.011	902 KAR 20:091		902 KAR 20:081
	921 KAR 2:015	216B.015	900 KAR 6:055
202B	908 KAR 3:081		900 KAR 6:060
202B.010	902 KAR 20:091		900 KAR 6:065
205.510-205.647	907 KAR 4:020		900 KAR 6:095
205.520	902 KAR 21:020		902 KAR 20:008
	907 KAR 1:045		902 KAR 20:013
	907 KAR 1:047		902 KAR 20:058
	907 KAR 7:010		902 KAR 20:091
	907 KAR 15:010	216B.020	202 KAR 7:501
	907 KAR 15:015	216B.030	902 KAR 20:091
205.594	921 KAR 1:410	216B.040	900 KAR 6:060
205.595	921 KAR 1:410		900 KAR 6:065
205.5605	907 KAR 7:010		902 KAR 20:008
205.5606	907 KAR 7:010		902 KAR 20:058
205.5607	907 KAR 7:010	216B.042	902 KAR 20:008
205.635	907 KAR 7:010		902 KAR 20:013
205.6313	902 KAR 20:091		902 KAR 20:058
205.6481-205.6497	907 KAR 4:020	216B.045-216B.055	902 KAR 20:008
	907 KAR 4:030		902 KAR 20:058
205.646	907 KAR 17:035	216B.061	900 KAR 6:095

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
216B.062	900 KAR 6:065	227.300	815 KAR 7:120
216B.075	902 KAR 20:008	227.550	815 KAR 7:120
	902 KAR 20:058	229.011	201 KAR 27:005
216B.085	900 KAR 6:065		201 KAR 27:007
216B.095	900 KAR 6:060	229.021	201 KAR 27:005
	900 KAR 6:065		201 KAR 27:007
216B.105	902 KAR 20:013		201 KAR 27:008
	902 KAR 20:091		201 KAR 27:011
216B.105-216B.131	902 KAR 20:008		201 KAR 27:012
	902 KAR 20:058		201 KAR 27:016
216B.155	906 KAR 1:151		201 KAR 27:017
216B.176	902 KAR 20:058		201 KAR 27:036
216B.177	902 KAR 20:058		201 KAR 27:040
216B.185	902 KAR 20:008		201 KAR 27:105
216B.400	201 KAR 20:411	229.031	201 KAR 27:005
216B.990	900 KAR 6:095		201 KAR 27:011
	902 KAR 20:008		201 KAR 27:012
	902 KAR 20:058		201 KAR 27:016
	902 KAR 20:081		201 KAR 27:020
	902 KAR 20:091		201 KAR 27:105
216B.935	902 KAR 20:081	229.041	201 KAR 27:007
217.005-217.215	902 KAR 55:035		201 KAR 27:020
217.055	201 KAR 2:076	229.051	201 KAR 27:005
217.065	201 KAR 2:076		201 KAR 27:007
218A.010	16 KAR 1:030		201 KAR 27:008
	201 KAR 2:076	229.061	201 KAR 27:007
	202 KAR 10:030	229.071	201 KAR 27:005
218A.010-218A.030	902 KAR 55:035		201 KAR 27:008
218A.010-218A.050	902 KAR 55:015		201 KAR 27:011
218A.120	902 KAR 55:035		201 KAR 27:012
218A.130	902 KAR 55:035		201 KAR 27:016
218A.205	201 KAR 2:050		201 KAR 27:017
	201 KAR 20:215		201 KAR 27:020
222.211	902 KAR 20:091		201 KAR 27:021
224.1	401 KAR 4:070		201 KAR 27:036
	401 KAR 45:060		201 KAR 27:105
	401 KAR 46:101	229.081	201 KAR 27:005
	401 KAR 46:110		201 KAR 27:008
	401 KAR 46:120		201 KAR 27:011
224.1-010	103 KAR 8:160		201 KAR 27:012
	401 KAR 45:010		201 KAR 27:016
224.10	401 KAR 4:070		201 KAR 27:017
	401 KAR 45:060		201 KAR 27:021
	401 KAR 46:101		201 KAR 27:036
	401 KAR 46:110		201 KAR 27:040
	401 KAR 46:120	229.091	201 KAR 27:005
224.10-100	401 KAR 60:005		201 KAR 27:008
	401 KAR 63:002		201 KAR 27:011
	401 KAR 63:060		201 KAR 27:012
224.20-100	401 KAR 60:005		201 KAR 27:016
	401 KAR 63:002		201 KAR 27:017
224.20-110	401 KAR 60:005		201 KAR 27:021
	401 KAR 63:002		201 KAR 27:036
	401 KAR 63:060		201 KAR 27:040
224.20-120	401 KAR 60:005		201 KAR 27:105
	401 KAR 63:002	229.101	201 KAR 27:011
224.40	401 KAR 45:060		201 KAR 27:016
224.46	401 KAR 45:060		201 KAR 27:017
224.50	401 KAR 4:070	229.111	201 KAR 27:005
	401 KAR 45:060		201 KAR 27:016
	401 KAR 46:101		201 KAR 27:021
	401 KAR 46:110	229.131	201 KAR 27:005
	401 KAR 46:120		201 KAR 27:011
224.50-760	401 KAR 45:010		201 KAR 27:016
224.70	401 KAR 46:101		201 KAR 27:017
	401 KAR 46:110	229.155	201 KAR 27:005
	401 KAR 46:120		201 KAR 27:007
224.99	401 KAR 4:070		201 KAR 27:011
	401 KAR 45:060		201 KAR 27:105
	401 KAR 46:101	229.171	201 KAR 27:005
	401 KAR 46:110		201 KAR 27:007
	401 KAR 46:120		201 KAR 27:008

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	201 KAR 27:011	244.500	804 KAR 11:010
	201 KAR 27:012	244.590	804 KAR 11:010
	201 KAR 27:016	250.021	12 KAR 1:116
	201 KAR 27:017		12 KAR 1:140
	201 KAR 27:021		12 KAR 1:155
	201 KAR 27:036	250.031	12 KAR 1:116
	201 KAR 27:040		12 KAR 1:140
	201 KAR 27:105		12 KAR 1:155
229.180	201 KAR 27:005	250.041	12 KAR 1:116
	201 KAR 27:016		12 KAR 1:140
	201 KAR 27:017		12 KAR 1:155
	201 KAR 27:020	250.051	12 KAR 1:116
	201 KAR 27:021		12 KAR 1:140
	201 KAR 27:036		12 KAR 1:155
229.190	201 KAR 27:105	250.061	12 KAR 1:116
	201 KAR 27:007		12 KAR 1:140
229.200	201 KAR 27:105		12 KAR 1:155
	201 KAR 27:007	250.071	12 KAR 1:116
	201 KAR 27:021		12 KAR 1:140
	201 KAR 27:105		12 KAR 1:155
229.991	201 KAR 27:007	250.081	12 KAR 1:116
	201 KAR 27:021		12 KAR 1:140
	201 KAR 27:105		12 KAR 1:155
230.215	810 KAR 1:009	250.091	12 KAR 1:116
	811 KAR 2:190		12 KAR 1:140
	811 KAR 1:215		12 KAR 1:155
	811 KAR 1:220	250.101	12 KAR 1:116
230.225	811 KAR 2:190		12 KAR 1:140
230.260	811 KAR 1:215		12 KAR 1:155
	811 KAR 1:220	250.111	12 KAR 1:116
230.280	811 KAR 1:220		12 KAR 1:140
230.290	811 KAR 1:220		12 KAR 1:155
230.310	811 KAR 1:220	260.165	302 KAR 39:020
230.398	811 KAR 1:220	260.166	302 KAR 39:020
230.443	811 KAR 2:190	260.167	302 KAR 39:020
230.445	811 KAR 2:190	260.168	302 KAR 39:020
230.770	811 KAR 1:215	260.175	302 KAR 39:020
230.802	811 KAR 1:215	273.405-273.453	922 KAR 6:010
230.990	811 KAR 1:215	281	601 KAR 1:231
235.010	301 KAR 1:015		601 KAR 2:011
235.990	301 KAR 1:015	281.626	601 KAR 1:231
237.110	921 KAR 1:410	281.655	601 KAR 1:231
241.060	804 KAR 1:071	281.656	601 KAR 1:231
	804 KAR 3:081	281.720	601 KAR 9:111
	804 KAR 4:041	281.900	601 KAR 1:231
	804 KAR 4:400	281.905	601 KAR 1:231
	804 KAR 4:410	286.3-010	808 KAR 1:160
	804 KAR 5:031	286.3-020	808 KAR 1:160
	804 KAR 7:051	286.3-050	808 KAR 1:160
	804 KAR 8:041	286.3-065	808 KAR 1:081
	804 KAR 9:010	286.3-095	808 KAR 1:160
	804 KAR 9:021	286.3-100	808 KAR 1:081
	804 KAR 10:021		808 KAR 1:111
	804 KAR 11:021	286.3-135	808 KAR 1:160
241.065	804 KAR 9:010	286.3-140	808 KAR 1:160
243.030	804 KAR 9:010	286.3-145	808 KAR 1:160
243.090	804 KAR 4:390	286.3-146	808 KAR 1:160
	804 KAR 4:400	286.3-170	808 KAR 1:160
241.110	804 KAR 10:010	286.3-172	808 KAR 1:160
241.120	804 KAR 10:010	286.3-174	808 KAR 1:160
241.130	804 KAR 10:010	286.3-180	808 KAR 1:160
241.160	804 KAR 10:010	286.3-185	808 KAR 1:160
241.170	804 KAR 10:010	286.3-450	808 KAR 1:160
241.180	804 KAR 10:010	286.3-480	808 KAR 1:160
241.220	804 KAR 10:010	286.3-530	808 KAR 1:160
241.230	804 KAR 10:010	286.3-820	808 KAR 1:160
241.240	804 KAR 10:010	286.3-900	808 KAR 11:011
243.155	804 KAR 4:381	286.3-920	808 KAR 1:160
243.240	804 KAR 9:010	286.5-081	808 KAR 7:031
243.250	804 KAR 9:010	286.5-441	808 KAR 7:031
243.380	804 KAR 4:400	286.5-451	808 KAR 7:031
243.390	804 KAR 4:400	286.5-905	808 KAR 7:031

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
286.5-910	808 KAR 7:031	309.420	201 KAR 47:010
286.6-070	808 KAR 3:020		201 KAR 47:020
286.6-100	808 KAR 3:020	311	201 KAR 27:008
	808 KAR 3:030		902 KAR 20:058
286.6-405	808 KAR 3:020	311.560	902 KAR 20:081
286.7-440	808 KAR 5:011		902 KAR 20:091
286.7-520	808 KAR 5:011	311A.010	202 KAR 7:520
286.7-550	808 KAR 5:011	311A.030	202 KAR 7:501
286.7-590	808 KAR 5:011		202 KAR 7:520
286.8-010	808 KAR 12:021	311A.035	202 KAR 7:520
	808 KAR 12:055	311A.050	202 KAR 7:520
286.8-020	808 KAR 12:021	311A.055	202 KAR 7:520
286.8-030	808 KAR 12:021	311A.060	202 KAR 7:520
286.8-036	808 KAR 12:021	311A.155	202 KAR 7:520
286.8-060	808 KAR 12:021	311A.190	202 KAR 7:501
286.8-070	808 KAR 12:021		202 KAR 7:520
286.8-080	808 KAR 12:021	312.019	201 KR 21:025
286.8-090	808 KAR 12:021	312.055	201 KR 21:025
286.8-255	808 KAR 12:055	312.085	201 KAR 21:041
286.8-260	808 KAR 12:021	312.095	201 KAR 21:041
286.8-290	808 KAR 12:021	312.145	201 KAR 21:041
304.1-050	806 KAR 9:360	312.175	201 KAR 21:041
304.2-040	806 KAR 2:011	314	902 KAR 20:058
304.2-080	806 KAR 2:011	314.011	201 KAR 20:215
304.2-110	806 KAR 2:011		201 KAR 20:220
304.2-150	806 KAR 2:011		201 KAR 20:411
304.2-160	806 KAR 2:011		902 KAR 20:091
304.3-270	103 KAR 15:180		920 KAR 2:040
304.4-010	806 KAR 2:011		922 KAR 2:160
	806 KAR 2:097	314.042	902 KAR 20:091
304.9-053	806 KAR 9:360	314.073	201 KAR 20:215
304.9-054	806 KAR 9:360		201 KAR 20:220
304.12-010	806 KAR 18:020	314.103	201 KAR 20:411
304.17A	902 KAR 21:020	314.131	201 KAR 20:220
304.18-040	806 KAR 18:020	314.142	201 KAR 20:411
304.32-080	806 KAR 18:020		920 KAR 2:040
309.080	902 KAR 20:091	314.470	201 KAR 20:411
309.081	201 KAR 35:030	314.991	201 KAR 20:215
309.083	201 KAR 35:020	315.010	201 KAR 2:045
	201 KAR 35:025	315.020	201 KAR 2:045
	201 KAR 35:050		201 KAR 2:076
	201 KAR 35:070	315.035	201 KAR 2:050
309.0831	201 KAR 35:020		201 KAR 2:076
	201 KAR 35:025	315.036	201 KAR 2:050
	201 KAR 35:070	315.050	201 KAR 2:050
309.0832	201 KAR 35:020	315.060	201 KAR 2:050
	201 KAR 35:025	315.110	201 KAR 2:050
	201 KAR 35:070	315.120	201 KAR 2:050
309.0833	201 KAR 35:020	315.191	201 KAR 2:045
	201 KAR 35:025		201 KAR 2:076
	201 KAR 35:070		201 KAR 2:351
309.0832	201 KAR 35:016	315.402	201 KAR 2:050
309.084	201 KAR 35:016	315.518	201 KAR 2:050
	201 KAR 35:020	315.520	201 KAR 2:050
309.085	201 KAR 35:020	315.0351	201 KAR 2:050
309.130	902 KAR 20:091		201 KAR 2:076
309.357	201 KAR 42:020	317.440	201 KAR 14:125
	201 KAR 42:040	317.450	201 KAR 14:125
309.361	201 KAR 42:040	318	815 KAR 20:010
309.362	201 KAR 42:020		815 KAR 20:080
	201 KAR 42:040	318.010	815 KAR 20:020
309.404	201 KAR 47:010		815 KAR 20:090
309.406	201 KAR 47:010		815 KAR 20:120
	201 KAR 47:020		815 KAR 20:130
309.412	201 KAR 47:010	318.015	815 KAR 20:020
	201 KAR 47:020		815 KAR 20:090
309.414	201 KAR 47:010		815 KAR 20:130
	201 KAR 47:020	318.130	815 KAR 20:020
309.416	201 KAR 47:010		815 KAR 20:060
	201 KAR 47:020		815 KAR 20:090
309.418	201 KAR 47:010		815 KAR 20:120
	201 KAR 47:020		815 KAR 20:130

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
318.150	815 KAR 20:020	335.625	201 KAR 38:070
	815 KAR 20:060	335.640	201 KAR 38:070
	815 KAR 20:090	335.650	201 KAR 38:070
	815 KAR 20:120	337.275	922 KAR 2:160
	815 KAR 20:130	338.015	803 KAR 2:180
318.165	815 KAR 20:120		803 KAR 2:300
318.200	815 KAR 20:020		803 KAR 2:305
	815 KAR 20:090		803 KAR 2:317
	815 KAR 20:120		803 KAR 2:412
	815 KAR 20:130	338.031	803 KAR 2:412
319.056	902 KAR 20:091	338.051	803 KAR 2:303
319.064	902 KAR 20:091		803 KAR 2:305
319A.070	201 KAR 28:200		803 KAR 2:313
319A.080	201 KAR 28:230		803 KAR 2:317
319A.160	201 KAR 28:090		803 KAR 2:412
	201 KAR 28:200	338.061	803 KAR 2:180
	201 KAR 28:230		803 KAR 2:303
319C.010	902 KAR 20:091		803 KAR 2:305
319C.030	201 KAR 43:110		803 KAR 2:313
320.210	902 KAR 20:091		803 KAR 2:317
322	401 KAR 46:120		803 KAR 2:412
322A	401 KAR 46:120	338.121	803 KAR 2:180
322.020	201 KAR 18:051	341.370	787 KAR 1:070
322.040	201 KAR 18:051	341.530	787 KAR 1:070
322.080	201 KAR 18:051	342.125	803 KAR 25:010
324A.010	201 KAR 30:030	342.260	803 KAR 25:010
324A.030	201 KAR 30:030	342.265	803 KAR 25:010
324A.035	201 KAR 30:030	342.270	803 KAR 25:010
324A.040	201 KAR 30:030	342.300	803 KAR 25:010
324A.052	201 KAR 30:030	342.310	803 KAR 25:010
325.230	201 KAR 1:015	342.315	803 KAR 25:010
	201 KAR 1:065	342.710	803 KAR 25:010
	201 KAR 1:100	342.715	803 KAR 25:010
327.010	201 KAR 22:020	342.732	803 KAR 25:010
	201 KAR 22:045	342.760	803 KAR 25:010
327.040	201 KAR 22:053	342.0011	803 KAR 25:010
327.050	201 KAR 22:020	344	922 KAR 6:010
327.060	201 KAR 22:020	360.210-360.265	808 KAR 4:021
327.070	201 KAR 22:045	367.93101	40 KAR 2:145
	201 KAR 22:053	367.93103	40 KAR 2:150
327.075	201 KAR 22:020	367.93105	40 KAR 2:145
333.130	902 KAR 2:020		40 KAR 2:150
335.080	201 KAR 22:020	367.93107	40 KAR 2:145
	902 KAR 20:091	367.93109	40 KAR 2:145
335.100	902 KAR 20:091	367.93111	40 KAR 2:145
335.130	201 KAR 23:075	367.93113	40 KAR 2:145
335.300	902 KAR 20:091	367.93115	40 KAR 2:145
335.500	201 KAR 36:060	367.93117	40 KAR 2:145
	201 KAR 36:065		40 KAR 2:150
	201 KAR 36:070	367.93121	40 KAR 2:145
	902 KAR 20:091	367.97501	40 KAR 2:145
335.500-335.990	201 KAR 36:030		40 KAR 2:150
335.505	201 KAR 36:045	367.97504	40 KAR 2:150
	201 KAR 36:060	367.97507	40 KAR 2:150
	201 KAR 36:065	367.97511	40 KAR 2:150
335.515	201 KAR 36:045	367.97514	40 KAR 2:145
	201 KAR 36:055		40 KAR 2:150
	201 KAR 36:090	367.97517	40 KAR 2:150
335.525	201 KAR 36:020	367.97521	40 KAR 2:150
	201 KAR 36:060	367.97524	40 KAR 2:145
	201 KAR 36:065		40 KAR 2:150
	201 KAR 36:070	367.97527	40 KAR 2:145
335.527	201 KAR 36:070		40 KAR 2:150
335.535	201 KAR 36:005	387.025	922 KAR 1:140
	201 KAR 36:020	403.190	102 KAR 1:320
	201 KAR 36:075	403.211	921 KAR 1:380
335.540	201 KAR 36:040	403.210-403.240	921 KAR 1:001
	201 KAR 36:050	403.311-403.215	921 KAR 1:410
335.545	201 KAR 36:050	403.707	201 KAR 20:411
	201 KAR 36:090	405.060	921 KAR 1:410
335.620	201 KAR 38:020	405.405-405.991	921 KAR 1:410
	201 KAR 38:030	405.430	921 KAR 1:380

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
405.440	921 KAR 1:001		603 KAR 4:046
405.467	921 KAR 1:380	26 C.F.R.	921 KAR 3:050
405.520	921 KAR 1:001	29 C.F.R.	601 KAR 1:231
	921 KAR 1:380		803 KAR 2:180
	921 KAR 1:420		803 KAR 2:300
406.021	921 KAR 1:380		803 KAR 2:303
406.025	921 KAR 1:380		803 KAR 2:305
407.5101	921 KAR 1:420		803 KAR 2:308
407.5101-407.5902	921 KAR 1:410		803 KAR 2:313
407.5101-407.5903	921 KAR 1:001		803 KAR 2:317
	921 KAR 1:380	31 C.F.R.	921 KAR 1:410
421.500-421.575	201 KAR 20:411	34 C.F.R.	11 KAR 4:080
427.125	921 KAR 1:410	40 C.F.R.	401 KAR 4:070
431.600	920 KAR 2:040		401 KAR 46:101
439	501 KAR 6:020		401 KAR 46:110
	501 KAR 6:110		401 KAR 46:120
	501 KAR 6:150		401 KAR 60:005
	501 KAR 6:160		401 KAR 63:002
	501 KAR 6:999		401 KAR 63:060
439.3401	201 KAR 47:010	42 C.F.R.	907 KAR 4:020
	201 KAR 47:020		907 KAR 7:010
	902 KAR 20:091		907 KAR 7:015
504	908 KAR 2:040		907 KAR 17:015
514	921 KAR 2:015		907 KAR 17:035
527.100	922 KAR 1:140		907 KAR 17:040
527.110	922 KAR 1:140	45 C.F.R.	806 KAR 9:360
600.020	922 KAR 1:140		900 KAR 10:200
	922 KAR 1:320		902 KAR 20:058
	922 KAR 1:360		902 KAR 20:091
	922 KAR 2:160		921 KAR 1:001
605.090	922 KAR 1:320		921 KAR 1:380
	922 KAR 1:360		921 KAR 1:410
605.120	922 KAR 2:160		921 KAR 1:420
610.110	922 KAR 1:140		922 KAR 1:140
	922 KAR 1:360		922 KAR 1:320
	922 KAR 1:500		922 KAR 1:500
610.125	922 KAR 1:140		922 KAR 2:020
610.127	922 KAR 1:140		922 KAR 2:160
610.170	921 KAR 1:380		922 KAR 2:260
620	922 KAR 1:151		922 KAR 6:010
	922 KAR 3:011	49 C.F.R.	202 KAR 10:020
620.020	920 KAR 2:040		600 KAR 6:061
	922 KAR 1:140		601 KAR 1:231
	922 KAR 1:320		601 KAR 2:011
	922 KAR 1:500	7 U.S.C.	921 KAR 3:030
	922 KAR 2:160		921 KAR 3:035
620.045	920 KAR 2:040		922 KAR 2:160
620.050	920 KAR 2:040	8 U.S.C.	921 KAR 2:015
620.060	922 KAR 1:140	15 U.S.C.	201 KAR 27:008
620.090	922 KAR 1:140		201 KAR 27:011
620.140	922 KAR 1:140		201 KAR 27:017
	922 KAR 1:500		806 KAR 3:210
620.180	922 KAR 1:140		921 KAR 1:410
	922 KAR 1:320	16 U.S.C.	401 KAR 4:070
620.230	922 KAR 1:320		401 KAR 46:101
625.040	922 KAR 1:140		401 KAR 46:110
625.090	922 KAR 1:140		401 KAR 46:120
645.020	902 KAR 20:091	18 U.S.C.	601 KAR 2:030
2 C.F.R.	202 KAR 7:520	20 U.S.C.	11 KAR 4:080
	803 KAR 2:412		702 KAR 7:065
7 C.F.R.	921 KAR 3:030		705 KAR 4:231
	921 KAR 3:035		780 KAR 4:012
	921 KAR 3:050		922 KAR 1:500
	922 KAR 2:160	21 U.S.C.	902 KAR 55:035
10 C.F.R.	921 KAR 4:119	23 U.S.C.	600 KAR 6:061
12 C.F.R.	806 KAR 3:210		603 KAR 4:046
	808 KAR 3:020	25 U.S.C.	922 KAR 1:140
20 C.F.R.	921 KAR 2:015		922 KAR 2:160
	922 KAR 2:160	26 U.S.C.	102 KAR 1:320
21 C.F.R.	902 KAR 55:015		103 KAR 15:180
	902 KAR 55:035	29 U.S.C.	921 KAR 4:119
23 C.F.R.	600 KAR 6:061		922 KAR 2:160

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
33 U.S.C.	401 KAR 4:070		
	401 KAR 46:101		
	401 KAR 46:110		
	401 KAR 46:120		
38 U.S.C.	922 KAR 2:160		
42 U.S.C.	106 KAR 1:081		
	106 KAR 1:091		
	401 KAR 46:101		
	401 KAR 46:110		
	401 KAR 46:120		
	401 KAR 60:005		
	401 KAR 63:002		
	401 KAR 63:060		
	815 KAR 20:060		
	900 KAR 10:200		
	902 KAR 20:058		
	902 KAR 20:091		
	906 KAR 1:190		
	907 KAR 3:031		
	907 KAR 4:020		
	907 KAR 4:030		
	907 KAR 7:015		
	907 KAR 15:010		
	907 KAR 15:015		
	907 KAR 17:015		
	921 KAR 1:001		
	921 KAR 1:380		
	921 KAR 1:410		
	921 KAR 1:420		
	921 KAR 2:015		
	921 KAR 3:030		
	921 KAR 3:035		
	921 KAR 4:119		
	922 KAR 1:140		
	922 KAR 1:320		
	922 KAR 1:360		
	922 KAR 1:500		
	922 KAR 2:020		
	922 KAR 2:160		
	922 KAR 2:260		
	922 KAR 3:011		
	922 KAR 6:010		
Pub.L. 109-58	921 KAR 4:119		
1986 Ky. Acts ch 401	603 KAR 8:011		
1998 Ky. Acts ch.615	600 KAR 5:011		
2010 ES Ky. Acts ch.1	101 KAR 5:016		
2014 Ky. Acts ch.117	922 KAR 2:160		
2016 Ky. Acts ch. 91	739 KAR 2:140		
2016 Ky. Acts ch. 149	922 KAR 2:160		
EO 2016-270	201 KAR 27:005		
	201 KAR 27:105		
Pres. EO 13166	921 KAR 3:030		

TECHNICAL AMENDMENT INDEX

Regulation Number	Date Corrected	Regulation Number	Date Corrected
The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the 2016 <i>Kentucky Administrative Regulations Service</i> . 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 to show the technical corrections in the <i>Administrative Register of Kentucky</i> . NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/KAR/frmtpage.htm .			
‡ - Pursuant to KRS 13A.320(1)(e), this symbol indicates a technical change was made to this administrative regulation during the promulgation process.			
30 KAR 1:040	8-2-2016	103 KAR 43:110	6-28-2016
40 KAR 2:150	6-30-2016	103 KAR 43:140	6-28-2016
103 KAR 25:050	6-22-2016	103 KAR 43:310	6-28-2016
103 KAR 25:060	6-22-2016	103 KAR 43:330	6-28-2016
103 KAR 25:131	6-22-2016	103 KAR 44:060	6-28-2016
103 KAR 26:050	6-22-2016	103 KAR 44:070	6-28-2016
103 KAR 26:070	6-22-2016	201 KAR 22:053	11-16-2016
103 KAR 26:080	6-22-2016	201 KAR 27:005	‡ 10-26-2016
103 KAR 26:090	6-22-2016	201 KAR 27:007	‡ 10-26-2016
103 KAR 26:100	6-22-2016	201 KAR 27:008	‡ 10-26-2016
103 KAR 27:120	6-22-2016	201 KAR 27:011	‡ 10-26-2016
103 KAR 27:140	6-22-2016	201 KAR 27:012	‡ 10-26-2016
103 KAR 27:150	6-22-2016	201 KAR 27:016	‡ 10-26-2016
103 KAR 27:180	6-22-2016	201 KAR 27:017	‡ 10-26-2016
103 KAR 27:220	6-22-2016	201 KAR 27:020	‡ 10-26-2016
103 KAR 28:010	6-22-2016	201 KAR 27:021	‡ 10-26-2016
103 KAR 28:020	6-22-2016	201 KAR 27:036	‡ 10-26-2016
103 KAR 28:030	6-22-2016	201 KAR 27:040	‡ 10-26-2016
103 KAR 28:040	6-22-2016	201 KAR 27:105	‡ 10-26-2016
103 KAR 28:051	6-22-2016	301 KAR 2:030	8-29-2016
103 KAR 28:060	6-22-2016	401 KAR 4:010	7-8-2016
103 KAR 28:090	6-22-2016	401 KAR 4:060	7-8-2016
103 KAR 28:130	6-22-2016	401 KAR 4:100	7-8-2016
103 KAR 28:150	6-22-2016	401 KAR 4:140	7-8-2016
103 KAR 30:091	6-22-2016	401 KAR 4:220	7-8-2016
103 KAR 30:120	6-22-2016	401 KAR 5:002	7-8-2016
103 KAR 30:140	6-22-2016	401 KAR 5:005	7-8-2016
103 KAR 30:160	6-22-2016	401 KAR 5:006	7-8-2016
103 KAR 30:170	6-22-2016	401 KAR 5:060	7-8-2016
103 KAR 30:180	6-22-2016	401 KAR 5:320	7-8-2016
103 KAR 30:190	6-22-2016	401 KAR 6:310	7-8-2016
103 KAR 30:235	6-22-2016	401 KAR 6:320	7-8-2016
103 KAR 30:250	6-22-2016	401 KAR 6:350	7-8-2016
103 KAR 30:260	6-22-2016	401 KAR 8:020	7-8-2016
103 KAR 30:270	6-22-2016	401 KAR 8:040	7-8-2016
103 KAR 30:280	6-22-2016	401 KAR 8:100	7-8-2016
103 KAR 30:290	6-22-2016	401 KAR 9:010	7-8-2016
103 KAR 31:011	6-22-2016	401 KAR 10:026	7-8-2016
103 KAR 31:050	6-22-2016	401 KAR 10:030	7-8-2016
103 KAR 31:080	6-22-2016	401 KAR 10:031	7-8-2016
103 KAR 31:090	6-22-2016	401 KAR 11:050	7-8-2016
103 KAR 31:190	6-22-2016	401 KAR 31:070	7-8-2016
103 KAR 40:010	6-28-2016	401 KAR 32:010	7-8-2016
103 KAR 40:035	6-28-2016		12-21-2016
103 KAR 40:050	6-28-2016	401 KAR 32:040	7-8-2016
103 KAR 40:090	6-28-2016		12-21-2016
103 KAR 40:100	6-28-2016	401 KAR 33:010	7-8-2016
103 KAR 41:030	6-28-2016		12-21-2016
103 KAR 41:040	6-28-2016	401 KAR 34:060	7-8-2016
103 KAR 41:050	6-28-2016		12-21-2016
103 KAR 41:060	6-28-2016	401 KAR 34:080	7-8-2016
103 KAR 41:090	6-28-2016	401 KAR 35:060	12-21-2016
103 KAR 41:100	6-28-2016	401 KAR 38:040	7-8-2016
103 KAR 41:110	6-28-2016		12-21-2016
103 KAR 41:120	6-28-2016	401 KAR 38:050	7-8-2016
103 KAR 41:130	6-28-2016	401 KAR 38:080	7-8-2016
103 KAR 41:160	6-28-2016		12-21-2016
103 KAR 43:010	6-28-2016	401 KAR 42:020	7-8-2016
103 KAR 43:050	6-28-2016		12-21-2016
103 KAR 43:100	6-28-2016	401 KAR 42:030	7-8-2016

TECHNICAL AMENDMENT INDEX

	12-21-2016	401 KAR 52:050	7-8-2016
401 KAR 42:040	7-8-2016	401 KAR 52:060	7-8-2016
	12-21-2016	401 KAR 52:070	7-8-2016
401 KAR 42:060	7-8-2016	401 KAR 52:100	7-8-2016
	12-21-2016	401 KAR 58:005	7-8-2016
401 KAR 42:070	7-8-2016	401 KAR 58:025	7-8-2016
	12-21-2016	401 KAR 59:021	7-8-2016
401 KAR 42:080	7-8-2016	401 KAR 59:023	7-8-2016
	12-21-2016	401 KAR 59:174	7-8-2016
401 KAR 42:250	7-8-2016	401 KAR 59:760	7-8-2016
	12-21-2016	401 KAR 61:036	7-8-2016
401 KAR 42:290	7-8-2016	401 KAR 61:090	7-8-2016
	12-21-2016	401 KAR 63:031	7-8-2016
401 KAR 42:300	7-8-2016	401 KAR 68:010	7-8-2016
	12-21-2016	401 KAR 68:020	7-8-2016
401 KAR 42:316	7-8-2016	401 KAR 68:048	7-8-2016
	12-21-2016	401 KAR 68:065	7-8-2016
401 KAR 42:320	7-8-2016	401 KAR 68:090	7-8-2016
	12-21-2016	401 KAR 68:100	7-8-2016
401 KAR 42:330	7-8-2016	401 KAR 68:150	7-8-2016
	12-21-2016	401 KAR 68:200	7-8-2016
401 KAR 42:340	7-8-2016	401 KAR 100:030	7-8-2016
	12-21-2016		12-21-2016
401 KAR 44:030	7-8-2016	401 KAR 101:010	7-8-2016
401 KAR 45:030	7-8-2016		12-21-2016
	12-21-2016	401 KAR 101:020	7-8-2016
401 KAR 45:040	7-8-2016	401 KAR 101:030	7-8-2016
	12-21-2016	401 KAR 101:040	7-8-2016
401 KAR 45:070	7-8-2016		12-21-2016
	12-21-2016	401 KAR 102:010	7-8-2016
401 KAR 45:080	7-8-2016		12-21-2016
	12-21-2016	405 KAR 5:032	7-6-2016
401 KAR 45:090	7-8-2016	405 KAR 5:070	7-6-2016
	12-21-2016	405 KAR 5:078	7-6-2016
401 KAR 45:100	7-8-2016	405 KAR 5:082	7-6-2016
401 KAR 45:135	7-8-2016	405 KAR 7:080	7-6-2016
	12-21-2016	405 KAR 7:095	7-6-2016
401 KAR 47:090	7-8-2016	405 KAR 8:001	7-6-2016
	12-21-2016	405 KAR 8:010	7-6-2016
401 KAR 47:095	7-8-2016	405 KAR 8:030	7-6-2016
	12-21-2016	405 KAR 8:040	7-6-2016
401 KAR 47:110	7-8-2016	405 KAR 10:015	7-6-2016
	12-21-2016	405 KAR 10:025	7-6-2016
401 KAR 47:205	7-8-2016	405 KAR 10:030	7-6-2016
	12-21-2016	405 KAR 10:070	7-6-2016
401 KAR 48:205	7-8-2016	405 KAR 10:070	11-1-2016
	12-21-2016	405 KAR 10:080	7-6-2016
401 KAR 48:206	7-8-2016	405 KAR 16:001	7-6-2016
401 KAR 48:207	7-8-2016	405 KAR 16:200	7-6-2016
401 KAR 48:208	7-8-2016	405 KAR 18:001	7-6-2016
401 KAR 48:310	7-8-2016	405 KAR 18:200	7-6-2016
	12-21-2016	500 KAR 3:010	12-20-2016
401 KAR 49:011	7-8-2016	501 KAR 6:060	8-18-2016
	12-21-2016	802 KAR 1:010	9-27-2016
401 KAR 49:080	7-8-2016	805 KAR 1:070	7-6-2016
	12-21-2016	805 KAR 1:100	7-6-2016
401 KAR 49:090	7-8-2016	805 KAR 1:110	7-6-2016
401 KAR 49:100	7-8-2016	805 KAR 1:140	7-6-2016
401 KAR 49:210	7-8-2016	805 KAR 1:160	7-6-2016
	12-21-2016	805 KAR 1:170	7-6-2016
401 KAR 50:015	7-8-2016	805 KAR 1:180	7-6-2016
401 KAR 50:045	7-8-2016	805 KAR 1:190	7-6-2016
401 KAR 50:065	7-8-2016	805 KAR 9:010	7-6-2016
401 KAR 50:066	7-8-2016	805 KAR 9:020	7-6-2016
401 KAR 51:001	7-8-2016	805 KAR 9:030	7-6-2016
401 KAR 51:150	7-8-2016	805 KAR 9:040	7-6-2016
401 KAR 51:160	7-8-2016	805 KAR 9:060	7-6-2016
401 KAR 51:170	7-8-2016	805 KAR 9:080	7-6-2016
401 KAR 51:180	7-8-2016	805 KAR 9:100	7-6-2016
401 KAR 51:190	7-8-2016	805 KAR 4:010	7-6-2016
401 KAR 51:195	7-8-2016	805 KAR 4:040	7-6-2016
401 KAR 52:020	7-8-2016	805 KAR 4:085	7-6-2016
401 KAR 52:030	7-8-2016	805 KAR 4:093	7-6-2016
401 KAR 52:040	7-8-2016	805 KAR 4:100	7-6-2016

TECHNICAL AMENDMENT INDEX

805 KAR 4:110		7-6-2016
805 KAR 5:070		7-6-2016
805 KAR 7:030		7-6-2016
805 KAR 7:080		7-6-2016
805 KAR 8:060		7-6-2016
805 KAR 11:010		7-6-2016
805 KAR 11:020		7-6-2016
902 KAR 2:020	‡	8-4-2016

SUBJECT INDEX

ACCOUNTANCY

Continuing professional education requirements; 201 KAR 1:100
Individual license renewal and fee; 201 KAR 1:065
Per diem compensation; 201 KAR 1:015

AERONAUTICS

Airport Development
Repeal of 602 KAR 15:010; 602 KAR 15:011
Airport Safety Standards
Repeal of 602 KAR 20:090; 602 KAR 20:091

AGING AND INDEPENDENT LIVING

Services
Long-term Care Ombudsman Program; 910 KAR 1:210

AGRICULTURE

Marketing and Product Promotion
Small Farm Wineries Support Fund; 302 KAR 39:020

AGRICULTURAL EXPERIMENT STATION

Seed
Permits, reports, and fees for persons using own tags; 12 KAR 1:140
Sampling, analyzing, testing, and tolerances; 12 KAR 1:116
Schedule of charges for samples submitted for testing; 12 KAR 1:155

AIR QUALITY

Ambient Air Quality
Ambient air quality standards; 401 KAR 53:010
Attainment and Maintenance of the National Ambient Air Quality Standards
Attainment status designations; 401 KAR 51:010
General Standards of Performance
40 C.F.R. Part 63 national emission standards for hazardous air pollutants; 401 KAR 63:002
List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list; 401 KAR 63:060
New Source Performance Standards
40 C.F.R. Part 60 standards of performance for new stationary sources; 401 KAR 60:005

ALCOHOL AND DRUG COUNSELORS

Curriculum of study; 201 KAR 35:050
Code of ethics; 201 KAR 35:030
Examinations; 201 KAR 35:025
Fees; 201 KAR 35:020
Repeal of 201 KAR 35:015; 201 KAR 35:016
Supervision of study; 201 KAR 35:070

ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF

Advertising Distilled Spirits and Wine
Repeal of 804 KAR 1:090 and 804 KAR 1:120; 804 KAR 1:071
Conduct of Business; Employees
Repeal of 804 KAR 5:030 and 804 KAR 5:050; 804 KAR 5:031
Fair Trade; Pricing and Sales
Repeal of 804 KAR 3:080; 804 KAR 3:081
Licensing
ABC basic application and renewal form incorporated by reference; 804 KAR 4:400
Renewals; 804 KAR 4:390
Repeal of 804 KAR 4:040, 804 KAR 4:050, 804 KAR 4:150, 804 KAR 4:310, 804 KAR 4:340, and 804 KAR 4:385; 804 KAR 4:041
Repeal of 804 KAR 4:380; 804 KAR 4:381
Special applications and registration forms; 804 KAR 4:410
Local Administrators
Appointment notification of local alcoholic beverage control administrator; 804 KAR 10:010
Repeal of 804 KAR 10:020 and 804 KAR 10:025; 804 KAR 10:021
Malt Beverage Equipment, Supplies, and Service

Equipment and supplies; 804 KAR 11:010
Repeal of 804 KAR 11:020; 804 KAR 11:021
Quotas
Quota retail license limits for counties; 804 KAR 9:010
Repeal of 804 KAR 9:020 and 804 KAR 9:030; 804 KAR 9:021
Retail Premises
Repeal of 804 KAR 7:050; 804 KAR 7:051
Transportation of Alcoholic Beverages
Repeal of 804 KAR 8:040 and 804 KAR 8:060; 804 KAR 8:041

APPLIED BEHAVIOR ANALYSIS

Per Diem; 201 KAR 43:110

ASSISTIVE TECHNOLOGY LOAN CORPORATION

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

ATHLETE AGENTS

Complaint review; 200 KAR 30:020
Definitions; 200 KAR 30:010
Fees; 200 KAR 30:040
Registration procedure; 200 KAR 30:030
Repeal of 200 KAR 30:050 and 200 KAR 30:060; 200 KAR 30:051

ATTORNEY GENERAL

Consumer Protection; 40 KAR Chapter 2

BANKS

See Financial Institutions

BARBERING

Fees; license, examination, renewal, expiration; 201 KAR 14:180
License, five (5) year expiration of; 201 KAR 14:030
New locations, notification and inspection of; 201 KAR 14:045
Retaking of examination; 201 KAR 14:015
School
Curriculum; 201 KAR 14:090
Equipment; plant layout; 201 KAR 14:110
Records; 201 KAR 14:150
Teacher requirements; 201 KAR 14:125

BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES

Mental Health
Hospital district assignments; 908 KAR 2:040
Institutional Care
Repeal of 908 KAR 3:080, 908 KAR 3:0910, 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; 908 KAR 3:081

BOXING AND WRESTLING

Definitions; 201 KAR 27:005
Disciplinary action; 201 KAR 27:105
Drug testing; 201 KAR 27:021
Elimination event requirements; 201 KAR 27:017
General requirements
Boxing and kickboxing shows; 201 KAR 27:011
Mixed martial arts matches, shows, or exhibitions; 201 KAR 27:016
Wrestling shows; 201 KAR 27:012
Inspector, powers and duties; 201 KAR 27:007
License requirements and fees; 201 KAR 27:008
Managers; 201 KAR 27:040
Repeal of 201 KAR 27:035, 27:045, 27:050, 27:055, 27:060, 27:065, 27:070, 27:090, 27:100; 201 KAR 27:036
Tickets; 201 KAR 27:020

BUILDING CODE

See Housing, Buildings and Construction

CHILD CARE

See Day Care

SUBJECT INDEX

CHILDREN

See listings under the following headings:

Day Care
Early Childhood Development Authority
Education
Family Support
Protection and Permanency
Public Health

CHIROPRACTIC EXAMINERS

Board; officers, duties, and compensation; 201 KAR 21:025
Licensing; standards, fees; 201 KAR 21:041

COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Emergency Medical Services; 202 KAR Chapter 7
Fire Commission; KAR Title 739

COMMUNITY BASED SERVICES

Family Support; KAR Title 921
Protection and Permanency; KAR Title 922
Child Care; 922 KAR Chapter 2

CONSTRUCTION

See: Highways
Housing, Buildings and Construction

CONSUMER PROTECTION

Cremation forms and inspections; 40 KAR 2:150
Funeral planning declaration form; 40 KAR 2:145

CORRECTIONS

Office of the Secretary
Correctional Industries; 501 KAR 6:160
Corrections policies and procedures; 501 KAR 6:020
Eastern Kentucky Correctional Complex; 501 KAR 6:150
Roederer Correctional Complex; 501 KAR 6:110

CREDIT UNIONS

See Financial Institutions

CRIMINAL JUSTICE TRAINING

Law Enforcement Foundation Program Fund
Participation: requirements; application; withdrawal; 503 KAR 5:090

DAY CARE

Child Care Assistance Program; 922 KAR 2:160
Child Care Assistance Program (CCAP) improper payments, claims, and penalties; 922 KAR 2:020
Child care service appeals; 922 KAR 2:260
Children's advocacy center standards; 920 KAR 2:040

DIABETES EDUCATORS

Supervision and work experience; 201 KAR 45:110

DURABLE MEDICAL EQUIPMENT SUPPLIERS

Home medical equipment and supplier licenses, requirements, and fees; 201 KAR 47:010
Inspections, discipline, reinstatement, and administrative appeals; 201 KAR 47:020

EARLY CHILDHOOD DEVELOPMENT AUTHORITY

Duties of the advisory council; 10 KAR 6:010

EDUCATION AND WORKFORCE DEVELOPMENT

See headings listed below:

For Education:

General; KAR Titles 702, 703, 704, 705
Higher Education Assistance Authority; KAR Title 11
Professional Standards Board; KAR Title 16
Postsecondary Education; KAR Title 13
Technical Education; KAR Title 780

For Workforce Development:

Assistive Technology Loan Corporation; KAR Title 789
Employment and Training; KAR Title 787
Employment Services; KAR Title 788

EDUCATION

Assessment and Accountability
Procedures for the inclusion of special populations in the state-required assessment and accountability programs; 703 KAR 5:070
Instruction
Repeal of 704 KAR 3:340; 704 KAR 3:342
Instructional Programs
General program standards for secondary career and technical education programs; 705 KAR 4:231
Repeal of 780 KAR 4:010; 780 KAR 4:012
Learning Results Services
Repeal of 703 KAR 4:040; 703 KAR 4:041
School Administration and Finance
Repeal of 702 KAR 3:170; 702 KAR 3:171
School Terms, Attendance and Operation
Designation of agent to manage middle and high school interscholastic athletics; 702 KAR 7:065

EDUCATION PROFESSIONAL STANDARDS BOARD

Assessment
Examination prerequisites for teacher certification; 16 KAR 6:010
Certification Procedures
Certification fees; 16 KAR 4:040
Out-of-state recency; 16 KAR 4:080
Reissuance; 16 KAR 4:090
General Administration
Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial; 16 KAR 1:030
Standards for certified teachers; 16 KAR 1:010
Internship
Kentucky Teacher Internship Program; 16 KAR 7:010

ELECTIONS

Forms and Procedures
Exceptions to prohibition on electioneering; 31 KAR 4:170

EMERGENCY MEDICAL SERVICES

Allocation of block grant funding assistance for emergency medical services; 202 KAR 7:520
Ambulance and medical first response agencies; 202 KAR 7:501
Survivor benefits for death of emergency medical services personnel; 202 KAR 7:810

EMPLOYMENT AND TRAINING

See also Occupations and Professions
Unemployment Insurance
Reasonable time for protesting claim; 787 KAR 1:070

ENERGY AND ENVIRONMENT

Environmental Protection
See specific heading:
Air Quality
Waste Management
Water

ENGINEERS AND LAND SURVEYORS

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

ENVIRONMENTAL PROTECTION

See specific heading:
Air Quality
Waste Management
Water

SUBJECT INDEX

ETHICS

*See: Executive Branch Ethics Commission, KAR Title 9
Legislative Ethics Commission, KAR Title 2*

EXECUTIVE BRANCH ETHICS COMMISSION

Registration and expenditure statements; financial transactions and termination forms; and enforcement; 9 KAR 1:040
Requirements relating to fundraising activities and charitable nonprofit organizations; 9 KAR 1:060
Statement of financial disclosure; 9 KAR 1:010

FAMILY SUPPORT

Child Support

Application and intergovernmental process; 921 KAR 1:380
Collection and enforcement; 921 KAR 1:410
Definitions; 921 KAR 1:001
Distribution; 921 KAR 1:420

Energy Assistance Program/Weatherization

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

K-TAP, Kentucky Works, Welfare to Work, State Supplementation

Supplemental programs for persons who are aged, blind, or have a disability; 921 KAR 2:015

Supplemental Nutrition Assistance Program

Application process; 921 KAR 3:030
Certification process; 921 KAR 3:035
Claims and additional administrative provisions; 921 KAR 3:050

FINANCE AND ADMINISTRATION

Executive Branch Ethics Commission; 9 KAR Chapter 1

Revenue; KAR Title 103

Purchasing

Public-private partnership delivery method; 200 KAR 5:355

Travel Expense and Reimbursement

Employees' reimbursement for travel; 200 KAR 2:006

Teachers' Retirement System; KAR Title 102

FINANCIAL INSTITUTIONS

Administration

Fees for services rendered to banks and trust companies; 808 KAR 1:160

Repeal of 808 KAR 1:080 and 808 KAR 1:100; 808 KAR 1:081

Repeal of 808 KAR 1:110; 808 KAR 1:111

Check Cashing

Required forms, procedures, and fees for applicants and licensees; 808 KAR 9:050

Credit Unions

Recordkeeping requirements; 808 KAR 3:020

Repeal of 808 KAR 3:030; 808 KAR 3:031

Finance Charges

Repeal of 808 KAR 4:020; 808 KAR 4:021

Industrial Loans

Repeal of 808 KAR 5:010, 808 KAR 5:020, and 808 KAR 5:030; 808 KAR 5:011

Repeal of 808 KAR 11:010; 808 KAR 11:011

Mortgage Loan Companies and Mortgage Loan Brokers

Licensing and registration; 808 KAR 12:021

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

Savings and Loans

Repeal of 808 KAR 7:030 and 808 KAR 7:040; 808 KAR 7:031

FIRE COMMISSION

Personnel Standards and Education

Survivor benefits for death of a firefighter; 739 KAR 2:040

Volunteer fire department reporting requirements; 739 KAR 2:140

FISH AND WILDLIFE RESOURCES

Fish

Boat and motor restrictions; 301 KAR 1:015

Taking of fish by traditional methods; 301 KAR 1:201

Game

Deer control tags, deer destruction permits, and landowner

designees; 301 KAR 2:176

Elk quota hunts, elk depredation permits, landowner cooperator permits, and voucher cooperator permits; 301 KAR 2:132

Hunting and trapping seasons and limits for furbearers; 301 KAR 2:251

Seasons, methods, and limits for small game; 301 KAR 2:122

Small game and furbearer hunting and trapping on public areas; 301 KAR 2:049

Waterfowl hunting requirements on public lands; 301 KAR 2:222

Waterfowl seasons and limits; 301 KAR 2:221

Youth waterfowl, moorhen, and gallinule hunting seasons; 301 KAR 2:226

Hunting and Fishing

Shooting ranges on department-owned or managed lands; 301 KAR 3:015

Licensing

Migratory Bird Harvest Information Program; 301 KAR 5:040

GENERAL GOVERNMENT CABINET

See listing for specific subject headings:

Accountancy; 201 KAR Chapter 1

Alcohol and Drug Counselors; 201 KAR Chapter 35

Barbering; 201 KAR Chapter 14

Chiropractic Examiners; 201 KAR Chapter 21

Counselors, Professional; 201 KAR Chapter 36

Diabetes Educators; 201 KAR Chapter 45

Durable Medical Equipment Suppliers; 201 KAR Chapter 47

Marriage and Family Therapists; 201 KAR Chapter 32

Massage Therapy; 201 KAR Chapter 42

Medical Imaging and Radiation Therapy; 201 KAR Chapter 46

Medical Licensure; 201 KAR Chapter 9

Nursing; 201 KAR Chapter 20

Occupational Therapy; 201 KAR Chapter 28

Ophthalmic Dispensers; 201 KAR Chapter 13

Pastoral Counselors; 201 KAR Chapter 38

Pharmacy; 201 KAR Chapter 2

Physical Therapy; 201 KAR Chapter 22

Engineers and Land Surveyors; 201 KAR Chapter 18

Real Estate Appraisers; 201 KAR Chapter 30

Respiratory Care; 201 KAR Chapter 29

Social Work; 201 KAR Chapter 23

GOVERNOR'S OFFICE

Early Childhood Development Authority; 10 KAR Chapter 6

HEALTH AND FAMILY SERVICES

Aging and Independent Living; KAR Title 910

Behavioral Health, Developmental and Intellectual Disabilities; KAR Title 908

Community Based Services; KAR Titles 921 and 922

Health Benefit and Information Exchange

Federal Platform; 900 KAR 10:200

Certificate of Need

Administrative escalations; 900 KAR 6:095

Application process; 900 KAR 6:065

Application timetable; 900 KAR 6:060

Forms; 900 KAR 6:055

Inspector General

Kentucky national background check program; 906 KAR 1:190

Repeal of 906 KAR 1:150; 906 KAR 1:151

State Health Plan

Facilities and services; 900 KAR 5:020

Medicaid Services; KAR Title 907

Protection and Permanency; KAR Title 922

Public Health; KAR Title 902

HIGHER EDUCATION ASSISTANCE AUTHORITY

Authority

Student aid applications; 11 KAR 4:080

Kentucky Educational Excellence Scholarship Program

KEES program; 11 KAR 15:090

SUBJECT INDEX

HIGHWAYS

Construction and Materials
 Repeal of 603 KAR 1:030; 603 KAR 1:031
Division of Planning
 Repeal of 603 KAR 9:020; 603 KAR 9:021
Mass Transportation
 Repeal of 603 KAR 7:010, 603 KAR 7:040, 603 KAR 7:050,
 603 KAR 7:060, 603 KAR 7:070; 603 KAR 7:071
Nonpublic School Transportation
 Repeal of 600 KAR 5:010; 600 KAR 5:011
Preconstruction
 Public-private partnerships; 603 KAR 2:020
Professional Engineering and Related Services
 Repeal of 600 KAR 6:020, 600 KAR 6:030, 600 KAR 6:060;
 600 KAR 6:061
Right-of-way
 Repeal of 603 KAR 4:045; 603 KAR 4:046
Traffic
 Repeal of 603 KAR 5:020, 603 KAR 5:030, 603 KAR 5:080,
 603 KAR 5:090, 603 KAR 5:301; 603 KAR 5:311
Transportation Scholarship Program
 Repeal of 603 KAR 8:010; 603 KAR 8:011

HORSE RACING

Harness Racing
 Harness racing at county fairs; 811 KAR 1:220
 Kentucky Standardbred Development Fund and Kentucky
 Standardbred Breeders' Incentive Fund; 811 KAR 1:215
Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing
 Development Fund; 811 KAR 2:190
Thoroughbred Racing
 Jockeys and apprentices; 810 KAR 1:009

HOUSING, BUILDINGS AND CONSTRUCTION

Building Code Enforcement
 Kentucky Building Code; 815 KAR 7:120
Plumbing; 815 KAR Chapter 20

HUNTING

See Fish and Wildlife Resources

INSURANCE

Agents, Consultants, Solicitors, and Adjusters
 Pharmacy benefit manager license; 806 KAR 9:360
Administration
 Filing of local government premium tax ordinances; notification
 to insurers; 806 KAR 2:097
 Repeal of 806 KAR 2:010, 806 KAR 2:020, 806 KAR 2:030,
 806 KAR 2:040, and 806 KAR 2:050; 806 KAR 2:011
Authorization of Insurers and General Requirements
 Privacy of consumer financial information; 806 KAR 3:210
Group and Blanket Health Insurance
 Preferred and exclusive provider arrangements; 806 KAR
 18:020

JUSTICE AND PUBLIC SAFETY

Corrections; KAR Title 501
Criminal Justice Training; KAR Title 503

LABOR

Workers' Claims; 803 KAR Chapter 25
Workplace Standards
 Occupational Safety and Health; 803 KAR Chapter 2

LEGISLATIVE ETHICS COMMISSION

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

MARRIAGE AND FAMILY THERAPISTS

Fees; 201 KAR 32:030

MASSAGE THERAPY

Fees; 201 KAR 42:020
Renewals; 201 KAR 42:040

MEDICAL IMAGING AND RADIATION THERAPY

Fees; 201 KAR 46:020
Violations and enforcement; 201 KAR 46:070

MEDICAL LICENSURE

Disciplinary proceedings; 201 KAR 9:081
Emergency orders and hearings; appeals and other proceedings;
201 KAR 9:240
Interpretation and application of KRS 311.571(10); 201 KAR 9:025
Pain management facilities; registration, oversight of; 201 KAR
9:250

MEDICAID SERVICES

Behavioral Health
 Definitions; 907 KAR 15:005
 Providers; Individuals, groups, and multi-specialty groups
 Coverage; 907 KAR 15:010
 Reimbursement; 907 KAR 15:015
Certified Provider Requirements
 Home and community based waiver services version 2
 Coverage; 907 KAR 7:010
 Reimbursement; 907 KAR 7:015
Children's Health Insurance Program
 Medicaid Expansion Title XXI of the Social Security Act; 907
 KAR 4:020
 Phase III Title XXI of the Social Security Act; 907 KAR 4:030
Managed Care
 Third-party review, external independent
 Appeal and administrative hearing, after; 907 KAR 17:040
 General; 907 KAR 17:035
 Provider requirements and policies; 907 KAR 17:015
Payments and Services
 Repeal of 907 KAR 3:030; 907 KAR 3:031
Services
 Community mental health center services
 Primary care services; 907 KAR 1:047
 Community services; 907 KAR 1:045

MILITARY AFFAIRS

Disaster and Emergency Services
 Kentucky Emergency Response Commission civil penalty
 assessment and hearing procedure; 106 KAR 1:131
 Kentucky Emergency Response Commission Fee Account
 Grant Committee; 106 KAR 1:111
 Kentucky Emergency Response Commission fee account grant
 distribution formula; 106 KAR 1:121
 Kentucky Emergency Response Commission fee account grant
 requirements for local emergency planning committees; 106
 KAR 1:091
 Kentucky Emergency Response Commission fee account grant
 requirements for state agencies; 106 KAR 1:101
 Kentucky Emergency Response Commission Tier 2 reporting
 and fee schedule requirements - EHS facility planning
 participation requirements; 106 KAR 1:081

MOREHEAD STATE UNIVERSITY

Board of Regents
 Capital construction procedures; 755 KAR 1:080

NURSING

Continuing competency requirements; 201 KAR 20:215
Continuing education provider approval; 201 KAR 20:220
Sexual assault nurse examiner program standards and credential
requirements; 201 KAR 20:411
Telehealth; 201 KAR 20:520

SUBJECT INDEX

OCCUPATIONAL THERAPY

Continuing competency; 201 KAR 28:200
Renewals; 201 KAR 28:090
Telehealth occupational therapy services; 201 KAR 28:230

OCCUPATIONS AND PROFESSIONS

See specific headings listed by occupation or profession
See also Secretary of State
Athlete Agents 200 KAR Chapter 30

OCCUPATIONAL SAFETY AND HEALTH

See Workplace Standards

OPHTHALMIC DISPENSERS

Apprentices; 201 KAR 13:050
Licensing; application, examination; experience; renewal; and inactive status; 201 KAR 13:040

PASTORAL COUNSELORS

Application; 201 KAR 38:020
Equivalent course of study; 201 KAR 38:030
Renewal of licenses and continuing education; 201 KAR 38:070

PERSONNEL

Board
Plan year handbook for the public employee health insurance program; 101 KAR 2:210
Probationary periods; 101 KAR 1:325
Cabinet, Classified
Classified compensation administrative regulations; 101 KAR 2:034
Employee performance evaluation system; 101 KAR 2:180
Cabinet, General
Repeal of 101 KAR 5:015; 101 KAR 5:016
Cabinet, Unclassified
Compensation plan and pay incentives for unclassified service; 101 KAR 3:045

PHARMACY

Compounding; 201 KAR 2:076
Licenses and permits; fees; 201 KAR 2:050
Repeal of 201 KAR 2:350; 201 KAR 2:351
Technicians; 201 KAR 2:045

PHYSICAL THERAPY

Continued competency requirements, procedures; 201 KAR 22:045
Eligibility and credentialing procedure; 201 KAR 22:020
Ethics and standards of practice for physical therapists and physical therapist assistants; 201 KAR 22:053

PLUMBING

Definitions; 815 KAR 20:010
House sewers and storm water piping; methods of installation; 815 KAR 20:130
Materials/Parts
List; 815 KAR 20:020
Quality and weight; 815 KAR 20:060
Soil, waste, and vent systems; 815 KAR 20:090
Waste pipe size; 815 KAR 20:080
Water supply and distribution; 815 KAR 20:120

POSTSECONDARY EDUCATION

Public Educational Institutions
Degree program approval; equal opportunity goals; 13 KAR 2:060
Interstate Reciprocity Agreements
State authorization reciprocity agreement; 13 KAR 4:010

PROFESSIONAL COUNSELORS

Administrative hearings for denials and revocation of probation; 201 KAR 36:090
Administrative subpoena; 201 KAR 36:055
Application, education, and examination requirements; 201 KAR

36:070

Code of ethics; 201 KAR 36:040
Complaint management process; 201 KAR 36:050
Continuing education requirements; 201 KAR 36:030
Definitions for 201 KAR Chapter 36; 201 KAR 36:005
Distance counseling; 201 KAR 36:045
Fees; 201 KAR 36:020
Licensed professional clinical counselor supervisor; 201 KAR 36:065
Qualifying experience under supervision; 201 KAR 36:060
Renewal, late renewal, and reinstatement of license; 201 KAR 36:075

PROTECTION AND PERMANENCY

Adult Services
Caregiver misconduct registry and appeals; 922 KAR 5:120
Repeal of 922 KAR 5:080; 922 KAR 5:081
Block Grants
Repeal of 922 KAR 3:010 and 922 KAR 3:020; 922 KAR 3:011
Child Welfare
Educational and training vouchers; 922 KAR 1:500
Foster care, adoption permanency services; 922 KAR 1:140
Private child care placement, levels, payment; 922 KAR 1:360
Repeal of 922 KAR 1:150, 1:170, 1:210, and 1:230; 922 KAR 1:151
Service appeals; 922 KAR 1:320
Community Action Agencies
Standards; 922 KAR 6:010

PUBLIC HEALTH

Communicable Diseases
Reportable disease surveillance; 902 KAR 2:020
Controlled Substances
Schedule I substances; 902 KAR 55:015
Schedule V substances; 902 KAR 55:035
Health Services and Facilities
Facilities specifications, operation and services; community mental health center; 902 KAR 20:091
License procedures and fee schedule; 902 KAR 20:008
Operation and services; primary care center; 902 KAR 20:058
Operations and services; home health agencies; 902 KAR 20:081
Repeal of 902 KAR 20:014; 902 KAR 20:013
Maternal, Child Health
Health Access Nurturing Development Services (HANDS) Program; 902 KAR 4:120
Programs for the Underserved
Colon Cancer Screening Program; 902 KAR 21:020
Radiology
Exempt concentrations; 902 KAR 100:085
Exempt quantities; 902 KAR 100:080
Quantities of radioactive material requiring labeling; 902 KAR 100:030

PUBLIC PROTECTION CABINET

Alcoholic Beverage Control; KAR Chapter 804
Boxing and Wrestling Commission; 201 KAR Chapter 27
Financial Institutions; KAR Title 808
Insurance; KAR Title 806
Occupations and Professions; KAR Title 200

PUBLIC TRANSPORTATION INFRASTRUCTURE AUTHORITY

Public-private partnerships; 202 KAR 10:020
Tolling projects; 202 KAR 10:030
Unsolicited proposals; 202 KAR 10:010

REAL ESTATE APPRAISERS

Types of appraisers required in federally related transactions; certification and licensure; 201 KAR 30:030

RESPIRATORY CARE

Fees; 201 KAR 29:015

SUBJECT INDEX

REVENUE

Ad Valorem Tax, Administration
Repeal of 103 KAR 5:120; 103 KAR 5:121

Ad Valorem Tax; State Assessment
Valuation of municipal solid waste landfill facilities; 103 KAR 8:160

Corporation License Tax
Repeal of 103 KAR 20:010, 103 KAR 20:020, and 103 KAR 20:035; 103 KAR 20:011

Forms
Repeal of 103 KAR 3:010, 103 KAR 3:020, 103 KAR 3:030, 103 KAR 3:040, and 103 KAR 3:050; 103 KAR 3:011

Income Tax; Corporations
Repeal of 103 KAR 16:030; 103 KAR 16:031
Repeal of 103 KAR 16:220 and 103 KAR 16:300; 103 KAR 16:221

Income Tax, Miscellaneous
Repeal of 103 KAR 19:030; 103 KAR 19:031

Income Tax; General Administration
Kentucky new markets development program tax credit; 103 KAR 15:180
Repeal of 103 KAR 15:020, 103 KAR 15:080, and 103 KAR 15:100; 103 KAR 15:021

Sales and Use Tax; Miscellaneous Retail Transactions
Repeal of 103 KAR 28:040; 103 KAR 28:041

Selective Excise Tax; Cigarettes
Repeal of 103 KAR 41:020; 103 KAR 41:021

Selective Excise Tax; Motor Vehicle Usage
Repeal of 103 KAR 44:130; 103 KAR 44:131

SECRETARY OF STATE

Occupational License Fees
Standard form for occupational license fee return; 30 KAR 7:010
Standard form occupational license fee returns for dual tax districts; 30 KAR 7:020

SOCIAL WORK

Continuing education for renewal; 201 KAR 23:075
Inactive status of license; 201 KAR 23:055

TEACHERS' RETIREMENT SYSTEM

General Rules
Disability retirement application, review and examinations; 102 KAR 1:290
Qualified domestic relations orders; 102 KAR 1:320
Surviving children's benefits; 102 KAR 1:165

TECHNICAL EDUCATION

Facilities and Equipment of the Kentucky TECH System
Equipment inventory and insurance; 780 KAR 7:060

TOURISM, ARTS AND HERITAGE

Fish and Wildlife Resources; KAR Title 301

TRANSPORTATION

Aeronautics; KAR Title 602
Highways; KAR Title 603
Vehicle Regulation; KAR Title 601

VEHICLE REGULATION

Administration
Ignition interlock; 601 KAR 2:030
Repeal of 601 KAR 2:010; 601 KAR 2:011

Motor Carriers
Repeal of 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; 601 KAR 1:231

Motor Vehicle Commission
Repeal of 605 KAR 1:010; 605 KAR 1:011

Motor Vehicle Tax

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; 601 KAR 9:111

Transportation of Solid Waste
Repeal of 601 KAR 40:010; 601 KAR 40:011

WASTE MANAGEMENT

Coal Combustion Residuals (CCR)
Coal Combustion residuals (CCR) permit-by-rule; 401 KAR 46:120
Definitions for 401 KAR Chapter 46; 401 KAR 46:101
Standards for the disposal of coal combustion residuals (CCR) in CCR units; 401 KAR 46:110

Identification and Listing of Hazardous Waste
Lists of hazardous wastes; 401 KAR 31:040

Special Waste
Definitions for 401 KAR Chapter 45; 401 KAR 45:010
Special waste permit-by-rule; 401 KAR 45:060

WATER

Resources
Coal Combustion residuals surface impoundments; 401 KAR 4:070

WORKERS' CLAIMS

Procedure for adjustments of claims; 803 KAR 25:010
Repeal of 803 KAR 25:009; 803 KAR 25:014
Workers' compensation medical fee schedule for physicians; 803 KAR 25:089

Workforce Investment

See Employment and Training

WORKPLACE STANDARDS

Occupational Safety and Health
Adoption of 29 C.F.R. 1926.1-6; 803 KAR 2:400
Fall protection; 803 KAR 2:412
General; 803 KAR 2:300
Hazardous materials; 803 KAR 2:307
Materials handling and storage; 803 KAR 2:313
Personal protective equipment; 803 KAR 2:308
Powered platforms, manlifts, and vehicle-mounted work platforms; 803 KAR 2:305
Recordkeeping, reporting, statistics; 803 KAR 2:180
Special Industries; 803 KAR 2:317
Walking-working surfaces; 803 KAR 2:303