ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 43, NUMBER 12
THURSDAY, JUNE 1, 2017

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ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 43, NUMBER 12
THURSDAY, JUNE 1, 2017

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, May 15, 2017.

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The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet June 13, 2017, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **2105-2107** 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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401 KAR 8:100. Design, construction, and approval of facilities and approval timetable for 401 KAR Chapter 8. (Comments Received)
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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.

REPRINT

This administrative regulation was originally published in the May 1, 2017, *Administrative Register of Kentucky*; however, it was inadvertently published the way the text would have read once all of the proposed changes were applied. For clarification purposes, this administrative regulation is being reprinted in its entirety with the proposed changes marked. Please note that the public comment period for this administrative regulation has ended. Comments were received and the Amended After Comments version is published in this issue of the *Administrative Register of Kentucky* on page 2156.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Amendment)

201 KAR 26:175. Continuing education.

RELATES TO: KRS 210.366, 319.032(1)(f), 319.050, 319.053, 319.064, 319.071

STATUTORY AUTHORITY: KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "Continuing education" means participation in an approved program beyond the basic educational requirements that meet the requirements established in Section 2(1) of this administrative regulation.

(2) "Continuing education hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) Each license holder shall document the completion of at least thirty-nine (39) continuing education hours approved by the board pursuant to this administrative regulation within each three (3) year renewal period.

(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 every six (6) years thereafter as required by KRS 210.366.

(a) A person holding a license shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management for the licensee's first six (6) years of licensure if the licensee completes a three (3) semester hour graduate course in suicide and crisis assessment, prevention, and intervention during the course of the licensee's graduate education.

(b) A person holding a license shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management from the six year continuing education if, during the six (6) year requirement, the licensee:

1. Is primarily employed in a clinical setting accredited by the Joint Commission or another nationally accrediting healthcare entity that requires the completion of a suicide risk assessment with each patient being seen within the setting;

2. Teaches a graduate-level psychology course in suicide assessment, training, and management; or

3. Teaches a continuing education course in suicide assessment, training, and management at least once during the six (6) year period.

(c) The continuing education course in suicide assessment, treatment, and management shall be approved in accordance with Section 5 of this administrative regulation.

(3) The continuing education shall:

(a) Provide specific content planned and evaluated to improve the license holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the habits of critical inquiry and balanced judgment; and

(d) Include a minimum of three (3) hours in either ethical practice or risk management with each three (3) year renewal period.

(4) Continuing educational hours shall not carry over from one (1) renewal period to the next.

(5)(a) Except as provided in paragraph (b) of this subsection, a licensed psychologist with the health service provider designation who provides supervision to an applicant for licensure, or a certified psychologist or a licensed psychological associate shall include as part of the thirty-nine (39) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques for each three (3) year renewal period.

(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3. (1) Hours required to satisfy the continuing education requirement shall be completed prior to the renewal date of a license.

(2) A credential holder shall certify in the renewal application that the continuing education requirement has been satisfied[~~and reported at license renewal~~].

(3) A credential holder who is being audited shall submit copies of the certificate of completion received from the continuing education course.

(4) The credential[~~license~~] holder shall:

(a)[~~(1)~~] Maintain and provide adequate records including certificates of attendance and documentation of completion of the required continuing education hours; or

(b)[~~(2)~~] Provide documentation through a board-approved registry, which shall certify the name and license number of the license holder, date and title of each program and the number of hours earned, and confirmation that the programs were given by a board-approved provider.

Section 4. All continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a license. A license holder shall determine prior to attending a specific continuing education program that the program:

(1) Has been approved by the board; or

(2) Is approved, offered, or sponsored by an organization approved by the board to sponsor continuing education programs.

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is approved, offered, or sponsored by an organization listed in this subsection shall be accepted toward the requirement for continuing education established in Section 2(1) of this administrative regulation:

(a) An affiliated state chapter of the American Psychological Association, American Medical Association, American Psychiatric Association, or National Association of Social Workers;

(b) A recognized state, regional, national, or international psychological association;[~~or~~]

(c) A state or provincial psychology licensure board; and[~~.~~

~~(2) The following programs shall be approved for continuing education:~~]

(d)[~~(a)~~] A course for graduate-level academic credit[~~or a workshop~~] in psychology or psychiatry offered by a national, regional, or state accredited academic institution.[~~or an affiliated hospital or medical center;~~

~~(b) The Kentucky Mental Health Institute or the Kentucky School of Alcohol and Other Drug Studies sponsored by the~~

~~Kentucky Department for Behavioral Health, Developmental and Intellectual Disabilities; and~~

~~(c) Interactional videoconferencing, internet-based course or a home study course provided by an organization listed in subsection (1) of this section~~].

(2)[~~(3)~~](a) The board may[~~shall~~] approve an organization that is not listed in subsection (1) of this section as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a completed Continuing Education Sponsorship Application[~~written request for approval~~];

2. Pays an initial application fee of $250; and

3. Proposes to sponsor continuing education programs that meet the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a $150 renewal fee annually.

[~~(4)~~](a) The board may[~~shall~~] approve a specific continuing education program that is not approved, offered, or sponsored by an organization listed in in subsection (1)[~~(2)~~] of this section or an approved organization under subsection (2) of this section if the sponsor or a participant of the program:

1. Files a completed Continuing Education Program Application [~~written request for approval~~];

2. Pays an application fee of fifty (50) dollars; and

3. Provides information about a continuing education program that it proposes to sponsor which meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the same approved program.

Section 6. A continuing education program that satisfies the requirements for license renewal shall:

(1) Be:

(a) Approved, offered, or sponsored by an organization that has been approved by the board; or

(b) A specific program approved by the board;

(2)(a) Have a clearly-stated purpose and defined content area; and

(b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) Have a presenter who is a professional qualified in the defined content area;

(4) Clearly state the program's time. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Include attendance recorded by the program's sponsor;

(6) Document completion that shall be provided to the participant; and

(7) Include each participant's evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours pursuant to paragraphs (a) and (b) of this subsection.

(a) Each one (1) hour semester[~~quarter~~] course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(b) Each one (1) hour quarter course shall be the equivalent of nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

(a) Earn six (6) continuing education hours for teaching the course; and

(b) Not receive:

1. Credit more than once for teaching a particular course during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(3) A person who teaches an approved continuing education workshop or program shall:

(a) Earn continuing education hours on a one (1) to one (1) basis; and

(b) Not receive:

1. Credit more than once for teaching a particular workshop or program during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(4) A person who completes home study or internet-based courses approved, offered, or sponsored by an organization listed in Section 5(1) shall not receive:

(a) Credit for repeating a specific study course during a renewal period; and

(b) More than twelve (12) total continuing education hours through home study or internet-based courses in a renewal period.

(5) A person who participates in videoconferencing in an interactive setting shall:

(a) Earn one (1) continuing education hour for each clock hour of participation; and

(b) Not receive more than twenty-four (24) continuing education hours through interactive videoconferencing participation.

Section 8. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 1 of this administrative regulation into the immediately following renewal period.

Section 9. The board shall audit a minimum of ten (10) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Education Program Application", October, 2016; and

(b) "Continuing Education Sponsorship Application", October, 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at 9 a.m.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 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 continuing education requirements for a credential holder.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate

regulations regarding the continuing education requirement for a credential holder.

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

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

(a) How the amendment will change this existing administrative regulation: The amendment incorporates new forms to assist applying for continuing education approval; clarifies that excess continuing education hours are not carried forward; establishes that 10% of renewals will be audited and what documents must be submitted if audited; removes some automatic providers from the continuing education provider list; and differentiate between different types of providers..

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to standardize the supervision reporting process and incorporate forms.

(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 will assist in providing the documents required to be submitted to the supervisor and supervisee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. 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? Kentucky Board of Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(f).

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
301 KAR 2:225E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting migratory birds. Waterfowl hunting season frameworks are set annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons shall do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. States must supply season selections for publication in the Federal Register less than 8 weeks after the final frameworks for migratory bird hunting regulations are published in the federal register. Once Kentucky's season selections are published in the Federal Register, there is no opportunity for revisions. An ordinary administrative regulation will not suffice because the time provided by the USFWS is not adequate for the normal regulatory process. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

GREGORY K. JOHNSON, Commissioner
MATTHEW G. BEVIN, Governor

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

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

RELATES TO: KRS 150.330, 150.340, 150.603
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21
EFFECTIVE: May 12, 2017
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 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.
(2) The seasons established in paragraphs (a) through (g) of this subsection shall apply to migratory bird hunting:
(a) Dove, beginning on:
1. September 1 for fifty-six (56) consecutive days;
2. Thanksgiving Day for eleven (11) consecutive days; and
3. The Saturday before Christmas for twenty-three (23) consecutive days;
(b) Woodcock, beginning on the fourth Saturday in October for forty-seven (47) consecutive days, except that the season shall be closed during the first two (2) days of modern gun deer season, as established in 301 KAR 2:172;
(c) Snipe, beginning on:
1. The third Wednesday in September for forty (40) consecutive days; and
2. Thanksgiving Day for sixty-seven (67) consecutive days;
(d) Wood duck, beginning on the third Saturday in September for five (5) consecutive days;
(e) Teal, beginning on the third Saturday in September for nine (9) consecutive days;
(f) Virginia rail, sora rail, common gallinule, and purple gallinule, beginning on September 1 for seventy (70) consecutive days; and
(g) Canada goose, beginning September 16 for fifteen (15) consecutive days except that the following areas, as established in 301 KAR 2:224, shall be closed:
1. Public land in the Ballard Zone;
2. Public land in the West-Central Goose Zone; and
3. The Northeast Goose Zone.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the limits established in paragraphs (a) through (h) of this subsection:
(a) Dove:
1. Daily limit of fifteen (15); and
2. Possession limit of forty-five (45).
(b) Eurasian collared dove: No limit, except that a hunter, if in the field or during transport, shall keep one (1) of the parts established in subparagraphs 1. and 2. of this paragraph attached to the bird:
1. The head; or
2. A fully-feathered wing.
(c) Woodcock:
1. Daily limit of three (3); and
2. Possession limit of nine (9).
(d) Snipe:
1. Daily limit of eight (8); and
2. Possession limit of twenty-four (24).
(e) Virginia and sora rail, singly or in aggregate:
1. Daily limit of twenty-five (25); and
2. Possession limit of seventy-five (75).
(f) Common and purple gallinule, singly or in aggregate:
1. Daily limit of three (3); and
2. Possession limit of nine (9).
(g) Wood duck and teal:
1. Daily limit of six (6), which shall not include more than two (2) wood ducks; and
2. Possession limit of eighteen (18), which shall not include more than six (6) wood ducks.
(h) Canada goose:
1. Daily limit of five (5); and
2. Possession limit of fifteen (15).
(2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the parts established in paragraphs (a) and (b) of this subsection attached to the bird:
(a) The head; or
(b) A fully-feathered wing.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section. (1) If hunting dove on WMA land, a person shall hunt:
(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and
(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of

this administrative regulation.

(2) If hunting dove on private land, a person shall hunt:

(a) Between 11 a.m. and sunset on September 1; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

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

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

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21 for waterfowl hunting; or

(c) Shot larger than size "T".

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

(1) Hunting waterfowl or doves; or

(2) Accompanying a person hunting waterfowl or doves.

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

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

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

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

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

(a) Ballard WMA;

(b) Boatwright WMA;

(c) Doug Travis WMA;

(d) Duck Island WMA;

(e) Kaler Bottoms WMA;

(f) Kentucky River WMA;

(g) Ohio River Islands WMA;

(h) Sloughs WMA;

(i) South Shore WMA;

(j) Yatesville Lake WMA; and

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

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

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

(b) Woodcock.

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

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

(b) Woodcock.

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

(a) Dove or snipe after October 13; or

(b) Woodcock.

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

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

(b) On Deer Creek Fork; or

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

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

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

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

(a) The Greenbrier Creek embayment; and

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

(10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

Section 8. Youth-Mentor Dove Hunts. (1) There shall be department-sponsored youth-mentor dove hunts on the first Saturday in September in which participants shall be selected by a random computerized drawing.

(2) A youth shall:

(a) Apply on the department's Web site at fw.ky.gov between the first Monday in August and the third Friday in August; and

(b) Carry a department-provided selection notification letter on the day of the hunt.

(3) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(4) At the youth-mentor hunts:

(a) Each youth shall not be accompanied by more than one (1) adult;

(b) One (1) adult may accompany two (2) youths; and

(c) A maximum of two (2) shotguns are allowed per party.

(5) A person shall:

(a) Hunt within fifteen (15) feet of the assigned location stake; and

(b) Not change locations unless another location has been vacated by the assigned hunter.

(6) A person shall only discharge a firearm within fifteen (15) feet of the assigned location stake.

(7) A person shall leave their firearm at the assigned location stake when retrieving birds.

(8) A hunter participating in youth-mentor hunts shall:

(a) Check-in prior to hunting;

(b) Not begin hunting before 2 p.m.;

(c) Cease hunting by 7 p.m.;

(d) Exit the area by 7:30 p.m.; and

(e) Check out before exiting the field.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: May 8, 2017

FILED WITH LRC: May 12, 2017 at 11 a.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.

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 seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2017–2018 migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory

game bird conservation efforts consistent with national and international management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will restrict the take of all migratory birds on WMAs with a wetland management focus to non-toxic shotshells. Previously only doves and waterfowl had been restricted. It also creates an online application process for youth hunters wishing to participate in department-sponsored youth-mentor dove hunts and establishes youth-mentor dove hunting requirements. All these changes are consistent with the long-term Mississippi Flyway and continental management efforts and are within the USFWS required frameworks.

(b) The necessity of the amendment to this administrative regulation: The deposition of lead shot in wetlands has been shown to poison waterfowl. With the high quality and availability of nontoxic shotshells, it is not necessary to continue the use of lead shotshells in these areas. The amendment also establishes a fair and equitable application process for youth-mentor dove hunts, and establishes reasonable hunting requirements.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 40,000 migratory bird hunters 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: Rail, snipe, gallinule and woodcock hunters on the identified public lands will have to use steel or other nontoxic shot to hunt. Youth dove hunters will have to apply for a random online drawing versus a "first come first served" signup on youth-mentor hunts.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youths will benefit from a fair and equitable random drawing process in order to participate in youth-mentor dove hunts.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment. It will not be necessary to increase any other fees or increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 CFR Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public lands managed by the department. The department imposes more restrictive hunting regulations on these lands in an effort to meet waterfowl management objectives while still providing quality hunting opportunity.

STATEMENT OF EMERGENCY
501 KAR 1:030E

The Kentucky Department of Corrections has experienced an increase in inmate population, creating serious concerns with operations and management of prisoners. Since January 2016 to date, there has been a six and nine-tenths (6.9) percent increase in state inmate population. Due to this overcrowding, the state is unable to move state prisoners from county jails to state prisons. This has led to a backlog of state inmates in county jails. The population report dated April 13, 2017 listed five (5) jails at over 200 percent of their rated capacity and thirty (30) jails over 140 percent. It is imperative that the overcrowding in county jails be reduced immediately. This emergency administrative regulation is necessary to meet an imminent threat to the public health, safety and welfare. An ordinary administrative regulation will delay the release of offenders already approved for parole, but not yet at the time served requirement currently in the administrative regulation. Due to the current population levels of the county jails and state prisons, this issue requires immediate attention. This emergency administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

HON. MATTHEW G. BEVIN, Governor
LELIA VANHOOSE, Chairperson

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Emergency Amendment)

501 KAR 1:030E. Determining parole eligibility.

RELATES TO: KRS 119.025, 197.410(2), 346.185, 439.340, 439.3401, 439.563, 532.043, 532.060, 532.080, 640.080
STATUTORY AUTHORITY: KRS 439.340(3)
EFFECTIVE: April 17, 2017
NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. (1) "Board" is defined by KRS 439.250(5).
(2) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.
(3) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.
(4) "Parole" means the release of an inmate with a signed parole certificate to:
(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision; or
(b) Answer the detainer.
(5) "Parole eligibility date" means the date set by the board for conducting parole hearings at the location designated for an inmate's parole release hearing to take place during the month the inmate becomes eligible for parole.
(6) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence.
(7) "Parole for violent offender" is defined in KRS 439.3401.
(8) "Physical injury" is defined in KRS 500.080(13).
(9) "Serious physical injury" is defined in KRS 500.080(15).
(10) "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.
(11) "SOTP" means Sex Offender Treatment Program.

Section 2. Ineligibility. (1) An eligible sex offender, as defined in KRS 197.410(2), convicted prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:
(a) He has been denied entrance into the Sex Offender Treatment Program;
(b) He has been terminated from the SOTP; or
(c) He has successfully completed the SOTP.
(2) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).
(3) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his postincarceration supervision by the court pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration.
(4) If an inmate is within sixty (60) days of being released by minimum expiration, administrative release, or maximum expiration at the time of his next scheduled parole hearing, the inmate shall not be eligible for parole.

Section 3. Parole Eligibility. (1) Initial parole review. Except as provided by Section 2 of this administrative regulation, a person confined to a state penal institution or county jail shall have his case reviewed by the board, in accordance with the following schedules:
(a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).
(b) For a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

(c) For a felony offense committed after December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

(d) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentence of life	12 years

(e) For a crime:
1. Committed on or after July 15, 1998, which is a capital

offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1;

2. Committed on or after July 15, 2002, which is:

a. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;

b. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

c. Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

d. Robbery in the first degree;

3. Committed on or after July 12, 2006, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree; or

4. Committed on or after June 26, 2007, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(f) For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction committed under paragraph (e) of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (c) of this subsection, parole eligibility shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(2) Subsequent parole review. Except as provided in KRS 439.340(14):

(a) After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board; and

(b) The board, at the initial or a subsequent review, may order a serve-out on a sentence.

(3) Parole review with new felony conviction.

(a) If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

(b)1. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be set on the length on the new sentence only, beginning from the date of his final sentencing, unless the board has previously set a new parole eligibility date.

2. If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.

(c) If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:

1. The recommendation of parole shall automatically be voided; and

2. The new parole eligibility date shall be set based upon the date of original admission on the aggregate sentences.

(4) Parole review for crimes committed while in an institution or while on escape. If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

(a) Except as provided by paragraph (b) of this subsection, in determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution, or on a sentence for a crime committed while on an escape, the total parole eligibility shall be set by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1. The amount of time to be served for parole eligibility on the original sentence;

2. If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;

3. If the inmate has an additional sentence for a crime committed while in the institution, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while in the institution; and

4. If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.

(b) If the board has previously set a parole eligibility date for an inmate described in paragraph (a) of this subsection, and that date is later than that set under paragraph (a) of this subsection, the later date shall be the parole eligibility date.

(c)1. Except as provided by paragraph (b) of this subsection, if a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date.

2.a. If the prisoner later receives a sentence for the escape, the previous deferment shall be automatically voided and the new parole eligibility date shall be set based on the new sentence beginning from the date of sentencing for the new sentence, unless the deferment date set by the board is a later date than that set based on the new sentence.

b. If the deferment date set by the board is a later date, the parole eligibility date shall be the date which last occurs.

(d) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, his parole eligibility date shall be set from the date of his new sentence or from the date previously set by the board, whichever occurs last.

(e) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be void. Upon return to a state institution, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines it may conduct a face-to-face hearing with this person at the institution with a three (3) member panel.

(5) Parole reviews for persons on shock probation or on prerelease probation. If a person is shock probated, or on prerelease probation, and is later returned to the institution as a shock probation violator or prerelease probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

(a) If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

(b) If a person on parole is returned to the institution, has received a new sentence for a crime committed while on parole, and is probated or shock probated on the new sentence, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines, it may conduct a face-to-face hearing with this person at the institution with a panel of at least two (2) members.

Section 4. Emergency Authority. If the Commissioner of the Department of Corrections gives notice to the board of a need to relieve state prison or local jail overpopulation, the board may authorize the Commissioner to release one (1) or more persons who have been granted parole but who remain in custody solely to meet the time service requirements of this administrative regulation, if:

(1) Sixty (60) or fewer days remain between the date of the actual release and the date on which the inmate would otherwise be physically released on parole;

(2) The release would not result in a violation of a statutorily set minimum service of time requirement, including that set out for violent offenders under KRS 439.3401; and

(3) All other release requirements, including victim notification and re-entry planning, are completed.

The Chairperson of the Kentucky Parole Board, with the authorization and approval of a majority of the members of the Kentucky Parole Board, hereby approves the promulgation of the emergency regulation on behalf of the Kentucky Parole Board, as indicated by her signature below.

LELIA A. VAN HOOSE, Chairperson

APPROVED BY AGENCY: April 17, 2017

FILED WITH LRC: April 17, 2017 at 4 p.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.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for determining parole eligibility.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 439.320 and 439.340.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to staff who assist the Kentucky Parole Board concerning eligibility requirements and managing parole review and to inmates concerning their parole eligibility.

(2) If 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 allows the Department of Corrections of Commissioner to request the Parole Board to authorize expedited release of prisoners granted parole in order to relieve overpopulation of jail or prisons.

(b) The necessity of the amendment to this administrative regulation: The amendment allows the expedited release of prisoners to relieve overpopulation of jails or prisons.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations governing parole eligibility. The amendment allows expedited release, which essentially reduces the time served requirement for parole eligibility for prisoners already approved for parole.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows the Parole Board to adjust parole eligibility requirements to assist with reducing overpopulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky Parole Board members, the staff that assist the board, offenders eligible for parole or on parole, members of the public that are victims of crime or that are affected by crime, and jails and prisons holding offenders already approved for parole.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Parole Board members, staff that assist the Board, offenders, and jail or prison staff will have to follow the changes made in the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The expedited release will assist jails and prisons with overpopulation.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Budgeted funds.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the

administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation and the amendment to it will impact the operations of the Kentucky Parole Board and jails and prisons within Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.320 and 439.340

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

(a) How much 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 generated by this regulation.

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

(c) How much will it cost to administer this program for the first year? No increase in cost is anticipated by this amendment. The amendment is expected to reduce jail costs with the expedited release of prisoners approved for parole.

(d) How much will it cost to administer this program for subsequent years? No increase in cost is anticipated by this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
601 KAR 2:030E

This emergency administrative regulation establishes the guidelines and requirements for the implementation and use of ignition interlock devices. It is filed to address the risk to public safety associated with driving under the influence. This emergency administrative regulation replaces the current emergency regulation that expires on April 25, 2017, and differs substantially by clarifying the language in Section 4(4) of this administrative regulation that requires a service provider to indemnify the Kentucky Transportation Cabinet. This emergency administrative regulation will be replaced by an ordinary administrative regulation which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
GREG THOMAS, Secretary

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

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

RELATES TO: KRS 45A, 186.010, 186.440, 186.442, 186.480, 186.531, 186.560, 186.570, 189A.005, 189A.010, 189A.040, 189A.070, 189A.085, 189A.090, 189A.103, 189A.105, 189A.107, 189A.200, 189A.240, 189A.250, 189A.340, 189A.345, 189A.400, 189A.410, 189A.420, 189A.440, 189A.500, 205.712, 18 U.S.C. 2721[~~57 C.F.R. 11772-11787~~]

STATUTORY AUTHORITY: KRS 189A.500[~~189A.085(1)(b), 189A.340(4)(f)~~]

EFFECTIVE: April 26, 2017

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

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

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

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

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

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

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

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

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

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

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

(11) "Ignition interlock service provider" or "service provider" means a certified supplier, installer, service provider, and, if applicable, manufacturer of the certified ignition interlock devices.

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

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

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

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

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

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

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

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

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

(21) "Service call" means an onsite remote service of an ignition interlock device, outside of a fixed facility, including for example:

(a) Diagnostic trouble shooting;

(b) Repair or replacement of a malfunctioning device; or

(c) Removal of a device from an inoperable vehicle.

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

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

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

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

(26) "Violation" means:

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

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

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

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

(e) Failure to pay provider fees as established in Section 2(17) of this administrative regulation.

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

(2)(a) Upon arraignment of an offense under KRS 189A.010 resulting in pretrial license suspension, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Pretrial Application to Court for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.4, pursuant to KRS 189A.200.

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

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

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

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

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

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

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

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

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

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

(8) A defendant shall submit to the cabinet a completed Ignition Interlock Application, TC 94-175, with a court order authorizing application and proof of insurance and valid vehicle registration.

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

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

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

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

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

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

(15) Upon a defendant's payment of the appropriate fees, the service provider's technician shall install the device and issue to the defendant a Certificate of Installation for Ignition Interlock Device, TC 94-177.

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

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

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

(17) After ten (10) days' written notice to the defendant, the provider shall notify the appropriate county attorney and the cabinet for nonpayment of fees on an account that is in arrears for thirty (30) days or more.

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

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

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

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

the ignition interlock restriction.

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

(21) A defendant with a license suspension or revocation period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers utilizing the provisions of KRS Chapter 45A and the terms of the RFQ. Initial certification shall be valid for a period of eighteen (18) months. Extensions shall be for a period of two (2) years with two (2) subsequent renewals.

(2) Ignition interlock device providers certified under this administrative regulation shall obtain re-certification in compliance with this administrative regulation prior to providing devices and services.

(3) An ignition interlock device provider seeking certification to provide devices and services within the commonwealth shall comply in all respects with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.

(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device and services if that device is specifically included in its original certification request and is specifically certified by the cabinet pursuant to KRS 189A.500.

(5) An ignition interlock device or service provider shall provide information and training for the operation and maintenance of the device to the defendant and other individuals operating a vehicle with an installed device.

(6)(a) A device and service provider shall be prohibited from removing a device owned by a different provider unless an agreement is in place or for the purpose of replacing a defendant's provider due to that provider's insolvency or business interruption.

(b) The original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.

(7) A device provider shall notify the cabinet within fifteen (15) days of a pending suspension, revocation, or disciplinary action taken against it by a jurisdiction outside the commonwealth. Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal.

(8) The records required by Section 4(2)(e) of this administrative regulation shall be retained by an ignition interlock device provider for five (5) years from the date the device is removed from the defendant's vehicle. The records shall be disposed of in a manner compliant with relevant privacy laws and the provisions contained in this administrative regulation.

Section 4. Certification of Ignition Interlock Devices and Device Providers. (1) An ignition interlock device provider requesting certification of an ignition interlock device shall:

(a) Submit an affidavit that the ignition interlock device sought to be used complies with the applicable specifications and certification requirements contained in the RFQ; and

(b) Submit documentation for each model from either a certified, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds the current NHTSA model specifications at nhtsa.gov/staticfiles/nti/pdf/811859.pdf.

(2) An ignition interlock device provider requesting certification shall:

(a) Submit evidence demonstrating successful experience in the development and maintenance of an ignition interlock service program, including a list of jurisdictions served by the device provider;

(b) Provide a description of the training required including its frequency, for persons employed by, contracted with, or permitted by the provider to install, calibrate, remove, and provide continuing support for the devices;

(c) Provide a plan that includes a location map describing the areas and locations of the provider's proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility in each of the twelve (12) highway districts;

(d) Agree to initial service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The provider shall also agree to provide sufficient notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;

(e) Provide a plan for the receipt, maintenance, and destruction or appropriate return of defendant records consistent with court rules and the confidential maintenance of defendant records as required by the Driver's Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;

(f) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ. The provider's liability insurance shall be expressly considered primary in the policy;

(g) Designate a provider representative authorized to speak on behalf of and bind the device provider, and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;

(h) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by defendants to request assistance in the event of operational problems related to the device and shall include technical assistance and aid in obtaining a roadside service call if needed; and

(i) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts.

(3) Device providers shall notify the appropriate county attorney within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient of the following occurrences:

(a) Device tampering or circumvention violations; or

(b) A defendant's failure to comply with a court order pursuant to Section 6(6) of this administrative regulation.

(4) A provider shall indemnify and hold harmless the commonwealth and its employees and agents from all claims, demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removal of an ignition interlock device. If the device provider's report of ignition interlock activities contains a verified error, the cabinet, department, or cabinet or department employees or agents shall be indemnified relevant to the error.

Section 5. Ignition Interlock Device Installation. (1) A provider may charge a defendant for the commodities and services listed in the RFQ, including the following:

(a) Standard ignition interlock device installation, or installation on alternative fuel motor vehicles or a motor vehicle with a push button starter;

(b) Device rental on a monthly basis;

(c) Scheduled device calibrations and monitoring as specified in the RFQ;

(d) Required insurance in case of theft, loss, or damage to the device and its components;

(e) Resets necessary due to the fault of the defendant;

(f) Missed appointments without notice;

(g) Service calls and mileage up to 100 miles at the current rate established by the Kentucky Finance and Administration Cabinet; and

(h) Device removal.

(2)(a) The court shall determine whether a defendant is indigent. A defendant declared indigent shall pay a proportionate amount of the fees agreed to in the RFQ based upon the guidelines established by the Kentucky Supreme Court in Amendment to Administrative Procedures of the Court of Justice,

Part XVI, Ignition interlock, Amended Order 2015-13.

(b) A device and service provider shall accept the court ordered amounts paid by an indigent defendant as payment in full.

(3) The defendant shall remit the fees directly to the device or service provider as directed by the device provider. A device provider shall not prohibit the pre-payment of fees for the device and services.

(4) The device provider shall pursue collection of amounts in arrears and recovery of the devices, where applicable, through separate legal action.

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

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

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

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

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

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

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

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

(8) The cabinet shall:

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

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

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

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

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

(a) Photo identification;

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

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

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

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

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

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

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

(6) A device provider shall, within ninety-six (96) hours of receipt of the court's order directing removal of the device, notify the defendant that he or she shall return the vehicle with the installed device for removal.

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

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

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

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

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

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

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

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

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

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

(i) The device provider requests a voluntary suspension.

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

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

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

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

(a) Providing notice to defendants; and

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

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

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

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

(b) A provider who terminates certification or goes out of business shall submit plans for transferring existing defendants to other providers to ensure continuity of service.

(c) A transfer plan shall be submitted to the cabinet for approval by the commissioner within thirty (30) days of the initial notification of intent to cease operations in the commonwealth.

(d) The provider shall be solely responsible for notifying

defendants with currently installed devices serviced by the provider, and shall be solely responsible for charges related to installation of a device by a new provider.

Section 8. Surrender of Motor Vehicle Registration Plates. (1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plates pursuant to KRS 189A.085.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's Web site at http://drive.ky.gov.[~~Surrender of Motor Vehicle Registration Plates. (1) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:~~

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

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

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

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

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

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

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

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

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

~~(e) The ignition interlock device shall:~~

~~1. Record each time the vehicle is started;~~

~~2. Record results of the alcohol concentration test;~~

~~3. Record how long the vehicle is operated; and~~

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

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

~~(g) The ignition interlock device shall require:~~

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

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

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

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

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

~~1. If the retest is not performed; or~~

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

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

~~(2) An ignition interlock device shall be:~~

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

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

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

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

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

~~1. Name of the person performing the installation and calibration;~~

~~2. Dates of activity;~~

~~3. Value and type of standard used;~~

~~4. Unit type and identification number of the ignition interlock device checked; and~~

~~5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number, year and color.~~

~~(4) An ignition interlock device in a lockout condition shall be returned to the site of installation for service.~~

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

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

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

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

~~(b) The license has been granted an exception for employment purposes pursuant to KRS 189A.340, if granted by the court.~~

~~(4) Manufacturers, installers, and servicing and monitoring entities shall apply to the Division of Driver Licensing for approval and placement on the list maintained by the cabinet.~~

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

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

GREG THOMAS, Secretary
JOHN MARK HACK, Commissioner

APPROVED BY AGENCY: April 21, 2017

FILED WITH LRC: April 26, 2017 at 4 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: This amendment will replace 601 KAR 2:030, the current ignition interlock administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend and replace 601 KAR 2:030.

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

(d) How the amendment will assist in the effective administration of the statutes: These amendments will clarify provisions in the current administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Division of Vehicle Regulation; circuit clerks, and the Administrative Office of the Courts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in the amount of $105 pursuant to KRS 189A.420(6).

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

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? KYTC Department of Vehicle Regulation, Division of Driver Licensing, the Circuit Clerks, Administrative Office of the Courts, County Attorneys.

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

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. For local government, costs should be minimal as the process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.

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

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

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

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

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

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

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

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, May 11, 2017)

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.

RELATES TO: KRS 218A.205(3)***(h)***[~~(g)~~], ***(8)***[~~(7)~~], 314.011, 314.042, 314.091, 314.103, 314.109, 314.161, 314.470

STATUTORY AUTHORITY: KRS 218A.205(3)***(h)***[~~(g)~~], ***(8)***[~~(7)~~], 314.042, 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)***(h)***[~~(g)~~] requires the board to establish by administrative regulation for licensees authorized to dispense or prescribe controlled substances the process for submitting a query on each applicant to the National Practitioner Data Bank. KRS 218A.205***(8)***[~~(7)~~] requires the board to require for any applicant for an initial licensure that authorizes the prescribing or dispensing of controlled substances to complete a state and national criminal records check. KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. KRS 314.103 authorizes the board to require a criminal background investigation of an applicant or a nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, education, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1)(a) Complete an Application for Licensure as an Advanced Practice Registered Nurse as required by 201 KAR 20:370, Section 1(1);

(b) Provide a copy of a current active registered nurse license or validation of registered nurse licensure if the state of licensure does not issue licensure cards;

(c) Submit the fee required by 201 KAR 20:240, Section 1(2)(j); and

(d) Comply with the requirements established in KRS 314.042 and this administrative regulation.

(2) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also provide:

(a) A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) A letter of explanation that addresses each conviction, if applicable.

(3) An applicant shall not be licensed until:

(a) A report is received from the FBI pursuant to the request submitted under subsection (2)(a) of this section and any conviction is addressed by the board; and

(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)***(h)***[~~(g)~~] and any relevant data on the applicant is received.

Section 2. Education and Clinical Experience. (1) An applicant for licensure as an advanced practice registered nurse shall complete an accredited education program that prepares a registered nurse for one (1) of the four (4) APRN roles established under Section 12(5) of this administrative regulation and clinical experience. This program shall conform to 201 KAR 20:062 or its substantial equivalence if from an out of state program.

(2)(a) If the applicant for licensure as an advanced practice registered nurse completed a program of study after January 1, 2005, the applicant shall hold a master's degree, doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to find if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of 201 KAR 20:062.

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in a role as defined by KRS 314.042(2)(a) and in a population focus as defined by KRS 314.011 and with primary or acute care competencies;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center;

(b) American Midwifery Certification Board;

(c) National Board of Certification and Recertification for Nurse Anesthetists;

(d) Pediatric Nursing Certification Board;

(e) National Certification Corporation;

(f) American Academy of Nurse Practitioners Certification Board[~~Program~~]; and

(g) American Association of Critical-Care Nurses Certification Corporation.

(3) The board recognizes the Oncology Nursing Certification Corporation only for an individual who has received certification prior to December 15, 2010 and who has continually renewed his or her Kentucky advanced practice registered nurse license since that date.

Section 4. Practice Pending Licensure. (1) A registered nurse who meets all the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.

(2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN Applicant" or "APRN App.".

Section 5. License Renewal. (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed Annual Licensure Renewal Application: RN and APRN or a completed Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky) form, as applicable, and as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(k); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license has been reinstated.

(4) An advanced practice registered nurse shall provide to the board evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:

(a) Submit a completed Application for Licensure as an Advanced Practice Registered Nurse form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(c) Maintain ***and submit evidence of*** current certification by a recognized national certifying organization***[and submit evidence of current certification]***.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide a:

(a) Completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) Certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) Letter of explanation that addresses each conviction, if applicable.

(4) The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse (APRN) shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.

(b) The APRN shall notify the board if ***current*** certification or recertification has been obtained and***[to]*** provide evidence of the ***certification or*** recertification prior to the expiration date[~~The board shall conduct an audit to verify that an advanced practice registered nurse has met the requirements of subsection (1)(a) of this section~~].

(2)(a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.

(b)1. An APRN[~~whose certification or recertification lapses prior to the expiration of the APRN license and~~] who does not provide evidence of current certification or recertification prior to its expiration date[~~after a request by the board~~] shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The board shall send notice to the APRN's address of record that the certification or recertification is about to lapse and a notice if the license has been voided.

2. The APRN may request a hearing on this action by submitting the request in writing. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section 6 of this administrative regulation, except as provided in subparagraph 3 of this paragraph.

3. If, after the APRN license has been voided, the APRN provides evidence of current certification acquired before the certification expiration date and there are no complaints pending against the APRN pursuant to 201 KAR 20:161[~~that the certification had not lapsed~~], then the APRN shall meet the requirements of Section 6 of this administrative regulation except for Section 6(4) of this administrative regulation. A license may be issued prior to receipt of the FBI report.

(3) An advanced practice registered nurse whose certification lapses or is not renewed[~~who is decertified~~] by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 9. The requirements of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) An accredited educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 10. A registered nurse who holds himself or herself out as a clinical nurse specialist or is known as a clinical nurse specialist shall be required to be licensed as an advanced practice registered nurse if his or her practice includes the performance of advanced practice registered nursing[~~procedures~~].

Section 11. A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the population focus to which he or she has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures established in KRS 314.091.

Section 12. Dual designations. (1) An advanced practice registered nurse who wishes to practice in more than one (1) role designation shall complete an accredited educational program of study and clinical experience for each desired designation in compliance with the educational requirements established in KRS Chapter 314 and 201 KAR 20:062 and meet all the requirements for licensure for each designation.

(2) To apply for licensure for more than one (1) role designation, the applicant shall submit a separate application and fee for each desired designation.

(3) To renew each role designation, the APRN shall pay a separate licensure fee as set forth in 201 KAR 20:240, Section 1(2)(k).

(4) For the purposes of Section 7(2)(b) of this administrative regulation, if the APRN does not provide evidence of current recertification in a role designation, then that role designation shall be voided. The license shall not be voided if the other role

designation is maintained. All other provisions of Section 7(2)(b) of this administrative regulation shall apply to the voided designation.

(5) Role designations shall be the Certified Registered Nurse Anesthetist, Certified Nurse Midwife, Certified Nurse Practitioner, and Clinical Nurse Specialist pursuant to KRS 314.042.

JIMMY ISENBERG, President

APPROVED BY AGENCY: February 9, 2017

FILED WITH LRC: February 28, 2017 at 1 p.m.

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TOURISM, ARTS, AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, May 11, 2017)

301 KAR 2:075. Wildlife rehabilitation permit.

RELATES TO: KRS 150.015, 150.021, 150.183, 150.195***, 50 C.F.R 17, 21***

STATUTORY AUTHORITY: KRS 150.025(1)(h), 150.280

NECESSITY, FUNCTION AND CONFORMITY: KRS 150.025(1)(h) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of Chapter 150[~~regulate wildlife in the Commonwealth~~]. KRS 150.280 authorizes the department to promulgate administrative regulations regarding holding protected wildlife. This administrative regulation establishes the guidelines for issuing a permit to a wildlife rehabilitator, maintaining a facility for wildlife rehabilitation, and the operating requirements[~~standards~~] for wildlife rehabilitators.

Section 1. Definitions[~~Definition~~]. (1) "Cervid" means a member of the family Cervidae.

(2) "Permit holder" means a wildlife rehabilitation permit holder.

(3) "Wildlife rehabilitation" means the process of rescuing, raising, and arranging for veterinary medical care of orphaned, sick, displaced, or injured wildlife with the goal of releasing the wildlife back into its natural habitat.

Section 2. Wildlife Rehabilitation Permits. (1) An applicant for a wildlife rehabilitation permit shall:

(a) Be at least[~~a minimum of~~] eighteen (18) years of age;

(b) Complete[~~Fill out~~] an application***[provided by the department]***;

(c) Submit[~~Send~~] the application to the Director of Wildlife at #1 Sportsman's Lane, Frankfort, Kentucky 40601;

(d) Submit proof of successful completion of the course entitled "Basic Wildlife Rehabilitation" offered by the International Wildlife Rehabilitation Council; and

(e) Submit the annual permit fee as established in 301 KAR 3:022[~~a twenty-five (25) dollar fee, which shall be paid each year for renewal of the permit~~].

(2) An applicant:

(a) May obtain a course-pending[~~"course pending"~~] status for up to one (1) year upon the issuance of the initial permit; and

(b) Shall submit[~~.~~] proof of course completion [~~shall be submitted~~] to the department before the permit shall be renewed.

(3) An applicant's or permit holder's[~~A~~] facility shall be inspected[~~preinspected~~] by a conservation officer to document compliance with Section 4 of this administrative regulation before a permit is obtained or renewed.

(4)[~~An annual permit shall be issued by calendar year beginning in January.~~

~~(5) Revocation of permits.~~] A permit shall be revoked and wildlife confiscated if:

(a) An applicant falsifies information on the application;

(b) The permit holder[~~permittee~~] fails to comply with the provisions of this administrative regulation; or

(c) The permit holder[~~permittee~~] is convicted of a violation of KRS Chapter 150.

(5)[~~(6)~~] An individual whose request for a permit has been denied or whose status has been revoked or suspended may request an administrative hearing pursuant to KRS Chapter 13B.

Section 3. Requirements. (1) A permit holder shall:

(a) Only keep wildlife[~~may remain~~] in a rehabilitation facility for a maximum of 180 days unless specifically exempted by the U.S. Fish and Wildlife Service; and[~~.~~]

(b) Submit to the department a completed Kentucky Department of Fish and Wildlife Resources ***Wildlife Rehabilitation*** Annual Report Form[~~(2) A permittee shall produce an annual report on a form~~] ***[provided by the department]***.

(2)[~~and incorporated by reference specifying the following:~~

~~(a) The species held;~~

~~(b) The quantity of species held;~~

~~(c) Status of each species;~~

~~(d) Release location;~~

~~(e) Date of release;~~

~~(f) Tag information if required; and~~

~~(g)~~] If an animal is not releasable as established in subsection (4) of this section[~~classified as nonreleaseable~~] and is held for educational purposes, then the annual report shall document each educational program's[~~program including~~]:

1. Date;
2. Time; and
3. Location[~~of event~~].

(3) A permit holder[~~permittee~~] shall not simultaneously hold captive wildlife[~~for nonrehabilitation purposes~~] under the auspices of a captive wildlife["~~captive wildlife"~~] permit as established[~~issued~~] in [~~accordance with~~] 301 KAR 2:081 or 301 KAR 2:083.

(4) A permit holder[~~permittee~~] may retain wildlife[~~classified as nonreleasable~~] for educational purposes if the animal[~~meets one (1) or more of the following conditions~~]:

(a) Is a mammal with[~~and has~~] an amputated leg;

(b) Lacks adequate vision to function in the wild;

(c) Lacks locomotive skills necessary for survival in the wild; or

(d) Has[~~Exhibits~~] another permanent injury that is reasonably expected to inhibit survival in the wild.

(5) An animal[~~classified as nonreleasable and~~] retained for educational purposes pursuant to subsection (4) of this section shall be exhibited in an educational program a minimum of six (6) times per year.

(6) Except as allowed[~~where permitted~~] ***pursuant to 50 C.F.R. 17 and 21[under federal regulations]***, a permit holder[~~permittee~~] shall not propagate threatened and endangered wildlife.

(7) A permit holder[~~The department~~] shall[~~be notified~~] immediately notify the department, in writing, of any federally-threatened or endangered wildlife species delivered, recovered, or retained for rehabilitation.

(8) A permit holder[~~permittee~~] shall not rehabilitate or attempt to rehabilitate any species of terrestrial wildlife not native to Kentucky.

(9) A permit holder[~~permittee~~] shall not rehabilitate or attempt to rehabilitate:

(a) A cougar[~~cougars~~] (Felis concolor);[~~,~~]

(b) A wolf[~~wolves~~] (Canis lupus or Canis rufus);[~~,~~]

(c) An elk (Cervus elaphus); or

(d) A bear[~~bears~~] (Ursus americanus).

(10) A permit holder[~~permittee~~] shall not transport wildlife across state lines for rehabilitation, release, or for any other purpose[~~purposes~~], unless authorized by the commissioner.

(11) A permit holder shall release rehabilitated wildlife [~~shall be released~~] into the appropriate habitat for that species.

(12) A permit holder[~~permittee~~] shall obtain landowner permission before releasing rehabilitated wildlife.

(13) A permit holder[~~Cervids~~] shall not keep a cervid[~~be held~~] in a rehabilitation facility for more than 180 days.[~~After 180 days a rehabilitation permit holder shall apply for a noncommercial captive cervid permit as specified in 301 KAR 2:083, if he or she wishes to hold the cervid for more than 180 days.~~]

(14) A wild-born cervid[~~cervids~~] held in captivity for rehabilitation purposes shall not ***be housed in***:

(a)***[Be housed in]*** The same pen as another captive cervid or[~~otherwise~~] housed in direct physical contact with a cervid[~~cervids~~] that originated in captivity; ***or[and]***

(b)***[Be housed in]*** A pen that has previously[~~ever~~] housed cervids that originated in captivity.

(15)[~~A person holding a wildlife rehabilitation permit shall not buy, sell, offer to sell, trade, or barter cervids.~~

~~(16)~~] A[~~person holding a wildlife rehabilitation~~] permit holder shall not simultaneously hold a[~~commercial~~] captive cervid permit.

Section 4. Facilities and Operating Standards. (1)***[Unless authorized by the Director of Wildlife,]*** A facility shall comply with Minimum Standards for Wildlife Rehabilitation as adopted by the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council.

(2) A permit[~~The~~] holder[~~of a rehabilitation permit~~] shall allow a conservation officer to inspect the facilities at any reasonable time.

(3) The conservation officer shall immediately notify the permit holder and the commissioner if the inspection reveals that the facility is not in compliance with***[the provisions of]*** this administrative regulation.

(4) The conservation officer shall make a second inspection after ten (10) days, and the permit shall be revoked and all captive wildlife confiscated immediately if the unsatisfactory conditions have not been corrected.[~~The Director of Wildlife may authorize additional time for compliance and subsequent inspections as necessary.~~]

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

(a) The National Wildlife Rehabilitator's Association and the International Wildlife Rehabilitation Council publication "Minimum Standards for Wildlife Rehabilitation", third edition, 2000;

(b) "Kentucky Department of Fish and Wildlife Resources ***Wildlife Rehabilitation*** Annual Report Form", 2002 edition; and

(c) "Application for Wildlife Rehabilitation Permit", 2006 edition.

(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. until 4:30 p.m.

CHARLES O. BUSH, JR., Deputy Commissioner
For GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary
APPROVED BY AGENCY: March 9, 2017
FILED WITH LRC: March 14, 2017 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
Department of Fish and Wildlife Resources
(As Amended at ARRS, May 11, 2017)

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

RELATES TO: KRS 150.010, 150.170, 150.340, 150.370(1), 150.990

STATUTORY AUTHORITY: 148.029(5), 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. 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 to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas that differ from statewide requirements.

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

(2) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(3)[~~(2)~~] "Centerfire" means a type of gun[~~firearm~~] that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(4) "Ground blind" means a structure consisting of a frame and a top that is placed on the ground to completely enclose a hunter while hunting deer.

(5)[~~(3)~~] "In-line muzzleloader[~~muzzleloading gun~~]" means a gun[~~firearm~~]:

(a) Capable of being loaded only from the discharging end of the barrel or cylinder; and

(b) That is equipped with an enclosed ignition system located directly behind the powder charge.

(6) "Mentor hunt" means a quota youth hunt in which the adult who accompanies a youth may legally take a deer.

(7)[~~(4)~~] "Mobility-impaired" means an individual who meets the requirements of 301 KAR 3:026, Section 2(1).

(8) "Modern gun" means an air gun, rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(9)[~~(5)~~] "Modern gun[~~firearm~~] season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November during which a modern gun[~~breech-loading firearms~~] may be used to take deer pursuant to 301 KAR 2:172.

(10) "Muzzleloader" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(11)[~~(6)~~] "Quota hunt" means a hunt in which a participant is selected by a random drawing.

(12) "Quota youth hunt" means a quota hunt in which a youth is the only person who can legally take a deer.

(13)[~~(7)~~] "Statewide requirements" mean the season dates, zone descriptions, and other requirements for deer hunting as established in 301 KAR 2:172.

(14)[~~(8)~~] "Wildlife management area" or "WMA" means a tract of land:

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

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

(15)[~~(9)~~] "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(16) "Youth gun seasons" means the October youth gun season and the December free youth weekend, as established in 301 KAR 2:172.

Section 2. General WMA Requirements. (1) Unless established in this administrative regulation, statewide requirements shall apply.

(2) [~~A hunter shall not take more than one (1) deer per day on a WMA in Zones 2, 3, or 4, except:~~

~~(a) During a quota hunt; or~~

~~(b) The Grayson Lake WMA open youth deer hunt.~~

~~(3)~~] Except as established in Section 6 of this administrative regulation, if a WMA is in two (2) or more deer hunting zones as established in 301 KAR 2:172, then the WMA shall be regulated by the most liberal zone requirements of the zones in which it lies.

(3)[~~(4)~~] Deer hunting on WMAs listed in Section 6 of this administrative regulation shall be permitted only as established in this administrative regulation, except archery and crossbow hunting shall be allowed pursuant to the statewide[~~archery~~] requirements established in 301 KAR 2:172, unless otherwise

noted.

(4) If a WMA is:

(a) Listed in Section 6 of this administrative regulation, then gun hunting shall be prohibited, unless otherwise noted; and

(b) Not listed in Section 6 of this administrative regulation, then statewide deer hunting requirements shall apply.

(5) An antlerless deer shall not count against a person's statewide or zone bag limit if harvested during:

(a) The Grayson Lake WMA open youth hunt; or

(b) [~~West Kentucky WMA firearms hunts; or~~

~~(c)~~] Any WMA or state park either-sex quota hunt.

(6) An open gun[~~firearm~~] deer hunt, beginning on the Wednesday following the third Monday in January for ten (10) consecutive days, shall:

(a) Be limited to members of the United States Armed Forces and the National Guard and reserve component who:

1. Are residents of Kentucky or nonresidents stationed in Kentucky; and

2. Were deployed out-of-country during any portion of the most recent regular statewide deer season;

(b) Only be on a WMA designated as open for this special hunt; and

(c) Be pursuant[~~according~~] to statewide requirements established in 301 KAR 2:172.

(7) On all WMAs and Otter Creek Outdoor Recreation Area, a person:

(a) Attaching a tree stand or climbing a tree shall not use a:

1. Nail;

2. Spike;

3. Screw-in device;

4. Wire; or

5. Tree climber;

(b) May use a portable stand or climbing device [~~that shall not injure a tree~~];

(c) [~~1.~~] Shall:

1. Not place a portable stand in a tree more than two (2) weeks before opening day; and

2.[~~Shall~~] Remove a portable stand[~~it~~] within one (1) week following the last day of each hunting period;

(d) Shall plainly mark the portable stand with the hunter's name and address;

(e) Shall not use an existing permanent tree stand;[~~and~~]

(f) Shall not place, distribute, or hunt over bait; and

(g) Shall not hunt in a ground blind, if gun deer hunting is allowed, without first attaching a hat or vest made of solid, unbroken hunter orange material to the blind so that it is visible from all sides.

(8) A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:

(a) To travel through a WMA on an established road or to use an area designated open by a sign; [~~or~~]

(b) To accompany a youth who is hunting in a youth or mentor quota hunt;

(c) That one (1) assistant, who shall not be required to have applied for the quota hunt, may accompany a hunter who was drawn to hunt, but shall check in and out as established in Section 5 of this administrative regulation; or

(d) To participate in small game hunting or the October shotgun segment of the fall turkey season during the archery and crossbow quota hunt on Big Rivers WMA.

(9) Except for waterfowl or dove hunting, or legal hunting at night, a person who is hunting any species, or a person who is accompanying a hunter, shall wear hunter orange clothing pursuant to 301 KAR 2:172 while:

(a) On a WMA if gun[~~while firearms~~] deer hunting is allowed;

(b) Hunting within the sixteen (16) county elk zone when a firearms elk season is open, pursuant to 301 KAR 2:132; or

(c) Hunting within the bear zone during a bear firearms season, pursuant to 301 KAR 2:300.

Section 3. General Quota Hunt Procedures. (1) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(2) If selected for a quota hunt, a person shall lose all accumulated preference points.

(3) A random selection of hunters with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(4) A person shall forfeit all accumulated preference points if, in a given year, the person does not apply for or is ineligible to apply for:

(a) A deer quota hunt; and

(b) The no-hunt option.

(5) A person who applies for the no-hunt option shall:

(a) Not be drawn for a quota hunt; and

(b) Be given one (1) preference point for each year the no-hunt option is selected.

(6) If applying as a party:

(a) Each applicant's preference points shall be independent of each other; and

(b) The entire party shall be selected if one (1) member of the party is selected.

(7) The commissioner 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 hunter may take up to two (2) deer on a quota hunt in Zones 2, 3, and 4, only one (1) of which may be an antlered deer, except as established in Section 6 of this administrative regulation.

(9) If a hunter has purchased the appropriate permits, a hunter may take unlimited antlerless deer in:

(a) The West Kentucky WMA gun hunt[~~firearms season~~];

(b) WMA quota hunts in Zone 1; and

(c) State Park quota hunts in Zone 1, except as established in Section 8 of this administrative regulation.

(10) One (1) person shall be drawn from the eligible quota hunt applicants who were not selected in the original drawing, and shall receive one (1) deer permit that carries with it all the privileges of the Special Commission Permit established in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Call the toll free number listed in the current fall hunting and trapping guide or apply online at fw.ky.gov by completing the Quota Hunt Application: Deer Quota Hunt Form, between September 1 and September 30;

(2) Enter each applicant's Social Security number;

(3) Select:

(a) A first and second choice of hunts; or

(b) The no-hunt option;

(4) Pay a three (3) dollar application fee for each applicant, prior to the draw by:

(a) Electronic funds transfer;

(b) Visa Card;

(c) Master Card; or

(d) Discover Card;

(5) Not apply more than one (1) time; and

(6) Not apply as a group of more than five (5) persons[~~; and~~

~~(7) Not be eligible to participate in a quota hunt unless:~~

~~(a) Selected pursuant to this administrative regulation; or~~

~~(b) Accompanying a drawn hunter~~].

Section 5. Quota Hunt Participant Requirements. Except as otherwise established in this administrative regulation, a person selected to participate in a quota hunt shall:

(1) Possess, unless exempted pursuant to KRS 150.170:

(a) A valid annual Kentucky hunting license; and

(b) A deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

(2) Hunt on the assigned dates and in assigned areas selected by a random drawing of applicants if applicable;

(3) Comply with hunting equipment restrictions specified by the type of hunt;

(4) Check in at the designated check station prior to hunting:

(a) Either:

1. On the day before the hunt, between noon and 8 p.m. local time; or

2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and

(b) With documentation of the participant's:

1. Social Security number or draw confirmation number; and

2. Purchase of a current license or permit which allows or includes statewide deer hunting privileges;

(5) Check out at the designated check station:

(a) If finished hunting;

(b) If the hunter's bag limit is reached; or

(c) By 8 p.m. Eastern time on the final day of the hunt;

(6) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested;

(7) Be declared ineligible to apply for the next year's drawing if the hunter or the hunter's assistant fails to check out properly; and

(8) Comply with all species quota hunt requirements or be ineligible to apply for any quota hunt or no-hunt option for these species the following year.

Section 6. Wildlife Management Area Requirements. (1) Dr. Norman and Martha Adair WMA.[~~The crossbow season shall be open pursuant to statewide requirements.~~]

(2) Ballard WMA.

(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November.

(b) On the main tract, the archery, crossbow, and October youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements through October 14, except that the two (2) mile driving loop marked by signs shall be closed to all hunting.

(c) The archery, crossbow, modern gun[~~firearm~~], youth gun[~~firearm~~], and muzzleloader seasons shall be open pursuant to statewide requirements only on the 400-acre tract south of Sallie Crice Road.

(d)[~~A hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.~~

~~(e)~~] A quota hunt participant shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.

(3) Barren River WMA. The area shall be open pursuant to statewide requirements except that on the Peninsula Unit, including Narrows, Goose, and Grass Islands, a person shall not hunt deer with a modern gun[~~firearm~~].

(4) Beaver Creek WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The limit shall be one (1) antlered deer during the quota hunt.

(c) The youth gun seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(5) Big Rivers WMA.

(a) The youth gun seasons[~~firearms season~~] shall be open pursuant to statewide requirements.

(b) [~~The crossbow season shall be open pursuant to statewide requirements, except that it shall be closed during the archery and crossbow quota hunt as established in paragraph (d) of this subsection.~~

~~(c)~~] There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.

(c) The archery and crossbow quota hunt shall begin the Monday following the second Saturday in October and continue through November 30, except that it shall be closed during the two (2) day quota hunt as established in paragraph (b) of this subsection.

(d) Pursuant to 301 KAR 2:172, any deer taken in the quota hunt established in paragraph (c) of this subsection shall be:

1. Telechecked; or

2. Checked in on the department's Web site at fw.ky.gov[~~(d) There shall be an archery and crossbow quota hunt beginning the Monday following the second Saturday in October and continuing through November 30, except that it shall be closed during the two (2) day quota hunt as established in paragraph (c) of this subsection~~].

(6) Boatwright WMA. The area shall be open pursuant to statewide requirements, except that on the Swan Lake Unit the:

(a) [~~On the Swan Lake Unit the~~] Archery, October youth gun, and crossbow seasons[~~season~~] shall only be open[~~pursuant to statewide requirements~~] through October 14; and

(b) December free youth weekend shall be closed[~~The October youth deer season shall be open pursuant to statewide requirements~~].

(7) Cedar Creek Lake WMA.[~~The crossbow season shall be open pursuant to statewide requirements.~~]

(8) Clay WMA.

(a) On the main tract,[~~crossbow,~~] muzzleloader[~~,~~] and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049.

(b) The remainder of the WMA shall be open pursuant to statewide requirements for the archery, crossbow, muzzleloader, and youth gun seasons, except during the quota deer hunt.

(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked-in, up to a maximum of four (4) points.

(e) Hunters drawn for the quota hunt may harvest up to four (4) deer, only one (1) of which may be antlered.

(9) Dewey Lake WMA.

(a) The December muzzleloader[~~crossbow~~] and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements.

(b) Guns[~~The use of firearms~~] shall be prohibited for deer hunting on the:

1. Western side of the lake, north of the Terry Boat Ramp; and

2. Eastern side of the lake, north of the ridge that begins across the lake from the Terry Boat Ramp, and extends eastward to the WMA boundary.

(c)[~~A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.~~

~~(d)~~] There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in December.

(d)[~~(e)~~] There shall be a one (1) deer limit during the quota hunt.

(10) Dix River WMA. The[~~crossbow,~~] youth gun[~~firearm,~~] and muzzleloader seasons shall be open pursuant to statewide requirements.

(11) Fishtrap Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving.

(b) The limit for the quota hunt shall be one (1) deer.

(c) The[~~crossbow and~~] youth gun and December muzzleloader seasons[~~firearm season~~] shall be open pursuant to statewide requirements.

(12) Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days; and

2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer.

(b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:

1. Travel through the WMA on an established public road; or

2. Use an area designated as open by signs.

(c) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October.

(d) The crossbow season[~~hunt~~] shall be from the first Saturday in September through the third Monday in January, except that the archery and crossbow seasons shall be closed during the November open youth hunt.

(e) The[~~statewide~~] youth gun seasons[~~firearm season~~] shall be open pursuant to statewide requirements.

(f) The December muzzleloader season shall be open pursuant to statewide requirements.

(13) Green River Lake WMA and Dennis-Gray WMA.

(a) The youth gun seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(c) Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons.

(d)[~~A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.~~

~~(e)~~] The Green River Lake and Dennis-Gray WMAs shall be considered to be located in the Eastern Time Zone.

(14) Griffith Woods WMA. The December muzzleloader[~~crossbow~~] and youth gun[~~firearms~~] seasons shall be open pursuant to statewide requirements.

(15) Higginson-Henry WMA.

The youth gun[~~firearm and crossbow deer~~] seasons shall be open pursuant to statewide requirements.

(16) J.C. Williams WMA. The December muzzleloader[~~crossbow~~] and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements.

(17) Kentucky River WMA.

(a) The December muzzleloader[~~crossbow~~] and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning on the first Saturday in November.

(18) Kleber WMA.

(a)[~~The crossbow season shall be open pursuant to statewide requirements, except during a quota hunt.~~

~~(b)~~] The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December.

(b)[~~(c)~~] The youth gun and December muzzleloader seasons[~~firearm season~~] shall be open pursuant to statewide requirements.

(19) Knobs State Forest WMA. The December muzzleloader[~~crossbow~~] and youth gun seasons shall be open pursuant to statewide requirements.

(20) Lake Barkley WMA shall be open pursuant to statewide requirements except:

(a) The North Refuge shall be closed from November 1 to February 15; and

(b) Duck Island shall be closed from October 15 to March 15, except that it shall be open for the October muzzleloader season, pursuant to statewide requirements.

(21) Livingston County WMA. The[~~crossbow,~~] youth gun[~~firearm~~], muzzleloader, and modern gun[~~firearm~~] seasons shall be open pursuant to statewide requirements, except a person shall not hunt deer with a modern gun[~~firearm~~] during the modern gun[~~firearm~~] deer season.

(22) Curtis Gates Lloyd WMA. The December muzzleloader[~~crossbow~~] and youth gun[~~firearms~~] seasons shall be open pursuant to statewide requirements.

(23) Mill Creek WMA.

(a) The youth gun seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November[~~The quota hunt shall:~~

~~1. Be for two (2) consecutive days beginning the first Saturday in November; and~~

~~2. Have a one (1) deer bag limit~~].

(24) Miller-Welch Central Kentucky WMA. The archery and crossbow seasons shall be open pursuant to statewide requirements:

(a) On Monday through Thursday, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

(25) Mud Camp Creek WMA. The[~~crossbow,~~] youth gun[~~firearm,~~] and muzzleloader seasons shall be open pursuant to statewide requirements.

(26) Mullins WMA. The youth gun and December muzzleloader seasons[~~crossbow season~~] shall be open pursuant to statewide deer requirements.

(27) Ohio River Islands WMA, Stewart Island Unit.

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in September through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth gun season shall be open pursuant to statewide requirements.

(e) The remainder of the WMA shall be open pursuant to statewide requirements.

(28) Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(b) The December muzzleloader[~~crossbow~~]and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements.

(c) A person shall not use a gun[~~firearms~~] for deer hunting on:

1. The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge; and

2. The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake. [~~(d) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.~~]

(29) Peabody WMA.

(a) The[~~crossbow,~~] youth gun[~~firearms,~~] and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern gun[~~firearm~~] season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(30) Pennyrile State Forest-Tradewater WMA.

[~~(a) The crossbow season shall be open pursuant to statewide requirements.~~

~~(b)~~] The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(31) Ping-Sinking Valley WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(32)[~~(c) A deer hunter shall not take a deer with antlers that have an outside spread less than fifteen (15) inches.~~

~~(31)~~] Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern gun[~~firearm~~];

(b) Shall not use an in-line muzzleloader[~~muzzleloading gun~~];

(c) Shall not use a scope;

(d) May use a crossbow during the entire archery season; and

(e) Shall use only open or iron sights on any weapon.

(33)[~~(32)~~] Redbird WMA.

(a) The youth gun seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(b) The modern gun[~~firearm~~] season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(34)[~~(33)~~] Dr. James R. Rich WMA.

(a) There shall be a[~~The crossbow season shall be open pursuant to statewide requirements, except during a quota hunt.~~

~~(b) The~~] quota hunt[~~hunts shall be~~] for two (2) consecutive days beginning on the first Saturday in:

1.[~~Two (2) consecutive days beginning the first Saturday in~~] November; and

2.[~~Two (2) consecutive days beginning the first Saturday in~~] December; and

(b)[~~(c)~~] The youth gun and December muzzleloader seasons[~~firearm season~~] shall be open pursuant to statewide requirements.

(35)[~~(34)~~] Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(36) Rockcastle River WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(37)[~~(35) Sinking Valley WMA. The crossbow and youth firearms seasons shall be open pursuant to statewide requirements.~~

~~(36)~~] Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth gun[~~firearm~~] seasons shall be open pursuant to statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open pursuant to statewide requirements through the end of modern gun[~~firearm~~] season.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(38)[~~(37)~~] South Shore WMA.

(a) The youth gun[~~firearm~~], October muzzleloader, and modern gun[~~firearm~~] seasons shall be open pursuant to statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons shall be open pursuant to statewide requirements, except that the area shall be closed November 15 through January 15.

(c) The December free youth weekend and December muzzleloader season shall be closed.

(39)[~~(38)~~] T.N. Sullivan WMA. The youth gun and December muzzleloader seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(40)[~~(39)~~] R.F. Tarter WMA. The[~~crossbow,~~] youth gun[~~firearm,~~] and muzzleloader seasons shall be open pursuant to statewide requirements.

(41)[~~(40)~~] Taylorsville Lake WMA.

(a) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in:

1.[~~1. Two (2) consecutive days beginning the first Saturday in~~] November; and [~~for antlerless deer;~~]

2.[~~Two (2) consecutive days beginning the first Saturday in~~] December[~~; and~~

~~3. Two (2) consecutive days beginning the first Saturday in January~~].

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons.

(c) The youth gun and December muzzleloader seasons [~~firearm season~~] shall be open pursuant to statewide requirements.

(42)[~~(d) The crossbow season shall be open pursuant to statewide requirements.~~

~~(e) A participant in the November antlerless-only quota hunt shall be given one (1) preference point for each female deer checked in, up to four (4).~~

~~(41)~~] Twin Eagle WMA. The youth gun and December muzzleloader seasons[~~crossbow season~~] shall be open pursuant to statewide requirements.

(43)[~~(42)~~] Paul Van Booven WMA.[~~The crossbow season shall be open pursuant to statewide requirements.~~]

(44)[~~(43)~~] Veteran's Memorial WMA.

(a) The December muzzleloader[~~crossbow,~~]and youth gun[~~firearms~~] seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in:

1.[~~Two (2) consecutive days beginning the first Saturday in~~] November; and

2.[~~Two (2) consecutive days beginning the first Saturday in~~] December for antlerless deer.

(c) A participant in the December antlerless-only quota hunt shall be given one (1) preference point for each female deer checked in, up to a maximum of four (4) points.

(45)[~~(44)~~] West Kentucky WMA.

(a) All tracts shall be open pursuant to statewide requirements for the archery and crossbow seasons, except that the statewide archery and crossbow seasons[~~all tracts~~] shall be closed [~~to archery and crossbow hunting~~] during department administered quota, mentor, and gun[~~firearm~~] deer hunts.

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open gun[~~firearm~~] deer hunts.

(c) Tract 7 and "A" tracts[~~Tracts~~] shall not be open for department administered quota or gun[~~firearm~~] deer hunts, except as established in paragraph (d) of this subsection.

(d) The "A" tracts shall be open to shotgun hunters participating in the mentor hunt.

(e) The quota hunt shall be for four (4)[~~five (5)~~] consecutive days beginning the Saturday prior to Thanksgiving.

(f) There shall be a mentor hunt for four (4) consecutive days beginning the Saturday prior to Thanksgiving in which:

1. There shall be no more than two (2) youths per adult;

2. There shall be no more than one (1) adult per youth; and

3. The adult may take a deer.

(g)[~~(e)~~] The gun hunt[~~firearms season~~] shall:

1. Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;

2. Require a hunter to check-in at a designated check station from 4 p.m. to 8 p.m. Central Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central Time on hunt days;

3. Require a hunter to check out at the designated check station:

a. When finished hunting; or

b. By 7 p.m. Central time on the final day of the hunt;

4. Have an unlimited bag limit, only one (1) of which may be an antlered deer; and

5. Require every person to check in during the gun hunt[~~firearms season~~], except for:

a. A person traveling on an established public road; or

b. A person in an area designated as open by signs.

(h) Gun[~~(f) Firearm~~] hunters shall not use centerfire rifles or handguns.

(i)[~~(g)~~] All persons shall check in daily at the designated check-in locations before entering the "A" tracts.

(j)[~~(h) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.~~

~~(i)~~] A participant in the quota hunt, mentor hunt, or open gun hunt[~~firearms season~~] shall:

1. Sign in for the hunting tract of his or her choice at check-in prior to each day's hunt; and

2. Except after noon, not hunt outside of that tract.

(46)[~~(45)~~] Yatesville WMA.

(a) The[~~crossbow,~~] youth gun[~~firearm,~~] and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern gun[~~firearm~~] season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(47)[~~(46)~~] Yellowbank WMA. The December muzzleloader [~~crossbow,~~]and youth gun[~~firearm~~] deer seasons shall be open pursuant to statewide requirements.

Section 7. State Park Deer Seasons. (1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(2) A state park may allow up to sixteen (16) days of modern gun[~~firearm~~] hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(3) A state park shall be open to deer hunting as established in this subsection and Section 8 of this administrative regulation.

(a) Lake Barkley State Resort Park. Deer hunting shall be allowed beginning[~~permitted~~] on the second Tuesday of January for two (2) consecutive days.

(b) Greenbo Lake State Resort Park. Deer hunting shall be

allowed beginning[~~permitted~~] on the:

1. First Friday of November for three (3) consecutive days;

2. Second Friday of November for three (3) consecutive days; and

3. Second Tuesday of January for two (2) consecutive days.

(c) Green River Lake State Park.

1. Archery and crossbow deer hunting shall be allowed[~~permitted~~] beginning on the first[~~second~~] Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed[~~permitted~~] beginning on the second[~~third~~] Thursday of December for four (4) consecutive days. [~~3. A deer hunter shall not take an antlered deer with antlers having an outside spread less than fifteen (15) inches.~~]

(d) Dale Hollow Lake State Resort Park.

1. Youth deer hunting shall be allowed beginning on the second Saturday of December for two (2) consecutive days.

2. Deer hunting shall be allowed beginning on the first Saturday of January for two (2) consecutive days.

(e) Kenlake State Resort Park. Archery and crossbow deer hunting shall be allowed beginning on the second Thursday of November for four (4) consecutive days.

(f) Kincaid Lake State Park.

1. Archery and crossbow hunting shall be allowed beginning on the second Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed beginning on the third Thursday of December for four (4) consecutive days.

(g)***[Perryville Battlefield State Historic Site. Deer hunting shall be allowed beginning on the first Saturday of November for two (2) consecutive days.***

~~(h)~~] Yatesville Lake State Park. Muzzleloader[~~Muzzleloading firearm~~], archery, and crossbow deer hunting shall be allowed[~~permitted~~] pursuant to statewide deer requirements on the second Monday of December for three (3) consecutive days.

(h)[~~(i)~~][~~(e)~~] Jenny Wiley State Resort Park.

1. Deer hunting shall be allowed beginning[~~permitted~~] on the first Saturday of January for two (2) consecutive days.

2. The bag limit shall be two (2) deer, only one (1) of which may be antlered.

3. The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.

4. A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026. [~~5. A deer hunter shall not take an antlered deer with antlers having an outside spread less than fifteen (15) inches.~~]

Section 8. State Park Deer Hunt Requirements. (1)[~~Except for the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park,~~] A person shall not hunt on a state park unless:

(a) Selected by a random drawing as established in Section 3 of this administrative regulation;

(b) The person is a member of a successful applicant's quota hunt[~~hunting~~] party; [~~or~~]

(c) The person is participating in a deer hunt established in Section 7 of this administrative regulation; or

(d) The person successfully registers on a first-come, first-served basis[~~was selected~~] as part of a process administered by the Department of Parks, at an area established in subparagraphs 1. through 5. of this paragraph:

1. Blue Licks Battlefield State Resort Park;

2. Carter Caves State Resort Park;

3. John James Audubon State Park;

4. My Old Kentucky Home State Park; and

5. Taylorsville Lake State Park[~~pursuant to Section 7 of this administrative regulation~~].

(2) A person participating in a state park quota hunt, except for the quota hunts at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification;

(c) Check in:

1. Between noon and 8 p.m. Eastern Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the requirements established in[~~provisions of~~] 301 KAR 2:172; and

(b) Check a harvested deer by completing the telecheck or online check-in process as established in 301 KAR 2:172[~~daily at the designated park check station, except that deer taken in the Green River Lake State Park quota hunts and the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park shall be telechecked or checked in on the department's Web site at fw.ky.gov, pursuant to 301 KAR 2:172~~].

(4) A person participating in a state park deer hunt shall not:

(a) Take more than [~~two (2) deer in a quota hunt, only~~] one (1) [~~of which may be~~] antlered deer;

(b) Hunt over bait;

(c) Use[~~Injure a tree by using~~]:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a gun[~~firearm~~] within 100 yards of a maintained road or building; or

(f) Hunt:

1. In an area posted as closed by signs;[~~or~~]

2. Outside park boundaries; or

3. From a ground blind, if gun deer hunting is allowed, unless first attaching a hat or vest made of solid, unbroken hunter orange material to the blind so that it is visible from all sides.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park and any department-administered state park quota hunt, may take up to two (2) bonus deer per hunt that shall not count toward the statewide limit if the person:

(a) Takes no more than one (1) bonus antlered deer per license year; and

(b) Obtains the valid bonus deer tag from the state park hunt administrators.

(6) A person participating in a state park deer hunt or in possession of harvested wildlife on state park property shall comply with all posted state park rules and regulations concerning the possession, storage, or disposal of harvested wildlife.

Section 9. Other Public Lands. (1) On Daniel Boone National Forest, Jefferson National Forest, and Land Between the Lakes, a person shall not use bait, feed, minerals, or other attractants.

(2) The areas established in paragraphs (a) through (g) of this subsection may schedule a gun[~~firearm~~], crossbow, or archery deer hunting season between September 1 and January 31:

(a) Big South Fork National River and Recreation Area;

(b) Clark's River National Wildlife Refuge;

(c) Daniel Boone National Forest;

(d) Jefferson National Forest;

(e) Land Between the Lakes National Recreation Area;

(f) Ohio River Islands National Wildlife Refuge; and

(g) Reelfoot National Wildlife Refuge.

(3) An area listed in subsection (2) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(4) At Land Between the Lakes, a person:

(a) Shall not take more than:

1. Two (2) deer during archery hunts; and

2. One (1) deer during quota hunts;

(b) Who is a quota deer hunter shall:

1. Apply in advance at Land Between the Lakes; and

2. Only hunt from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset; and

(c) Who harvests a deer shall:

1. Check in the carcass pursuant to U.S. Forest Service requirements; and

2. Affix a game check card pursuant to U.S. Forest Service requirements.

(5) At Reelfoot National Wildlife Refuge:

(a) Zone 1 bag limits shall apply during the open archery season;

(b) A person shall not take more than two (2) deer by gun[~~firearm~~], only one (1) of which shall be antlered;

(c) A quota hunt participant shall:

1. Tag deer with a tag issued by the Refuge; and

2. Comply with the Refuge check-in requirements; and

(d) A person who is archery hunting shall:

1. Only take deer using the appropriate statewide or additional deer permit; and

2. Check harvested deer through the department's telephone or online check-in systems.

(6) At Otter Creek Outdoor Recreation Area:

(a) The archery and crossbow seasons shall be open pursuant to statewide requirements; and

(b) There shall be a quota hunt for two (2) consecutive days beginning the second Saturday in December.

(7) At Twin Knobs Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during odd-numbered years for mobility-impaired persons.

(8) At Zilpo Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during even-numbered years for mobility-impaired persons.

Section 10. Special Areas under Federal Control. (1) The areas established in paragraphs (a) through (e) of this subsection may schedule a gun[~~firearm~~], archery, or crossbow deer hunting season between September 1 and January 31:

(a) Bluegrass Army Depot;

(b) Fort Campbell;

(c) Fort Knox;

(d) Hidden Valley Training Center; and

(e) Wendell Ford Regional Training Center.

(2) An area listed in subsection (1) of this section may issue a bonus permit for antlered or antlerless deer, which shall:

(a) Not count against a hunter's statewide bag limit; and

(b) Only be issued for a hunt that is open to the general public.

(3) Except on the Hidden Valley Training area, on the areas listed in subsection (1) of this section, a deer hunter shall:

(a) Obtain a permit from the area before hunting;

(b) Only hunt on assigned dates;

(c) Remain in assigned areas;

(d) Tag deer with tags issued on the area, unless otherwise established in this section;

(e) Keep the area tag attached to the deer until the carcass is processed; and

(f) Check deer at a designated check station before leaving the area.

(4) At Bluegrass Army Depot, a person shall not take an antlered deer whose outside antler spread is less than fifteen (15) inches.

(5) At Fort Knox, a person shall not take an antlered deer whose outside antler spread is less than twelve (12) inches.

(6) At Hidden Valley Training Area, a person shall not use a gun[~~firearm~~] to hunt deer.

Section 11. Incorporation by Reference. (1) "Quota Hunt Application: Deer Quota Hunt Form", March 2014, 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.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: February 14, 2017

FILED WITH LRC: February 14, 2017 at 3 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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, May 11, 2017)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.640

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

Section 1. Incorporation by Reference. (1) Kentucky State Penitentiary policies and procedures, ***May 11[~~March 14~~]***, 2017[~~January 7, 2013~~], are incorporated by reference. Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01	Public Information and Media Communications (Amended 11/8/2005)
KSP 02-01-02	Inmate Canteen (Amended 3/14/17[~~11/8/2005~~])
KSP 02-12-02	Inmate Funds (Amended 11/14/12)
KSP 03-01-02	Tobacco Free (Amended ***5/11/17[~~3/14/17~~]*** [~~Added 11/14/12~~])
KSP 06-01-02	Inmate Master Records (Amended 11/14/12)
KSP 10-02-01	Special Management Unit Operating Procedures, Living Conditions and Classification (Amended 11/14/12)
KSP 10-02-05	Death Row (Amended ***5/11/17[~~3/14/17~~]*** [~~12/12/06~~])
KSP 10-04-01	Special Needs Inmates (Amended 11/14/12)
KSP 13-01-01	Pharmacy Procedures (Amended 3/14/17[~~11/8/2005~~])
KSP 13-02-01	Health Services (Amended 11/8/2005)
KSP 13-02-03	Continuity of Care (Amended ***5/11/17[~~3/14/17~~]***[~~12/12/06~~])
KSP 13-02-04	Levels of Care and Staff Training (Amended 11/8/2005)
KSP 13-02-05	Consultations (Amended 9/14/2005)
KSP 13-02-08	Health Records (Amended 12/12/06)
KSP 13-02-09	Psychiatric and Psychological Services (Amended 3/14/17[~~11/8/2005~~])
KSP 13-02-13	Optometric Services (Amended 1/7/13)
KSP 13-06-02	Informed Consent (Amended 11/8/2005)
KSP 14-03-01	Marriage of Inmates (Amended ***5/11/17[~~3/14/17~~]***[~~11/14/12~~])
KSP 14-04-01	Legal Services (Amended 3/14/17[~~11/14/12~~])
KSP 14-06-01	Inmate Grievance Procedure (Amended 3/14/17[~~9/14/2005~~])
KSP 15-06-01	Adjustment Procedures (Amended ***5/11/17[~~3/14/17~~]***[~~9/14/2005~~])
KSP 16-01-01	Visiting Program (Amended 3/14/17[~~11/14/12~~])
KSP 16-02-01	Inmate Correspondence (Amended ***5/11/17[~~3/14/17~~]***[~~11/14/12~~])

KSP 16-03-02 Inmate Telephone Access (Amended 3/14/17[~~11/8/2005~~])
KSP 16-04-01 Inmate Packages (Amended 3/14/17 [~~11/8/2005~~])
KSP 17-01-01 Inmate Personal Property (Amended 9/14/2005)
KSP 17-01-02 Disposition of Unauthorized Property (Amended 11/8/2005)
KSP 17-01-03 Procedures for Providing Clothing, Linens, and Other Personal Items (Amended 3/14/17 [~~11/14/12~~])
KSP 17-01-04 Property Room, Clothing Storage and Property Inventory Control (Amended 11/8/2005)
KSP 17-02-01 Inmate Reception and Orientation (Amended 11/14/12)
KSP 18-01-01 ~~***[General Guidelines and Functions of the]***~~ Classification Committee (Amended ***5/11/17[~~3/14/17~~]***[~~11/14/12~~])
KSP 18-01-02 Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) (Added ***5/11/17[~~3/14/17~~]***)
KSP 18-01-05 Meritorious Housing ***Unit*** (Added ***5/11/17[~~3/14/17~~]***)
KSP 18-06-01 Classification Document (Amended 3/14/17[~~11/8/2005~~])
KSP 18-10-01 Preparole Progress Report (Amended 3/14/17[~~11/14/12~~])
KSP 18-15-01 Protective Custody Unit (Amended 3/14/17[~~9/14/2005~~])
KSP 19-04-01 Inmate Work Programs and Safety Inspections of Inmate Work Locations (Amended 3/14/17[~~7/12/00~~])
KSP 19-04-02 Unit Classification Committee and Inmate Work Assignments (Amended 3/14/17[~~11/14/12~~])
KSP 19-05-01 Correctional Industries (Amended ***5/11/17[~~3/14/17~~]***[~~9/14/2005~~])
KSP 20-04-01 Educational Programs (Amended ***5/11/17[~~3/14/17~~]***[~~11/14/12~~])
KSP 22-04-01 Arts and Crafts Program (Amended 12/12/06)
KSP 23-01-03 Religious Services (Amended 3/14/17 [~~11/14/12~~])
KSP 25-01-01 Release Preparation Program (Amended 3/14/17[~~11/14/12~~])
KSP 25-01-02 Inmate Release Procedure (Amended 3/14/17[~~11/14/12~~])
KSP 25-10-01 Discharge of Inmates by Shock Probation (Amended 11/14/12)

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RODNEY BALLARD, Commissioner
APPROVED BY AGENCY: March 14, 2017
FILED WITH LRC: March 14, 2017 at 2 p.m.
CONTACT PERSON: Oran S. McFarlan, III, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8246, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

TRANSPORTATION CABINET
Department of Vehicle Regulation
(As Amended at ARRS, May 11, 2017)

601 KAR 1:018. Special overweight or overdimensional motor vehicle load permits.

RELATES TO: KRS 175.450, 177.390-177.570, 177.9771, 186.010(8), 186.050, 189.221, 189.222, 189.2225(3), 189.270, 189.271, 189.2715, 189.2716, 189.2717, 227.550, 281.838, 23 C.F.R. 658.17, 49 C.F.R. 367, 393.11

STATUTORY AUTHORITY: KRS 189.270(6), 189.271(9)(b), 189.2715(1), 189.2717(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.270(6), 189.271(9)(b), 189.2715(1), 189.2716, and 189.2717(1) authorize the Secretary of the Kentucky Transportation Cabinet to issue permits for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights or dimensions. This administrative regulation establishes the procedures and requirements for the issuance of an overweight or overdimensional single trip or annual permit including the height, width, and length necessary for vehicles and loads; escort safety requirements; the requirements to move a house or building; and the criteria necessary to obtain a permit for a sealed, containerized, ocean-going cargo unit[~~permit,~~].

Section 1. Definitions. (1) "Axle spacing" means the measurable distance between the axle centers of the axle unit.

(2) "Boat" means a vehicle used for movement on the water and includes the trailer on which it is placed for transporting the vehicle on the highway.

(3) "Designated National Truck Network" means routes approved for use by increased dimension as established in KRS 189.222.

(4) "Height pole" means a vertical clearance measuring device.

(5) "International bill of lading" means a receipt or ticket for property tendered for transportation by a common motor carrier or private carrier in foreign commerce including:

(a) Consignor;

(b) Consignee;

(c) Origin and destination points;

(d) Number of packages;

(e) Description of freight or goods; and

(f) Date.

(6) "Manufactured home" is defined by KRS 227.550(7).

(7) "Nondivisible" means a load, cargo unit, or vehicle that if separated into smaller loads or vehicles would:

(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or

(c) Require more than four (4) or eight (8) work hours to dismantle and reassemble contingent on the route traveled.

(8) "Overdimensional" means the motor vehicle exceeds the dimension limits established in 603 KAR 5:070.

(9) "Overweight" means the motor vehicle exceeds:

(a) The gross weight limit established in 603 KAR 5:066;

(b) The axle weight limit established in 603 KAR 5:066;

(c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;

(d) The bridge weight limit established by 603 KAR 5:066; or

(e) The gross weight limit posted at a bridge or other structure.

(10) "Permit fee" means the fee established in KRS 189.270, 189.2715, or 189.2717 for the issuance of an overweight or overdimensional trip or annual permit, to cover the cost of processing the permit application, including:

(a) A qualification check of the applicant;

(b) A statutory compliance check; and

(c) An initial bridge and weight analysis.

(11) "Pole trailer" means a motor vehicle without motive power that is:

(a) Designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle; and

(b) Used for transporting long or irregularly shaped loads such as poles, pipes, or structural members that generally are capable of sustaining themselves as beams between the supporting connections.

(12) "Sealed, containerized, ocean-going cargo unit" means a nondivisible unit of cargo that is part of international trade due to importation from, or exportation to, another country.

(13) "Self-propelled specialized mobile equipment" means every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or

moved over the highways.

(14) "Steering axle" means the axle or axles of a vehicle or combination of vehicles by which the vehicle or vehicles are guided or steered.

(15) "Tandem" means any two (2) axles with centers forty two (42) inches or more apart but less than ninety six (96) inches apart.

(16) "Tridem" means any three (3) consecutive axles with centers forty two (42) inches or more apart and less than 120 inches apart.

(17) "Trunnion axle" means an axle configuration with two (2) individual axles mounted in the same transverse plane with four (4) tires on each axle connected at a pivot point that allows each individual axle to oscillate in a vertical plane to provide constant and equal weight distribution on each individual axle.

Section 2. Overweight or Overdimensional Permit Application. (1) An application for a ***["Single Trip]***Kentucky ***Overweight/Overdimensional[Overweight or Overdimensional]*** Permit Worksheet, TC Form 95-10, and an Application for Annual Overweight or Overdimensional Permit***["]***, TC Form 95-25, shall be submitted to the Division of Motor Carriers by:

(a) Hand delivery;

(b) Mail;

(c) Fax; or

(d) The online motor carrier permitting system at http://drive.ky.gov/motor-carriers/Pages/Purchase-Overweight-Over-Dimensional-Permits.aspx.

(2) An applicant for an overweight or overdimensional single trip permit shall submit a completed***[Single Trip]*** Kentucky ***Overweight/Overdimensional[Overweight or Overdimensional]*** Permit Worksheet, TC Form 95-10 to the Division of Motor Carriers.

(3) An overweight or overdimensional single trip permit shall be valid for one (1) move and a duration of ten (10) days.

(4) An overweight or overdimensional single trip permit application shall specify the following information regarding the towing vehicle:

(a) The year, make, and vehicle identification number;

(b) The license plate number and jurisdiction;

(c) The maximum weight for which the towing vehicle is registered;

(d) The jurisdiction or state of the apportioned registration;

(e) The name, address, and telephone number of the operator or owner;

(f) A general description of the cargo;

(g) The effective date of travel;

(h) The serial number for a manufactured home;

(i) The specific routes of travel requested;

(j) ***[A general description of the cargo;***

(k)] The Kentucky Highway Use License (KYU License) or the DOT number; and

(k)[(l)] The axle spacing and axle group configuration.

(5) An applicant for an overweight or overdimensional annual permit shall submit a completed ***Application for*** Annual Overweight or Overdimensional Permit***[Worksheet]***, TC Form 95-25 to the Division of Motor Carriers.

(6) An overweight or overdimensional annual permit shall be valid for an unlimited number of moves for a duration of 365 days.

(7) An overweight or overdimensional annual permit application shall specify the following information regarding the towing vehicle:

(a) The year, make, and vehicle identification number;

(b) The license plate number, jurisdiction, and unit number;

(c) The maximum weight for which the towing vehicle is registered;

(d) The jurisdiction or state of the apportioned registration;

(e) The name, address, and telephone number of the operator or the owner;

(f) A general description of the cargo;

(g) The effective date of travel;

(h) The Kentucky Highway Use License (KYU License) or the DOT number; and

(i) The axle spacing and axle group configuration.

Section 3. Permit Validity and Availability. (1)(a) A valid overweight or overdimensional annual or single trip permit issued by the Division of Motor Carriers shall be carried in the overweight or overdimensional vehicle during transit.

(b) The permit shall be presented upon request to law enforcement or authorized personnel of the Department of Vehicle Regulation.

(c) A modification by the permittee to the permit that is not authenticated by the Division of Motor Carriers shall render the permit invalid.

(2) A separate overweight or overdimensional permit shall be required for each vehicle involved in a movement.

(3) An overweight or overdimensional permit shall not be issued for a divisible load that if reasonably divided, dismantled, disassembled, or rearranged would no longer be overweight or overdimensional except as provided by KRS 189.2715, 189.2716, or 189.2717.

(4) A special overweight or overdimensional annual or trip permit to allow the movement of a motor vehicle with a gross weight or gross dimension in excess of the weights and dimensions established in KRS 189.270, 189.271, 189.2715, and 189.2717 may be issued by the Division of Motor Carriers if the movement is necessary to provide transportation for specified cargo that is in the interest of the health, welfare, or economy of the Commonwealth.

Section 4. Changes to Overweight or Overdimensional Permits. (1) A duplicate overweight or overdimensional permit that is needed to replace a lost, stolen, or destroyed annual permit or to transfer or amend the permit to another towing vehicle shall be obtained from the Division of Motor Carriers by a payment of ten (10) dollars.

(2) One (1) transfer to another towing vehicle or one (1) amendment of vehicle information shall be allowed for each overweight or overdimensional annual permit during the permit's effective year.

(3) The original overweight or overdimensional permit shall be returned to the Division of Motor Carriers prior to the transfer of an annual permit.

Section 5. Travel Restrictions. (1) In accordance with 23 C.F.R. 658.17, the Division of Motor Carriers may deny an overweight or overdimensional permit application if:

(a) The route includes a portion of the interstate highway system; and

(b) The load is divisible.

(2) The cabinet shall deny or restrict an overweight or overdimensional permit for the use of a route that may cause damage to property or is detrimental to public safety or convenience. The following shall be considered in making a determination on the application:

(a) The strength of bridges and structures on the route;

(b) Traffic congestion on the route;

(c) Horizontal and vertical clearance on the route;

(d) The availability of alternate routes that afford greater safety;

(e) Urban development in residential and commercial areas on the route; and

(f) The proximity of schools to the route.

(3) Overdimensional restrictions shall not prohibit a utility company from working in an emergency situation to restore utility service to an area otherwise experiencing an outage.

(4)(a) As needed for public safety, the department shall prohibit movements in congested areas within the peak traffic hours.

(b) Additional restrictions shall be noted on the overweight or overdimensional permit upon issuance.

(5)(a) Travel on an overweight and overdimensional permit shall not be permitted in Boone, Kenton, Campbell, Fayette, Jefferson County (Louisville) or at the Owensboro, Kentucky 2155 bridge from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday.

(b) An overweight or overdimensional load originating in Fayette County shall be exempt from traffic rush hour restrictions on Interstate 64 and Interstate 75 in Fayette County and on

connecting routes to both interstates up to a distance of three (3) miles from the interstates.

(6) If proof of an emergency is ***submitted[~~furnished~~]*** to the Division of Motor Carriers, a move shall be authorized during the hours restricted by KRS 189.270(11)(a).

(7) Each vehicle transporting a load under the provisions of an overweight or overdimensional annual or single trip permit shall obtain prior approval from the Division of Motor Carriers for a deviation from the routes approved by the Transportation Cabinet.

Section 6. Height. (1) A vehicle and load with a height in excess of thirteen (13) feet, six (6) inches shall obtain an overweight or overdimensional single-trip permit pursuant to KRS 189.270(2) prior to movement.

(2) An overweight or overdimensional annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen (13) feet, six (6) inches.

(3) The maximum height for each overweight or overdimensional single-trip permit shall be determined by the cabinet based upon underpass and bridge height along the designated route.

(4) A vehicle and load exceeding (15) feet, (6) inches in height shall submit a completed ***Overweight or Overdimensional Proposed*** Route Survey, TC Form 95-625 in addition to TC Form 95-10 to the Division of Motor Carriers.

Section 7. Weight. (1) Gross or axle overweight shall not be permitted on:

(a) A unit that does not have a registered weight of at least 80,000 lbs; or

(b) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load.

(2) The weight on a single axle in any combination shall not exceed the product of 700 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single axle - 24,000 pounds;

(b) Steering axle - 20,000 pounds;

(c) Tandem axle group if the combination vehicle has only five (5) axles total - 45,000 pounds;

(d) Tandem axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds;

(e) Tridem axle group - 60,000 pounds;

(f) Five (5) axle combination units not exceeding 96,000 pounds gross weight;

(g) Six (6) axle combination units not exceeding 120,000 pounds gross weight; or

(h) Seven (7) axle combination units not exceeding 160,000 pounds gross weight.

(3) Trunnion axle group maximum gross weights shall be determined by a route and bridge analysis performed by the cabinet's Bridge Preservation Branch.

(4) Maximum weights shall not be permitted unless each of the bridges and roads on the moving route have sufficient capacity to accommodate the load.

(5) Self-propelled specialized mobile equipment shall not exceed the following axle, axle group, or gross weight:

(a) Single axle: 23,000 pounds;

(b) Tandem axle group: 46,000 pounds; and

(c) Tridem axle group: 69,000 pounds.

(6) The maximum gross weight for a four (4) axle self-propelled specialized mobile equipment shall be 92,000 pounds.

(7) The maximum gross weight for a five (5) axle self-propelled specialized mobile equipment shall be 115,000 pounds.

Section 8. Manufacturers of Self-Propelled Specialized Mobile Equipment. (1)(a) A manufacturer of self-propelled construction equipment that is not licensed as a motor vehicle may obtain an annual permit for the sole purpose of road-testing the equipment prior to its sale.

(b) Operation of the equipment during the road-testing shall be limited to employees of the manufacturer upon designated routes within the Commonwealth.

(2) The annual permit issued to a manufacturer of self-propelled construction equipment shall be limited to equipment that is:

(a) A maximum width of ten (10) feet; and

(b) A gross vehicle weight not in excess of 160,000 pounds.

(3)(a) A manufacturer desiring to road test equipment shall submit a completed ***Application for*** Annual Overweight or Overdimensional Permit***[~~Worksheet~~]***, TC Form 95-25 to the Division of Motor Carriers.

(b) The application for a permit shall designate the model of the equipment and the requested or intended route. A separate TC Form 95-25 shall be submitted or required for each model, and each requested or intended route.

(c) The cost of each annual permit shall be $250 dollars.

(d) A permit issued to the manufacturer of self-propelled construction equipment shall be valid for twenty-four (24) hours a day except that pursuant to the concerns cited in Section 5 of this administrative regulation, the department may restrict operation under the permit on Monday through Friday between 7 a.m. and 9 a.m. and between 4 p.m. and 6 p.m.

Section 9. Length. (1) A front overhang on a combination vehicle shall be prohibited.

(2) A manufactured home that has a combined length of the manufactured home and towing vehicle greater than 120 feet shall not be towed upon a Kentucky highway.

(3) A manufactured home shall not exceed ninety (90) feet in length.

Section 10. Width. (1) Prior to movement, a vehicle and load with a width in excess of eight and a half (8 1/2) feet shall obtain an overweight or overdimensional permit pursuant to KRS 189.270(2).

(2) Prior to movement, a vehicle and load with a width in excess of eight (8) feet traveling on routes not included on the Designated National Truck Network shall obtain an overweight or overdimensional permit except as provided in KRS 189.2225(3).

(3) An annual permit shall not be issued for the movement of an overweight or overdimensional load in excess of sixteen (16) feet in width.

(4)(a) A move of an overweight or overdimensional load more than twelve (12) feet wide shall not be made on a highway if a wind advisory has been issued by the National Weather Service; or

(b) If adverse weather conditions or road conditions would cause the move to be dangerous.

(5) A move of an overweight or overdimensional load that is more than twelve (12) feet wide operating pursuant to an annual permit shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Division of Motor Carriers.

Section 11. Power Unit Flag and Sign Requirements (1) Red or orange fluorescent flags that are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the provisions an overweight or overdimensional permit.

(a) A vehicle operating overwidth shall display four (4) warning flags, one (1) at each of the four (4) corners. If a portion of the load extends beyond the four (4) corners, additional flags shall be displayed at the widest points of the load.

(b) A vehicle operating overlength, or with a rear overhang, shall display two (2) warning flags located to indicate the maximum width at the extreme rear of the vehicle or load.

(2) A vehicle exceeding twelve (12) feet (3.65 meters) in width, or having front overhang shall display two (2) warning signs.

(a) A warning sign shall be six (6) to eight (8) feet in width stating "OVERSIZE LOAD" in black letters on a yellow background.

(b) The black letters shall be at least eighteen (18) inches high (11,612.7 millimeters) with a brush stroke of at least one and four tenths (1.4) inches (35.56 millimeters).

(c) A warning sign shall be displayed at the:

1. Front of the power unit;
2. Rear of the towed unit; or
3. Rear of the load.

(3) If a front overhang exceeds ten (10) feet (3.05 meters), an amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use while the power unit is in operation.

(4) The lighting devices and reflectors established in 49 C.F.R. 393.11 for pole trailers and projecting loads shall be required.

(5) As a special provision of the permit, and due to safety considerations, the Division of Motor Carriers may require additional lighting or warning flags.

Section 12. Braking Requirements. (1) The number, type, size, and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour shall not exceed forty (40) feet.

(2) If required, a manufactured home not equipped with brakes on all axles shall certify to law enforcement that the towing unit has sufficient brake assemblies to meet the braking distance specified in this section by producing:

(a) A manufacturer's statement;

(b) Documented technical data; or

(c) An engineering analysis or its equivalent stating that the braking distance has been met.

(3) The certification shall be carried in the towing unit and presented upon request to law enforcement.

Section 13. Escort Vehicle Safety Requirements. (1) A required escort vehicle shall accompany the overweight or overdimensional vehicle at a distance of 300 feet (91.44 meters) on open highways unless it is necessary to travel at a distance closer or farther away from the vehicle accompanied for safety or due to road conditions. An escort vehicle shall:

(a) Maintain radio contact with the load;

(b) Have amber strobe lights or flashing lights;

(c) Keep its headlamps lit during transit; and

(d) Use a height pole front escort if the escorted load is in excess of fourteen (14) feet eleven (11) inches.

(2) A warning sign stating "OVERSIZE LOAD" shall be displayed on a lead escort vehicle so that it is visible to oncoming traffic for a vehicle and load with a width in excess of twelve (12) feet.

Section 14. Escorts required. (1) A lead escort shall be required on two (2) lane routes of travel if:

(a) The vehicle and load width is in excess of twelve (12) feet.

(b) The vehicle and load length is in excess of seventy five (75) feet; or

(c) The vehicle and load height is in excess of fourteen (14) feet eleven (11) inches.

(2) A trail escort shall be required on two (2) lane routes of travel if:

(a) The vehicle and load width is in excess of twelve (12) feet;

(b) The vehicle and load length is in excess of eighty five (85) feet; or

(c) The vehicle and load do not maintain the posted speed limit.

(3) A lead escort shall be required on four (4) lane routes of travel if:

(a) The vehicle and load width is in excess of fourteen (14) feet; or

(b) The vehicle and load height is in excess of fourteen (14) feet eleven (11) inches.

(4) A trail escort shall be required on four (4) lane routes of travel if:

(a) The vehicle and load width is in excess of twelve (12) feet;

(b) The vehicle and load length is in excess of 110 feet; or

(c) The vehicle and load width is in excess of twelve (12) feet and does not maintain a speed of forty five (45) miles per hour.

(5) Due to safety considerations, the Division of Motor Carriers may require additional escort vehicles as a special provision of the permit.

Section 15. House or Building Permits. (1)(a) An application for a permit to move a house or building shall be made on House Moving Application, TC Form 95-310, and submitted to the Division of Motor Carriers via mail, hand delivery, or the motor carrier online permitting system at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m., or via fax at (502) 564-0992.

(b) The mover shall ***provide[~~furnish~~]*** all escorts and flagmen deemed necessary during the move to ensure the safety of the public.

(2) A house moving permit shall not be issued for the movement of a permanent building other than a portable storage unit on a parkway or an interstate highway.

(3)(a) The Division of Motor Carriers shall contact the appropriate cabinet district office for specific routing restrictions or local highway conditions prior to the issuance of a house moving permit.

(b) Specific restrictions shall be identified on the house moving permit and a deviation from the restrictions shall void the house moving permit.

Section 16. Building Materials.***[~~(1)~~]*** A vehicle hauling building materials to a home or home site may travel fifteen (15) miles off of a state highway for purpose of delivery if the highway is classified to carry the registered weight of the vehicle.

(1)[~~(a)~~] The vehicle shall meet the requirements and limits of its registration and also be within the axle weight limits. The vehicle shall not be required to have a permit for overweight or overlength dimensions.

(2)[~~(b)~~] An operator shall be required to provide a bill of lading either to vehicle enforcement, or to a cabinet designee, while engaged in the transportation of home building materials.

Section 17. Permits for sealed, containerized, ocean-going cargo units. (1) A vehicle moving a sealed, containerized, ocean-going cargo unit that meets the requirements and limitations established in KRS 189.222, 189.270, and Section 7 of this administrative regulation shall be eligible for an overweight single trip or annual permit.

(2) An applicant for an overweight or overdimensional single trip permit shall submit the following to the Division of Motor Carriers:

(a) A completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10;

(b) A payment of sixty (60) dollars pursuant to KRS 189.270(2);

(c)1. Either a copy of an international bill of lading signed by a custom's official; or

2. An international bill of lading with an equipment interchange and inspection report; and

(d) The seal number and container number for the load.

(3) An applicant for an overweight or overdimensional annual permit shall submit the following to the Division of Motor Carriers:

(a) A completed Kentucky ***Overweight/Overdimensional [~~Overweight or Overdimensional~~]*** Permit Worksheet, TC Form 95-25;

(b) A payment of 250 dollars pursuant to KRS 189.270(3); and

(c) 1. Either an acknowledgement of possession of a copy of an international bill of lading signed by a custom's official; or

2. An international bill of lading with an equipment interchange and inspection report containing the seal number and container number for each load.

(4) During transit, an operator shall have in his or her possession either a copy of the international bill of lading signed by a custom's official, or an international bill of lading with an equipment interchange and inspection report containing the seal number and container number for the load.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "***[~~Single Trip~~]*** Kentucky ***Overweight/Overdimensional [~~Overweight or Overdimensional~~]*** Permit Worksheet", TC Form 95-10, February, 2017; and

(b) **"**Application for Annual Overweight or Overdimensional Permit", TC Form 95-25, September, 2014;

(c) "House Moving Application", TC Form 95-310, August, 2012;

(d) "Overweight or Overdimensional Proposed Route Survey", TC Form 95-625, February, 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m.[~~"Cosignor" means a shipper of goods.~~

~~(4) "Cosignee" means a recipient of goods.~~

~~(5) "Divisible load" means a load that if divided, dismantled, disassembled, or rearranged would no longer be overweight or overdimensional.~~

~~(6) "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle.~~

~~(7) "Height pole" means a vertical clearance measuring device.~~

~~(8) "International bill of lading" means a receipt or ticket for property tendered for transportation by a common motor carrier or private carrier in foreign commerce containing the following information:~~

~~(a) Cosignor;~~

~~(b) Cosignee;~~

~~(c) Origin and destination points;~~

~~(d) Number of packages;~~

~~(e) Description of freight or goods; and~~

~~(f) Date.~~

~~(9) "Nondivisible load" means a load or vehicle, that if separated into smaller loads or vehicles would:~~

~~(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;~~

~~(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or~~

~~(c) Require more than eight (8) work hours to dismantle using appropriate equipment.~~

~~(10) "Overdimensional" means the motor vehicle exceeds the dimension limits established in 603 KAR 5:070.~~

~~(11) "Overweight" means the motor vehicle exceeds:~~

~~(a) The gross weight limit established in 603 KAR 5:066;~~

~~(b) The axle weight limit established in 603 KAR 5:066;~~

~~(c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;~~

~~(d) The bridge weight limit established by 603 KAR 5:066; or~~

~~(e) The gross weight limit posted at a bridge or other structure.~~

~~(12) "Permit fee" means the fee established in KRS 189.270, 189.2715, or 189.2717 for the issuance of an overweight or overdimensional trip or annual permit, to cover the cost of processing the permit application, including:~~

~~(a) A qualification check of the applicant;~~

~~(b) A statutory compliance check; and~~

~~(c) An initial bridge and weight analysis.~~

~~(13) "Pole trailer" means a motor vehicle without motive power that is:~~

~~(a) Designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle; and~~

~~(b) Used for transporting long or irregularly shaped loads such as poles, pipes, or structural members that generally are capable of sustaining themselves as beams between the supporting connections.~~

~~(14) "Sealed, containerized, ocean-going cargo unit" means a nondivisible unit of cargo that is part of international trade due to importation from, or exportation to another country.~~

~~(15) "Steering axle" means the axle or axles of a vehicle or combination of vehicles by which the vehicle or vehicles are guided or steered.~~

~~(16) "Tandem" means any two (2) axles with centers forty two (42) inches or more apart but less than ninety six (96) inches apart.~~

~~(17) "Tridem" means any three (3) consecutive axles with centers forty two (42) inches or more apart and less than 120 inches apart.~~

~~(18) "Trunnion axle" means an axle configuration with two (2) individual axles mounted in the same transverse plane with four (4) tires on each axle connected at a pivot point that allows each individual axle to oscillate in a vertical plane to provide constant and equal weight distribution on each individual axle.~~

~~(19) "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes, transformers, regulators, or other utility electrical field equipment. It does not include equipment necessary for the construction or operation of a power generation station.~~

~~Section 2. Overweight or Overdimensional Permit Application. (1) An applicant for an overweight or overdimensional single trip permit shall submit a completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10 to the Division of Motor Carriers.~~

~~(2) An applicant for an overweight or overdimensional annual permit shall submit a completed Application for Annual Overweight or Overdimensional Permit, TC Form 95-25 to the Division of Motor Carriers.~~

~~(3) An application for an overweight or overdimensional single trip or annual permit shall be submitted to the Division of Motor Carriers by:~~

~~(a) Hand delivery;~~

~~(b) Mail;~~

~~(c) Fax; or~~

~~(d) The online motor carrier permitting system.~~

~~(4) An overweight or overdimensional single trip permit shall be valid for:~~

~~(a) One (1) move; and~~

~~(b) A duration of ten (10) days.~~

~~(5) An overweight or overdimensional annual permit shall be valid for 365 days from date of issue.~~

~~(6) An overweight or overdimensional single trip permit application or request shall specify the following:~~

~~(a) The year, make, and vehicle identification number of the towing vehicle;~~

~~(b) The towing vehicle's license plate number;~~

~~(c) The maximum weight for which the vehicle is registered;~~

~~(d) The state of registration of the vehicle;~~

~~(e) The name, address, and telephone number of the owner;~~

~~(f) The dates of travel;~~

~~(g) The serial number for a manufactured home;~~

~~(h) The specific routes of travel requested;~~

~~(i) A detailed description of the equipment or load to be moved;~~

~~(j) The Kentucky Highway Use License (KYU License) or the DOT number; and~~

~~(k) Axle spacing.~~

~~(7) If the towing vehicle for which an overweight or overdimensional single trip permit is being requested is registered in a state other than Kentucky, the vehicle shall be either:~~

~~(a) Apportioned registered to operate in Kentucky; or~~

~~(b) In compliance with KRS 281.838.~~

~~(8) An overweight or overdimensional annual permit application or request shall specify the following information relating to the motor vehicle:~~

~~(a) Year and make;~~

~~(b) Vehicle identification number;~~

~~(c) License plate number and unit number;~~

~~(d) The maximum weight for which it is registered;~~

~~(e) The state of apportioned registration, if not registered in Kentucky;~~

~~(f) Name, address, and telephone number of the motor carrier operating or the owner of the towing vehicle;~~

~~(g) If the motor carrier operating the towing vehicle is a for-hire or private carrier;~~

~~(h) A general description of cargo;~~

~~(i) Axle spacing; and~~

~~(j) The Kentucky Highway Use License (KYU License) or the DOT number.~~

~~(9) If the towing vehicle issued an overweight or overdimensional annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.~~

~~(10) A special overweight or overdimensional annual or trip permit to allow the movement of a motor vehicle with a gross weight or gross dimension in excess of the weights and dimensions established in KRS 189.270, 189.271, 189.2715, and 189.2717 shall be issued by the Division of Motor Carriers if the movement is necessary to provide transportation for specified cargo in the interest of the health, welfare, or economy of the people.~~

~~(11) Each overweight or overdimensional trip or annual permit issued shall be limited to designated portions of the state primary road system and stated periods of time.~~

~~(12) A separate overweight or overdimensional permit shall be required for each vehicle involved in a movement.~~

~~(13) An overweight or overdimensional permit shall not be issued for a divisible load that if reasonably divided, dismantled, disassembled, or rearranged would no longer be overweight or overdimensional except as provided by KRS 189.2715 or 189.2717.~~

~~(14) An overweight or overdimensional permit shall not be issued to the following:~~

~~(a) A Kentucky licensed vehicle with a gross weight exceeding that for which the truck is registered unless registered for 80,000 pounds (36,287.36 kilograms);~~

~~(b) A tractor-trailer combination of less than five (5) axles;~~

~~(c) A vehicle not registered in Kentucky, unless it has met one (1) of the following conditions:~~

~~1. The vehicle has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds (36,287.36 kilograms); or~~

~~2. The vehicle has met the provisions of KRS 281.838;~~

~~(d) A vehicle whose axle weight would exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle; or~~

~~(e) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load.~~

~~(15) The cabinet shall further restrict the movement or deny the overweight or overdimensional permit for a movement that may cause damage to property or that may be detrimental to public safety or convenience.~~

~~(16) An overweight or overdimensional annual permit shall not be issued if the vehicle is licensed with a limited or restricted registration as identified in KRS 186.050(8) and (9) for Kentucky-based vehicles.~~

~~Section 3. Height. (1) A vehicle and load with a height in excess of thirteen (13) feet, six (6) inches shall obtain an overweight or overdimensional single-trip permit pursuant to KRS 189.270(2) prior to movement.~~

~~(2) The maximum height for each overweight or overdimensional single-trip permit shall be determined by the cabinet based upon underpass and bridge height along the designated route.~~

~~Section 4. Weight. (1) Gross or axle overweight shall not be permitted:~~

~~(a) On a combination unit of less than five (5) axles; or~~

~~(b) On a single unit except off-road equipment such as a road grader, mobile crane, or other self-propelled unit.~~

~~(2) A vehicle shall not be issued an overweight or overdimensional permit that does not have a declared gross weight of at least 80,000 lbs.~~

~~(3) The weight on a single axle in any combination shall not exceed the product of 700 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:~~

~~(a) Single wheel axle - 24,000 pounds;~~

~~(b) Steering axle - 20,000 pounds;~~

~~(c) Tandem dual-wheel axle group if the combination vehicle has only five (5) axles total - 45,000 pounds;~~

~~(d) Tandem dual-wheel axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds;~~

~~(e) Tridem dual-wheel axle group - 60,000 pounds;~~

~~(f) Five (5) axle combination units not exceeding 96,000 pounds gross weight;~~

~~(g) Six (6) axle combination units not exceeding 120,000 pounds gross weight;~~

~~(h) Seven (7) axle combination units not exceeding 160,000 pounds gross weight; or~~

~~(i) Trunnion axle group maximum gross weight as determined by the formula established in 603 KAR 5:066, Section 3(7).~~

~~(4) Maximum weights shall not be permitted unless all bridges and roads on the moving route have sufficient capacity to accommodate the load.~~

~~(5) A self propelled truck crane shall not exceed the following axle, axle group weights, or gross weight:~~

~~(a) Single wheel axle: 23,000 pounds;~~

~~(b) Tandem dual-wheel axle group: 46,000 pounds; and~~

~~(c) Tridem dual-wheel axle group: 69,000 pounds.~~

~~(6) The maximum gross weight for a four (4) axle self-propelled truck crane shall be 92,000 pounds.~~

~~(7) The maximum gross weight for a five (5) axle self-propelled truck crane shall be 115,000 pounds.~~

~~Section 5. Responsibility of the Overweight or Overdimensional Permit Holder. (1) Damage to highway, signs, guardrails, or other public or private property caused by the transportation of the specialized equipment shall be the responsibility of the overweight or overdimensional permit holder. The overweight or overdimensional permit holder shall either repair all damage incurred or pay for the repair.~~

~~(2) An overweight or overdimensional permit holder shall not cut, trim, remove, or relocate a tree, shrub, guardrail, highway sign, or other object without the written approval of the landowner or the chief district engineer or designee in the district office where the property is physically located.~~

~~(3) The applicant shall be responsible for providing accurate information and reviewing the permit prior to travel on Kentucky highways.~~

~~Section 6. Overweight or Overdimensional Permit Availability. (1) A valid overweight or overdimensional permit issued by the Division of Motor Carriers shall be carried in the overweight or overdimensional vehicle during transit.~~

~~(2) A valid overweight or overdimensional annual or single trip permit shall be presented upon request to law enforcement or authorized personnel of the Department of Vehicle Regulation.~~

~~(3) An overweight or overdimensional annual permit not authenticated by the Division of Motor Carriers shall not be valid.~~

~~Section 7. Duplicate Overweight or Overdimensional Permits. (1) A duplicate overweight or overdimensional permit that is needed to replace a lost, stolen, or destroyed annual permit or to transfer the permit to another towing vehicle shall be obtained from the Division of Motor Carriers by a payment of ten (10) dollars.~~

~~(2) One (1) transfer to another towing vehicle shall be allowed for each overweight or overdimensional annual permit during its effective year.~~

~~(3) An additional transfer of the overweight or overdimensional annual permit requested shall be subject to the permit fees established in KRS 189.270.~~

~~(4) The original overweight or overdimensional permit shall be returned to the Division of Motor Carriers prior to the transfer of an annual permit.~~

~~Section 8. Travel Restrictions. (1) A time extension shall only be granted if the overweight or overdimensional permit holder proves extenuating circumstances, such as weather, fire, natural disaster, or unforeseen emergency.~~

~~(2)(a) As needed for public safety, the department shall further~~

~~prohibit movements in congested areas within the peak traffic hours.~~

~~(b) The additional restrictions shall be noted on the overweight or overdimensional permit upon issuance.~~

~~(3) Overdimensional restrictions shall not prohibit a utility company from working in an emergency situation to restore utility service to an area otherwise experiencing an outage.~~

~~Section 9. Escort Vehicle Safety Requirements. (1) The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and:~~

~~(a) Used in part for off-road use;~~

~~(b) Not required to be registered or licensed; and~~

~~(c) Not transporting cargo.~~

~~(2) A required escort vehicle shall accompany the overweight or overdimensional vehicle at a distance of 300 feet (91.44 meters) on open highways unless it is necessary to travel at a distance closer or farther away from the vehicle accompanied for safety or due to road conditions.~~

~~(3) An escort vehicle shall:~~

~~(a) Maintain radio contact with the load;~~

~~(b) Post appropriate signs on the vehicle;~~

~~(c) Have amber strobe lights or flashing lights on the escort vehicle;~~

~~(d) Keep its headlamps lit during transit; and~~

~~(e) Use a height pole if the escorted load is fifteen (15) feet or greater.~~

~~(4) One (1) lead escort shall be required for:~~

~~(a) A vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters), but twelve (12) feet (3.66 meters) or less in width travelling on a two (2) lane highway;~~

~~(b) A vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters), but not more than eighty-five (85) feet (25.91 meters);~~

~~(c) Utility equipment, a pole, or pipe being transported that exceeds fifty-five (55) feet (16.76 meters) in length.~~

~~(5) One (1) trail escort shall be required for:~~

~~(a) A vehicle and load with a width exceeding twelve (12) feet (3.66 meters) that does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour) on a highway that is four (4) lanes or wider;~~

~~(b) A vehicle and load traveling on a two (2) lane highway at speeds below the posted speed limit on its route; and~~

~~(c) A vehicle and load with a length of 120 feet or less traveling on a four (4) lane or wider highway.~~

~~(6) One (1) lead and one (1) trail escort shall be required for:~~

~~(a) A vehicle and load with a length in excess of eighty-five (85) feet (25.91 meters traveling on a two (2) lane highway);~~

~~(b) A vehicle and load with a width exceeding twelve (12) feet (3.66 meters) on a two (2) lane highway; and~~

~~(c) A vehicle and load with a length in excess of 120 feet traveling on a four (4) lane or wider highway.~~

~~Section 10. Flag and Sign Requirements for Escort Vehicles. (1) Red or orange fluorescent flags that are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.~~

~~(a) A vehicle operating overwidth shall display four (4) warning flags, one (1) at each of the four (4) corners and if any portion of the load extends beyond the four (4) corners, additional flags shall be displayed at the widest points of the load.~~

~~(b) A vehicle operating overlength or with a rearend overhang shall display two (2) warning flags located to indicate maximum width at the extreme rear of the vehicle or load.~~

~~(2) A vehicle exceeding ten (10) feet, six (6) inches, three and two-tenths (3.2) meters in width or having front overhang shall display two (2) warning signs.~~

~~(a) A warning sign shall be six (6) to eight (8) feet in width stating "OVERSIZE LOAD" in black letters on a yellow background.~~

~~(b) The black letters shall be at least eighteen (18) inches high (11,612.7 millimeters) with a brush stroke of at least one and four tenths (1.4) inches (35.56 millimeters).~~

~~(c) A warning sign shall be displayed on a lead escort vehicle so that it is visible to oncoming traffic.~~

~~(d) A warning sign shall be displayed at the:~~

~~1. Front of the power unit;~~

~~2. Rear of the towed unit; or~~

~~3. Rear of the load.~~

~~(3) If a front overhang exceeds ten (10) feet (3.05 meters), an amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use while the power unit is in operation.~~

~~(4)(a) The lighting devices and reflectors established in 49 C.F.R. 393.11 for pole trailers and projecting loads shall be required.~~

~~(b) A front overhang on a combination vehicle shall be prohibited.~~

~~(5) As a special provision of the permit and due to safety considerations, the Division of Motor Carriers may require additional escort vehicles, lighting, or warning flags.~~

~~Section 11. House or Building Permits. (1) An application for a permit to move a house or building shall be made on House Moving Application, TC Form 95-310, and submitted to the Division of Motor Carriers via mail, hand delivery, or the motor carrier online permitting system at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m., or via fax at (502) 564-0992.~~

~~(2)(a) House moving permits shall be issued for movements that occur during off-peak traffic hours.~~

~~(b) The mover shall furnish all escorts and flagmen required to protect the public.~~

~~(3) A house moving permit shall not be issued for the movement of a permanent building other than a portable storage unit on a parkway or an interstate highway.~~

~~(4)(a) The Division of Motor Carriers shall contact the appropriate Department of Highways' district office for specific routing restrictions or local highway conditions prior to the issuance of a house moving permit.~~

~~(b) Specific restrictions shall be identified on the house moving permit, and deviation from the restrictions shall void the house moving permit.~~

~~Section 12. Route Deviation. Each vehicle transporting a load under an overweight or overdimensional annual or single trip permit shall obtain prior written approval from the Division of Motor Carriers for any deviation from the routes approved by the Transportation Cabinet for the towing vehicle.~~

~~Section 13. Overweight or Overdimensional Permit Required. Until an authorized overweight or overdimensional permit has been issued by the Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:~~

~~(1) An overweight or overdimensional load of a width greater than eight and one-half (8 1/2) feet shall not be towed on any state-maintained highway;~~

~~(2) An overweight or overdimensional load with a width greater than eight (8) feet shall not be towed on any state-maintained highway not included on the Transportation Cabinet's list of roads approved for passage of motor vehicles with increased dimensions pursuant to 603 KAR 5:070, except as provided in KRS 189.2225(3); and~~

~~(3) A manufactured home with a combined length of manufactured home and towing vehicle greater than 120 feet shall not be towed upon any Kentucky highway. The manufactured home shall not exceed eighty-five (85) feet in length.~~

~~Section 14. Overweight or Overdimensional Annual Permits. (1)(a) A permit shall not be issued for the movement of an overweight or overdimensional load in excess of sixteen (16) feet in width inclusive of the usual overhang.~~

~~(b) Mirrors on a towing vehicle shall not be considered in determining the width of an overweight or overdimensional load.~~

~~(2) Prior to a movement of an overweight or overdimensional load under the provisions of an annual permit, the permit holder shall evaluate the entire route proposed to be used for the movement of the overweight or overdimensional load. The evaluation shall include the following:~~

~~(a) Highway width;~~

~~(b) Shoulder width and surface type;~~

~~(c) Bridge width and posted weights;~~

~~(d) Curves;~~

~~(e) Turns to be negotiated;~~

~~(f) Construction zones;~~

~~(g) Obstructions;~~

~~(h) Access control;~~

~~(i) Traffic volume; and~~

~~(j) Other routes available that may be safer even if not as convenient.~~

~~(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overweight or overdimensional load.~~

~~(4) If there is any doubt about the adequacy of the highway to safely accommodate the overweight or overdimensional load, the permit holder shall either:~~

~~(a) Select a different route; or~~

~~(b) Contact the Division of Motor Carriers for approval to move the overweight or overdimensional load over that specific route.~~

~~(5) An overweight or overdimensional annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen (13) feet, six (6) inches.~~

~~(6) Acceptance and use of the annual overweight or overdimensional permit shall indicate the permit holder's acceptance of the liability associated with the move.~~

~~(7) Moves of overweight or overdimensional loads more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Division of Motor Carriers. The cabinet shall deny movements on a route unsuitable for move.~~

~~Section 15. Traffic Control. (1) If an overweight or overdimensional load while crossing a bridge would encroach on any other lane of traffic:~~

~~(a) All approaching traffic shall be stopped; and~~

~~(b) All trailing traffic shall be prevented from attempting to pass the overweight or overdimensional load until the load has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.~~

~~(2) An overweight or overdimensional load shall slow the movement of other traffic as little as possible. If traffic backs up behind the load being moved, the escort vehicles and load shall exit the highway if there is sufficient space to do so.~~

~~Section 16. Overweight or Overdimensional Permit Validity. (1) A vehicle hauling building materials to a home or home site shall be allowed to travel fifteen (15) miles off of a state highway classified to carry the registered weight of the vehicle for purpose of delivery.~~

~~(a) The vehicle shall:~~

~~1. Not be required to have a permit for overweight or overlength; and~~

~~2. Be within the limits of the registration and within axle weight limits.~~

~~(b) An operator shall be required to provide a bill of lading while engaged in the transportation of home building materials.~~

~~(2)(a) Travel on all overweight and overdimensional permits shall not be permitted in Boone, Kenton, Campbell, Fayette, Jefferson County (Louisville) or at the Owensboro, Kentucky 2155 bridge from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday.~~

~~(b) An overweight or overdimensional load originating in Fayette County shall be exempt from traffic rush hour restrictions on Interstate 64 and Interstate 75 in Fayette County and on connecting routes to both interstates up to a distance of three (3) miles from the interstates.~~

~~(3) If proof of an emergency is furnished to the Division of Motor Carriers, moves shall be authorized during the hours restricted pursuant to KRS 189.270(11)(a).~~

~~(4) Travel shall not be made in excess of the posted limitations on a bridge or other highway structure.~~

~~Section 17. Weather Conditions. (1) A move of an overweight or overdimensional load more than twelve (12) feet wide shall not be made on a highway if a wind advisory has been issued by the National Weather Service; or~~

~~(2) If adverse weather conditions or road conditions would cause these moves to be dangerous.~~

~~Section 18. Brakes. (1) The number, type, size, and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour shall not exceed forty (40) feet.~~

~~(2) A manufactured home not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assemblies to meet the braking distance specified in this section. Certification shall be in the form of:~~

~~(a) A manufacturer's statement;~~

~~(b) Documented technical data; or~~

~~(c) An engineering analysis or its equivalent stating that the braking distance has been met.~~

~~(3) The certification shall be carried in the towing unit and shall be presented upon request to law enforcement.~~

~~Section 19. Permits for Sealed, Containerized, Ocean-going Cargo Units. (1) A vehicle moving a sealed, containerized, ocean-going cargo unit shall be eligible for an overweight or oversized single trip permit.~~

~~(2) A vehicle eligible for an overweight or oversized permit shall meet the specifications and limitations established in KRS 189.222 and Section 4 of this administrative regulation.~~

~~(3) An applicant for an overweight or overdimensional permit shall submit the following to the Division of Motor Carriers:~~

~~(a) A completed Kentucky Overweight or Overdimensional Permit Worksheet, TC Form 95-10;~~

~~(b) A payment of sixty (60) dollars pursuant to KRS 189.270(2); and~~

~~(c) A copy of an international bill of lading signed by a custom's official, or an international bill of lading with an equipment interchange and inspection report.~~

~~(4) An overweight or overdimensional permit shall be valid for:~~

~~(a) One (1) move;~~

~~(b) A duration of ten (10) days; and~~

~~(c) Twenty four (24) hour continuous movement during the duration of the overweight or overdimensional permit.~~

~~(5) During transit, an operator shall have in his or her possession a copy of the documents established in subsection (3)(c) of this section.~~

~~Section 20. Denial of Overweight or Overdimensional Permit Application. (1) In accordance with 23 C.F.R. 658.17, the Division of Motor Carriers shall deny an overweight or overdimensional permit application if:~~

~~(a) The route includes any portion of the interstate highway system; and~~

~~(b) The load is divisible.~~

~~(2) The Transportation Cabinet shall deny or restrict an overweight or overdimensional permit for the use of a route if it is detrimental to public safety or convenience. The Transportation Cabinet shall consider the following while making a determination on the application:~~

~~(a) The strength of all bridges and structures on the route;~~

~~(b) Traffic congestion on the route;~~

~~(c) Horizontal and vertical clearance on the route;~~

~~(d) The availability of alternate routes that afford greater safety;~~

~~(e) Urban development in residential and commercial areas on the route;~~

~~(f) The proximity of schools to the route; and~~

~~(g) A condition that would unduly compromise public safety and convenience.~~

~~Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application for Annual Overweight or Overdimensional Permit", TC Form 95-25, August 2010;~~

~~(b) "House Moving Application", TC Form 95-310, November 2007;~~

~~(c) "Kentucky Overweight or Overdimensional Permit Worksheet", TC Form 95-10, February 2011.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4 p.m.~~]

GREG THOMAS, Secretary
JOHN-MARK HACK, Commissioner
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APPROVED BY AGENCY: March 15, 2017
FILED WITH LRC: March 15, 2017 at 11 a.m.
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(As Amended at ARRS, May 11, 2017)

902 KAR 2:060. Immunization schedules for attending child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools.

RELATES TO: KRS 158.035, 211.090, 211.220, 214.032-214.036

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1)(a), (e), 214.034(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the secretary for the Cabinet for[~~of~~] Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.190(3) requires the secretary to promulgate administrative regulations necessary to regulate and control all matters set forth in KRS 211.180. KRS 214.034(1) requires the cabinet to promulgate administrative regulations to establish immunization schedules. This administrative regulation establishes the mandatory immunization schedule for attendance at child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" means a nurse designated to engage in advanced registered nursing as defined in KRS 314.011.

(2) "Advisory Committee on Immunization Practices" or "ACIP" [~~or Advisory Committee on Immunization Practices"~~] means the United States Department of Health and Human Services (HHS) Committee that makes national immunization recommendations to the Secretary of the HHS, the Assistant Secretary for Health, and the Director of the Centers for Disease Control and Prevention or CDC.

(3) "Child" means a person less than eighteen (18) years of age.

(4) "Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations" means an original, written, sworn, and notarized statement of a parent or guardian's objection to medical immunization against disease of a child on religious grounds.

(5)[~~(2) "Advanced Practice Registered Nurse" or "APRN" (APRN) means a nurse designated to engage in advanced registered nursing practice as defined in KRS 314.011.~~

~~(3)~~] "Dose" means a measured quantity of vaccine, specified in the package insert provided by the manufacturer.

(6)[~~(4)~~] "DT" means diphtheria and tetanus toxoids [~~combined~~].

(7)[~~(5)~~] "DTaP" means diphtheria and tetanus toxoids and [~~combined with~~] acellular pertussis vaccine.

(8)[~~(6)~~] "DTP" means diphtheria and tetanus toxoids and[~~combined with~~] pertussis vaccine.

(9)[~~(7)~~] "Healthcare provider" means a person licensed under KRS 311.530 to 311.620, 311.840 to 311.862, and a nurse designated to engage in advanced practice registered nursing as defined in KRS 314.011 and 314.042.

(10) "HepA" means hepatitis A vaccine.

(11)[~~(8)~~] "HepB" means hepatitis B vaccine.

(12)[~~(9)~~] "Hib" means Haemophilus influenzae type b conjugate vaccine.

(13)[~~(10)~~] "IPV" means inactivated **poliovirus[~~polio virus~~]** vaccine.

(14)[~~(11)~~] "**MenACWY[~~MCV~~]**" means **serogroups A, C, W, and Y** meningococcal conjugate vaccine.

(15)[~~(12)~~] "MMR" means measles, mumps, and rubella virus vaccine [~~vaccines combined~~].24)

(16)[~~(13)~~]**[~~"MPSV" means meningococcal polysaccharide vaccine.~~**

[~~(17)~~][~~(14)~~] "OPV" means trivalent oral poliovirus vaccine[~~(Sabin)~~].

(17)[~~(18)~~][~~(15)~~] "PCV" means pneumococcal conjugate vaccine.

(18)[~~(19)~~][~~(16)~~] "Pharmacist" means a person licensed under KRS 315.002 to 315.050.

(19)[~~(20)~~][~~(17)~~] "Physician[~~Physicians~~] assistant" means a person licensed under KRS 311.840 to 311.862.

(20)[~~(21)~~][~~(18)~~] "Td" means [~~combined~~] tetanus and diphtheria toxoids for [~~(~~]adult use [~~type)~~].

(21)[~~(22)~~][~~(19)~~] "Tdap" means tetanus toxoid, [~~and~~] reduced diphtheria toxoid, and [~~combined with~~] acellular pertussis vaccine [~~vaccines~~].

(22)[~~(23)~~][~~(20)~~] "Varicella" means varicella [~~or chickenpox~~] vaccine.

(23)[~~(24)~~] "Varicella immunity (non-vaccine)" means:

(a) Diagnosis of varicella disease by a healthcare provider;

(b) Verification of a history of varicella disease by a healthcare provider;

(c) Diagnosis of herpes zoster by a healthcare provider; or

(d) Verification of a history of herpes zoster by a healthcare provider.

Section 2. Immunization Schedules. **Except as provided in Section 3 of this administrative regulation:**

(1) A current Commonwealth of Kentucky Certificate of Immunization Status [~~child three (3) months of age or older, without a current immunization certificate,~~] shall be required to[~~not~~] attend a:

(a)[~~A~~] Child day care center, beginning at age three (3) months;

(b) Certified family child care home, beginning at **age** three (3) months;

(c)[~~Other~~] Licensed facility that[~~which~~] cares for children, beginning at **age** three (3) months;

(d) Preschool program; or

(e) Public or private primary or secondary school.

(2) A current Commonwealth of Kentucky Certificate of Immunization Status shall be required for a child that is otherwise homeschooled **in order** [~~before they are permitted~~] to attend one (1) or more in-school classes or to participate in sports or any school-sponsored extra-curricular activities.

(3)**[~~Except as provided in Section 3 of this administrative regulation,~~]** A Commonwealth of Kentucky Certificate of Immunization Status[~~the immunization certificate~~] of a child shall be

considered current for age-appropriate vaccines if the child is:

(a) At least aged three (3) months and less than five (5) months [~~of age~~] and has received at least:

1. One (1) dose of DTaP or DTP;

2. One (1) dose of IPV or OPV;

3. One (1) dose of Hib;

4. One (1) dose of HepB; and

5. One (1) dose of PCV;

(b) At least aged five (5) months and less than seven (7) months[~~of age~~] and has received at least:

1. Two (2) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Two (2) doses of IPV or OPV or combinations of the two (2) vaccines;

3. Two (2) doses of Hib;

4. Two (2) doses of HepB; and

5. Two (2) doses of PCV;

(c) At least aged seven (7) months and less than twelve (12) months[~~of age~~] and has received at least:

1. Three (3) doses of DTaP or DTP or combinations or the two (2) vaccines;

2. Two (2) doses of IPV or OPV or combinations of the two (2) vaccines;

3. Two (2) doses of Hib;

4. Two (2) doses of HepB; and

5.a. Three (3) doses of PCV; or

b. Two (2) doses [~~does~~] of PCV if[~~a child received~~] the first dose was received when aged[~~of PCV between~~] seven (7) months through[~~to~~] eleven (11) months[~~of age~~];**[~~and~~]**

(d) At least aged twelve (12) months and less than sixteen (16) months[~~of age~~] and has received at least:

1. Three (3) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Two (2) doses of IPV or OPV or combinations of the two (2) vaccines;

3.a. Three (3) doses of Hib;[~~or~~]

b. Two (2) doses of Hib if the first dose was received when aged seven (7) months through eleven (11) months;

c. One (1) dose of Hib if the first dose was received when aged[~~between~~] twelve (12) months through fourteen (14)[~~and fifteen (15)~~] months[~~of age~~]; or

d. One (1) dose of Hib if the first dose was received when aged fifteen (15) months;

4. One (1) dose of HepA;

5.[~~4.~~] Two (2) doses of HepB; and

6.[~~5.~~]a. Four (4) doses of PCV with one (1) dose when aged[~~on or after~~] twelve (12) months through fifteen (15) months[~~of age~~];

b. Three (3) doses of PCV if the first dose was received when aged[~~a child received the first dose of PCV between~~] seven (7) months through[~~to~~] eleven (11) months[~~of age~~], with at least one (1) dose received when aged[~~on or after~~] twelve (12) months through fifteen (15) months[~~of age~~]; or

c. Two (2) doses of PCV if[~~a child received~~] the first dose was received when aged[~~of PCV between~~] twelve (12) months through[~~to~~] fifteen (15) months[~~of age~~];

(e) At least aged sixteen (16) months and less than nineteen (19) months[~~of age~~] and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Two (2) doses of IPV or OPV or combinations of the two (2) vaccines;

3.a. Four (4) doses of Hib;

b. Three (3) doses of Hib if the first dose was received before aged twelve (12) months, and the second dose was received when younger than aged fifteen (15) months;

c. Two (2) doses of Hib if the first dose was received when aged twelve (12) months through fourteen (14) months; or

d. One (1) dose of Hib if the first dose was received when aged fifteen (15) months through eighteen (18) months;

4. One (1) dose of HepA;

5.[~~4.~~] Two (2) doses of HepB;

6.[~~5.~~]a. Four (4) doses of PCV with one (1) dose when aged[~~on or after~~] twelve (12) months through eighteen (18) months[~~of age~~];

b. Three (3) doses of PCV if[~~a child received~~] the first dose was received when aged[~~of PCV between~~] seven (7) months through[~~to~~] eleven (11) months[~~of age~~], with at least one dose when aged[~~on or after~~] twelve (12) months through eighteen (18) months[~~of age~~]; or

c. Two (2) doses of PCV if[~~a child received~~] the first dose was received when aged[~~of PCV between~~] twelve (12) months through eighteen (18)[~~to fifteen (15)~~] months[~~of age~~];

7.[~~6.~~] One (1) dose of MMR; and

8.a.[~~7.~~] One (1) dose of Varicella; or

b.[~~, unless~~] A **diagnosis or verification from a healthcare provider that[~~healthcare provider diagnosed or verified that~~]** the child has varicella immunity (non-vaccine)[~~states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider~~];

(f) At least aged nineteen (19) months and less than forty-eight (48) months[~~of age~~] and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines:

3.a. Four (4) doses of Hib;

b. Three (3) doses of Hib if the first dose was received before aged twelve (12) months, and the second dose was received when younger than aged fifteen (15) months;

c. Two (2) doses of Hib if the first dose was received when aged twelve (12) months through fourteen (14) months; or

d. One (1) dose of Hib if the first dose was received when aged fifteen (15) months through forty-seven (47) months;

4. Two (2) doses of HepA;

5.[~~4.~~] Three (3) doses of HepB;[~~and~~]

6.[~~5.~~]a. Four (4) doses of PCV with one (1) dose when aged[~~on or after~~] twelve (12) months through fifteen (15) months[~~of age~~];

b. Three (3) doses of PCV if[~~a child received~~] the first dose was received when aged[~~of PCV between~~] seven (7) months through[~~to~~] eleven (11) months[~~of age~~], with at least one (1) dose when aged[~~on or after~~] twelve (12) months through forty-seven (47) months[~~of age~~];

c. Two (2) doses of PCV if[~~a child received~~] the first dose was received when aged[~~of PCV between~~] twelve (12) months through twenty-three (23)[~~to fifteen (15)~~] months[~~of age~~]; or

d. One (1) dose of PCV if[~~a child received~~] the first dose was received when aged[~~of PCV at~~] twenty-four (24) months through forty-seven (47) months[~~of age or older~~];

7.[~~6.~~] One (1) dose of MMR; and

8.a.[~~7.~~] One (1) dose of Varicella; or

b.[~~, unless~~] A **diagnosis or verification from a healthcare provider that[~~healthcare provider diagnosed or verified that~~]** the child has varicella immunity (non-vaccine)[~~states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider~~];

(g) At least aged forty-eight (48) months and less than five (5) years[~~of age~~] and has received at least:

1. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines;

2. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines;

3.a. Four (4) doses of Hib;

b. Three (3) doses of Hib if the first dose was received before aged twelve (12) months, and the second dose was received when younger than aged fifteen (15) months;

c. Two (2) doses of Hib if the first dose was received when aged twelve (12) months through fourteen (14) months; or

d. One (1) dose of Hib if the first dose was received when aged fifteen (15) months through fifty-nine (59) months;

4. Two (2) doses of HepA;

5.[~~4.~~] Three (3) doses of HepB;

6.[~~5.~~]a. Four (4) doses of PCV with one (1) dose when aged[~~on or after~~] twelve (12) months through fifteen (15) months[~~of age~~];

b. Three (3) doses of PCV if[~~a child received~~] the first dose was received when aged[~~of PCV between~~] seven (7) months through[~~to~~] eleven (11) months[~~of age~~], with at least one (1) dose when aged[~~on or after~~] twelve (12) months through fifty-nine (59) months[~~of age~~];

c. Two (2) doses of PCV if[~~a child received~~] the first dose was received when aged[~~of PCV between~~] twelve (12) months through[~~to~~] twenty-three (23) months[~~of age~~]; or

d. One (1) dose of PCV if[~~a child received~~] the first dose was received when aged[~~of PCV at age~~] twenty-four (24) months through fifty-nine (59) months[~~or older~~];

7.[~~6.~~] Two (2) doses of MMR; and

8.a.[~~7.~~] Two (2) doses of Varicella; or

b.[~~, unless~~] A **diagnosis or verification from a healthcare provider that[~~healthcare provider diagnosed or verified that~~]** the child has varicella immunity (non-vaccine)[~~states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider~~];

(h) At least aged five (5) years and less than seven (7) years[~~of age~~] and has received at least:

1.a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines; or

b. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines if the fourth dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

2.a. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines with the fourth dose received **when aged four (4) years [~~on or after the fourth birthday~~]** through**[~~age~~]** six (6) years and at least six (6) months after the previous dose;

b. Four (4) or more doses of IPV or OPV or combinations of the two (2) vaccines received before age four (4) years and an additional dose received when aged four (4) years through six (6) years and at least six (6) months after the previous dose; or

c. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines if the third dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

3. Two (2) doses of HepA;

4.[~~3.~~] Three (3) doses of HepB;

5.[~~4.~~] Two (2) doses of MMR; and

6.[~~5.~~]a. Two (2) doses of Varicella; or

b.[~~, unless~~] A **diagnosis or verification from a healthcare provider that[~~healthcare provider diagnosed or verified that~~]** the child has varicella immunity (non-vaccine)[~~states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider~~];

(i) At least aged seven (7) years[~~of age~~] and less than eleven (11) years[~~of age~~] and has received at least:

1.a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines;[~~or~~]

b. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines if the fourth dose was received when aged four (4) years or older and at least six (6) months after the previous dose; or

c. A dose of Td that was preceded by two (2) doses of DTaP, DTP,[~~DTaP,~~] DT, or Td or combinations of the four (4) vaccines;

2.a. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines with the fourth dose received when aged four (4) years or older and at least six (6) months after the previous dose;**[~~or~~]**

b. **Four (4) or more doses of IPV or OPV or combinations of the two (2) vaccines received before age four (4) years and an additional dose received when aged four (4) years or older and at least six (6) months after the previous dose;**

c. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines if the fourth dose was received before August 7, 2009, with all doses separated by at least four (4) weeks; or

d. Three (3) doses of IPV or OPV or combinations of the two (2) vaccines if the third dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

3. Two (2) doses of HepA;

4.[~~3.~~] Three (3) doses of HepB;

5.[~~4.~~] Two (2) doses of MMR; and

6.a.[~~5.~~] Two (2) doses of Varicella; or

b.[~~, unless~~] A **diagnosis or verification from a healthcare provider that[~~healthcare provider diagnosed or verified that~~]** the child has varicella immunity (non-vaccine)[~~states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider~~];

(j) At least aged eleven (11) years and less than thirteen (13) years **and has**[~~(3) For sixth grade entry, age eleven (11) or twelve (12) years or older~~]**[~~, a child shall have~~]** received at least:

1.[~~(a)~~] One (1) dose of Tdap;

2.a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines;

b. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines if the fourth dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

c. A dose of Td that was preceded by two (2) doses of DTaP, DTP, DT, or Td or combinations of the four (4) vaccines; or

d. Two (2) doses of Td after the dose of Tdap;

3.a.[~~(b)~~] Four (4) doses of IPV or OPV or combinations of the two (2) vaccines with the fourth dose received when aged four (4) years and older and at least six (6) months after the previous dose;

b. **Four (4) or more doses of IPV or OPV or combinations of the two (2) vaccines received before age four (4) years and an additional dose received when aged four (4) years or older and at least six (6) months after the previous dose;**

c. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines if the fourth dose was received before August 7, 2009, with all doses separated by at least four (4) weeks; or

d.[~~c.~~] Three (3) doses of IPV or OPV or combinations of the two (2) vaccines if the third dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

4. Two (2) doses of HepA;

5.a.[~~(c)1.~~] Three (3) doses of HepB; or

b.[~~2.~~] Two (2) doses of adult HepB approved by the FDA to be used for an alternative schedule for adolescents aged eleven (11) years through fifteen (15) years[~~of age~~];

6.[~~(d)~~] Two (2) doses of MMR;

7.a.[~~(e)~~] Two (2) doses of Varicella; or

b.[~~, unless~~] A **diagnosis or verification from a healthcare provider that[~~healthcare provider diagnosed or verified that~~]** the child has varicella immunity (non-vaccine)[~~states that the child has had a diagnosis of typical varicella disease or verification of a history of varicella disease by a healthcare provider or a diagnosis of herpes zoster disease or verification of a history of herpes zoster disease by a healthcare provider~~]; and

8.[~~(f)~~] One (1) dose of **MenACWY[~~MCV or MPSV~~]**;

(k) At least aged thirteen (13) years and less than sixteen (16) years **and has[~~, a child shall have~~]** received at least:

1. One (1) dose of Tdap;

2.a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines;

b. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines if the fourth dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

c. A dose of Td that was preceded by two (2) doses of DTaP, DTP, DT, or Td or combinations of the four (4) vaccines; or

d. Two (2) doses of Td after the dose of Tdap;

3.a. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines with the fourth dose received when aged four (4) years or older and at least six (6) months after the previous dose;

b. **Four (4) or more doses of IPV or OPV or combinations of the two (2) vaccines received before age four (4) years and an additional dose received when aged four (4) years or older and at least six (6) months after the previous dose;**

c. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines if the fourth dose was received before August 7, 2009, with all doses separated by at least four (4) weeks; or

d.[~~c.~~] Three (3) doses of IPV or OPV or combinations of the two (2) vaccines if the third dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

4. Two (2) doses of HepA;

5.a. Three (3) doses of HepB; or

b. Two (2) doses of adult HepB approved by the FDA to be used for an alternative schedule for adolescents aged eleven (11) through fifteen (15) years;

6. Two (2) doses of MMR;

7.a. Two (2) doses of Varicella; or

b. A **diagnosis or verification from a healthcare provider that**[~~healthcare provider diagnosed or verified that~~] the child has varicella immunity (non-vaccine); and

8. One (1) dose of **MenACWY**[~~MCV or MPSV~~];

(I) At least aged sixteen (16) years or older **and has**[~~, a child shall have~~] received at least:

1. One (1) dose of Tdap;

2.a. Five (5) doses of DTaP or DTP or combinations of the two (2) vaccines;

b. Four (4) doses of DTaP or DTP or combinations of the two (2) vaccines if the fourth dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

c. A dose of Td that was preceded by two (2) doses of DTaP, DTP, DT, or Td or combinations of the four (4) vaccines; or

d. Two (2) doses of Td after the dose of Tdap;

3.a. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines with the fourth dose received when aged four (4) years and older and at least six (6) months after the previous dose;

b. **Four (4) or more doses of IPV or OPV or combinations of the two (2) vaccines received before age four (4) years and an additional dose received when aged four (4) years or older and at least six (6) months after the previous dose;**

c. Four (4) doses of IPV or OPV or combinations of the two (2) vaccines if the fourth dose was received before August 7, 2009, with all doses separated by at least four (4) weeks; or

d.[~~c.~~] Three (3) doses of IPV or OPV or combinations of the two (2) vaccines if the third dose was received when aged four (4) years or older and at least six (6) months after the previous dose;

4. Two (2) doses of HepA;

5.a. Three (3) doses of HepB; or

b. Two (2) doses of adult HepB approved by the FDA to be used for an alternative schedule for adolescents aged eleven (11) years through fifteen (15) years;

6. Two (2) doses of MMR;

7.a. Two (2) doses of Varicella; or

b. A **diagnosis or verification from a healthcare provider that**[~~healthcare provider diagnosed or verified that~~] the child has varicella immunity (non-vaccine); and

8.**a.** Two (2) doses of **MenACWY; or**

b. One (1) dose of MenACWY if that dose was received at age sixteen (16) years or older[~~MCV or MPSV~~].

(4) Immunizations shall be received in accordance with[~~administered at least at~~] the minimum ages and intervals between doses recommended by the ACIP. Partial, split, half, or fractionated doses or quantities shall not be administered and shall not be counted as a valid dose.

Section 3. Exceptions and Exemptions to the Required Immunization Schedules in Section 2. (1) If the first two (2) doses of Hib vaccine[~~required in Section 2(2) of this administrative regulation~~] were meningococcal group B outer membrane protein (PRP-OMP) vaccines, the third dose may be omitted.

(2)[~~If one (1) dose of Hib vaccine has been administered to a child who is at least fifteen (15) and less than sixty (60) months of age, the child shall:~~

~~(a) Not be required to receive further doses of Hib; and~~

~~(b) Be considered to have received the Hib doses required by this administrative regulation.~~

~~(3)~~] A child with a medical contraindication to pertussis vaccine may be given DT in lieu of DTaP or Td in lieu of Tdap[~~required in Section 2 of this administrative regulation~~].

(3)(a) If both IPV **and** [~~or~~] OPV were administered as part of a series, a total of four (4) doses shall be administered[~~, regardless of the child's current age~~].

(b) If only OPV was administered, and all doses were received prior to four (4) years of age, one (1) dose of IPV shall be administered when aged four (4) years or older and at least four (4) weeks after the last OPV dose.

(4) **A child aged seven (7) years or older may receive one (1) dose of Tdap in the catch-up series if the child is not fully immunized with DTaP vaccine.**

(5) A Commonwealth of Kentucky Certificate of Immunization Status marked to designate a medical exemption shall be issued for a child with a temporary or permanent medical contraindication to receiving a vaccine[~~If the fourth dose of DT, DTP, or DTaP was administered on or after the fourth birthday, the fifth dose shall not be required~~].

(6)[~~(5)~~][~~If the third dose of IPV or OPV was administered on or after the fourth birthday and at least six (6) months following the previous dose, the fourth dose shall not be required.~~

~~(6) If one (1) dose of PCV has been administered to a child who is at least age twenty-four (24) months and less than sixty (60) months of age, the child shall:~~

~~(a) Not be required to receive further doses of PCV; and~~

~~(b) Be considered to have received the PCV doses required by this administrative regulation.~~

~~(7) A child with a medical contraindication to receiving a vaccine may obtain, from the child's healthcare provider, a "Certificate of Medical Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.~~

~~(8)~~](a) **If an immunization is administered but another is objected to on religious grounds,** a healthcare provider, pharmacist, local health department, or other licensed healthcare facility administering immunizations [~~shall,~~][~~, upon receipt of a~~][~~written sworn~~] [~~statement of objection to immunizations from a~~][~~the~~][~~parent or guardian of a child, shall~~]:

1. **May** request that a parent or guardian complete the Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations form **to be submitted upon enrollment in a child care facility or school**[~~as to the objection to medical immunization for some or all required vaccines~~];

2. **Shall** issue a Commonwealth of Kentucky Certificate of Immunization Status marked to designate "religious objection" to the[~~issue a "Certificate of Religious Exemption" from the requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036.~~

~~(b) A "Certificate of Religious Exemption" shall only be valid for all~~] requirements of Section 2 of this administrative regulation, in compliance with KRS 214.036; and

3. **Shall** list **administered**[~~any previously received~~] immunizations on the Commonwealth of Kentucky Certificate of Immunization Status.

(b) **An EPID 230A form,**[~~A~~] Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations, shall:

1. Be valid for **the**[~~all~~] requirements of Section 2 of this administrative regulation;

2. List the immunizations that a parent or guardian objects to being administered to a child based on religious grounds;

3. Be an original document written, sworn, and signed before a notary public; **and**

4. Be submitted at the time of enrollment in a child care facility or school[~~; and~~

~~**5. Not be required to be separately submitted to a child care facility or school if a parent or guardian submits a Commonwealth of Kentucky Certificate of Immunization Status marked to designate "religious objection" to a child care facility or school!**~~].

(7)[~~(6)~~] A Commonwealth of Kentucky Certificate of Immunization Status marked to designate "Provisional Status" shall:

(a) Be issued for a child who is behind in required immunizations listed in Section 2 of this administrative regulation;

(b) Be issued for a child who has received at least one (1) dose

of each of the required vaccines but has not completed all the[~~(9)(a) A provisional immunization certificate shall be issued for an otherwise qualified child, who is behind in~~] required immunizations;

(c)[~~, and:~~

~~1. Who has not yet reached the required minimum age; or~~

~~2. For whom the time interval between doses has not elapsed.~~

~~(b) A provisional immunization certificate shall:~~

~~1.~~] Permit a child to attend a child day care center, certified family child care home,[~~other~~] licensed facility which cares for children, preschool program, or primary or secondary school until the child reaches the appropriate age[~~,~~] or upon passage of the time interval between required doses;

(d)[~~2.~~] Expire**:**

1. Fourteen (14) days from the date the next dose is required to be given **for school use; or**

2. Thirty (30) days from the date the next dose is required to be given for use in a day care center, certified family child-care home, or other licensed facility which cares for children; and

(e)[~~3.~~] Not be valid for more than one (1) year.

Section 4. Commonwealth of Kentucky Certificate of Immunization Status [~~Immunization Certificates~~]. (1) A Commonwealth of Kentucky Certificate of Immunization Status shall[~~An immunization certificate may~~] be issued by:

(a) A physician licensed in any state;

(b) An advanced practice registered nurse licensed in any state;

(c) A physician[~~physician's~~] assistant licensed in Kentucky;

(d) A pharmacist licensed in Kentucky;

(e) A local health department in Kentucky; [~~or~~]

(f) A[~~Other~~] licensed healthcare facility administering immunizations in Kentucky; or

(g) An authorized user of the Kentucky Immunization Registry.

(2) Signatures on the Commonwealth of Kentucky Certificate of Immunization Status shall[~~An immunization certificate may be signed by~~]:

(a) Contain the printed name;

(b) Be in ink or an electronic signature;

(c) Be dated; and

(d) Be that of:

1. A physician;

2.[~~(b)~~] An advanced practice registered nurse;

3.[~~(c)~~] A physician[~~physician's~~] assistant;

4.[~~(d)~~] A pharmacist;

5. The[~~(e)~~] local health department administrator; or

6.[~~(f)~~] A registered nurse or licensed practical nurse designee of a physician, local health department administrator, or other licensed healthcare facility.

(3) A Commonwealth of Kentucky Certificate of Immunization Status printed from the Kentucky Immunization Registry shall not require a signature.

(4)**[(a)]** A[~~local health department,~~] healthcare provider, pharmacist, local health department, or other licensed healthcare facility administering immunizations may obtain a blank hard copy of the following[~~immunization certificates~~] from the Cabinet for Health and Family Services:

(a)[1.][~~(a)~~] Commonwealth of Kentucky[~~Immunization~~] Certificate of Immunization Status; and

(b)[2.][~~(b)~~] Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations.**[~~(b) A blank hard copy of the Commonwealth of Kentucky Certificate of Immunization Status shall not be made available on or after July 1, 2018.~~]**

(5) The Commonwealth of Kentucky Certificate of Immunization Status[~~Provisional Immunization Certificate;~~

~~(c) Commonwealth of Kentucky Certificate of Medical Exemption; or~~

~~(d) Commonwealth of Kentucky Certificate of Religious Exemption.~~

~~(4) If an immunization certificate that was not provided by the Cabinet for Health and Family Services is issued to a child, it~~] shall:

(a) Be on a hard copy provided by the Cabinet for Health and Family Services; or

(b) Be a copy[~~an~~] electronically[-] produced in the size, orientation, and format printed by:

1. A Kentucky medical provider's electronic medical record system;

2. A local health department's electronic medical record system;

3. A Kentucky licensed healthcare facility administering immunizations electronic medical record system; or

4. The Kentucky Immunization Registry.

(6) An electronically produced copy of a Commonwealth of Kentucky Certificate of Immunization Status shall[~~copy; (b) Be in the same size and format as a certificate provided by the Cabinet for Health and Family Services; and~~

~~(c)~~] contain at least the following information:

(a)[~~1.~~] The name of the child;

(b)[~~2.~~] The birthdate of the child;

(c)[~~3.~~] The name of the parent or guardian of the child;

(d)[~~4.~~] The address of the child, including street, city, state, and ZIP Code;

(e)[~~5.~~] The type(s) of vaccine(s) administered to the child;

(f)[~~6.~~] The date that each dose of each vaccine was administered;

(g)[~~7.~~] Certification that the child is current for immunizations until a specified date, including a statement that the certificate shall not be valid after the specified date;

(h) The printed name, ink or electronic signature, and date as described in subsection (2) of this section; and

(i) The name, address, and telephone number of the healthcare provider practice, pharmacy, local health department, or licensed health care facility issuing the certificate.

(7) A signed certificate or a certificate printed from the **Kentucky** Immunization Registry may be faxed from a medical office to a:

(a) Medical office;

(b) Healthcare facility;

(c) Child care facility;**[~~or~~]**

(d) School**; or**

(e) State or local health department.

(8) All immunizations required by Section 2 of this administrative regulation and received by a child shall be included on the Commonwealth of Kentucky Certificate of Immunization Status.

(9) All ACIP recommended immunizations a child has received in addition to the immunizations required by Section 2 of this administrative regulation may be included on the Commonwealth of Kentucky Certificate of Immunization Status.

(10)[~~8. The signature and the date of the signature of:~~

~~a. A physician;~~

~~b. An advanced practice registered nurse;~~

~~c. A physician's assistant;~~

~~d. A pharmacist;~~

~~e. Local health department administrator; or~~

~~f. A registered nurse designee of a physician, local health department administrator, or other licensed healthcare facility; and~~

~~9. The name of the healthcare provider practice, pharmacy, local health department, or licensed health care facility.~~

~~10. Immunizations included on the certificate shall only be those immunizations required for attending child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private elementary or secondary schools as outlined in Section 2 of this administrative regulation. The certificate issued may have a separately titled additional page for all immunizations administered but not otherwise required for attending child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, public and private elementary, and secondary schools.~~

~~(5)~~] A completed Commonwealth of Kentucky Certificate of Immunization Status[~~immunization certificate~~] shall[~~:~~

~~(a)~~] be:

(a) On file for a child:

1.[~~Enrolled in a public or private primary or secondary school or preschool program; or~~

~~2.~~] Cared for in a:

a.[~~A~~] Child day care center;

b.[~~A~~] Certified family child care home; or

c.[~~Other~~] Licensed facility that cares for children; or

2. Enrolled in a:

a. Preschool program;

b. Public or private primary or secondary school; or

c. Preschool program or a public or private primary or secondary school for all in-school classes or to participate in sports or any school sponsored extra-curricular activities if the child is otherwise homeschooled; and

(b)[~~be~~] Available for inspection and review by a representative of the Cabinet for Health and Family Services or a representative of a local health department.

Section 5. Out-of-State Certificate of Immunization Status (1) An Out-of-State Certificate of Immunization Status shall be accepted when completed by an out-of-state physician or advanced practice registered nurse.

(2) The out-of-state certificate shall contain at least the following information:

(a) The name of the child;

(b) The birthdate of the child;

(c) The name of the parent or guardian of the child;

(d) The address of the child, including street, city, state, and **ZIP** Code;

(e) The type(s) of vaccine(s) administered to the child;

(f) The date that each dose of each vaccine was administered;

(g) All age appropriate immunizations required in Kentucky as identified in Section 2(3) of this administrative regulation;

(h) Certification that the child is current for immunizations until a specified date, including a statement that the certificate shall not be valid after the specified date;

(i) A printed name, ink or electronic signature, and date as described in Section 4(2) of this administrative regulation; and

(j) The name, address, and telephone number of the healthcare provider practice, local health department, or licensed health care facility issuing the certificate.

(3) The Out-of-State Certificate of Immunization Status may be in the size, orientation, and format required by another state.

(4) Immunizations documented on an out-of-state certificate shall be transferred to a hard copy of a Commonwealth of Kentucky Certificate of Immunization Status or shall be documented on an electronically produced Commonwealth of Kentucky Certificate of Immunization Status when one (1) or more immunizations are administered in Kentucky.

Section 6. Review of Immunization Status. (1) A current Commonwealth of Kentucky Certificate of Immunization Status or an Out-of-State Certificate of Immunization Status for a child shall be provided by a parent or guardian:

(a) Upon enrollment in a:

1. Child day care center;

2. Certified family child care home;

3. Licensed facility that cares for a child; or

4. School at:

a. Kindergarten entry;

b. Seventh grade entry;

c. Eleventh grade entry;

d. Twelfth grade entry for the first twelve (12) months this administrative regulation is effective; and

e. New enrollment at any grade resulting from a transfer to:

(i) Kentucky from another state;

(ii) Kentucky from a country outside the United States; or

(iii) A school from another school within Kentucky;

(b) Upon legal name change; or

(c) At a school required examination pursuant to 702 KAR 1:160.

(2) Upon review of a Commonwealth of Kentucky Certificate of Immunization Status or an Out-of-State Certificate of Immunization Status:

(a) A child whose certificate has exceeded the date for the certificate to be valid shall be recommended to visit the child's medical provider or local health department to receive immunizations required by this administrative regulation; and

(b) An updated and current certificate shall be provided to the**:**

1. Day care center, certified family child care home, **or** other licensed facility that cares for children **by a parent or guardian within thirty (30) days from when the certificate was found be invalid; [~~,~~]** or

2. School by a parent or guardian within fourteen (14) days **from when the[~~that~~]** certificate was found to be invalid.

(3) A Commonwealth of Kentucky Certificate of Immunization Status or an Out-of-State Certificate of Immunization Status for a child or group of children shall be reviewed upon request of a local health department as part of controlling an outbreak of a vaccine preventable disease.

Section 7. Effective Date. **For all child day cares, certified family child care homes, other licensed facilities which care for children, preschool programs, and public or private primary and secondary schools:**

(1) This administrative regulation**, except for Section 2,** shall become effective for the school year beginning on or after July 1, 2017[~~2011~~]**; and[~~for all child day cares, certified family child care homes, other licensed facilities which care for children, preschool programs, public and private primary, and secondary schools.~~]**

(2) **Section 2 of this administrative regulation shall become effective for the school year beginning on or after July 1, 2018[~~Effective July 1, 2018, a Commonwealth of Kentucky Certificate of Immunization Status shall be official only when printed from the Kentucky Immunization Registry~~].**

Section 8[~~6~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form "EPID 230, Commonwealth of Kentucky Certificate of Immunization Status", ***5/2017[~~1/2017~~]***["~~Commonwealth of Kentucky Immunization Certificate (EPID 230)", revised 08/2010~~]; and

(b) Form "EPID 230A, Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations", 1/2017["~~Commonwealth of Kentucky Provisional Immunization Certificate (EPID 230A)", revised 08/2010;~~

~~(c) "Commonwealth of Kentucky Certificate of Medical Exemption (EPID 230B)", revised 08/2010"; and~~

~~(d) "Commonwealth of Kentucky Certificate of Religious Exemption (EPID 230C)", revised 08/2010~~].

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

HIRAM C. POLK, JR., MD, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: April 12, 2017

FILED WITH LRC: April 14, 2017 at 10 a.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Prevention and Quality Improvement
(As Amended at ARRS, May 11, 2017)

902 KAR 21:030. Pediatric Cancer Research and Treatment Grant Program.

RELATES TO: KRS 141.445, 194A.095, 211.595-597

STATUTORY AUTHORITY: KRS 194A.050(1), 211.597(2) and (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.597(3) requires the Pediatric Cancer Research Trust Fund Board to promulgate administrative regulations necessary to carry out the provisions of KRS 211.596***[and KRS 211.597]***. KRS 211.597(2) requires the Pediatric Cancer Research Trust Fund Board to promulgate administrative regulations to establish a competitive***, open*** grant program to provide funding to specific entities offering research funding and treatment for pediatric cancer for Kentucky children impacted by the disease. This administrative regulation establishes the Pediatric Cancer Research and Treatment Grant Program.

Section 1. Definitions. (1) "Applicant" means a not-for-profit entity, academic medical center, or government agency in Kentucky offering research funding and treatment to Kentucky children impacted by pediatric cancer and applying for a grant pursuant to this administrative regulation.

(2) "Board" means the Pediatric Cancer Research Trust Fund Board created by KRS 211.596.

(3) "Funding" means a financial grant from the Pediatric Cancer Research Trust Fund created by KRS 211.595.

Section 2. Application Process. (1) An applicant may apply or reapply each year for grant funding.

(2) To apply for grant funding, an applicant shall mail to the board:

(a) A completed PCRTF 101, Pediatric Cancer Research Trust Fund, Application for Research and Treatment Grant Program:

1. Postmarked on or before the date specified in the applicable grant notice; and

2. Addressed to the Department for Public Health, Division of Prevention and Quality Improvement, Chronic Disease Prevention Branch, 275 East Main Street, Frankfort, Kentucky 40621;

(b) A project description that includes the following information:

1. The need for the funding;

2. The goals and objectives, including how many people will be affected and in what geographic area;

3. The outcomes directly related to the impact of the research;

4. An implementation plan describing how the objectives will be met;

5. A timeline for implementation of the proposed research;

6. Plans designed to measure the success of the research; and

7. Intent to provide a semi-annual progress report and a year-end progress report documenting progress toward meeting the grant objectives; and

(c) The following financial information:

1. A detailed budget of requested funds; and

2. A description of any other sources of funds for the research including in-kind participation.

(3) A faxed or incomplete application shall not be considered for funding.

Section 3. Duties of the Board. (1) The board shall:

(a) Hold meetings and conduct board business pursuant to KRS 211.596;

(b) Advertise a grant funding opportunity on the Cabinet for Health and Family Services Web site including:

1. A postmark date for submission of an application;

2. The mailing address for the application as specified in Section 2(2)(a)2**.** of this administrative regulation; and

3. An anticipated grant award date;

(c) Review and score applications based on the following criteria:

1. Relevancy to the mission of the Pediatric Cancer Research Trust Fund;

2. Offer of research funding and treatment specifically for pediatric cancer to Kentucky children impacted by the disease;

3. Proposal to address the prioritized list of programs and research projects the board has identified; and

4. Enhancement, but not duplication, of a program or research project currently provided in the same geographic area; and

(d) To the extent funds are available:

1. Award a Pediatric Cancer Research and Treatment Grant to a selected applicant; and

2. Notify the applicant of the award decision:

a. Within ninety (90) days after application deadline;

b. In writing; and

c. By certified mail.

(2) The board's decision for award selection shall be final.

(3) A selected applicant shall sign and return a grant agreement:

(a) To the board; and

(b) Postmarked within two (2) weeks of receipt.

(4) If a research grant is awarded, the grant shall be contingent upon a grant recipient's appropriate Institutional Review Board approval if applicable.

Section 4. Grant Objectives Reporting. (1) A grant recipient shall provide semi-annual and year-end progress reports to the board as specified in Section 2(2)(b)7 ***of this administrative regulation***.

(2) A grant recipient that is not making progress toward meeting grant objectives, as determined by the board, shall be notified in writing that objectives are not being met. The grant recipient shall:

(a) Submit to the board within thirty (30) days of receiving the notice a corrective action plan addressing the objectives that are not being met; and

(b) Reimburse the board for grant funds received to date if the corrective action plan is not implemented.

Section 5. Incorporation by Reference. (1)***[~~The following material is incorporated by reference:~~]*** Form "PCRTF 101, Pediatric Cancer Research Trust Fund, Application for Research and Treatment Grant Program", 3/2017***, is incorporated by reference***.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 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, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: March 14, 2017

FILED WITH LRC: March 14, 2017 at 3 p.m.

CONTACT PERSON: Tricia Orme, Administrative Specialist, 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, May 11, 2017)

907 KAR 1:065. Payments for price-based nursing facility services.

RELATES TO: KRS 142.361, 142.363, **216.380,** 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, **482.58,** 483.10**[~~(i)~~]**, 42 U.S.C. **1395tt,** 1396, **1396**a, **1396**b, **1396**c, **1396**d, **1396**g, **1396l, 1396**n, **1396**o, **1396**p, **1396**r, **1396**r-2, **1396**r-5

STATUTORY AUTHORITY: KRS 142.361(5), 142.363(3), 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by a price-based nursing facility.

Section 1. Definitions. (1) "Ancillary service" means a direct service for which a charge is customarily billed separately from the per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1:023; **or[~~and~~]**

(b) If ordered by a physician:

1. Laboratory procedures; **or[~~and~~]**

2. X-rays.

(2) "Appraisal" means an evaluation of a price-based nursing facility building, excluding equipment and land, conducted by the department in accordance with Section 4 of this administrative regulation for the purpose of calculating the depreciated replacement cost of a price-based nursing facility.

(3) "Appraisal base year" means a year in which the department ***conducts[~~shall conduct~~]*** an appraisal of each price-based NF.

(4)**[~~"Appraisal period" means a five (5) year period beginning with an appraisal base year. For example, the appraisal period corresponding to appraisal base year 2014 is January 1, 2014, through December 31, 2018, and thereafter~~]** [~~2000 is January 1, 2000 through December 31, 2004~~]**[~~.~~**

(5)] "Auxiliary building" means a roofed and walled structure:

(a) Serviced by electricity, heating**,** and cooling;

(b) Independent of an NF;

(c) Used for administrative or business purposes related to an NF; and

(d) Constructed on the same tract of ground as an NF.

(5)[(6)] "Capital rate component" means a calculated per diem amount for an NF based on:

(a) The NF's appraised depreciated replacement cost;

(b) A value for land;

(c) A value for equipment;

(d) A rate of return;

(e) A risk factor;

(f) The number of calendar days in the NF's cost report year;

(g) The number of licensed NF beds in the NF; and

(h) The NF's bed occupancy percentage.

(6)[(7)] "Case-mix" means the time-weighted average price-based NF acuity for Medicaid-eligible and dual-eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 3.0[~~2.0~~] data classified through the RUG III, M3 p1, (version 5.20[~~5.12B~~]) thirty-four (34) group model resident classification system or equivalent.

(7)[(8)] "Core based statistical area" or "CBSA" means the designation of metropolitan and micropolitan population centers based on the national census, as published by the Federal Office of Management and Budget.

(8)[(9)] "Department" means the Department for Medicaid Services or its designee.

(9)[(10)][(9)] "Equipment" means a depreciable tangible asset, other than land or a building, which is used in the provision of care for a resident by an NF staff person.

(10)[(11)][(10)] "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(11)[(12)][(11)] "Hospital-based NF" means an NF that:

(a) Is separately identifiable as a distinct part of the hospital; and

(b) If separated into multiple but distinct parts of a single hospital**, is[~~are~~]** combined under one (1) provider number.

(12)[(13)][(12)] "Land" means a surveyed tract or tracts of ground **that[~~which~~]** share a common boundary:

(a) As recorded in a county government office;

(b) Upon which a building licensed as an NF is constructed; and

(c) Including site preparation and improvements.

(13)[(14)][(13)] "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.[~~(14) "Metropolitan Statistical Area" or "MSA" means the designation of urban population centers based on the national census and updated on a yearly basis, as published by the Federal Office of Management and Budget.~~]

(14)[(15)] "NF" or "nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted an NF license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280**,** and **482.58[~~482.66~~]**.

(15)[(16)] "NF building" means a roofed and walled structure serviced by electricity, heating**,** and cooling **and that[~~which~~]** is also an NF.

(16)[~~(17) "Nursing facility with an intellectual disability specialty" or "NF-ID" means an NF in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of an intellectual disability as determined by the department.~~]

(18)] "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver of the nursing staff requirement.

(17)[(19)] "Provider assessment" means the assessment imposed by KRS 142.361 and 142.363.

(18)[(20)] "Routine services" means the services covered by the Medicaid Program pursuant to 42 C.F.R. **483.10(f)(11)(i)[~~483.10(c)(8)(i)~~]**.

(19)[(21)] "Site improvement" means a depreciable asset element, other than an NF building or auxiliary building, on NF land extending beyond an NF's foundation if used for NF-related purposes.

(20)[(22)] "Standard price" means a facility-specific reimbursement that includes a case-mix adjusted component, noncase-mix adjusted component including an allowance to offset a provider assessment, noncapital-facility related component, and capital rate component.

(21)[(23)] "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care[~~Facilities and Services~~].

(22)[(24)] "Time-weighted" means a method of calculating case-mix by determining the number of days that a minimum data set (MDS) record is active over a calendar quarter rather than captured from a single day during the calendar quarter.

Section 2. NF Reimbursement Classifications and Criteria. (1) An NF **or[,]** a hospital-based NF**[~~, or an NF-ID~~]**[~~MRS~~] shall be reimbursed as a price-based NF pursuant to this administrative regulation if:

(a) It provides NF services to an individual who:

1. Is a Medicaid recipient;

2. Meets the NF patient status[~~level of care~~] criteria pursuant to 907 KAR 1:022; and

3. Occupies a Medicaid-certified bed; and

(b)1. It has more than ten (10) NF beds and the greater of:

a. Ten (10) of its Medicaid-certified beds participate in the Medicare Program; or

b. Twenty (20) percent of its Medicaid certified beds participate in the Medicare Program; or

2. It has less than ten (10) NF beds and all of its NF beds participate in the Medicare Program.

(2) An NF-W shall be reimbursed as a price-based NF pursuant to this administrative regulation if it meets the criteria established in subsection (1)(a) of this section.

(3) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:

(a) An NF with a certified brain injury unit;

(b) An NF with a distinct part ventilator unit;

(c) An NF designated as an institution for mental disease;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for[~~an individual with~~] individuals with an intellectual disability.

Section 3. Reimbursement for Federally-Defined Swing Beds

and for Skilled Nursing Facility Services in**[a]** Critical Access Hospital Swing Beds. (1) The reimbursement rate for a federally-defined swing bed shall be:

(a) The average rate per patient day paid to freestanding price-based **NFs[NF's]** for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 14 of this administrative regulation; and

(b) Established effective January 1 of each year.

(2)(a) The department shall reimburse a critical access hospital for skilled nursing facility services in a swing bed at the same rate as established by the Centers for Medicare and Medicaid Services for Medicare.

(b) The department shall pay an interim per diem rate as established by CMS for the Medicare Program.

(c) The effective date of a rate shall be the same as used by the Medicare Program.

(d) A critical access hospital's final reimbursement for skilled nursing facility services in a swing bed shall reflect any adjustment made by the Centers for Medicare and Medicaid Services.

(e) Total payments made to a critical access hospital for skilled nursing facility services provided in a swing bed under this section shall be subject to the payment limitation established in 42 C.F.R. 447.271.

(f) The provisions established in this subsection shall apply to a critical access hospital **that[which]** complies with all requirements established in KRS 216.380.

Section 4. Price-based NF Appraisal. (1) The department shall appraise a price-based NF to determine the facility specific capital component in 2009, and every fifth year, in order to calculate the NF's depreciated replacement cost.

(2) The department shall not appraise equipment or land. A provider shall be given the following values for land and equipment:

(a) Ten (10) percent of an NF's average licensed bed value for land; and

(b) $2,000 per licensed NF bed for equipment.

(3) The department shall utilize the following variables and fields of the nursing home or convalescent center #5200 model of the Marshall & Swift Boeckh Building Valuation System (BVS)[(#503) model of the E.H. Boeckh Commercial Building Valuation System] to appraise an NF identified in Section 2(1) of this administrative regulation:

(a) Provider number;

(b) Property owner - NF name;

(c) Address;

(d) Zip code;

(e) Section number - the lowest number shall be assigned to the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;

(f) Occupancy code - nursing home or substructure;

(g) Average story height;

(h) Construction type;

(i) Number of stories;

(j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports**,** and similar areas). In addition, interior square footage measurements shall be reported for:

1. A non-NF area;

2. A shared service area by type of service; and

3. A revenue-generating area;

(k) Gross perimeter (common walls between sections shall be excluded from both sections);

(l) Construction quality;

(m) Year built;

(n) Building effective age;

(o) Building condition;

(p) Depreciation percent;

(q) Exterior wall material;

(r) Roof covering material and roof pitch;

(s) Heating system;

(t) Cooling system;

(u) Floor finish;

(v) Ceiling finish;

(w) Partition wall structure and finish;

(x) Passenger and freight elevators - actual number;

(y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and

(z) Miscellaneous additional features**,** which shall be limited to:

1. Canopies;

2. Entry foyers (sheltered entry ways):

a. The glass and aluminum standard allowance shall be thirty (30)[twenty (20)] dollars per square foot;

b. Bulkhead standard allowance shall be**:**

(i) Seven (7)[5 (five)] dollars per square foot for a wood frame;

(ii) Eight (8) dollars per square foot for a steel frame; or

(iii) Twenty (20) dollars per square foot for brick masonry;

3. Loading docks;

4.**[Bay windows, if not included in the perimeter calculation]**[shall be valued at $1,500 each]**[;**

5.] Code alerts, Wanderguards, or other special electronically-secured doorways, except for a door with a sound detector or sensing unit, (the standard allowance shall be $1,500 for each fully-functioning door at the time of appraisal);

5.[6.] A door with a sound detector or sensing unit shall have a standard allowance of $500 per door;

6.[7.] Automatic sliding doors (the standard allowance shall be $17,000[$2,700] per doorway);

7.[8.] An automatic door opener shall have a standard allowance of $6,500 per door;

8.[9.][7.] Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);

9.[10.][8.] Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (the standard allowance shall be fifty-six (56) dollars[thirty-eight (38) dollars and fifty (50) cents] per square foot);

10.[11.][9.] Walk-in coolers or freezers;

11.[12.][10.] Laundry chutes (the standard allowance shall be $2,100[$1,000] per floor serviced);

12.[13.][11.] Dumb waiters (which shall have a minimum speed of fifty (50) feet per minute. The standard allowance shall be $8,000[$4,500] for initial two (2) stops for a manual door or $21,000 for the initial two (2) stops for an electric door and $7,000[; $2,100] per additional stop);

13.[14.][12.] Skylights (the standard allowance shall be forty (40)[twenty-six (26)] dollars per square foot);

14.[15.][13.] Operable built-in oxygen delivery systems (valued at $300[$250] per serviced bed);[and]

15.[16.][14.] Carpeted wainscoting (the standard allowance shall be sixty (60) dollars per licensed bed[three (3) dollars and fifty (50) cents per linear foot]);

16.[17.] Balconies;

17.[18.] Ceiling fans for which the standard allowance shall be $250 for each ceiling fan without a light and $400 for each ceiling fan with a light;

18.[19.] Cupolas for which the standard allowance shall be $720 each;

19.[20.] Fireplaces;

20.[21.] Concrete-lined utility tunnels for which the standard allowance shall be twenty-five (25) dollars per cubic foot; and

21.[22.] Mechanical penthouses.

(4) An item listed in subsection (3)(z) of this section shall be subject to the Marshall & Swift Boeckh BVS model #5200[Boeckh model #503] monetary limit unless a monetary limit is provided for that item in subsection (3)(z) of this section.

(5) The department shall use the corresponding Marshall & Swift Boeckh BVS[E.H. Boeckh System] default value for any variable listed in subsection (3) of this section if no other value is stated for that variable in subsection (3) of this section.

(6)(a) Values from the most recent Marshall & Swift Boeckh BVS tables[E.H. Boeckh tables, as of July 1 of the year prior to the

~~appraisal base year,~~] shall be used during an appraisal.

(b) An adjustment calculation shall be performed if the most recent Marshall & Swift Boeckh BVS tables do not correspond to an appraisal base year[~~For example, values from the most recent 1999 E.H. Boeckh tables, as of July 1, 1999, shall be used for an appraisal conducted during the appraisal period beginning January 1, 2000~~].

(7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:

(a) The NF submits written proof of construction costs to the department; and

(b)1. The NF undergoes renovations or additions costing a minimum of $150,000 and the NF has more than sixty (60) licensed beds; or

2. The NF undergoes renovations or additions costing a minimum of $75,000 and the NF has sixty (60) or fewer licensed beds.

(8) An auxiliary building shall be:

(a) Appraised if it rests on land, as defined in Section ***1(12)[(13)]*[~~1(12)~~]** of this administrative regulation; and

(b) Appraised separately from an NF building.

(9) To appraise an auxiliary building, the department shall utilize a Marshall & Swift Boeckh BVS[~~an E.H. Boeckh building~~] model other than the nursing home or convalescent center #5200[~~(#503)~~] model, if the model better fits the auxiliary building's use and type.

(10) If an NF building has beds licensed for non-NF purposes or a provider conducts business activities not related to the NF, the appraisal shall be adjusted between NF and non-NF activity**. The appraiser shall determine if the adjustment shall be made by dividing the number of licensed NF beds by the total number of beds, or** through the use of an adjustment factor **determined in accordance with appraisal industry standards by the appraiser,[~~in the Marshall & Swift Boeckh BVS~~]** regardless of the occupancy factor[~~,the appraisal shall be apportioned between NF and non-NF by dividing the number of licensed NF beds by the total number of beds, regardless of the occupancy factors~~]. **For example, an adjustment factor may be used to apportion the appraisal by the percent of NF square footage relative to the square footage on non-NF-related business activities.**

(11)[~~If, in an NF building, a provider conducts business activities not related to the NF, the appraisal shall be apportioned by the percent of NF square footage relative to the square footage of non-NF-related business activities.~~

~~(12)~~] Cost of an appraisal shall be the responsibility of the NF being appraised.

(12)[~~(13)~~] A building held for investment, future expansion, or speculation shall not be considered for appraisal purposes.

(13)[~~(14)~~] The department shall not consider the following location factors in rendering an appraisal:

(a) Climate;

(b) High-wind zone;

(c) Degree of slope;

(d) Position;

(e) Accessibility; or

(f) Soil condition.

Section 5. Standard Price Overview. (1) Rates shall reflect the differential in wages, property values**,** and cost of doing business in rural and urban designated areas.

(2)***(a) Except as provided by paragraph (b) of this subsection, and beginning in 2018,* on July 1 of each year,** the department shall utilize**[~~every four (4) years~~]** the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas always being classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation[~~the Federal Office of Management and Budget's Metropolitan Statistical Area (MSA) urban and rural designations, in effect on January 1, 2003, to classify an NF as being in an urban or rural area~~].

(b)1. On the effective date of this administrative regulation, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.

2. On the effective date of this administrative regulation, a change in designation from:

a. Rural to urban shall take effect on July 1, 2017; and

b. Urban to rural shall take effect July 1, 2018.

(3) The department shall utilize an analysis of fair-market pricing and historical cost for the following data:

(a) Staffing ratios;

(b) Wage rates;

(c) Cost of administration, food, professional support, consultation, and nonpersonnel operating expenses as a percentage of total cost;

(d) Fringe benefit levels;

(e) Capital rate component; and

(f) Noncapital facility-related component.

(4) The following components shall comprise the case-mix adjustable portion of an NF's standard price:

(a) The personnel cost of:

1. A director of nursing;

2. A registered nurse (RN);

3. A licensed practical nurse (LPN);

4. A nurse **aide[~~aid~~]**;

5. An activities staff person; and

6. A medical records staff person; and

(b) Nonpersonnel operating cost including:

1. Medical supplies; and

2. Activity supplies.

(5) The following components shall comprise the noncase**-**mix adjustable portion of an NF's standard price:

(a) Administration to include an allowance to offset a provider assessment;

(b) Nondirect care personnel;

(c) Food;

(d) Professional support; and

(e) Consultation.

(6) The following components shall comprise the facility and capital component of an NF's standard price:

(a) The noncapital facility-related component, which shall be a fixed, uniform amount for all price-based **NFs[~~NF's~~]**; and

(b) The NF's capital rate component, which shall be facility specific.

(7) Excluding[~~noncapital facility-related and~~] capital rate components, the following is an example of an urban and a rural price-based NF's standard price based on rebased wages at the 2008[~~2004~~] level:

CBSA [~~MSA~~] Designation	Case-Mix Adjustable Portion of Standard Price	Noncase-Mix Adjustable Portion of Standard Price without Capital Rate [~~Cost~~] Component	Total Standard Price Excluding [~~Noncapital Facility Related and~~] Capital Rate Components
Urban	$88.05 [~~$78.24~~]	$62.80[~~$58.84~~]	$150.85 [~~$137.08~~]
Rural	$74.62 [~~$64.58~~]	$55.63[~~$52.24~~]	$130.25 [~~$116.82~~]

(8) A price-based NF's standard price shall be adjusted for inflation every July 1 and rebased in 2008.

(9) Effective July 1, 2004, an NF shall not receive a rate less than its standard price.

(10) The department shall adjust an NF's standard price if:

(a) A governmental entity imposes a mandatory minimum wage or staffing ratio increase and the increase was not included in the inflation adjustment; or

(b) A new licensure requirement or new interpretation of an

existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.

Section 6. Standard Price Calculation. (1) Based on the classification of urban or rural, the department shall calculate an individual NF's standard price to be the sum of:

(a) The case-mix adjustable portion of the NF's standard price, adjusted by the NF's current case-mix index pursuant to Section 7 of this administrative regulation;

(b) The noncase-mix adjustable portion of the NF's standard price, which shall include an allowance to offset a provider assessment;

(c) The noncapital facility-related component; and

(d) Pursuant to subsection (2) of this section, the capital rate component.

(2) An NF's capital rate component shall be calculated as follows:

(a) The department shall add the total of:

1. The NF's average licensed bed value, which shall:

a. Be determined by dividing the NF's depreciated replacement cost, as determined from an appraisal conducted in accordance with Section 4 of this administrative regulation, by the NF's total licensed NF beds; and

b. Not exceed $56,003 effective July 1, 2016, which shall be adjusted every July 1 thereafter by the same **factor applied to**[~~value as~~] the NF's depreciated replacement cost[~~$40,000~~];

2. A value for land, which shall be ten (10) percent of the NF's average licensed NF bed value, established in accordance with subparagraph 1. of this paragraph; and

3. A value for equipment, which shall be $2,000 per licensed NF bed;

(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor, which shall:

1. Be equal to the sum of:

a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and

b. A risk factor of two (2) percent; and

2. Not be less than nine (9) percent nor exceed twelve (12) percent;

(c) The department shall determine the NF's capital cost-per-bed day by:

1. Dividing the NF's total patient days by the NF's available bed days to determine the NF's occupancy percentage;

2. If the NF's occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and

3. If the NF's occupancy percentage exceeds ninety (90) percent, multiplying the NF's occupancy percentage by 365 days; and

(d) The department shall divide the sum of paragraphs (a) and (b) of this subsection by the NF's capital cost-per-bed day established in paragraph (c) of this subsection to determine an NF's capital rate component.

(3) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:

(a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and

(b) File an updated provider application with the Medicaid Program pursuant to**[~~Section 3(4) of~~]** 907 KAR 1:672**, Section 3(4)**.

(4) A new facility shall be:

(a) Classified as a new facility if the facility does not have a July 1, of the current state fiscal year, Medicaid rate;

(b) Determined to be urban or rural; and

(c) Reimbursed at its standard price, which shall:

1. Be based on a case-mix of 1.0;

2. Be adjusted prospectively based upon no less than one (1) complete calendar quarter of available MDS 3.0[~~2.0~~] data following the facility's Medicaid certification;

3. Utilize $56,003 effective July 1, 2016, as adjusted through the current state fiscal year[~~$40,000~~] as the facility's average licensed NF bed value until the facility is appraised in accordance with Section 4 of this administrative regulation; and

4. Be adjusted, if necessary, following the facility's appraisal if the appraisal determines the facility's average licensed NF bed value to be less than $56,003 effective July 1, 2016, as adjusted through the current state fiscal year[~~$40,000~~].

(5) The amounts calculated pursuant to subsection (4)(c)*3. and* 4.*[and 5.]* of this section[~~5. Subparagraphs 3. and 4. of this paragraph~~] shall be adjusted annually consistent with the adjustments made to the depreciated replacement cost, as described in subsection (2)(a)1.b. of this section for the capital component calculation.

Section 7. Minimum Data Set (MDS) 3.0[~~2.0~~], Resource Utilization Group (RUG) III, and Validation. (1) A price-based NF's Medicaid MDS data shall be utilized to determine its case-mix index each quarter.

(2) A price-based NF's case-mix index shall be applied to its case-mix adjustable portion of its standard price.

(3) To determine a price-based NF's case-mix index, the department shall:

(a) Calculate case-mix on a time-weighted basis using MDS data:

1. Extracted on the last date of each calendar quarter from the NF's MDS item sets:

a. **Included in Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening**[~~**Incorporated by reference into 907 KAR 1:755**~~]; and

b. Transmitted by the NF to the Centers for Medicare and Medicaid Services; and

2. Which, if revised, shall be revised**[,]** no later than the last date of the quarter following the date on which MDS data was extracted. For example, MDS data submitted after September 30, 2016, for the purpose of revision to MDS data extracted June 30, 2016, shall not be utilized[~~Extract the required MDS data from the NF's MDS form:~~

~~1. Incorporated by reference in 907 KAR 1:755;~~

~~2. Transmitted by the NF to the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care Facilities and Services; and~~

~~3. On the last date of each calendar quarter and revised no later than the data revision cut-off date established in subsection (7)(b) of this section~~];

(b) Classify the data cited in paragraph (a) of this subsection through the RUG III, (M3 p1), version five point twenty (5.20)[~~twelve B (5.12B)~~] thirty-four (34) group or equivalent model resident classification system; and

(c) Validate the data cited in paragraph (a) of this subsection as follows:

1. The department shall generate a stratified random sample of twenty-five (25) percent of the Medicaid residents in a price-based NF[~~price-based NF's Medicaid MDS assessments~~];

2. The department shall review one (1) MDS assessment from each resident in the sample referenced in subparagraph 1. of this paragraph;

3. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraphs [~~subparagraph~~] 1. and 2. of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents; and

4.[~~3.~~] If a review of records cited in subparagraph 3.[~~2~~] of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall determine if the NF fails to meet the minimum accuracy threshold by reviewing 100 percent of the price-based NF's Medicaid MDS assessments:

a. Extracted in accordance with paragraph (a) of this subsection; and

b. Selecting one (1) MDS assessment per resident[~~review 100 percent of the price-based NF's Medicaid MDS assessments extracted in accordance with paragraph (a)3 of this subsection to determine whether the NF fails to meet the minimum accuracy threshold~~].

(4) If the department's review, in accordance with subsection

(3)(c)3. and 4.[~~2 and 3~~] of this section, of a price-based NF's MDS assessment data reveals that the NF fails to meet the MDS data minimum accuracy threshold, the department shall conduct another review of the same data utilizing an individual or individuals not involved in the initial validation process if the price-based NF requests a reconsideration[~~rereview~~] within ten (10) business days of being notified of the findings of the review cited in subsection (3)(c)4.[~~3~~] of this section.

(5) Only MDS data extracted in accordance with subsection (3)(a)2.[~~3~~] of this section shall be allowed during a review or reconsideration[~~rereview~~].

(6) If a reconsideration[~~rereview~~] of a price-based NF's MDS assessment data, in accordance with subsection (4) of this section, confirms that the NF fails to meet the minimum accuracy threshold, the department shall:

(a) Conduct a conference with the NF to review preliminary findings of the reconsideration[~~rereview~~]; and

(b) Send the final results of the reconsideration[~~rereview~~] to the NF within ten (10) business days of the conference.

(7) In performing validation reviews on MDS data, the department shall:

(a) **Notify the NF at the time of the MDS assessment review of any assessment that is not validated and allow the NF to provide supporting documentation that had been utilized to support the assessment;**

(b) Consider all MDS supporting documentation provided by **the[~~an~~]** NF prior to the exit conference; and

(c)[~~(b)~~] Not consider MDS supporting documentation provided by the NF after the exit conference has occurred.

(8)(a) Reconsideration of a price-based NF's MDS assessment data validation shall be provided if the NF:

1. Requests a reconsideration and clearly identifies each specific resident's review and MDS elements that are being disputed;

2. States the basis on which the department's decision on each issue is believed to be erroneous; and

3. Provides a summary supporting the NF's position.

(b) After a reconsideration of a price-based NF's MDS assessment data has been completed, the NF may appeal the department decision regarding the data in accordance with 907 KAR 1:671, Section 9.

(9)(a) The department shall refer any suspected intentional alteration of clinical documentation or creation of documentation after an MDS assessment has been transmitted to the Office of Inspector General (OIG) for investigation of possible fraud.

(b) A fraud investigation may result in a felony or misdemeanor criminal conviction.

(10) An NF's rate shall be effective beginning on the first date of the second quarter following the MDS extraction date.

(11) An MDS validation review, if conducted, shall be initiated in the month containing the corresponding rate effective date.

(12) A rate sanction shall be applied on the rate effective date following the validation review initiation date.

(13)***[The following establishes the]*** MDS assessment accuracy thresholds and corresponding rate sanctions ***shall be established in accordance with this subsection.[:]***

(a) If a price-based NF's percentage of accurate MDS assessments is between sixty-five (65) and seventy-nine (79) percent, the price-based NF's rate shall be sanctioned by fifty (50) cents per patient day.***[;]***

(b) If a price-based NF's percentage of accurate MDS assessments is between forty (40) and sixty-four (64) percent, the price-based NF's rate shall be sanctioned by sixty (60) cents per patient day.***[; and]***

(c) If a price-based NF's percentage of accurate MDS assessments is below forty (40) percent, the price-based NF's rate shall be sanctioned by seventy (70) cents per patient day.[~~Following is a chart establishing:~~

~~(a) That an MDS extraction date shall be the last date of each quarter;~~

~~(b) That a final MDS assessment data revision cut-off date shall be the last date of the quarter following the date on which MDS data was extracted. For example, MDS data or revisions to MDS data extracted December 31, 2000 shall not be accepted after March 31, 2001;~~

~~(c) That a rate effective date shall be the first date of the second quarter following the MDS extraction date;~~

~~(d) That MDS audits shall be initiated in the same month containing the corresponding rate effective date;~~

~~(e) MDS assessment accuracy thresholds and corresponding rate sanctions. For example if a price-based NF's percentage of accurate MDS assessments is below fifty (50) percent for MDS data extracted March 31, 2002, then effective October 1, 2002, the price-based NF's rate shall be sanctioned by fifteen (15) cents per patient day; and~~

~~(f) Rate sanction effective dates:~~

~~MDS Data Extraction Date~~	~~MDS Data Revision Cut-Off Date~~	~~Rate Effective Date~~	~~Audits Initiated~~	~~Required MDS Accuracy Threshold~~	~~Rate Sanction~~	~~Sanction Effective Date~~
~~6/30/01~~	~~9/30/01~~	~~10/1/01~~	~~10/2001~~	~~40%~~	~~$0.10 per patient day (ppd)~~	~~1/1/02~~
~~9/30/01~~	~~12/31/01~~	~~1/1/02~~	~~1/2002~~	~~40%~~	~~$0.10 ppd~~	~~4/1/02~~
~~12/31/01~~	~~3/31/02~~	~~4/1/02~~	~~4/2002~~	~~50%~~	~~$0.15 ppd~~	~~7/1/02~~
~~3/31/02~~	~~6/30/02~~	~~7/1/02~~	~~7/2002~~	~~50%~~	~~$0.15 ppd~~	~~10/1/02~~
~~6/30/02~~	~~9/30/02~~	~~10/1/02~~	~~10/2002~~	~~65%~~	~~$0.20 ppd~~	~~1/1/03~~
~~9/30/02~~	~~12/31/02~~	~~1/1/03~~	~~1/2003~~	~~65%~~	~~$0.20 ppd~~	~~4/1/03~~
~~12/31/02 and forward~~	~~3/31/02 and forward~~	~~4/1/03 and forward~~	~~4/2003 and forward~~	~~65-79% 40-64% Below 40%~~	~~$0.50 ppd $0.60 ppd $0.70 ppd~~	~~7/1/03 and forward~~]

Section 8. Limitation on Charges to Residents. (1) Except for applicable deductible and coinsurance amounts, an NF that receives reimbursement for a resident pursuant to Section 6 of this administrative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.

(2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. **483.10(f)(11)*(ii)[(i)]*[483.10 (c)(8)(ii)]** if:

(a) The item is requested by the resident;

(b) The NF informs the resident in writing that there will be a charge; and

(c) Medicare, Medicaid, or another third party does not pay for the item.

(3) An NF shall:

(a) Not require a resident, or responsible representative of the resident, to request any item or services as a condition of admission or continued stay; and

(b) Inform a resident, or responsible representative of the resident, requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(4) Reserved bed days, per resident, for an NF or an NF-W shall be:

(a) Reimbursed[~~Covered~~] for a maximum of fourteen (14) days per calendar year due to hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to relocation;

(b) Reimbursed[~~Covered~~] for a maximum of ten (10) days during a calendar year for leaves of absence other than hospitalization. Accumulated bed reserve days shall follow a

resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;

(c) Reimbursed at seventy-five (75) percent of a facility's rate if the facility's occupancy percent is ninety-five (95) percent or greater for the calendar quarter preceding the bed reserve day; and

(d) Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent for the calendar quarter preceding the bed reserve day.

(5) Except for oxygen therapy, durable medical equipment (DME) and supplies shall:

(a) Be furnished by an NF; and

(b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:479, Section 6(3).

(6) Dentures, lenses, frames, **or[~~and~~]** hearing aids shall be paid for through the resident's patient liability or spend down amounts and limited to one (1) replacement per item per calendar year.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 10. Price-Based NF Protection Period and Budget Constraints. (1) A county-owned hospital-based nursing facility shall not receive a rate that is less than the rate that was in effect on June 30, 2002.

(2) For each year of the biennium, a price-based NF shall:

(a) Receive an adjustment[~~increase~~] pursuant to Section 5(8) and **(10)[~~(9)~~]** of this administrative regulation; or

(b) Except for a county-owned hospital-based nursing facility pursuant to subsection (1) of this section, not receive an increase if the price-based NF's rate is greater than its standard price.

Section 11. Cost Report. (1) A Medicare cost report and the Supplemental Medicaid Schedules shall be submitted pursuant to time frames established in the CMS[~~HCFA~~] ***Medicare*** Provider Reimbursement Manual - Part 2 (Pub. **15-2) Sections[~~15-11) Section~~]** 102, 102.1, 102.3, and 104, **using the Instructions for Completing the Medicaid Supplemental Schedules. [~~incorporated by reference into this administrative regulation; and~~]**

(2) A copy of a price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end.

Section 12. Ancillary Services. (1) Except for oxygen therapy and for ancillary services provided to an individual in a critical access hospital swing bed, the department shall reimburse for an ancillary service that meets the criteria established in 907 KAR 1:023 utilizing the corresponding outpatient procedure code rate listed in the Medicaid Physician Fee Schedule established in 907 KAR 3:010, Section 3**.[~~;~~]**

(2) The department shall reimburse for an oxygen therapy utilizing the Medicaid DME Program fee schedule established in 907 KAR 1:479**.[~~; and~~]**

(3) Respiratory therapy and respiratory therapy supplies shall be a routine service.

(4) Reimbursement for ancillary services provided to an individual in a critical access hospital swing bed shall be included in the critical access hospital swing bed reimbursement established in Section 3(2) of this administrative regulation.

Section 13. Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 14. Supplemental Payments to Nonstate Government-Owned or Operated Nursing Facilities. (1) Beginning July 1, 2001, subject to state funding made available for this provision by a transfer of funds from a governmental entity, the department shall make a supplemental payment to a qualified nursing facility.

(2) To qualify for a supplemental payment under this section, a nursing facility shall:

(a) Be owned or operated by a local unit of government pursuant to 42 C.F.R. 447.272(a)(2);

(b) Have at least 140 or more Medicaid-certified beds; and

(c) Have a Medicaid occupancy rate at or above seventy-five (75) percent.

(3) For each state fiscal year, the department shall calculate the maximum supplemental payment that it may make to qualifying nursing facilities in accordance with 42 C.F.R. 447.272.

(4) Using the data reported by a nursing facility on a Schedule NF-7 submitted to the department as of December 31, 2000, the department shall identify each nursing facility that meets the criteria established in subsection (2) of this section.

(5) The department shall determine a supplemental payment factor for a qualifying nursing facility by dividing the qualifying nursing facility's total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

(6) The department shall determine a supplemental payment for a qualifying nursing facility by applying the supplemental payment factor established in subsection (5) of this section to the total amount available for funding under this section.

(7) Total payments made under this section shall not exceed the amount determined in subsection (3) of this section.

(8) Payments made under this section shall:

(a) Apply to services provided on or after April 1, 2001; and

(b) Be made on a quarterly basis.

Section 15. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

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

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

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

(a) "Medicare Provider Reimbursement Manual - Part 2 (Pub. **15-2), Sections 102, 102.1, 102.3, and 104[~~15-11) Chapter 1. Cost Reporting - General (15-2-102) 102 and 104. Cost Reporting Period~~]**", October 2007[~~; April 2000 Edition"~~];

(b) The "Instructions for Completing the Medicaid Supplemental Schedules", April 2015[~~November 2003 Edition"~~];**[~~and~~]**

(c) The "Supplemental Medicaid Schedules", April 2015**; and**

(d) "Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening", 10/1/2016[~~November 2003 Edition"; and~~

~~(d) The "Schedule J Request for Reimbursement, November 2003 Edition"~~].

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

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: April 12, 2017

FILED WITH LRC: April 13, 2017 at 4 p.m.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(Amended After Comments)

201 KAR 26:175. Continuing education.

RELATES TO: KRS 210.366, 319.032(1)(f), 319.050, 319.053, 319.064, 319.071

STATUTORY AUTHORITY: KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "Continuing education" means participation in an approved program beyond the basic educational requirements that meet the requirements established in Section 2(1) of this administrative regulation.

(2) "Continuing education hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) Each license holder shall document the completion of at least thirty-nine (39) continuing education hours approved by the board pursuant to this administrative regulation within each three (3) year renewal period.

(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 every six (6) years thereafter as required by KRS 210.366.

(a) A person holding a license shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management for the licensee's first six (6) years of licensure if the licensee completes a three (3) semester hour graduate course in suicide and crisis assessment, prevention, and intervention during the course of the licensee's graduate education.

(b) A person holding a license shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management from the six year continuing education if, during the six (6) year requirement, the licensee:

1. Is primarily employed in a clinical setting accredited by the Joint Commission or another nationally accrediting healthcare entity that requires the completion of a suicide risk assessment with each patient being seen within the setting;

2. Teaches a graduate-level psychology course in suicide assessment, training, and management; or

3. Teaches a continuing education course in suicide assessment, training, and management at least once during the six (6) year period.

(c) The continuing education course in suicide assessment, treatment, and management shall be approved in accordance with Section 5 of this administrative regulation.

(3) The continuing education shall:

(a) Provide specific content planned and evaluated to improve the license holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the habits of critical inquiry and balanced judgment; and

(d) Include a minimum of three (3) hours in either ethical practice or risk management with each three (3) year renewal period.

(4) Continuing educational hours shall not carry over from one (1) renewal period to the next.

(5)(a) Except as provided in paragraph (b) of this subsection, a licensed psychologist with the health service provider designation who provides supervision to an applicant for licensure, or a certified psychologist or a licensed psychological associate shall include as part of the thirty-nine (39) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques for each three (3) year renewal period.

(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3. (1) Hours required to satisfy the continuing education requirement shall be completed prior to the renewal date of a license.

(2) A credential holder shall certify in the renewal application that the continuing education requirement has been satisfied[~~and reported at license renewal~~].

(3) A credential holder who is being audited shall submit copies of the certificate of completion received from the continuing education course.

(4) The credential[~~license~~] holder shall:

(a)[~~(1)~~] Maintain and provide adequate records including certificates of attendance and documentation of completion of the required continuing education hours; or

(b)[~~(2)~~] Provide documentation through a board-approved registry, which shall certify the name and license number of the license holder, date and title of each program and the number of hours earned, and confirmation that the programs were given by a board-approved provider.

Section 4. All continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a license. A license holder shall determine prior to attending a specific continuing education program that the program:

(1) Has been approved by the board; or

(2) Is approved, offered, or sponsored by an organization approved by the board to sponsor continuing education programs.

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is approved, offered, or sponsored by an organization listed in this subsection shall be accepted toward the requirement for continuing education established in Section 2(1) of this administrative regulation:

(a) An affiliated state chapter of the American Psychological Association, American Medical Association, American Psychiatric Association, or National Association of Social Workers;

(b) A recognized state, regional, national, or international psychological association;[~~or~~]

(c) A state or provincial psychology licensure board; and[~~.~~

~~(2) The following programs shall be approved for continuing education:~~]

(d)[~~(a)~~] A course for graduate-level academic credit[~~or a workshop~~] in psychology or psychiatry offered by a national, regional, or state accredited academic institution.[~~or an affiliated hospital or medical center;~~

~~(b) The Kentucky Mental Health Institute or the Kentucky School of Alcohol and Other Drug Studies sponsored by the Kentucky Department for Behavioral Health, Developmental and Intellectual Disabilities; and~~

~~(c) Interactional videoconferencing, internet-based course or a home study course provided by an organization listed in subsection (1) of this section~~].

(2)[~~(3)~~](a) The board may[~~shall~~] approve an organization that is not listed in subsection (1) of this section as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a completed Continuing Education Sponsorship Application[~~written request for approval~~];

2. Pays an initial application fee of $250; and

3. Proposes to sponsor continuing education programs that meet the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a $150 renewal fee annually.

(d) A workshop in psychology or psychiatry offered by a national, regional, or state accredited academic institution's medical center or affiliated hospital shall comply with the requirement of subsection 2(a)(1) of this section. The fees required under subsection (2)(a)2 and (2)(c) of this section are waived.

(3)[**3**][~~(4)~~](a) The board may[~~shall~~] approve a specific continuing education program that is not approved, offered, or sponsored by an organization listed in in subsection (1)[~~(2)~~] of this section or an approved organization under subsection (2) of this section if the sponsor or a participant of the program:

1. Files a completed Continuing Education Program Application [~~written request for approval~~];

2. Pays an application fee of fifty (50) dollars; and

3. Provides information about a continuing education program that it proposes to sponsor which meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the same approved program.

Section 6. A continuing education program that satisfies the requirements for license renewal shall:

(1) Be:

(a) Approved, offered, or sponsored by an organization that has been approved by the board; or

(b) A specific program approved by the board;

(2)(a) Have a clearly-stated purpose and defined content area; and

(b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) Have a presenter who is a professional qualified in the defined content area;

(4) Clearly state the program's time. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Include attendance recorded by the program's sponsor;

(6) Document completion that shall be provided to the participant; and

(7) Include each participant's evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours pursuant to paragraphs (a) and (b) of this subsection.

(a) Each one (1) hour semester[~~quarter~~] course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(b) Each one (1) hour quarter course shall be the equivalent of nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

(a) Earn six (6) continuing education hours for teaching the course; and

(b) Not receive:

1. Credit more than once for teaching a particular course during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(3) A person who teaches an approved continuing education workshop or program shall:

(a) Earn continuing education hours on a one (1) to one (1) basis; and

(b) Not receive:

1. Credit more than once for teaching a particular workshop or program during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(4) A person who completes home study or internet-based courses approved, offered, or sponsored by an organization listed in Section 5(1) shall not receive:

(a) Credit for repeating a specific study course during a renewal period; and

(b) More than twelve (12) total continuing education hours through home study or internet-based courses in a renewal period.

(5) A person who participates in videoconferencing in an interactive setting shall:

(a) Earn one (1) continuing education hour for each clock hour of participation; and

(b) Not receive more than twenty-four (24) continuing education hours through interactive videoconferencing participation.

Section 8. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 1 of this administrative regulation into the immediately following renewal period.

Section 9. The board shall audit a minimum of ten (10) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Education Program Application", October, 2016; and

(b) "Continuing Education Sponsorship Application", October, 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: May 15, 2017

FILED WITH LRC: May 15, 2017 at 10 a.m.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 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 continuing education requirements for a credential holder.

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

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

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

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment incorporates new forms to assist applying for continuing education approval; clarifies that excess continuing education hours are not carried forward; establishes that 10% of renewals will be audited and what documents must be submitted if audited; removes some automatic providers from the continuing education provider list; and differentiate between different types of providers..

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to standardize the supervision reporting process and incorporate forms.

(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 will assist in providing the documents required to be submitted to the supervisor and supervisee.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. 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? Kentucky Board of Examiners of Psychology.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(f).

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

201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.

RELATES TO: KRS 319.032(1)(i)

STATUTORY AUTHORITY: KRS 319.032(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license through reciprocity. This administrative regulation establishes the requirements for licensure as a psychologist by reciprocity.

Section 1. The board shall issue a license to an applicant who qualifies for a license as a psychologist pursuant to an agreement of reciprocity entered into by the board of this jurisdiction with the board or boards of any other jurisdiction or multiple jurisdictions.

Section 2. The applicant for licensure as a psychologist by reciprocity shall:

(1) Submit a completed Application for Licensure by Reciprocity;

(2) Hold a current valid license in good standing to practice psychology which has been granted by at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board:

(a) That is a constituent member of the Association of State and Provincial Psychology Boards (ASPPB); and

(b) With whom this board has an agreement of reciprocity;

(3)[~~(2)~~] Have a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and

(4)[~~(3)~~] Has not been disciplined by any licensure board.

Section 3. The board shall conduct **an examination on psychological practice[~~a face-to-face~~]** of an applicant for licensure by reciprocity. The applicant shall demonstrate an acceptable level of knowledge of Kentucky mental health law.

Section 4. An applicant for licensure with the health service

provider designation shall comply with KRS 319.050(7).

Section 5. If an applicant for licensure with the health service provider designation does not have an additional 1,800 hours of supervised experience as required by KRS 319.050 and 201 KAR 26:125, the board may determine that the applicant's practice experience is equivalent to the required year of experience. **The board may substitute an applicant's employment experience for the additional 1,800 hours of supervised experience as required by KRS 319.050 and 201 KAR 26:125, and may award the applicant the Health Service Provider designation.**

Section 6. A person holding the Certificate of Professional Qualification in Psychology (CPQ) issued by the (ASPPB) or a successor organization or a person who holds a certificate from the National Register of Health Service Providers in Psychology or a successor organization and has a minimum equivalent of five (5) years of full-time practice at the independent level and has had no disciplinary action taken by a licensure board or on record in the ASPPB database[~~date base~~] shall:

(1) Be deemed to meet the qualifications for licensure by reciprocity as established in this administrative regulation; and

(2) Upon meeting the requirements established in Section 3 of this administrative regulation, shall be granted a license with the health service provider designation.

Section 7. An applicant for licensure as a psychologist by reciprocity may request permission to practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The request for a temporary credential shall issue in accordance with 201 KAR 26:155, Section 2. The temporary credential shall expire in accordance with 201 KAR 26:155, Section 2(4).

Section **8.[~~7.~~]** Incorporation by Reference. (1) "Application for Licensure by Reciprocity", February 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMIE A. HOPKINS, Ph.D., HSPP, Chairperson

APPROVED BY AGENCY: May 15, 2017

FILED WITH LRC: May 15, 2017 at 10 a.m.

CONTACT PERSON: Chessica Nation, Board Administrator, Kentucky Board of Examiners of Psychology, Department of Professional Licensing, 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 procedures and requirements to obtain a licensure as a psychologist through reciprocity.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the procedures and necessary documents to obtain a licensure as a psychologist through reciprocity.

(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 assist with the effective processing of an application for licensure as a psychologist through reciprocity.

(2) If 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 application form for licensure as a psychologist through reciprocity.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary standardized the process and allow for the board to continue towards online applications.

(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 will assist with the effective processing of an application for licensure as a psychologist through reciprocity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently nine (9) certified psychologists, seventy-three (73) certified psychologist with autonomous functioning, three hundred forty (340) psychological associates, one hundred thirty (130) psychological practitioners, and nine hundred sixty (960) licensed psychologists. 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? Kentucky Board of Examiners of Psychology.

2. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation: KRS 319.032(1)(i).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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
Office of Occupations and Professions
Kentucky Board of Interpreters for the
Deaf and Hard of Hearing
(Amended After Comments)

201 KAR 39:001. Definitions for 201 KAR Chapter 39.

RELATES TO: KRS 309.300(4), KRS 309.304[~~KRS 309.3015~~]

STATUTORY AUTHORITY: KRS 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) requires the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations pertaining to the practice and licensure of interpreters, interpreter intern, or student in training. This administrative regulation establishes definitions for 201 KAR Chapter 39.

Section 1. Definitions. (1) "American Sign Language Proficiency Interview (ASLPI) as administered by Gallaudet University" means the assessment that rates the ability to use American Sign Language grammar and vocabulary in most formal and informal conversations on social and work topics.

(2) "BEI" means the Board for Evaluation of Interpreters sponsored by the Department of Assistive and Rehabilitative Services in Texas and the University of Arizona National Center for Interpretation Testing, Research and Policy.

(3)[~~(2)~~] "Board-approved mentor" means a licensed interpreter in this state or the resident of another state who:

(a) Can meet the requirements for licensure in this state as set forth in KRS Chapter 309 and 201 KAR Chapter 39;

(b) Holds a valid certificate meeting the requirements for full licensure for a minimum of three (3) years prior to serving as a mentor; and

(c) Has completed forty-five (45) hours of continuing education since obtaining certification.

(4)[~~(3)~~] "Case manager" means a member of the board appointed by the chair of the board to review complaints and investigative reports, and to participate in informal proceedings to resolve a formal complaint.

(5)[~~(4)~~] "Certificate of Interpretation (CI) granted by RID" means a certificate indicating that the holder has demonstrated the ability to interpret between American Sign Language and spoken English in both sign-to-voice and voice-to-sign, without consideration of the interpreter's ability to transliterate.

(6)[~~(5)~~] "Certificate of Transliteration (CT) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate between English-based sign language and spoken English in both sign-to-voice and voice-to-sign, without consideration of the transliterator's ability to interpret.

(7)[~~(6)~~] "Certified Deaf Interpreter (CDI) granted by RID" means a certificate indicating the holder of this certificate is an interpreter who is deaf or hard of hearing, has passed comprehensive written and performance tests, and is recommended for a broad range of assignments where an interpreter who is deaf or hard of hearing would be beneficial.

(8)[~~(7)~~] "Chair" means the chair or vice-chair of the board.

(9)[~~(8)~~] "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of a specified provision of KRS 309.300 to 309.319, 201 KAR Chapter 39, or any other state or federal statute or administrative regulation.

(10)[~~(9)~~] "Complaint" means any written or videotaped allegation of misconduct by a licensed individual that might constitute a violation of KRS 309.300 to 309.319, 201 KAR Chapter 39, or any state or federal statute regulating the practice of interpreting.

(11)[~~(10)~~] "Complaint screening committee" means a committee consisting of three (3) persons on the board appointed by the chairman of the board to review complaints and investigative reports, and to participate in informal proceedings to resolve a formal complaint or recommend action to the board.

(12)[~~(11)~~] "Comprehensive Skills Certificate (CSC) granted by RID" means a certificate indicating that the holder has demonstrated the ability to interpret between American Sign Language and Spoken English and to transliterate between spoken English and an English-based sign language.

(13)[~~(12)~~] "Conditional Legal Interpreting Permit-Relay (CLIP-R) granted by RID" means that the holder of this conditional certificate has completed a RID-recognized training program designed for interpreters and transliterators who work in legal settings, who are also deaf or hard of hearing, and who are recommended for a broad range of assignments in the legal setting.

(14)[~~(13)~~] "Cued Language Transliterator National Certification Examination (CLTNCE)" means the examination which measures skills that satisfy the TECUnit minimum standard of both knowledge and skills in cued language transliteration and passage of which is required to recommended the individual for limited settings that require cued speech.

(15)[~~(14)~~] "Deaf Interpreter" means an individual who is deaf or hard of hearing and holds licensure or temporary licensure indicating the holder is an interpreter who is deaf or hard of hearing, has submitted proof of qualification to the Board, and is recommended for a broad range of assignments where an interpreter who is deaf or hard of hearing would be beneficial.

(16)[~~(15)~~] "Deaf or Hard of Hearing Individuals" means individuals who have hearing disorders and who cannot hear and understand speech clearly through the ear alone with or without amplification, as verified by a licensed medical professional specializing in the provision of services to the deaf and hard of hearing.

(17)[~~(16)~~] "Education Interpreter Performance Assessment (EIPA) granted by Boys Town National Research Hospital" means **a proficiency[~~an~~]** assessment **for K-12 interpreting only, which indicates[~~indicating~~]** that the holder:

(a) Has demonstrated the ability to expressively interpret classroom content and discourse;

(b) Has demonstrated the ability to receptively interpret student sign language;

(c) Is not limited to any one sign language or system; and

(d) Is recommended to work with students who predominately use American Sign Language (ASL), Manually-Coded English (MCE), or Pidgin Sign English (PSE).

(18)[~~(17)~~] "Educational Certificate: K-12 (Ed: K-12) granted by RID" means that the holder has demonstrated:

(a) The ability to interpret classroom content, discourse, and student sign language; and

(b) Proficient expressive and receptive interpreting skills in all elementary and secondary school classroom settings.

(19)[~~(18)~~] "Formal complaint" means a formal administrative pleading authorized by the board which:

(a) Sets forth charges against a licensed individual or other person; and

(b) 1. Commences a formal disciplinary proceeding pursuant to KRS Chapter 13B; or

2. Requests the court to take criminal or civil action.

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

(21)[~~(20)~~] "Interpretation Certificate (IC) granted by RID" means that the holder has demonstrated the ability to interpret between American Sign Language and spoken English.

(22)[~~(21)~~] "Interpreting Certificate/Transliteration Certificate (IC/TC) granted by RID" means that the holder has demonstrated the ability to transliterate between English and a signed code for English and the ability to interpret between American Sign Language and spoken English.

(23)[~~(22)~~] "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint.

(24)[~~(23)~~] "Licensure year" means the period between July 1st of each year and June 30th of the following year or the time from which a license or temporary license was granted until the next June 30th.

(25)[~~(24)~~] "Master Comprehensive Skills Certificate (MCSC) granted by RID" means that the holder has demonstrated a higher standard of performance than holders of the CSC and is recommended for a broad range of interpreting and transliterating assignments.

(26)[~~(25)~~] "NAD" means the National Association of the Deaf.

(27)[~~(26)~~] "NAD Level III (Generalist)" means that the holder has demonstrated average voice-to-sign skills, good sign-to-voice skills, and the minimum competence needed to meet generally accepted interpreter standards, except that this individual is not qualified for all situations.

(28)[~~(27)~~] "NAD Level IV (Advanced)" means that the holder has demonstrated excellent voice-to-sign skills and above average sign-to-voice skills, and this individual is recommended for most situations.

(29)[~~(28)~~] "NAD Level V (Master)" means that the holder has demonstrated superior voice-to-sign skills and excellent sign-to-voice skills, and this individual is recommended for a broad range of interpreting assignments.

(30)[~~(29)~~] "National Interpreter Certification (NIC)" means a certification indicating that the holder has passed the NIC Knowledge exam as administered by RID and has scored within the standard range on the interview and performance portions of the test.

(31)[~~(30)~~] "National Interpreter Certification (NIC Advanced)" means a certification indicating that the holder has passed the NIC Knowledge exam as administered by RID, scored within the standard range on the interview portion, and scored within the high range on the performance portion of the test.

(32)[~~(31)~~] "National Interpreter Certification Master (NIC Master)" means a certification indicating that the holder has passed the NIC Knowledge exam as administered by RID and has scored within the high range on both the interview and performance portions of the test.

(33) "Nationally Recognized Organization" means an organization that owns or administers an interpreting skills assessment that has been adopted by law or regulation by two or more state agencies or state regulatory boards.

(34)[~~(32)~~] "One (1) continuing education hour" means sixty (60) contact minutes of participating in continuing education experiences.

(35)[~~(33)~~] "Oral Interpreting Certificate. Comprehensive (OIC:C) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf or hard-of-hearing.

(36)[~~(34)~~] "Oral Interpreting Certificate. Spoken to Visible (OIC:S/V) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing.

(37)[~~(35)~~] "Oral Interpreting Certificate. Visible to Spoken (OIC:V/S) granted by RID" means a certificate indicating that the holder has demonstrated the ability to understand the speech and silent mouth movements of a person who is deaf or hard-of-hearing and to repeat the message for a hearing person.

(38)[~~(36)~~] "Oral Transliteration Certificate (OTC) granted by RID" means a certificate indicating that the holder has demonstrated ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf and hard-of-hearing.

(39)[~~(37)~~] "Reverse Skills Certificate (RSC) granted by RID" means a certificate indicating that the holder:

(a) Is deaf or hard of hearing; and

(b) Has demonstrated the ability to:

1. Interpret between American Sign Language and English-based sign language; or

2. Transliterate between spoken English and a signed code for English.

(40)[~~(38)~~] "Revoked" means the process by which the board terminates all rights and privileges associated with that license, in settlement of a disciplinary action initiated by the board.

(41)[~~(39)~~] "RID" means Registry of Interpreters for the Deaf, Inc.

(42)[~~(40)~~] "Sign Communication Proficiency Interview (SCPI) as developed by National Technical Institute for the Deaf" means the assessment that rates the ability to communicate expressively and receptively in a video-taped one-on-one interview or conversation with a trained interviewer.

(43)[~~(41)~~] "Sign Language Proficiency Interview (SLPI) as developed by National Technical Institute for the Deaf" means the assessment that rates the ability to communicate expressively and receptively in a video-taped one-on-one interview or conversation with a trained interviewer.

(44)[~~(42)~~] "Specialist Certificate: Legal (SC:L) granted by RID" means a certificate indicating that the holder has demonstrated specialized knowledge of legal settings and greater familiarity with language used in the legal system and is recommended for a broad range of assignments in the legal setting.

(45)[~~(43)~~] "Specialist Certificate: Performing Arts (SC:PA) granted by RID" means a certificate indicating that the holder has demonstrated specialized knowledge in performing arts interpretation and is recommended for a broad range of assignments in the performing arts setting.

(46)[~~(44)~~] "TECUnit" means the National Training, Evaluation, and Certification Unit.

(47)[~~(45)~~] "Transliteration Certificate (TC) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate between spoken English and a signed code for English.

(48)[~~(46)~~] "Voluntary surrender" means the process by which a person who holds a license issued by the board, knowingly and willingly, returns the license to the board, forfeiting all rights and privileges associated with that license, in settlement of a disciplinary action initiated by the board.

DEREK DRURY, Board Chair

APPROVED BY AGENCY: May 12, 2017

FILED WITH LRC: May 12, 2017 at 2 p.m.

CONTACT PERSON: John Marcus Jones, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601. phone (502) 696-5635, fax (502) 564-6801, email marcus.jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marcus Jones

(1) Provide a brief summary of: Establishes the definitions for terms used in the regulations pertaining to Interpreters for the Deaf

and Hard of Hearing.

(a) What this administrative regulation does: This administrative regulation establishes the definitions for terms used in the regulations pertaining to Interpreters for the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set uniform definitions for terms used in the regulations pertaining to Interpreters for the Deaf and Hard of Hearing.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 309.304(3) requires the board to promulgate necessary and reasonable regulations to carry out the provisions of KRS 309.300 to 309.319. The uniform definitions for terms used in the administrative regulation are necessary to carry out that mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the public of the definitions for the terms used in the administrative regulations pertaining to Interpreters for the Deaf and Hard of Hearing.

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

(a) How the amendment will change this existing administrative regulation: The amendment will add the BEI and define the term "Nationally Recognized Organization."

(b) The necessity of the amendment to this administrative regulation: The amendment will identify the BEI certification examination and define the term "Nationally Recognized Organization" as used in the chapter regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.304(1) requires the board to promulgate regulations to carry out the provisions of KRS 309.300 to 309.319.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will define the term BEI as a certification examination and provide a uniform definition for the term "Nationally Recognized Organization" for the chapter regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 50 persons will seek licensure within the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will define the term BEI as a certifying agency and provide a uniform definition for the term nationally recognized organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any cost to the applicants affected by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will be aware of the BEI as a certifying examination available to applicants for licensure as an interpreter.

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

(a) Initially: The budget for the Board is $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The budget for the Board is estimated to continue to have a budget of $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish the fees. This regulation only sets the definitions for the administrative regulations pertaining to Interpreters for the Deaf and Hard of Hearing.

(9) Tiering: Is tiering applied? No. Tiering is not applied because this change in the administrative regulation will apply to all applicants for licensure or temporary licensure equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.300, KRS 309.304.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have any effect on the expenditures and revenues of state and local government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated will depend on the number of applicants for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue will depend on the number of applicants for the subsequent years.

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

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

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

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

GENERAL GOVERNMENTAL CABINET
Office of Occupations and Professions
Kentucky Board of Interpreters for the Deaf and Hard of Hearing
(Amended After Comments)

201 KAR 39:070. Application and qualifications for temporary licensure.

RELATES TO: 309.312(1)(b), (3)
STATUTORY AUTHORITY: KRS 309.304(3), 309.312
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) and (3) require the board to promulgate an administrative regulation establishing the requirements for an applicant for temporary licensure as an interpreter for the deaf and hard of hearing. This administrative regulation establishes the requirements regarding temporary licensure.

Section 1. Application for **Temporary** Licensure. Each

applicant shall submit:

(1) A completed Application for Licensure Form;

(2) The appropriate application and licensure fees as required by 201 KAR 39:040;

(3) A Plan of Supervision for a Temporary License from a board approved mentor;

(4) Proof documenting passage of the NIC or EIPA Knowledge Exam. If the interpreter is deaf or hard of hearing, eighteen (18) hours of continuing education focused on CDI preparation may be obtained in lieu of this requirement; and

(5) Proof of achieving or holding one (1) of the following:

(a) Valid NAD Level III as a currently certified member;

(b) SCPI Advanced or better, within three (3) years of application;

(c) SLPI Advanced or better, within three (3) years of application;

(d) ASLPI of three and one-half (3.5) or better, within three (3) years of application; [~~or~~]

(e) EIPA of three (3.0) or better; or[~~.~~]

(f) BEI Basic or better, within three (3) years of application.

Section 2. Temporary Licensure Duration. (1) An individual may hold temporary licensure for a maximum of five (5) consecutive licensure years from the date of initial issuance.

(2) An individual who is deaf or hard of hearing may hold temporary licensure for a maximum of ten (10) consecutive licensure years from the date of initial licensure.

(3) Any reinstatement or extension of a temporary license shall occur during the period established in subsection (1) or (2) of this section.

(4) The board shall, in individual cases involving medical disability, illness, undue hardship, or active military service, or other extenuating circumstances that preclude the individual from completing the requirements, grant an extension of temporary licensure for an additional one (1) year for applicants who submit to the board:

(a) A written request for an extension of the temporary licensure term delivered to the board, by certified mail, no less than thirty (30) days before the expiration of the temporary license; and

(b) Verifying documentation signed by a licensed physician or proper military personnel, if applicable; or

(c) Documentation that provides evidence of the undue hardship.

Section 3. Supervision Requirements. (1) Each applicant for a temporary license shall be trained and supervised by a board-approved mentor.

(2) During the period of training and supervision the mentor shall meet with the licensee on a quarterly basis. One (1) of these meetings shall be on a face to face basis with each person being mentored. The remaining meetings may be through the use of video or video teleconferencing or any other method outlined in the approved plan of supervision.

(3) A mentor shall contract with no more than twenty (20) temporary licensees during a calendar year.

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

(a) "Application for Licensure", December 2016[~~August 2015~~]; and

(b) "Plan of Supervision for Temporary License", 10/2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing[~~Division of Occupations and Professions~~], 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

DEREK DRURY, Board Chair

APPROVED BY AGENCY: May 12, 2017

FILED WITH LRC: May 12, 2017 at 2 p.m.

CONTACT PERSON: John Marcus Jones, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601. phone (502) 696-5635, fax (502) 564-6801, email marcus.jones@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Marcus Jones

(1) Provide a brief summary of: Establishes the requirements to obtain a temporary license as an Interpreter for the Deaf and Hard of Hearing.

(a) What this administrative regulation does: This administrative regulation establishes the procedures and certification levels for the licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the process and minimum certification testing scores for temporary licensure and establish an expiration date for certifications.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 309 requires the board to verify the qualifications of and establish a procedure for the temporary licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing. This administrative regulation establishes the minimum qualifications and supervision requirements for temporary licensure and the expiration date for certifications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the examinations required, minimum test scores, and supervision requirements for obtaining temporary licensure from the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment will add the BEI as a certification examination for applicants wishing to obtain a temporary license as an interpreter in the Commonwealth of Kentucky.

(b) The necessity of the amendment to this administrative regulation: The amendment will add the BEI as a certification examination for applicants wishing to obtain a license as an interpreter in the Commonwealth of Kentucky. The amendment is necessary as the existing certifying examinations have been placed on a moratorium with no foreseeable end date.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.312(3) states that the board may issue a temporary license to applicants for licensure and establish procedures for the issuance of temporary licenses. KRS 309.312 requires applicants to meet current certification standards from a nationally recognized organization at the requisite level for sign language interpreters. BEI is a nationally recognized examination from Texas and Arizona and an affordable alternative for applicants.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will add the BEI as a certification examination for applicants wishing to obtain a temporary license as an interpreter in the Commonwealth of Kentucky. The amendment is necessary as the existing certifying examinations have been placed on a moratorium with no foreseeable end date.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 50 persons will seek temporary licensure within the next fiscal year, this regulation will also continue as new applicants seek temporary licensure from the board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will allow new applicants to use a passing score on the BEI to qualify for licensure as an interpreter in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any cost to the applicants affected by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will have an additional certifying examination alternative for qualifying for Kentucky licensure as an interpreter.

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

(a) Initially: The budget for the Board is $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The budget for the Board is estimated to continue to have a budget of $38,000 annual. It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish the fees. This regulation only sets the procedure for obtaining a temporary license.

(9) Tiering: Is tiering applied? No. Tiering is not applied because this change in the administrative regulation will apply to all applicants for licensure or temporary licensure equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.304, KRS 309.312.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will not have any effect on the expenditures and revenues of state and local government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenue generated will depend on the number of applicants for the year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue will depend on the number of applicants for the subsequent years.

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(Amended After Comments)

400 KAR 1:090. Administrative hearings practice provisions.

RELATES TO: KRS 146.200-146.360, 146.450, 146.530, 146.990, 149.344, 149.346, 149.348, 151.125, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224[~~223.200, 223.420, 223.991, 224.10-270, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.20-755(7), 224.60-130, 224.60-140~~], 350.028, 350.029, 350.0301, 350.0305, 350.032, 350.060, 350.070, 350.085, 350.090, 350.093, 350.130, 350.240, 350.255, 350.300, 350.305, 350.465, 350.610, 350.990, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS 146.270, [~~13A~~] 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.029, 350.0301, 350.0305, 350.240, 350.255, 350.300, 350.465, 350.610, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapters 146, 149, 151, 223, 224, and[~~Chapter~~] 350 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This administrative regulation establishes procedures for conducting administrative hearings, administrative conferences, mediations, and issuance of final orders in regard to violations and final determinations of the cabinet made pursuant to KRS Chapters 146, 149, 151, 223, 224, and 350[~~in pertinent part authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth practice provisions for the permanent regulatory program in addition to those found in 405 KAR 7:091 and 405 KAR 7:092. KRS Chapters 224 and portions of KRS Chapters 146 and 223 in pertinent part authorize the cabinet to promulgate administrative regulations pertaining to the conduct of administrative hearings concerning matters covered by KRS Chapters 146, 223, and 224. This administrative regulation sets forth practice provisions for the administration of matters falling under KRS Chapters 146, 223 and 224. KRS Chapter 151 in pertinent part authorizes the secretary to promulgate, without notice or hearing, rules and administrative regulations with respect to procedural aspects of administrative hearings. This administrative regulation sets forth practice provisions for the administration of matters falling under KRS Chapter 151~~].

Section 1. Applicability. This administrative regulation establishes procedures for conducting an administrative hearing, administrative conference, mediation, and issuance of a final order in regard to a violation and a final determination of the cabinet made pursuant to KRS Chapters 146, 149, 151, 223, 224, and 350.

Section 2. Assignment of a Case Number and Caption. (1) Assignment of a case number.

(a) If the office receives an initiating document, filed in accordance with Section 3 of this administrative regulation by a person other than the cabinet, the office shall assign a case number to that document.

(b) If the initiating document is filed by the cabinet's Office of General Counsel, the Office of General Counsel shall assign the case number to the document at the time of filing.

(2) Caption requirements. Any person filing an initiating document, or pleading in the office shall state:

(a) The case number **in accordance with subsection (1) of this section**;

(b) The permit number if it relates to a permit;

(c) The noncompliance number if it relates to a notice of noncompliance and order for remedial measures as defined in 405 KAR 7:092, Section 1;

(d) The cessation order number if it relates to a cessation order as defined in 405 KAR 7:092, Section 1;

(e) The agency interest number**, if known**;

(f) The petitioner name;

(g) The respondent name; and

(h) Any intervenor name.

(3) Any person filing an initiating document in the office shall state in the caption of the document, the name and address of the person to be served on behalf of each respondent.

(4) Consolidated case caption. A pleading filed in a consolidated case shall list all consolidated case numbers. If a pleading filed in a consolidated case pertains to some, but not all, of the consolidated cases, the party filing the document shall indicate the case to which the document applies.

Section 3. Filing and Retention of a Pleading or Discovery Material. (1) Filing of a pleading.

(a) Any person filing a pleading in the office shall file the original pleading with office.

(b) A pleading may be initially filed by facsimile or electronic mail pursuant to the requirements in subparagraphs 1. and 2. of this paragraph. A person filing by facsimile or electronic mail shall, after sending the document via facsimile or by electronic mail, file the original of the document with the office.

1. Facsimile.

a. A person filing a pleading in the office may file the pleading by facsimile at the facsimile number listed for the office.

b. The facsimile pleading shall be stamped filed according to the time and date stamp placed on the facsimile pleading by the office facsimile machine and shall be filed in the record upon retrieval from the office facsimile machine.

c. If the office facsimile machine malfunctions, the facsimile pleading shall be stamped as of the date actually received in the office.

2. Electronic mail.

a. A person filing a pleading in the office may file the pleading by electronic mail at the electronic mail address listed for the office, not the electronic mail address of the assigned hearing officer.

b. The pleading shall be saved as a Portable Document Format (PDF). If the pleading is not electronically mailed in a Portable Document Format, it shall not be accepted by the office.

c. The electronic mail pleading shall be stamped filed according to the time and date placed on the electronic mail pleading as received by the office computer and shall be filed in the record upon retrieval from the office computer.

d. If the office electronic mail server fails, the document shall be stamped as of the date actually received in the office.

(c) The original pleading shall be file stamped on the date actually received by the office. The effective date of filing shall be the earlier date of the receipt in the office of either the facsimile, the electronic mail, or the original.

(d) Filing of discovery material.

1. Except as provided by subparagraph 3 of this paragraph, the following documents shall not be filed with the office unless the hearing officer issues an order otherwise:

a. Interrogatory;

b. Request for production or inspection; and

c. Request for admission.

2. The party responsible for the service of the discovery material shall retain the original and become the custodian. The custodian shall provide access to any party of record during the pendency of the action. A subpoena shall be returned to the party requesting issuance.

3. If a document listed in paragraph (d)1. of this section is to be used at the administrative hearing or in support of a pleading, then the document shall be filed in the office at the beginning of the administrative hearing or at the time the pleading is filed.

(2) Official record.

(a) Each pleading, book, record, paper, or map received in evidence in an administrative hearing or submitted for the record in a proceeding before the office shall be retained in the official record. The replacement of an original document with an accurate photocopy may be permitted while the case is pending upon terms and conditions as may be ordered by the hearing officer.

(b) If a final order of the secretary has been entered, the hearing officer may, upon request and after notice to the other parties, authorize the replacement of an original document with an accurate photocopy.

(3) Signature and record address.

(a) Contact information. A person who files a pleading in the record shall sign the document and shall state the person's:

1. Mailing address;

2. Electronic mail address, if available;

3. Facsimile number, if available; and

4. Telephone number.

(b) Change of contact information. If any of the information that is required to be provided in paragraph (a) of this subsection changes, the person shall within fourteen (14) days of the change, file a notice of change of information in the office identifying each case number in which the person has made a filing.

(4) Submission of authority. If a person filing a pleading relies upon a pertinent case decision or other legal authority in the pleading, the person may file with the pleading a copy of the case decision or other legal authority. If the person files a copy of authority, the person shall serve upon each party in the case a copy of the case decision or other legal authority with the pleading.

(5) Format requirements. Each pleading filed with the office shall conform to the requirements established in paragraphs (a) and (b) of this subsection.

(a) Paper size and binding. The pleading shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock;**[~~. A filing shall not be side-bound or top-bound with a binding that interferes with the inclusion of the pleading in the office unless permitted by the hearing officer;~~]** and

(b) Type size and style. The document shall be typed in a twelve (12) point font.

(6) Electronic recording and transcript.

(a) An administrative hearing and proceeding before the office shall be electronically recorded.

(b) A digital copy of the electronic recording shall be provided by the office upon request.

(c) The cost of a transcript shall be borne by the requesting party **and prepared by a certified court reporter pursuant to a contract between the reporter and the cabinet, the cost of the transcript shall be at the rate established by the contract.[~~1. The cost of a transcript prepared by an employee of the office shall be at a rate that covers the costs of staff time, machine use, and materials.~~**

~~2. If the transcript is prepared by a private reporter pursuant to a contract between the reporter and the cabinet, the cost of the transcript shall be at the rate established by the contract.~~]

(e) Requirement to file transcript with the office.

1. Any party who obtains a transcript of a proceeding before the office and who cites to, quotes from or otherwise relies upon that transcript in any pleading filed with the office, shall file a complete copy of the transcript in the record in the office, unless a copy of the transcript was previously filed in the record.

2. The transcript shall be filed no later than the date upon which the party first cites to, quotes from or relies upon the transcript in any pleading filed with the office.

3. If the party fails to file the transcript with the office that is cited, quoted, or otherwise relied upon in a pleading, the hearing officer may strike all or part of the pleading that refers to the transcript.

Section 4. Time. (1) Computation.

(a) In computing any period of time prescribed or allowed by order of the hearing officer or administrative regulation, the day of the act, event, or default after which the designated period of time begins to run shall not be included.

(b) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

(c) If the period of time prescribed or allowed is less than

seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(d) If a person has the right or is required to perform an act within a period prescribed by order of the hearing officer or administrative regulation after the service of a notice or other pleading upon the party and the notice or pleading is served by mail, three (3) days shall be added to the prescribed period. This provision shall not apply to the service of administrative summons and initiating documents by mail.

(2) Extensions of time.

(a) A motion for an extension of time shall be filed within the time allowed for filing the pleading. The hearing officer, upon cause shown, may order the period extended. If the motion is made after the expiration of the time allowed for filing the pleading, the hearing officer may order the period extended if the failure to act was the result of excusable neglect.

(b) The hearing officer shall not extend the time for filing an initiating document pursuant to the applicable statute of limitations, or if the extension is contrary to any other law or administrative regulation.

Section 5. Administrative Summons and Service of Process. (1) Upon receipt of an initiating document, the office shall serve a copy of the initiating document upon each party designated on the initiating document to be served along with an administrative summons. The office shall serve the initiating document in accordance with the method designated on the initiating document and subsection (4) this section.

(2) The administrative summons shall:

(a) Notify the respondent that an initiating document has been filed against the respondent and unless a written defense is timely served, action adverse to the respondent's interest may be taken;

(b) Designate the date, time, and place of the prehearing conference or administrative hearing; and

(c) Include a statement of the legal authority for the administrative hearing and reference to the statutes and administrative regulations involved.

(3) Service shall be made pursuant to one of the methods in subparagraphs (a) through (k) of this subsection.

(a) Individual within the Commonwealth. Service shall be made upon an individual within the Commonwealth, other than an unmarried infant or person of unsound mind, by delivering a copy of the administrative summons and initiating document to the person or, if acceptance is refused, by offering personal delivery to the person, or by delivering a copy of the administrative summons and initiating document to an agent authorized by appointment or by law to receive service of process for the individual.

(b) Unmarried infant or person of unsound mind. Service shall be made upon an unmarried infant or a person of unsound mind by serving the person's resident guardian or committee if there is one (1) known to the initiating party or, if none; by serving either the person's father or mother within this state or, if none, by serving the person within this state having control of the individual. If there are no persons, application shall be made to the appropriate court to appoint a practicing attorney as guardian ad litem who shall be served. If any person directed by this section to be served is also an initiating party, the person who stands first in the order named who is not an initiating party shall be served.

(c) Partnership or unincorporated association. Service shall be made upon a partnership or unincorporated association subject to suit under a common name by serving:

1. A partner or managing agent of the partnership;

2. An officer or managing agent of the association; or

3. An agent authorized by appointment or by law to receive service on its behalf.

(d) Corporation. Service shall be made upon a corporation by serving an officer or managing agent thereof, or any other agent authorized by appointment or by law to receive service on its behalf.

(e) Person issued a permit, registration, or certification from the cabinet. Service shall be made at the address specified in the permit, registration, registration application, certification, or certification application, exploration notice or exploration application pursuant to 405 KAR 8:020 upon:

1. A person issued a permit, registration, or certification by the cabinet;

2. A person specified as an operator in the permit; or

3. The person's named agent for service stated in the permit, registration, registration application, certification, or certification application.

(f) Commonwealth or agency other than the cabinet. Service shall be made upon the Commonwealth or any agency other than the cabinet by serving the attorney general or any assistant attorney general.

(g) Cabinet. Service of a request for an administrative hearing shall be made upon the cabinet by serving the Executive Director of the Office of General Counsel.

(h) County, city, public board, or other administrative body except state agencies.

1. Service shall be made upon a county by serving the county judge or, if the judge is absent from the county, the county attorney.

2. Service shall be made upon a city by serving the chief executive officer of the city or an official attorney of the city.

3. Service on any public board or other administrative body, except state agencies, shall be made by serving a member.

(i) Nonresident. Service may be made upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in any action growing out of or connected with the business of an office or agency, by serving the person in charge.

(j) Out of state individual. Service may be made upon an individual out of this state, other than an unmarried infant, a person of unsound mind or a prisoner, by any method stated in subsection (4) of this section.

(k) Unknown person. In an action against a person whose name is unknown to the initiating party, the person shall be described in the initiating document and administrative summons as unknown party. If the person's name or place of residence is discovered during the action, then the initiating document shall be amended accordingly.

(4) Methods of service. The office shall place a copy of the document to be served in an envelope and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The office shall employ one (1) of the methods of service in paragraphs (a) through (c) of this subsection as directed by the petitioner on the initiating document in accordance with Section 2(3) of this administrative regulation.

(a) Certified mail.

1. The office shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested.

2. The office shall enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.

3. The office shall file the return receipt or returned envelope in the record;

(b) Personal service.

1. The office shall cause the envelope to be transferred for service to a person authorized by the secretary or by a statute to deliver it, or to a person authorized to serve an action in a court of law who shall serve the initiating document.

2. The office shall enter the fact of delivery in the record and make a similar entry when the return receipt from the authorized person is received.

3. If the return receipt is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The return receipt shall be proof of the time and manner of service; or

(c) Other method allowed by law. Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a circuit court of the Commonwealth of Kentucky shall be supplemental to and shall be accepted as an alternative to any

of the methods of service specified in subsections (3) or (4) of this section.

(5) Proof of service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document. The return receipt shall also be proof of the time, place, and manner of service. Service shall be effective upon:

(a) Acceptance of the summons by any person eighteen (18) years of age or older at the permanent address;

(b) Refusal to accept the summons by any person at the permanent address;

(c) The United States Postal Service's inability to deliver the certified mail containing the summons if properly addressed pursuant to Section (4) of this section;

(d) Failure to claim the certified mail containing the summons prior to its return to the cabinet by the United States Postal Service; or

(e) To the extent the United States postal regulations allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee.

Section 6. Service of a Pleading and Discovery Material. (1) Service is required. Except as provided in subsections (2) or (5) of this section, a party, including a person filing a motion for intervention, shall serve the following pleadings or other documents upon each party in the proceeding:

(a) Every order required by its terms to be served;

(b) Every pleading subsequent to the original initiating document unless the hearing officer orders otherwise in accordance with subsection (5); and

(c) Every document relating to discovery required to be served upon a party unless the hearing officer orders otherwise in accordance with subsection (5).

(2) Service requirement for parties in default. If a secretary's order of default has been entered against a party for failure to appear, then that party shall not be required to be served pursuant to subsection (1) of this section. The defaulting party shall only be given notice of a pleading asserting a new or additional claim for relief against the defaulting party by an initiating document and summons issued thereon.

(3) How service is made.

(a) If service is required pursuant to subsection (1) of this section or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the hearing officer.

(b) Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney's or party's last known address. Delivery of a copy shall include:

1. Handing it to the attorney or to the party;

2. Leaving it at the attorney's or party's office with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or

3. If the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(c) Service by mail shall be complete upon mailing unless the serving party learns or has reason to know it did not reach the person to be served.

(4) Proof of service.

(a) Proof of the time and manner of service shall be filed in the office before the hearing officer or the party is required to take action.

(b) Proof may be by:

1. Certificate of a member of the bar;

2. Affidavit of the person who served the document; or

3. By any other proof satisfactory to the hearing officer.

(c) The certificate or affidavit shall identify by name the person served.

(5) Service on numerous respondents. If there are numerous respondents, the hearing officer may designate one (1) respondent for the service of each document.

Section 7. Hearing Officer. (1) Functions of a hearing officer. An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing. The hearing officer shall:

(a) Administer oaths and affirmations;

(b) Issue subpoenas in accordance with Section 8 of this administrative regulation;

(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;

(d) Rule on procedural requests or similar matters;

(e) Preside over prehearing conferences for settlement or simplification of the issues;

(f) Regulate the course of the administrative hearing;

(g) Rule on offers of proof and receive relevant evidence;

(h) Rule on a motion for summary disposition in accordance with Section 17 of this administrative regulation;

(i) Rule on a motion for directed recommendation in accordance with Section 18 of this administrative regulation;

(j) Issue an order for temporary relief in accordance with 405 KAR 7:092, Section 11 and 405 KAR 5:095, Section 7;

(k) Serve as a mediator in accordance with Section 23 of this administrative regulation;

(l) Take any other action authorized by KRS Chapters 146, 149, 151, 223, 224, 350, and the administrative regulations promulgated pursuant thereto; and

(m) Make or recommend decisions or reports in accordance with KRS Chapters 146, 149, 151, 223, 224, 350, and the administrative regulations promulgated pursuant thereto.

(2) No Authority to Grant Injunctive Relief or a Stay. Notwithstanding the right to grant temporary relief in accordance with 405 KAR 7:092, Section 11 and 405 KAR 5:095, Section 7, a hearing officer shall not have any independent authority to grant injunctive relief or a request for a stay of any statutory, regulatory, or permit requirement.

(3) Ex parte communication.

(a) Except to the extent required for the disposition of an ex parte matter as authorized by law, the hearing officer shall not discuss the merits of an administrative hearing or proceeding with a person identified in subparagraphs 1. through 3. of this paragraph, unless the communication, if oral, is made in the presence of each and every party or their representative, or, if written, is furnished to each party.

1. A party to the proceeding;

2. A person interested in the proceeding; or

3. A representative of a party.

(b) Office personnel involved or who may become involved in the decision making process of an administrative hearing shall not discuss the merits of an administrative hearing or proceeding with a person identified in paragraph (a)1. through 3. of this subsection, unless the communication, if oral, is made in the presence of every other party or their representative, or, if written, is furnished to every party.

(c) The hearing officer and office personnel may discuss the case status or provide advice concerning compliance a with procedural requirement with a person identified in paragraph (a)1. through 3. of this subsection, unless the area of inquiry is in fact an area of controversy in the administrative hearing or proceeding over which the hearing officer is presiding.

(d) An oral communication made in violation of this subsection shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record.

(e) A written communication made in violation of this administrative regulation shall be included in the record and a copy of the memorandum or communication shall be provided to each party, who shall be given an opportunity to respond in writing.

(4) Disqualification. The hearing officer shall withdraw from a case if, according to recognized canons of judicial ethics, the hearing officer deems it appropriate. If prior to a decision of the hearing officer an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of

disqualification.

Section 8. Subpoena. (1) **When requested by a party** the hearing officer shall issue a subpoena requiring the attendance of a witness or production of a book, paper, document, or tangible thing designated therein, or both, at an administrative hearing or at the taking of a deposition.

(2) A subpoena shall be issued using OAH 100 or OAH 101.

(3) A subpoena may be served by:

(a) A person who is not less than eighteen (18) years of age; or

(b) Certified mail, return receipt requested.

(4) The original subpoena bearing a certificate of service shall be filed with the office.

(5) The return receipt if signed by the addressee's authorized agent shall constitute proof of service of the subpoena.

Section 9. De Novo Review. An administrative hearing shall be de novo as to all issues of fact and law. A previous final order on the merits shall be binding against each party or any party in privity with the original party to that action in regard to the issues determined by that final order.

Section 10. Right to Counsel, Entry of Appearance and Notice of Withdrawal. (1) Right to counsel. A party to an administrative hearing may be represented by counsel. The hearing officer shall permit any party to represent his own interests, except a party that is a corporation or limited liability company shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of the corporation or limited liability company to appear by counsel, without good cause, shall be grounds for default.

(2) Filing of notice of entry of appearance.

(a) An attorney representing a party before the office shall file a written notice of entry of appearance in each case before the attorney may practice in that case before the office.

(b) The notice of entry of appearance shall set forth the current, complete and correct name, address, telephone number, and facsimile number, if any, and electronic mail address, if any.

(c) An attorney is not required to file a separate notice of entry of appearance if the attorney files a pleading on behalf of attorney's client.

(3) Withdrawal of representation. An attorney of record shall not withdraw from representation in a proceeding before the office without leave of the hearing officer. Leave shall be given unless the hearing officer determines that the withdrawal will result in substantial prejudice or will unduly delay the consideration and resolution of the case.

(4) Filing of notice of change of address. Each party or, if the party is represented, the party's counsel, shall notify the office of any change of address, telephone number, electronic mail address, or facsimile number by filing a notice of change of address in the record within fourteen days of the change.

Section 11. Prehearing Conference. A hearing officer may order a prehearing conference to be held in person or by telephone:

(1) To simplify and clarify the issue;

(2) To receive a stipulation and admission;

(3) To explore the possibility of agreement to dispose of any issue in dispute; and

(4) To address any motions.

Section 12. Motion Practice. (1) General provisions.

(a) A request for relief, which is not required to be made in a pleading, shall be in the form of a motion and shall indicate in the caption the nature of the motion.

(b) A motion filed with the office shall state precisely the relief requested, and include a citation to the record, the administrative regulations, or the law as appropriate.

(c) A written motion shall comply with the provisions of this section. Failure to comply with this section may be grounds for denying the motion.

(2) Supporting memorandum.

(a) A motion filed with the office, including a motion to dismiss, a motion for summary disposition, a motion to strike, and a motion on the pleadings, shall be accompanied by a memorandum setting forth the grounds for the motion and shall contain a citation to any authority relied upon.

(b) The memorandum shall be no longer than twenty-five (25) pages in length and may be filed in the office without prior leave of a hearing officer.

(3) Response. Any party served with a motion may file a response memorandum opposing the motion, with a citation to any supporting authority.

(a) A response memorandum shall be filed no later than fifteen (15) days of the date of service of a motion.

(b) The time for filing a response memorandum may be extended once, without leave of the hearing officer, for no more than thirty (30) additional days if each party enters into a written agreement that is filed in the office prior to the deadline for filing the initial response.

(c) No response memorandum longer than twenty-five (25) pages in length shall be filed in the office without approval prior leave of a hearing officer.

(d) A response memorandum shall indicate in its caption that it is a response memorandum.

(4) Reply. Any party served with a response memorandum may file a reply memorandum addressing only the matter initially raised in the response.

(a) A reply memorandum shall be filed no later than five (5) days of the date of service of a response memorandum unless a different reply period is ordered by the hearing officer.

(b) The time for filing a reply memorandum may be extended once without leave of the hearing officer for no more than ten (10) additional days if each party enters into a written agreement that is filed in the office prior to the deadline for filing the initial reply.

(c) No reply memorandum longer than ten (10) pages in length shall be filed in the office without prior leave of a hearing officer.

(d) A reply memorandum shall indicate in its caption that it is a reply memorandum.

(5) Failure to file supporting memorandum. The hearing officer may find or recommend entry of an order against a party failing to file a supporting memorandum in support of a motion, response or reply.

(6) Proposed order.

(a) A party who files a motion or response shall simultaneously tender a proposed order granting the requested relief or denying the motion.

(b) he office shall not accept for filing a motion or response unless accompanied by a tendered proposed order.

(c) The tendered order shall contain a service page listing the current, correct and complete names and addresses of each party and counsel of record upon whom the office is required to serve the order.

(d) A party may submit a proposed order in electronic form if accompanied by a hard copy.

(7) Hearing on a motion.

(a) Any party making a motion may request that the motion be heard before the hearing officer.

(b) Upon receipt of the request for a hearing on a motion, the hearing officer may schedule a hearing after the time for all responses and replies pursuant to this section has expired, if the hearing officer determines that oral arguments could provide additional information to form the basis of the ruling.

(c) Court reporter. Any party may arrange for a court reporter to record a hearing on a motion, as long as the party bears the costs.

(d) Failure to appear at hearing. A hearing officer may deny a motion for which the movant who requested the hearing fails to appear. A hearing officer may grant a motion for which a movant requests a hearing and the nonmovant fails to appear, upon proof by the movant filed in the record that the motion was served on the nonmoving party.

Section 13. Motion for Continuance of Formal Administrative Hearing. (1) The hearing officer shall not grant a motion for

continuance unless good cause is shown.

(2) The hearing officer shall not grant a motion for continuance of an administrative hearing if filed within fifteen (15) days of the scheduled date for the administrative hearing unless compelling cause is shown.

Section 14. Motion for Intervention and Consolidation. (1) Who may file. A person may petition in writing for leave to intervene at any stage of a proceeding. A person shall set forth a statement describing the person's interest and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the person:

1. Had a statutory right to initiate the proceeding in which the person requests to intervene; or

2. Has an interest that is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria set forth in paragraph (a) of this subsection does not apply, the hearing officer shall consider the following in determining if intervention is appropriate:

1. The nature of the issues;

2. The adequacy of representation of the person's interest which is provided by the existing parties to the proceeding;

3. The ability of the person to present relevant evidence and argument; and

4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or in a limited capacity. The hearing officer shall determine the extent and terms of the participation, having due regard for the interests of justice and the orderly and prompt conduct of the proceeding. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceeding; and

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.

(4) Consolidation. If proceedings involving the same parties or a common question of law or fact are pending before the office, the proceedings shall be subject to consolidation pursuant to a motion by a party or upon the initiative of the hearing officer.

Section 15. Dismissal for Failure to Prosecute. Once per year the office shall determine all cases in which no activity has been taken for one (1) year or more. The hearing officer to whom a case is assigned shall issue an order directing the petitioner to show cause why the case should not be dismissed. If the petitioner does not show good cause why the case should not be dismissed, the hearing officer shall recommend dismissal of the case with prejudice for failure to prosecute.

Section 16. Evidence. (1) Admissiblity. Unless specifically excluded by subsection (2) this section, evidence that would otherwise not be admissible under the Kentucky Rules of Evidence may be admitted by the hearing officer, if determined by the hearing officer:

(a) To be necessary to ascertain facts not reasonably susceptible to proof under rules of evidence; and

(b) Is a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs.

(2) The hearing officer shall exclude:

(a) Irrelevant, immaterial, or unduly repetitious evidence from the record; the

(b) Evidence designated as confidential by statute; and

(c) Evidence protected pursuant to a privilege recognized by law.

(3) An objection may be made by a party and shall be noted in the record by hearing officer.

(4) The hearing officer may require each party to submit any part of the evidence in written form if:

(a) An administrative hearing will be expedited; and

(b) The interests of each party will not be substantially prejudiced.

(5) Documentary evidence may be received in the form of a copy or excerpt. Upon request of any party, each party shall be given an opportunity to compare the copy with the original.

(6) A party may conduct cross-examination as required for a full and true disclosure of the facts.

(7) The hearing officer may take notice of generally recognized technical or scientific facts within the cabinet's specialized knowledge. The hearing officer shall notify each party of the material noticed either before or during the administrative hearing, or by reference in the report and recommended order. Each party shall be afforded an opportunity to contest the material so noticed by the hearing officer.

(8) The cabinet's experience, technical competence, and specialized knowledge may be utilized by the hearing officer in the evaluation of the evidence.

Section 17. Summary Disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedures shall apply:

(1) The moving party shall verify any allegation of fact with a supporting affidavit, unless the moving party is relying upon:

(a) A deposition,

(b) An answers to interrogatories,

(c) An admissions, or

(d) Any document produced upon request to verify such allegation.

(2) A hearing officer may grant a motion for summary disposition and render a report and recommended order to the secretary under this section if the record shows that:

(a) There is no genuine issue as to any material fact; and

(b) The moving party is entitled to a summary disposition as a matter of law.

(3) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall and upon examination of all relevant documents and evidence, ascertain what material facts are actually and in good faith controverted. The hearing officer shall issue an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate.

Section 18. Directed Recommendation. (1) At the close of the presentation of evidence by a party at an administrative hearing, the opposing party may move the hearing officer for a directed recommendation to the secretary.

(2) The moving party shall state the specific grounds in support of the request for a directed recommendation.

(3) The hearing officer shall consider all of the evidence presented at the administrative hearing by the nonmoving party and shall draw all inferences in favor of the nonmoving party.

(4) If the hearing officer determines that the nonmoving party has failed to meet his burden of proof, the hearing officer shall:

(a) Grant the moving party's motion; and

(b) Recommend that the secretary deny the nonmoving party's request for relief.

(5) A motion for a directed recommendation is not a waiver of an administrative hearing.

(6) A party who moves for a directed recommendation may move forward and offer evidence to the same extent as if the motion had not been made and without having to reserve the right to offer the evidence.

Section 19. Orders to Abate and Alleviate. (1) Notice.

(a) If the secretary issues an order to abate or alleviate pursuant to KRS 224.10-410, the secretary shall file a copy of the order in the office.

(b) Upon filing an order to abate or alleviate, the office shall

issue an administrative summons pursuant to Section 5 of this administrative regulation and shall set the time and place for an administrative hearing to be held within ten (10) days from the date the order to abate or alleviate was signed by the secretary.

(2) Response.

(a) The person named in the order to abate or alleviate shall prior to or at the administrative hearing file a response to the order that:

1. Specifically admits or denies the facts alleged in the order;

2. Sets forth other matters to be considered on review; and

3. Sets forth evidence, if any, that the condition or activity does not violate the provisions of KRS 224.10-410.

(b) In lieu of a response, the person named in the order to abate or alleviate may contact the office in writing or by other means and state that an administrative hearing is not needed, and that the person does not desire to contest the order.

(3) Hearing procedure. The administrative hearing shall be held in accordance with this administrative regulation.

(4) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the abate and alleviate order. The person named in the abate and alleviate order shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 224.10-410, or that the condition or activity has been discontinued, abated, or alleviated.

(5) Default. The hearing officer shall promptly prepare a report stating that the hearing has been waived and the order to abate or alleviate stands as issued if:

(a) The person named in the order to abate or alleviate notified the office that an administrative hearing is not needed; or

(b) Upon failure of the person to appear at the administrative hearing.

(6) Effect of the proceeding. The scheduling and holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligation imposed on a person by the order.

Section 20. Report and Recommended Order and Any Exception. (1) Time.

(a) With the exception of paragraph (b) and (c) of this subsection, the hearing officer shall make a report and recommended order to the secretary within thirty (30) days of the close of the record.

(b) In a hearing brought in accordance with 405 KAR 7:092, Section 8, permit determinations, the hearing officer shall make a report and recommended order within twenty (20) days of the close of the record.

(c) If the secretary finds upon written request of the hearing officer that additional time is needed to submit the report and recommended order, the secretary may grant an extension. If granted by the secretary, all parties shall be notified.

(2) Preponderance of the Evidence.

(a) The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law.

(b) The report and recommended order may depart from prior interpretations of the law by the cabinet provided that the Hearing Officer explicitly and rationally justifies such a change of position.

(3) Civil Penalty Determination.

(a)The hearing officer shall recommend the amount of a civil penalty based on the record.

(b) The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party.

(c) In actions brought pursuant to 405 KAR 7:092, the hearing officer shall consider the same factors set forth in 405 KAR 7:092, Section 3(2) for consideration in recommending the penalty assessment.

(d) The hearing officer shall state with particularity the reasons, supported by the record, for the penalty recommended in the report and recommended order.

(4) Mailing. The report and recommended order shall be mailed, postage prepaid, to each party and the party's attorney of record.

(5) Exceptions. A party may file an exception and a response to the exception as allowed pursuant to KRS 149.346, 151.184, 224.10-440, and KRS 350.0301. There shall be no further submissions in the record.

(a) Each exception and response shall conform to the format for filing a document in Section 3 of this administrative regulation.

(b) A party filing an exception to a report and recommended order shall tender with the exception a draft recommended order for the secretary.

1. The excepting party's draft recommended order shall set out the relief the party requests in its exception.

2. The draft recommended order shall contain a service page listing the current, correct, and complete name and address of each party and counsel of record upon whom the office shall be required to serve the order.

3. A party may submit a draft recommended order in electronic form if accompanied by a hard copy.

(c) Good cause exception. The secretary may exempt a party from compliance with paragraphs (a) and (b) of this subsection upon a showing of good cause or undue hardship.

Section 21. Secretary's Order. (1) The secretary shall consider the hearing officer's report and recommended order, any exception filed, and response to any exception if permitted by statute, and decide the case within the time period required by statute.

(2) The secretary may:

(a) Remand the matter to the hearing officer;

(b) Adopt the report and recommended order of the hearing officer as a final order;

(c) Adopt part of the report and recommended order of the hearing officer and issue a final order; or

(d) Reject the report and recommended order of the hearing officer and issue a final order.

(3) The final order of the secretary shall be mailed postage prepaid to each party and the party's attorney of record.

(4) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

(5) The final order may depart from prior interpretations of the law by the cabinet provided that the Secretary explicitly and rationally justifies such a change of position.

Section 22. Agreed Order. (1) An agreed order that resolves any claim or part of a claim in a case pending in the office shall be tendered to the hearing officer for acknowledgment by signature before being presented to the secretary.

Section 23. Mediation. (1) Referral to mediation.

(a) At any time prior to the conclusion of the final prehearing conference, a hearing officer may issue an order referring all or any part of any case to nonbinding mediation.

(b) A case shall not be referred for mediation if the cabinet advises the hearing officer that mediation would require a deviation from a statutory or regulatory requirement.

(2) Mediator.

(a) A case may be referred to any hearing officer employed by the office or a mediator approved by the chief hearing officer.

(b) The mediator shall notify the hearing officer in writing when a case is not accepted for mediation.

(c) Disqualification of a mediator.

1. Any party may move the hearing officer to enter an order disqualifying the mediator for good cause. Employment by the cabinet shall not constitute good cause for the disqualification.

2. If the hearing officer rules that a mediator is disqualified from mediating the case, the hearing officer shall enter an order referring the matter to another mediator.

3. Nothing in this provision shall preclude a mediator from disqualifying himself or refusing any assignment.

4. Unless the hearing officer orders otherwise, the time for

mediation shall be tolled during any periods in which a motion to disqualify is pending.

(3) Statements not admissible. Statements or admissions made for the purpose of mediation shall not be:

(a) Subject to disclosure through discovery;

(b) Admitted in evidence at an administrative hearing; or

(c) Used by the hearing officer in making any report and recommended order.

(4) Proceeding not stayed. Unless otherwise ordered by the hearing officer or agreed to in writing by the parties, the mediation shall not operate as a stay of discovery or other prehearing proceeding.

(5) Mediation conference.

(a) Mediation status conference. In the mediation referral order, the hearing officer shall schedule a mediation status conference to be held within thirty (30) days from the entry of the mediation referral order unless otherwise agreed to in writing by the parties.

(b) Scheduling a Mediation Conference.

1. The mediator shall schedule a mediation conference within thirty (30) days of the mediation status conference unless otherwise agreed to by the parties.

2. The mediator may schedule as many conferences as are necessary to complete the process of mediation.

(c) Purpose of the mediation conference. The conference shall be conducted by the mediator to consider the possibility of settlement, the simplification of each issue, and any other matter that the mediator and each party determines may aid in the handling or the disposition of the proceeding.

(d) Appearance at mediation conference.

1. Each party or a representative of the party, having authority to negotiate on behalf of that party, shall attend the mediation.

2. Counsel may also be present.

(e) Production of a document and witness. The mediator may request that a party bring a document or witness, including an expert witness, to the mediation conference, but shall not have authority to order production.

(f) The mediation conference shall continue until:

1. A settlement is reached;

2. Any party is unwilling to proceed further; or

3. The mediator determines that further efforts would be of no avail.

(6) Reporting to the hearing officer.

(a) After the conclusion of the first mediation conference, any party may move the hearing officer to remove the case from mediation and to set the case for a prehearing conference or an administrative hearing.

(b) Within ten (10) days of the conclusion of a case accepted for mediation, the mediator shall state in writing to the hearing officer that the mediation process has ended. The report shall state:

1. Remand prior to settlement. If any party is unwilling to proceed further or the mediator determines that further efforts would be of no avail, then the mediator shall state in writing the lack of an agreement to the hearing officer and shall make no other comment or recommendation.

2. Full settlement. If a case is settled prior to or during mediation, an attorney for one (1) of the parties shall:

a. Within ten (10) days of the conclusion of mediation, file with the office a joint statement that all issues have been resolved; and

b. Promptly prepare and submit to the hearing officer an agreed order reflecting the terms of the settlement in accordance with Section 22 of this administrative regulation.

3. Partial settlement. If some but not all of the issues in the case are settled during mediation or if an agreement is reached to limit discovery or on any other matter, the attorney for one (1) party shall, within ten (10) days of the conclusion of mediation, file with the office a joint statement enumerating the issues that have been resolved and the issues that remain for an administrative hearing. The hearing officer shall then return the matter to the active docket and promptly schedule a prehearing conference or an administrative hearing.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Subpoena", OAH 100, November 2016;

(b) "Subpoena Duces Tecum", OAH 101, November 2016.

(2) This material may be inspected, copied, or obtained, at the Office of Administrative Hearings, 211 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

(3) This material may also be obtained on the office Web site at www.oah.ky.gov.[~~This administrative regulation shall govern the conduct by the cabinet of all administrative hearings authorized by KRS Chapters 151, 224, and 350, and pertinent portions of KRS Chapters 146 and 223, including those pending at the time this administrative regulation becomes effective.~~

~~Section 2. Construction. This administrative regulation shall be construed liberally and in conformity with reasonable administrative practice to achieve just, timely and inexpensive determinations of matters before the office. This administrative regulation is not intended to be comprehensive, and nothing contained herein shall be construed to limit the authority of a hearing officer to govern the conduct of his docket or the procedural course of a particular administrative hearing as authorized by statute and administrative regulation and in accordance with reasonable administrative practice.~~

~~Section 3. Assignment of Case Numbers and Captions. (1) Assignment of case numbers. The office shall stamp each initiating document filed on the date received by the office and shall assign a file number to that document.~~

~~(2) Captions generally. All initiating documents, pleadings, motions, orders and all other papers filed in any case before the office shall be uniformly marked in the caption to indicate the file number(s) and, where applicable, shall show the permit number(s), the noncompliance number(s), the cessation order number(s), the notice of violation number(s), the petitioner's or plaintiff's name(s), the respondent's or defendant's name(s), and any intervenors' names.~~

~~(3) Consolidated case captions. All documents filed in consolidated proceedings shall list all case file numbers as set forth in subsection (2) of this section. If a document filed in a consolidated proceeding pertains to some, but not all, of the cases consolidated, the party filing such a document shall indicate in the text thereof the case(s) to which the document applies.~~

~~Section 4. Facsimile Filings. (1) Time and manner of filing. Persons filing documents with the office may file such documents by telefacsimile machine at the telefacsimile number listed for the office. The telefacsimile document shall be stamped filed according to the time and date stamp placed on the telefacsimile copy by the telefacsimile machine and shall be promptly filed in the record upon retrieval from the telefacsimile machine. If the telefacsimile machine malfunctions, the telefacsimile document shall be stamped as of the date actually received in the office.~~

~~(2) Originals filed. Parties filing by telefacsimile machine shall promptly after telefaxing a document file the original of the document with the office. The original shall be file stamped on the date actually received by the office. The effective date of filing shall be the date of the receipt in the office of the telefacsimile document or the original document, whichever is earlier.~~

~~Section 5. Initiating Documents, Answers and Responsive Pleadings. (1) Initiating documents. In addition to other administrative regulations governing the contents of an initiating document, an initiating document shall identify by name and file number all related actions pending before the office known to the filing party, and shall set forth the current, complete and correct name, address, telephone number, and telefax number, if any, of the filing party and, if he is represented, his counsel.~~

~~(2) Answers and responsive pleadings. In addition to other administrative regulations governing the contents of an answer or responsive pleading, an answer or responsive pleading, if required or permitted, shall set forth other matters to be considered in the~~

~~action, and shall set forth the current, complete and correct name, address, telephone number, and telefax number, if any, of the responding party and, if he is represented, his counsel. If a responding party is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state and this shall have the effect of a denial.~~

~~(3) Effect of failure to deny. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. Allegations in a pleading to which a responsive pleading is required may be deemed admitted when not denied in the responsive pleading. Failure to plead any available administrative affirmative defense in a required responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.~~

~~Section 6. Prehearing Conferences. (1) General provisions. To the extent practicable, a prehearing conference shall be held in all cases filed with the office.~~

~~(2) Telephonic prehearing conferences. Prehearing conferences may be held in person or by telephone. Any party who requests a telephonic prehearing conference shall initiate the conference call, unless the hearing officer orders otherwise.~~

~~Section 7. Mediation. (1) General provisions.~~

~~(a) Referral to mediation. At any time prior to the conclusion of the final prehearing conference, a hearing officer may, by appropriate order, refer all or any part of any case to nonbinding mediation. A case shall not be referred for mediation if the cabinet advises the hearing officer that mediation would require deviation from statutory or regulatory requirements. Cases may be referred to any mediator employed by the office or approved by the chief hearing officer.~~

~~(b) Disqualification of mediator. Any party may move the hearing officer to enter an order disqualifying the mediator for good cause, except that employment by the cabinet shall not constitute good cause for such disqualification. If the hearing officer rules that a mediator is disqualified from mediating the case, he shall enter an order referring the matter to another mediator. Nothing in this provision shall preclude a mediator from disqualifying himself or refusing any assignment. Unless the hearing officer orders otherwise, the time for mediation shall be tolled during any periods in which a motion to disqualify is pending.~~

~~(c) Statements not admissible. No statements or admissions made for the purpose of mediation are subject to disclosure through discovery, nor may they be admitted in evidence at an administrative hearing or used by the hearing officer in making any report and recommendation to the secretary.~~

~~(d) Proceedings not stayed. Referral of a case to mediation shall not operate as a stay of discovery or other prehearing proceedings, unless otherwise ordered by the hearing officer or agreed to in writing by the parties. While a case is in mediation, the hearing officer may schedule periodic prehearing conferences to ascertain the status of mediation.~~

~~(2) Mediation conferences.~~

~~(a) Time and purpose of conference. Within ten (10) days from the entry of a mediation referral order, the mediator shall schedule a mediation conference, which shall be held within thirty (30) days from the entry of the mediation referral order unless otherwise agreed to in writing by the parties. The conference shall be conducted by the mediator to consider the possibility of settlement, the simplification of the issues and any other matters which the mediator and the parties determine may aid in the handling or the disposition of the proceedings.~~

~~(b) Duration. The mediator may schedule such sessions as are necessary to complete the process of mediation, and mediation shall continue until the parties have reached a settlement, until any party is unwilling to proceed further, until the mediator determines that further efforts would be of no avail, or until the hearing officer orders the matter remanded from mediation. After the conclusion of the first mediation conference, any party may move the hearing officer to remove the case from mediation and to set the case for a prehearing conference or an administrative hearing.~~

~~(c) Appearance at conference. The parties shall attend the mediation conference(s). Counsel may also be present. If a party to mediation is the cabinet or any other public entity, that party shall be deemed to appear at a mediation conference by the presence of a representative with full authority to negotiate on behalf of the cabinet or other entity and to recommend settlement to the secretary or to the appropriate decision-making body of the entity. In all other cases, a party is deemed to appear at a mediation conference if that party or a representative having full authority to negotiate on behalf of that party is present.~~

~~(d) Production of documents and witnesses. The mediator may request that the parties bring documents or witnesses, including expert witnesses, to the mediation sessions, but has no authority to order such production.~~

~~(3) Reporting to the hearing officer.~~

~~(a) Refusal to accept. The mediator shall notify the hearing officer promptly in writing when a case is not accepted for mediation.~~

~~(b) Remand prior to settlement. At any time after the case has been referred for mediation, the mediator may for good cause in writing return the case to the hearing officer. The hearing officer shall promptly thereafter schedule a prehearing conference or an administrative hearing.~~

~~(c) Full settlement. If a case is settled prior to or during mediation, an attorney for one (1) of the parties shall promptly prepare and submit to the hearing officer an agreed order reflecting the terms of the settlement in accordance with Section 16 of this administrative regulation.~~

~~(d) Partial settlement. If some but not all of the issues in the case are settled during mediation or if agreements are reached to limit discovery or on any other matter, the parties shall, within ten (10) days of the conclusion of mediation, file with the office a joint statement enumerating the issues that have been resolved and the issues that remain for an administrative hearing. The hearing officer shall then return the matter to his active docket and promptly schedule a prehearing conference or an administrative hearing.~~

~~(e) Mediator's report. Within ten (10) days of the conclusion of cases accepted for mediation, the mediator shall state in writing to the hearing officer that the mediation process has ended. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall state in writing the lack of an agreement to the hearing officer and shall make no other comment or recommendation.~~

~~Section 8. Entry of Appearance and Notice of Withdrawal. (1) Filing of notice of entry of appearance. All attorneys representing parties before the office must file a written notice of entry of appearance in each case before they may practice in that case before the office. The notice of entry of appearance must set forth the current, complete and correct name, address, telephone number and telefax number, if any, of the attorney and his client. An attorney is not required to file a separate notice of entry of appearance if he files the initial pleading on behalf of his client in conformity with Section 5 of this administrative regulation.~~

~~(2) Withdrawal of representation. An attorney of record shall not withdraw from representation in a proceeding before the office without leave of the hearing officer. Leave shall be given unless the hearing officer determines that the withdrawal will result in substantial prejudice or will unduly delay the consideration and resolution of the case.~~

~~(3) Filing of notice of change of address. Each party or, if he is represented, his counsel shall promptly notify the office of any change of address, telephone number, or telefax number required to be filed pursuant to this administrative regulation by filing a notice of entry of change of address in the record.~~

~~Section 9. Motion Practice. (1) General provisions. All requests for relief which are not required to be made in a pleading shall be in the form of a motion. All motions filed with the office shall state precisely the relief requested, with citations to the record, the administrative regulations or the law as appropriate. All written~~

~~motions shall comply with the provisions of this section. Failure to comply with this section may be grounds for denying the motion.~~

~~(2) Motions. All motions filed with the office going to the merits of a case, including motions to dismiss, motions for summary disposition, motions to strike, and motions on the pleadings shall be accompanied by a brief memorandum setting forth the grounds for the motion and shall contain citation of authorities relied upon.~~

~~(a) No memorandum in support of a motion longer than twenty-five (25) pages in length shall be filed in the office without prior leave of a hearing officer.~~

~~(b) A motion shall indicate in its caption the nature of the motion.~~

~~(3) Responses. Any party served with a motion may file a response memorandum opposing the motion, with citation of supporting authorities.~~

~~(a) A response memorandum shall be filed no later than fifteen (15) days of the date of service of a motion unless a different response time is ordered by the hearing officer. The time for filing a response memorandum may be extended once without leave of the hearing officer for no more than thirty (30) additional days by written agreement of all parties filed in the office prior to the deadline for filing that is being extended.~~

~~(b) No response memorandum longer than twenty-five (25) pages in length shall be filed in the office without prior leave of a hearing officer.~~

~~(c) A response memorandum shall indicate in its caption that it is a response memorandum.~~

~~(4) Replies. Any party served with a response memorandum may file a reply memorandum addressing only matters initially raised in the response.~~

~~(a) A reply memorandum shall be filed no later than five (5) days of the date of service of a response memorandum unless a different reply period is ordered by the hearing officer. The time for filing a reply memorandum may be extended once without leave of the hearing officer for no more than ten (10) additional days by written agreement of all parties filed in the office prior to the deadline for filing that is being extended.~~

~~(b) No reply memorandum longer than ten (10) pages in length shall be filed in the office without prior leave of a hearing officer.~~

~~(c) A reply memorandum shall indicate in its caption that it is a reply memorandum.~~

~~(5) Failure to file supporting memorandum. Failure to file a memorandum in support of a motion or in support of a response or reply may be grounds for ruling against the party failing to file the supporting memorandum.~~

~~(6) Format of memoranda. All motions, memoranda, pleadings and briefs filed with the office shall conform to the following requirements:~~

~~(a) Paper size and binding. All motions, memoranda, pleadings and briefs shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock. Filings shall not be side-bound or top-bound with bindings that interfere with the inclusion of the papers or pleadings in the office files unless permitted by the hearing officer.~~

~~(b) Type size and style. All motions, memoranda, pleadings and briefs shall be in type no smaller than ten (10) point nor closer than twelve (12) pitch.~~

~~(c) Signature. All motions, memoranda, pleadings and briefs shall be signed by the party or counsel submitting same and shall include the name, address, telephone number and telefax number, if any, of the attorney of record or party filing such document.~~

~~(d) Certificate of service. All documents served under these administrative regulations shall have proof of service by a written certification. Proof of service shall state the date and method of service and shall be signed by a person who can verify service.~~

~~(7) Originals only filed. Unless otherwise ordered by the hearing officer, only the original motion, memorandum, pleading or brief, together with any telefacsimile thereof, shall be filed with the office.~~

~~(8) Submission of authority. If a person filing a motion, brief or memorandum has relied upon a pertinent case decision or other legal authority in the motion, brief or memorandum, that person may file with such motion, brief or memorandum a copy of the case decision or other legal authority. If the person files a copy of authority, he shall serve upon all other parties to the case a copy of the case decision or other legal authority with the memorandum or motion.~~

~~(9) Proposed orders. No motion, response or memorandum supporting or opposing a motion shall be accepted for filing by the office unless accompanied by a tendered separate proposed order granting the requested relief or denying the motion. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the office is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.~~

~~(10) Good cause exception. The hearing officer may exempt a party from compliance with subsections (6) and (9) of this section upon a showing of good cause or undue hardship.~~

~~Section 10. Hearings on Motions. (1) Requests for hearing on motion. Any party making a motion may request that such motion be heard before the hearing officer assigned to the case in which the motion is made. A request for a hearing on a motion shall give notice that the motion will be heard on any regularly scheduled motion day for the hearing officer that follows the expiration of the time for filing a reply memorandum unless otherwise ordered by the hearing officer.~~

~~(2) Court reporter. Any party may arrange for a court reporter to record a hearing on a motion. The party requesting the court reporter shall bear all appearance costs and expenses associated with having the court reporter at the motion hearing.~~

~~(3) Motion days. Motion days shall be conducted on a regular basis according to a schedule established by the office. The office shall post a current schedule which sets forth the time, place and date of upcoming motion days.~~

~~(4) Failure to appear at hearing. A hearing officer before whom a motion is made may deny any motion for which a movant schedules or notices a hearing and fails to appear. A hearing officer before whom a motion is made may grant any motion for which a movant schedules or notices a hearing and the nonmovant fails to appear, upon proof by the movant filed in the record that the motion was served on the nonmoving party.~~

~~Section 11. Motion for Continuance. No motion for a continuance shall be granted if made within two (2) days of a prehearing conference or fifteen (15) days of an administrative hearing, unless compelling cause is shown therefor. All motions for a continuance shall be in writing, shall be filed with the office, and shall be served upon all other parties to the case. Continuances shall not be granted upon oral motion absent good cause shown.~~

~~Section 12. Directed Recommendation. (1) Time and standard. At the close of the presentation of evidence by a party at an administrative hearing, the opposing party may move the hearing officer for a directed recommendation to the secretary. The moving party shall state the specific grounds therefor. In ruling on the motion for directed recommendation, the hearing officer shall consider all of the evidence presented at the administrative hearing by the nonmoving party and shall draw all inferences therefrom in favor of the nonmoving party. If, after so considering the evidence, the hearing officer determines that the nonmoving party has failed to meet his burden of proof, the hearing officer shall grant the moving party's motion and shall recommend that the secretary deny the nonmoving party's request for relief.~~

~~(2) Motion for directed recommendation not a waiver. A motion for a directed recommendation is not a waiver of an administrative hearing. A party who moves for a directed recommendation at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having to reserve the right to do so and to the same extent as if the motion had not been made.~~

~~Section 13. Dismissal for Failure to Prosecute. Cases which have been on the docket of the office for a period of one (1) year without any activity shall be dismissed, with prejudice, for failure to~~

~~prosecute unless there is good cause shown why they should not be dismissed. Once per year the office shall determine all cases in which no activity has been taken for one (1) year or more. Thereafter, the hearing officer to whom such cases are assigned shall issue an order directing the petitioner or plaintiff of the case to show cause why the case should not be dismissed. If the petitioner or plaintiff does not show good cause why the matter should not be dismissed, the hearing officer shall recommend dismissal of the matter.~~

~~Section 14. Filing Exceptions. (1) Filing with the office. Any party filing exceptions to a hearing officer's report and recommendation or a response to such exceptions as provided for by statute or administrative regulation shall file the exceptions or response in the record of the case in the office. All such exceptions and responses shall conform to the format for motion memoranda specified in Section 9(6) of this administrative regulation.~~

~~(2) Draft order of the secretary. All parties filing exceptions to a hearing officer's report and recommendation shall tender with their exceptions a draft final order for the secretary. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the cabinet is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.~~

~~(3) Good cause exception. The secretary may exempt a party from compliance with the formatting requirements of subsection (1) of this section and the requirements of subsection (2) of this section upon a showing of good cause or undue hardship.~~

~~Section 15. Filing Transcripts. (1) Transcript to be filed on use. Any party who obtains a transcript of a proceeding before the office and who cites to, quotes from or otherwise relies upon that transcript in any document filed with the office shall file a complete copy of the transcript in the record in the office, unless a copy of the transcript has been previously filed in the record.~~

~~(2) Time for filing. Any party filing a transcript under this section shall file the transcript no later than the date upon which the party first cites to, quotes from or relies upon the transcript in any document filed with the office.~~

~~(3) Failure to file transcript. Failure to file any transcript cited, quoted or otherwise relied upon in a document filed with the office shall be grounds for striking all or part of such motion, memorandum, pleading or other document.~~

~~Section 16. Agreed Orders. All agreed orders entered into which resolve any claim or part of a claim in a case pending before a hearing officer shall be tendered to the office for acknowledgement by the hearing officer before being presented to the secretary, and shall contain thereon a signature line for the hearing officer. The filing of an agreed order in accordance with this section shall not relieve the parties from compliance with the provisions of Section 11 of this administrative regulation.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 15, 2017

FILED WITH LRC: May 15, 2017 at noon

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the administrative hearing practice provisions for the cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish administrative hearing practice provisions that relate to the cabinet's administrative hearing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapters 146, 149, 151, 223, 224, and 350 authorize the cabinet to conduct administrative hearings and authorize the cabinet to promulgate administrative regulations to regulate the administrative hearing process. This regulation establishes procedures for conducting administrative hearings, administrative conferences, mediations and issuance of final orders in regard to violations and final determinations for the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statues by providing consistent provisions relating to the conduct of administrative hearings, administrative conferences, mediations and issuance of final orders in regard to violations and final determinations of the cabinet.

(2) If 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 incorporate provisions previously included in 400 KAR 1:030, 401 KAR 100:010, and 405 KAR 7:091, as well as allow for filing of pleadings by electronic mail. Other updates are made to provide clarity and ease of administration. In addition, further changes were made to clarify preparation of transcripts, use of prior final orders, issuance of subpoenas, and formatting of initiating documents or pleadings.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to continue to provide an effective, fair, and timely administrative hearing practice provisions.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides for the consolidation of certain hearing practice provisions into this administrative regulation. The administrative hearing process ensures the cabinet can effectively administer the cabinet's programs.

(d) How the amendment will assist in the effective administration of statutes: This amendment will decrease possible conflict and delay by providing practitioners and the public with consolidated hearing practice provisions, which will lesson confusion among those involved in an administrative proceeding with the cabinet. Allowing the filing of pleadings by electronic mail will reduce delay.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation establishes practice provisions that apply to all individuals, businesses, organizations, or state and local governments that either initiate or become subject to an administrative proceeding in the cabinet's Office of Administrative Hearings.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will have to comply with the requirements for the filing of pleadings, service, computation of time, evidence and other procedural processes included in the administrative hearing process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs to comply with is administrative regulation are similar to those found in private civil litigation due to the nature of the de novo hearing at the administrative level. However, there might be a slight cost saving due to this amendment due to the allowance of filing pleadings by electronic mail

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will continue to benefit from effective, fair, and timely administrative hearing practice provisions.

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

(a) Initially: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(b) On a continuing basis: The cabinet will not incur any additional costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's current operating budget will be used for the implementation of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering was used. Generally, the provisions in this administrative regulation will apply equally to all parties of an administrative adjudication in the Cabinet's Office of Administrative Hearings. However, tiering was used to determine how service shall be made to different types of legal entities.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The cabinet will continue to hold administrative hearings to as needed concerning matters covered by KRS Chapters 146, 149, 151, 223, 224, and 350. State and local government will only be impacted insofar as they are parties of an administrative adjudication with the cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 146.270, 146.450, 146.990, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 223.200, 223.991, 224.10-100, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.40-310, 224.60-120, 350.020, 350.028, 350.029, 350.0301, 350.0305, 350.240, 350.255, 350.300, 350.465, 350.610, 30 C.F.R. Parts 724, 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255.

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

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

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

PROPOSED AMENDMENTS

FINANCE AND ADMINISTRATION CABINET
Kentucky Judicial Form Retirement System
(Amendment)

4 KAR 1:010. General Compliance with Federal Tax Laws.

RELATES TO: KRS 6.500, 6.505, 6.515, 6.520, 6.521, 6.525, 6.530, 6.535, 6.575, 6.577 21.345, 21.347, 21.350, 21.357, 21.360, 21.370, 21.375, 21.380, 21.385, 21.400, 21.402, 21.405, 21.410, 21.415, 21.420, 21.425, 21.427, 21.440, 21.450, 21.460, 21.470, 21.480, 21.510, 21.525, 21.530, 21.540, 21.550, 21.560, 21.570, 26 U.S.C. 401(a)(8), (17), (25), (37), 401(h), 26 U.S.C. 414(u), 38 U.S.C. 4301-4334 and 29 U.S.C. 623(i).

STATUTORY AUTHORITY: KRS 21.402, 21.530, 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.540(3) authorizes the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations, with retroactive effect if required by federal law, to conform the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan with federal law and to meet the qualification requirements under 26 U.S.C. 401(a). This administrative regulation establishes requirements to ensure compliance with federal tax laws.

Section 1. Definitions. (1) "Differential wage payment" is defined by 26 U.S.C. 3401(h)(2).

(2) "Plan" means the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan.

Section 2. Compliance with 26 U.S.C. 401(a)(8) for Forfeitures. In conformity with 26 U.S.C. 401(a)(8), any forfeitures of benefits by members or former members of the plan shall not be used to pay benefit increases.

Section 3. Compliance with 26 U.S.C. 401(a)(17) for Compensation Limit. (1) For years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation of each member taken into account for determining all benefits provided under the Plans for any plan year shall not exceed $200,000. This limitation shall be adjusted at the same time and in the same manner as under 26 U.S.C. 415(d), except that the dollar increase in effect on January 1 of any calendar year shall be effective for plan years beginning with or within that calendar year, and the first adjustment to the $200,000 limitation shall be effective on January 1, 1990.

(2)(a) For years beginning on or after January 1, 1994, the annual compensation of each member taken into account for determining all benefits provided under the Plans for any determination period shall not exceed $150,000, as adjusted for the cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).

(b) For plan years beginning on or after January 1, 2002, the annual compensation of each member taken into account in determining all benefits provided under the Plans for any determination period shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).

(c) The cost-of-living adjustment in effect for a calendar year shall apply to any determination period beginning with or within that calendar year.

(3) If compensation for any prior determination period is taken into account in determining a member=s benefits for the current plan year, the compensation for that prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(a) For this purpose, in determining benefits in plan years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation limit in effect for determination periods beginning before January 1, 1989 shall be $200,000.

(b) In determining benefits in plan years beginning on or after January 1, 1994, and before January 1, 2002, the annual compensation limit in effect for determination periods beginning before January 1, 2002 shall be $150,000.

(c) In determining benefits in plan years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date shall be $200,000.

Section 4. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Judicial Form Retirement System shall determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by resolution. Plan benefits shall not be subject to employer discretion.

Section 5. Compliance with 26 U.S.C. 401(h). (1) No diversion. At any time prior to the satisfaction of all liabilities under the Plan to provide for the payment of medical benefits described in 26 U.S.C. 401(h), the corpus or income of the medical benefits account shall not be used for, or diverted to, any purpose other than the providing of Plan benefits.

(2) Reversion. Any amounts which are contributed to fund medical benefits described in 26 U.S.C. 401(h) and which remain in the medical benefits account upon the satisfaction of all liabilities arising out of the operation of the medical benefits portion of the Plan shall be returned to the Commonwealth.

(3) Forfeitures. If a member's interest in the medical benefits account is forfeited prior to termination of the Plan, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce contributions to fund the medical benefits described in 26 U.S.C. 401(h).

(4) Notwithstanding KRS 21.427(1)(b), for purposes of the Plans' 401(h) retiree medical benefits account, the term "dependent" shall mean any individual who is a child (as defined in 26 U.S.C. 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age twenty-seven (27). Provided, however, that as of the effective date of state legislative change approving the same, the term "dependent" shall mean any individual who is a child (as defined in 26 U.S.C. 152(f)(1)) of a retired employee who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22).

(5) The health benefits of the 401(h) account shall be subordinate to the retirement benefits provided by the Plans. No life insurance protection is provided by the Plans. This requirement shall not be satisfied unless the actual contributions to the 401(h) accounts established under 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the Plans determined on an aggregate basis since the inception of the 401(h) arrangement.

(6) The mandatory contribution established by the Plans shall be reasonable and ascertainable.

Section 6. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. (1) Effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334.

(2) Effective for deaths on or after January 1, 2007, if a member dies while performing qualified military service (as defined in 26 U.S.C. 414(u)), the survivors of the member shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) under the Plans had the member resumed and then terminated employment on account of death.

(3) Effective for Plan Years beginning on or after July 1, 2009, to the extent permitted by 26 U.S.C. 414(u)(12), an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment, and the differential wage payment shall be treated as compensation solely for Internal Revenue Code purposes and not for determining Plan benefits.

Section 7. Compliance with 29 U.S.C. 623(i). (1) Termination

Requirements. Upon termination of the Plan, the interest rate and mortality table used to determine the amount of any benefit under the Plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the Plan for such purpose as of the termination date.

Section 8. Hybrid Cash Balance Plan. This section shall apply solely to the hybrid cash balance benefit tier of the Plan under KRS 21.402.

(1) Geometric Average Net Investment Return. The Plan's geometric average net investment return shall be computed in accordance with KRS 21.402 and based on returns generated by assets of the individual Plan's segregated hybrid cash balance benefit tier to the extent such assets are segregated for investment purposes.

(2) Refund. Refunds may be requested at any time in accordance with KRS 21.402 and shall be paid as soon as administratively practicable following qualification for refund and request of the member. No partial refunds shall be permitted.

(3) Establishment of Hypothetical Accumulated Account Balance. A member's accumulated account balance shall be a hypothetical account for bookkeeping purposes only, and neither the maintenance nor the adding of credits thereto shall be construed as an allocation of assets of the Plan to, or a segregation of such assets in, any such hypothetical accumulated account balance, or otherwise creating a right for any member to receive specific assets of the Plan. Benefits provided under the cash balance benefit tier shall be paid from the assets of the applicable Plan. No interest credits shall accrue to any portion of the hypothetical accumulated account balance after the annuity starting date that applies to that portion.

LEWIS G. PAISLEY, Chairman

APPROVED BY AGENCY: April 28, 2017

FILED WITH LRC: May 11, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2017 at 10:00 a.m. at Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202. 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 canceled. 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 June 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200, email apauw@rwsvlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alan D. Pauw

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Judicial Form Retirement System=s compliance with specified provisions of the Internal Revenue Code in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section 401(a) and compliance with the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 623(i).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish compliance with specified provisions of the Internal Revenue Code and to clarify certain provisions of the hybrid cash balance plan under KRS 21.402.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute because it conforms Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan with federal statutes and regulations to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a) and ADEA under 29 U.S.C. 623(i).

(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 establishing Kentucky Judicial Form Retirement System=s compliance with federal law in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

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

(a) How the amendment will change this existing administrative regulation: Adding new provisions to comply with federal law and clarify cash balance provisions of the Plans.

(b) The necessity of the amendment to this administrative regulation: The amendment is required to comply with 26 U.S.C. 401(a) and 401(h) and 29 U.S.C. 623(i) and clarify cash balance provisions of the Plans.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies dependent age for health care benefits under 26 U.S.C. 401(h), and it adds provisions for compliance with 26 U.S.C. 401(h) medical benefit accounts and age discrimination rules of 29 U.S.C. 623(i). A member's cash balance account is described consistent with 26 U.S.C. 401(a).

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the calculation of member benefits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to members of the Plans. There are approximately 970 members and retirees in the two Plans.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be entitled to Plan benefits as provided by statute.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the administrative account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Judicial Form Retirement System; Kentucky Judicial Retirement Plan; Kentucky Legislators Retirement Plan.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 21.540, 26 U.S.C. 401(a)(8), (17), (25), (37), 401(h), 26 U.S.C. 414(u), 38 U.S.C. 4301-4334 and 29 U.S.C. 623(i).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 26 U.S.C. 401(a)(8), (9), (16), (17), (25), (31), (37) and 401(h), 414(u), 38 U.S.C. 4301-4334 and 29 U.S.C. 623(i).

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FINANCE AND ADMINISTRATION CABINET
Kentucky Judicial Form Retirement System
(Amendment)

4 KAR 1:040. Limitation on Benefits.

RELATES TO: KRS 6.500, 6.505, 6.515, 6.520, 6.521, 6.525, 6.530, 6.535, 6.575, 6.577 21.345, 21.347, 21.350, 21.357, 21.360, 21.370, 21.375, 21.380, 21.385, 21.400, 21.402, 21.405, 21.410, 21.415, 21.420, 21.425, 21.427, 21.440, 21.450, 21.460, 21.470, 21.480, 21.510, 21.525, 21.530, 21.540, 21.550, 21.560, 21.570, 26 U.S.C. 401(a)(16), 415

STATUTORY AUTHORITY: KRS 21.402, KRS 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.402(8) and 21.540(3) authorize[~~authorizes~~] the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations to administer the provisions of the hybrid cash balance benefit tier and, with retroactive effect if required by federal law, to conform the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan with federal law and to meet the qualification requirements under 26 U.S.C. 401(a). This administrative regulation establishes requirements for the administration of testing contribution and benefit limits in accordance with 26 U.S.C. Section 415.

Section 1. Definitions. (1) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(2) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

(3) "Annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)), and with the benefit attributable determined in accordance with Treasury Regulations located in 26 C.F.R. 1.415(b)-1.

(4)(a) "Permissive service credit" means service credit:

1. Recognized by the Plan for purposes of calculating a member's benefit under the Plan;

2. Which the member has not received under the Plan; and

3. Which the member shall receive only by making a voluntary additional contribution, in an amount determined under the Plan, which does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the Plan.

(5) "Plan" means the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan.

Section 2. This administrative regulation shall apply to the Plans as of July 1, 2007. Subject to the provisions of this administrative regulation, benefits paid from, and employee contributions made to, these Plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under 26 U.S.C. 415 and Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1.

Section 3. Basic 415(b) Limitation. (1) A member shall not receive an annual benefit that exceeds the dollar amount specified in 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in 26 U.S.C. 415(b) and Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1 and subject to any additional limits that are specified in this administrative regulation.

(2) A member's annual benefit payable in any limitation year from a Plan shall not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to 26 U.S.C. 415(d) and the Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1.

(3) In the case of a member who has had a severance from employment in any previous or subsequent year, the member's annual benefit, including any cost of living increases, shall be tested under the then applicable 26 U.S.C. 415(d) limit, including, any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit under 26 U.S.C. 415(d) and the Treasury Regulations thereunder.

Section 4. Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the Plan is other than the form specified in Section 3 of this administrative regulation, the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations located in 26 C.F.R. 1.415(b)-1. For limitation years after December 31, 2008, for purposes of adjusting any benefit or limitation under 26 U.S.C. 415(b)(2)(B), (C) and (D), the mortality table used shall be the applicable mortality table within the meaning of 26 U.S.C. 417(e)(3)(B).

Section 5. Benefits Not Taken into Account for 415(b) Limit. (1) For purposes of this administrative regulation, the following benefits shall not be taken into account in applying these limits:

(a) Any ancillary benefit which is not directly related to retirement income benefits;

(b) That portion of any joint and survivor annuity if the annuity is a qualified joint and survivor annuity; or

(c) Any other benefit not required under 26 U.S.C. 415(b)(2) and Treasury Regulations located in 26 C.F.R. 1.415(b)-1 to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).

Section 6. Other Adjustments in 415(b) limitation. (1) If the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this administrative regulation shall be reduced in accordance with Treasury Regulations located in 26 C.F.R. 1.415(b)-1 pursuant to the provisions of 26 U.S.C. 415(b), so that the limit (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to a $160,000 (as adjusted) annual benefit beginning at age sixty-two (62).

(2) The reductions provided for in subsection (1) of this section shall not be applicable to any preretirement disability benefits or preretirement death benefits.

Section 7. Less than Ten (10) Years of Service Adjustment for 415(b) Limitations. (1) The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under Section 4 of this administrative regulation multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10).

(2) The reduction provided by this section shall not reduce the maximum benefit below ten (10) percent.

(3) The reduction provided by this section shall not be applicable to any preretirement disability benefits or preretirement death benefits.

Section 8. Service Purchases Under Section 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under the Plan, the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit.

(2) For purposes of applying this section, the Plan shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3) The Plan shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this section; or

(b) Any nonqualified service credit is taken into account under this section before the member has at least five (5) years of participation under the Plan.

(4) For purposes of subsection (3) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, nonqualified service credit shall be the permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3));

(b) Service as an employee (other than as an employee described in paragraph (a) of this subsection) of an educational organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or

(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the Plan.

(5) For service described in subsection (4)(a), (b), or (c) of this section, the service shall be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one plan.

(6) For a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

(a) The limitations of subsection (3) of this section shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable to the Plan shall apply to these amounts and any benefits attributable to these amounts.

Section 9. Repayments of Cashouts. Any repayment of contributions (including interest) to the Plan with respect to an amount previously refunded upon a forfeiture of service credit under the Plan or another governmental plan maintained by the Commonwealth or a local government within the Commonwealth shall not be taken into account for purposes of the 415(b) or (c) limits.

LEWIS G. PAISLEY, Chairman

APPROVED BY AGENCY: April 28, 2017

FILED WITH LRC: May 11, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2017 at 10:00 a.m. at Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202. 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 this date, the hearing may be canceled. 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 June 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200, email apauw@rwsvlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alan D. Pauw

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Judicial Form Retirement System=s compliance with specified provisions of the Internal Revenue Code in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. Section 401(a).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish compliance with specified provisions of the Internal Revenue Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute because it conforms Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan with federal statutes and regulations to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

(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 establishing Kentucky Judicial Form Retirement System=s compliance with federal law in order for Kentucky Judicial Retirement Plan and Kentucky Legislators Retirement Plan to maintain their tax qualified status as public defined benefit plans under 26 U.S.C. 401(a).

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

(a) How the amendment will change this existing administrative regulation: Adding new provisions to comply with federal law.

(b) The necessity of the amendment to this administrative regulation: The amendment is required to comply with 26 U.S.C. Section 415.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies computation of adjusted annual dollar limitation under 26 U.S.C. 415(d) for members who have had severance from employment. The amendment identifies the applicable mortality table for purposes of calculating a member's benefit for testing compliance with 26 U.S.C. 415(b).

(d) How the amendment will assist in the effective administration of the statutes: The amendment limits member benefits consistent with federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to members of the Plans. There are approximately 970 members and retirees in the two Plans.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be entitled to Plan benefits as provided by statute.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the administrative account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Judicial Form Retirement System; Kentucky Judicial Retirement Plan; Kentucky Legislators Retirement Plan.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 21.402 and 21.540, 26 U.S.C. 401(a)(16), and 415.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1.Federal statute or regulation constituting the federal mandate. 26 U.S.C. Section 401(a)(16), and 415.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The above referenced statutes and regulations require compliance with the requirements for plan documents (state statutes and administrative regulations).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

OFFICE OF SECRETARY OF STATE
(Amendment)

30 KAR 2:010. Certification of vacancy in nominations.

RELATES TO: KRS 118.105

STATUTORY AUTHORITY: KRS 118.105

NECESSITY, FUNCTION, AND CONFORMITY: Senate Bill 223, enacted during the 1990 Regular Session of the General Assembly, amended KRS 118.105(1), (3) and (4), governing certification by the Secretary of State that a vacancy exists in a nomination governed by KRS 118.105. This administrative regulation is required to establish the procedure for the determination and certification of a vacancy under the provisions of KRS 118.105.

Section 1. Notification of Vacancy. (1) The Secretary of State shall be notified of the vacancy in a nomination governed by KRS 118.105.

(2) The notification shall:

(a) Be written;

(b) Be dated;

(c) State the reason for the vacancy;

(d) Contain documentation to substantiate the reason for the vacancy;

(e) Be signed by the person making the notification; and

(f) Be notarized.

(3) The notification may be made by:

(a) The candidate;

(b) The governing authority of a party;

(c) A registered voter; or

(d) An opposing candidate.

(4) The notification shall be delivered to the Secretary of State by:

(a) Certified mail;
(b) Fax;
(c) Email; or
(d) Any person authorized by the person making the notification [~~The person making the notification~~].

Section 2. Documentation to Substantiate Reason for Vacancy. (1) Documentation to substantiate the reason for a vacancy shall be filed with the notification by the candidate or governing authority of the party as provided by this section. For:
(a) Death of a candidate: a certificate of death or other evidence satisfactory to the Secretary of State;
(b) Disqualification to hold the office sought: evidence of legal disqualification; and
(c) Severe disabling condition: medical evidence of the condition.
(2) Medical evidence of a severe disabling condition shall consist of medical evidence provided by:
(a) A licensed and practicing:
1. Physician;
2. Osteopath;
3. Psychologist;
4. Psychiatrist; or
(b) Other medical professional qualified to make a determination that the candidate is suffering from a severe disabling condition.
(3) The documentation filed to substantiate the reason for vacancy may be challenged, in writing, by:
(a) The governing authority of an opposing party;
(b) An opposing candidate; or
(c) A registered voter.
(4)(a) The Secretary of State shall review all documentation relating to the reason for a vacancy.
(b) If he determines that additional documentation is required, he shall request a review:
1. Of the medical evidence of a severe disabling condition filed with the notification; or
2. By a medical professional specified in subsection (2) of this section.

Section 3. The Secretary of State shall not certify that a vacancy exists if he determines that the documentation filed to substantiate the reason for the vacancy does not establish that a vacancy exists because of:
(1) Death;
(2) Disqualification to hold the office sought; or
(3) A severe disabling condition which arose after the nomination.

LINDSAY HUGHES THURSTON, Assistant Secretary of State
APPROVED BY AGENCY: May 15, 2017
FILED WITH LRC: May 15, 2017 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2017, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Lindsay Hughes Thurston, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email Lindsay.thurston@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Lindsay Hughes Thurston
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides the procedure for notification of vacancy in candidacy.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 118.105, which requires the Secretary of State to establish the procedure for the determination and certification of a vacancy.
(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Office of Secretary of State to fulfill its duties under KRS 118.105, this administrative regulation is necessary to establish the procedure for the determination and certification of a vacancy.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the procedure for notification of vacancy in candidacy.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will allow for alternative methods for notification of vacancy.
(b) The necessity of the amendment to this administrative regulation: This amendment will allow for alternative methods for notification of vacancy.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute. (KRS 118.105)
(d) How the amendment will assist in the effective administration of the statues: This amendment will allow for alternative methods for notification of vacancy.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect countless individuals that register for candidacy within the Commonwealth of 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: Regulated individuals identified in question (3) will have to familiarize themselves with the law.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur no costs in order to comply.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals identified in question (3) will benefit by having more alternatives for notification of vacancy, particularly when time is of the essence.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There is no cost to implement this administrative regulation.
(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source funding since there is no cost to implement this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: An increase in fees or funding will not be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.
(9) TIERING: Is tiering applied? Tiering was not appropriate in

this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact only the Office of Secretary of State.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 118.105.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

OFFICE OF SECRETARY OF STATE
(Amendment)

30 KAR 5:060. Search requests and reports.

RELATES TO: KRS 355.9-519, 355.9-523, 355.9-525

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the requirements governing search requests and reports.

Section 1. General Requirements. The filing officer shall maintain for public inspection a searchable index of active records in the UCC Information Management System. Active records shall be retrievable by the name of the debtor or by the file number of the related initial financing statement. Regardless of the retrieval method, the following shall be retrieved:

(1) The initial financing statement; and

(2) Each active record related to the initial financing statement.

Section 2. Search Requests – Required Information. Search requests shall include the following:

(1) Name searched. A search request shall set forth the name of the debtor to be searched using designated fields for organization or individual surname, first personal name, and additional names or initials. A search request shall be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field, without regard to the nature or character of the debtor that is subject of the search.

(2) Requesting party. The search request shall include the name and address of the person to whom the search report is to be sent.

(3) Fee. The five (5) dollar fee shall be tendered if the request is in writing.

(4) Search Logic. The request shall specify if a search methodology other than that described in Section 4 of this administrative regulation is to be applied in conducting the search. If methodology is not specified, the methodology described in Section 4 of this administrative regulation shall be applied.

Section 3. Search Requests - Optional Information. A search request may include the following:

(1) Copies. The request may limit the copies of UCC records that would normally be provided with a search report by requesting that no copies be provided or that copies be limited to those UCC records that:

(a) Include a particular debtor address;

(b) Include a particular city in the debtor address;

(c) Were filed on a particular date or within a particular range of dates; or

(d) Include a particular secured party name.

(2) Scope of search. A requesting party may ask for a search that reports all active records retrieved by the search, rather than only unlapsed records retrieved by the search.

(3) Mode of delivery. A search request may specify a mode of delivery for search results. This request shall be honored if the requested mode is made available by the filing office, and all requisite fees are tendered.

Section 4. Search Methodology. (1) Search results shall be produced by the application of search logic to the name presented to the filing officer. Human judgment shall not play a role in determining the results of the search.

(2) Standard search logic. The requirements established in this subsection shall describe the filing office's standard search logic and shall apply to all searches unless the search request specifies that a nonstandard search logic be used.

(a) There shall not be a limit to the number of matches that may be returned in response to the search criteria.

(b) A distinction shall not be made between upper and lower case letters.

(c) The character "&" (the ampersand) shall be deleted and replaced with the characters "and" each place it appears in the name.

(d) Punctuation marks and accents shall be disregarded. For the purposes of this administrative regulation, punctuation and accents include all characters other than the numerals zero through nine (9) and the letters A through Z, in any case, of the English alphabet.

(e) The word "the" at the beginning of an organization debtor name shall be disregarded.

(f) All spaces shall be disregarded.

(g) For first personal name and additional names or initials of individual debtor names, initials shall be treated as the logical equivalent of all names that begin with those initials, and first personal name and no additional names or initials shall be equated with all additional names or initials. For example, a search request for "John A. Smith" shall cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with the initial "A" or any name beginning with "A" in the additional names or initials field. If the search request is for "John Smith" (first personal name and surnames with no designation in the additional names or initials field), the search shall retrieve all filings against individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with any name or initial or no name or initial in the additional names or initials field.

(h) If the name being searched is the surname of an individual debtor name without any first personal name or additional names or initials provided, the search shall retrieve from the UCC Information Management System all financing statements with

individual debtor names that consist of only the surname.

(i) The following words will be disregarded as noise words:

a. "agency"
b. "association"
c. "assn"
d. "associates"
e. "assoc"
f. "assc"
g. "attorneys at law"
h. "bank"
i. "national bank"
j. "na"
k. "business trust"
l. "charter"
m. "chartered"
n. "company"
o. "co"
p. "corporation"
q. "corp"
r. "credit union"
s. "cu"
t. "federal credit union"
u. "fcu"
v. "federal savings bank"
w. "fsb"
x. "general partnership"
y. "gen part"
z. "gp"
aa. "incorporated"
bb. "inc"
cc. "limited"
dd. "ltd"
ee. "ltee"
ff. "limited liability company"
gg. "lc"
hh. "llc"
ii. "limited liability partnership"
jj. "llp"
kk. "lllp"
ll. "limited partnership"
mm. "lp"
nn. "medical doctors professional association"
oo. "mdpa"
pp. "medical doctors professional corporation"
qq. "mdpc"
rr. "national association"
ss. "partners"
tt. "partnership"
uu. "professional association"
vv. "prof assn"
ww. "pa"
xx. "professional corporation"
yy. "prof corp"
zz. "pc"
aaa. "professional limited liability company"
bbb. "pllc"
ccc. "real estate investment trust"
ddd. "registered limited liability partnership"
eee. "rllp"
fff. "savings association"
ggg. "sa"
hhh. "sole proprietership"
iii. "sp"
jjj. "spa"
kkk. "trust"
lll. "trustee"
mmm. "as trustee"

(j)[~~(i)~~] After using the requirements outlined in paragraphs (a) through (~~h~~ i) of this subsection to modify the name being searched, the search shall retrieve from the UCC Information Management System all unlapsed records, or, if requested by the searcher, all active records, that pertain to financing statements with debtor names that, after being modified as provided in Section 5 of this administrative regulation, exactly match the modified name being searched.

Section 5. Changes in Standard Search Logic. If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that will alter search results, the filing office shall provide public notice of the change.

Section 6. Search Responses. Responses to a search shall include the following:

(1) Copies. Copies of all UCC records retrieved by the search, unless only limited copies are requested by the searcher. Copies shall reflect any redaction of personal identifying information required by law.

(2) Introductory information. A filing officer shall include the following information with a UCC search response:

(a) Filing office identification. Identification of the filing office responsible for the search response;

(b) Unique search report identification number. Unique number which identifies the search report;

(c) Report date and time. The date and time the report was generated;

(d) Through date and time. The date and time at or prior to which a UCC record was filed with the filing office in order for it to be reflected on the search;

(e) Certification date. The certification date and time for which the search is effective;

(f) Scope of search;

(g) Search logic used;

(h) Search logic disclaimer language;

(i) Name provided. Name as provided by searcher;

(j) Search string. Normalized name as provided by Section 4 of this administrative regulation;

(k) Lien type searched. UCC or other type of documents searched; and

(l) Copies. Copies of all UCC records revealed by the search and requested by the searcher. Copies of UCC records shall not be available for electronic search requests.

(3) Report. The search report shall contain the following:

(a) Identification. Identification of the filing office responsible for the search report;

(b) Search report identification number. Unique number assigned under subsection (2)(b) of this section; and

(c) Identification of financing statement. Identification of each initial financing statement, including a listing of all related amendments, correction statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria, regardless of. Financing statement information shall include the following:

1. The initial financing statement file number;
2. The date and time the initial financing statement was filed;
3. The lapse date;
4. The debtor name that appears of record;
5. The debtor address that appears of record;
6. The secured party name that appears of record;
7. The secured party address that appears of record;
8. An indication of type of each amendment, if any;
9. The date and time each amendment, if any, was filed;
10. The amendment file number of each amendment, if any;
11. The date and time a correction statement, if any, was filed; and
12. The date and time a filing officer statement, if any, was filed.

LINDSAY HUGHES THURSTON, Assistant Secretary of State

APPROVED BY AGENCY: May 12, 2017

FILED WITH LRC: May 15, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2017, at 1:00 p.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing

was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Lindsay Hughes Thurston, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687, email Lindsay.thurston@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements governing UCC search requests and reports.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for UCC search requests and reports.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Secretary of State to fulfill its duties under KRS 335.9-526(1), this administrative regulation is necessary to establish the procedures for UCC search requests and reports.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in establishing the procedures for UCC search requests and reports.

(2) If 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 brings the administrative regulation into compliance with standard search logic governed by KRS 355.9-506.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to bring the administrative regulation into compliance with the statutory authority (KRS 355.9-506).

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute. (KRS 355.9-506)

(d) How the amendment will assist in the effective administration of the statues: This amendment is necessary to bring the administrative regulation into compliance with the statutory authority (KRS 355.9-506).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect countless individuals that request UCC search requests and reports.

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

(a) List 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 individuals identified in question (3) will have to familiarize themselves with the law.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefit will accrue to the entities identified in question (3).

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: An increase in fees or funding will not be necessary to implement this administrative regulation.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact only the Secretary of State.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 355.9-526(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)

201 KAR 2:076.[~~Parenteral pharmaceutical~~] Compounding.

RELATES TO: KRS 217.055(2), 217.065(7),[~~218A.010(13)(a)~~], 315.020(1), 315.035(6), 315.0351, 315.191(1)(a), (g)

STATUTORY AUTHORITY: KRS 315.020(1), (2), 315.035(6), 315.0351,[~~315.065(1), (2),~~] 315.191(1)(a), (g)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Board of Pharmacy is responsible to insure minimum standards of practice of[~~parenteral~~] compounding by pharmacies and pharmacists. The board is also responsible to insure the safety of all products provided to the citizens of the Commonwealth. This administrative regulation establishes the requirements for

compounding non-sterile and sterile preparations.

Section 1. (1) A policy and procedure manual for non-sterile and sterile[parenteral pharmaceutical] compounding shall be readily available at a pharmacy for inspection purposes.

(2) A copy of the manual shall be made available to the board upon request.[The manual shall include policies and procedures for:

(1) Oncology drugs;

(2) Disposal of unused supplies and medications;

(3) Drug destruction and return;

(4) Drug dispensing;(5) Drug labeling;

(6) Storage;

(7) Duties and qualifications for staff;

(8) Equipment;

(9) Handling of hazardous wastes;

(10) Investigation drug protocol;

(11) Safety;

(12) Recordkeeping;

(13) Reference material;

(14) Sanitation;

(15) Security

(16) Transportation; and

(17) Quality assurance, as relates to:

(a) Recall procedures;

(b) Storage and dating;

(c) Educational procedures for staff and patient;

(d) Sterile procedures, to include routine maintenance and hood certification; and, if necessary,

(e) Sterile testing of end products, operator procedures, and environment.]

(3) The manual shall be reviewed and revised on an annual basis.

Section 2. (1) Effective January 1, 2018, all non-sterile compounded preparations shall be compounded pursuant to United States Pharmacopeia (USP) 795, unless specified portions submitted by a pharmacist have been waived by the board.

(2) Effective January 1, 2018, all sterile compounded preparations shall be compounded pursuant to USP 797, unless specified portions submitted by a pharmacist have been waived by the board.

(3) After January 1, 2018, all written waiver requests submitted by a pharmacist shall be considered by the board at its next regularly scheduled meeting.

(4) The board, upon a showing of good cause and in the best interest of the public health, safety and welfare, may waive the requirement of any specified portion of USP 795 or 797.[The following physical requirements are in addition to other requirements set forth in KRS 217.055 and 315:020:

(1) The licensed pharmacy shall have a designated area for preparing compounded parenteral pharmaceuticals. This area shall be designed to withstand routine disinfecting procedures and shall be kept free of particulate generators, e.g., corrugated cardboard containers. This area shall be designed to avoid unnecessary traffic and airflow disturbances. It shall be used only for the preparation of sterile products. It shall be of sufficient size to accommodate a laminar airflow hood and to provide for the proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation, and security.

(2) The minimum equipment shall be:

(a) Laminar airflow hood or Class 100 clean room;

(b) Sink with hot and cold running water which is convenient to the compounding area;

(c) Appropriate disposal containers for used needles, syringes, and if applicable, cytotoxic and hazardous wastes from preparation of said agents;

(d) A Class II vertical flow biological safety cabinet, if oncology agents are prepared;

(e) Refrigerator or freezer with a thermometer; and

(f) A temperature controlled delivery container (not required if delivered in the same facility).

(3) The minimum supplies shall be:

(a) Disposable needles, syringes, and other supplies needed for aseptic parenteral compounding;

(b) Disinfectant cleaning solutions;

(c) Hand-washing agent with bactericidal action;

(d) Disposable, lint-free towels or equivalent;

(e) Appropriate filters and filtration equipment;

(f) Oncology drug spill kit; and

(g) Disposable gowns, and sterile disposable gloves.

(4) This area of the pharmacy shall not be accessible to the public and no one shall have access without supervision of the pharmacist.

(5) The pharmacy shall have current reference materials related to sterile products.]

Section 3. (1) A facility that compounds non-sterile or sterile preparations[Each licensed pharmacy] shall be managed by a pharmacist-in-charge (PIC)[pharmacist] licensed to practice pharmacy in the Commonwealth and who is knowledgeable in the specialized functions of preparing and dispensing compounded non-sterile and[,] sterile preparations[pharmaceuticals], including the principles of aseptic technique and quality assurance.

(2) The PIC[pharmacist in charge] shall be responsible for the: purchasing, storage, compounding, repackaging, dispensing,[and] distribution of all drugs and preparations,[pharmaceuticals. The pharmacist shall also be responsible for the] development and continuing review of all policies and procedures, training manuals, [and the] quality assurance programs, and[as well as] participation in those aspects of the facility's patient care evaluation program relating to pharmaceutical material utilization and effectiveness.

(3) The PIC[pharmacist in charge] may be assisted by additional pharmacy personnel adequately trained, to the satisfaction of the PIC, in this area of practice and for each product they will be compounding.[A pharmacist shall be accessible at all times at each licensed facility to respond to patients' and other health professionals' questions and needs.]

Section 4. (1) The pharmacist shall receive a written, electronic, facsimile, or verbal prescription, or medical[direct copy] order from a prescriber before dispensing any compounded, non-sterile or sterile preparation[parenteral product]. These prescriptions or medical[direct copy] orders shall contain the following:

(a) Patient's name, and species if not human;

(b) Patient's address on controlled substances prescriptions or location (room number);

(c) Drug name and strength;

(d) Directions for use;

(e) Date;

(f) Authorized prescriber's name;

(g) Prescriber's address and DEA number, if applicable;

(h) Refill or end date instructions, if applicable; and

(i) Dispensing quantity, if applicable.

(2) A pharmacy generated patient profile shall be maintained separate from the prescription file. The patient profile shall be maintained under the control of the PIC[pharmacist in charge] for a period of two (2) years following the last dispensing activity. In addition, a medication administration record (MAR) as part of the institutional [medical] record shall be retained for a period of five (5) years from date of the patient's discharge from the facility, or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer. Supplemental records may also be employed as necessary. The patient profile shall contain:

(a) Patient's name;

(b) Name of compounded preparation[Sterile product] dispensed;

(c) Date dispensed;

(d) Drug content and quantity; and

(e) Patient's directions.

(3) Each compounded preparation[sterile pharmaceutical] dispensed to patients shall be labeled with the following information:

(a) Name, address, and telephone number of the licensed

pharmacy, if product will leave the premises;

(b) Date;

(c) Identifying number;

(d) Patient's full name;

(e) Name of each drug, strength, and amount;

(f) Directions for use, including infusion rate;

(g) Required controlled substances transfer warnings, where applicable;

(h) Beyond use[~~Expiration~~] date;

(i) Identity of dispensing pharmacist;

(j) Storage requirements, when applicable; and

(k) Auxiliary labels, when applicable.

(4) The PIC[~~pharmacist in charge~~] shall maintain access to and submit, as appropriate, such records and reports as are required to insure the patient's health, safety, and welfare. Records shall be readily available, maintained for two (2) years at a facility not computerized, but for five (5) years at a facility utilizing computerized recordkeeping, and subject to inspection by the Board of Pharmacy or its agents. These shall include the following:

(a) Patient profile;

(b) Purchase records;

(c) Biennial controlled substances inventories;

(d) Policy and procedures manual;

(e) Policies and procedures for hazardous[~~cytotoxic~~] wastes, if applicable;

(f) Quality assurance records; and

(g) Such other records and reports as may be required by law and rules and administrative regulations of the Kentucky Board of Pharmacy.

(5) Information regarding individual patients shall be maintained in a manner to assure confidentiality of the patient's records. Release of this information shall be in accordance with federal and state laws.

(6)[(~~5~~)] The PIC[~~pharmacist in charge~~] shall be responsible for the environmental control of all products shipped. Any compounded[~~,~~] product[~~sterile pharmaceutical~~] that is frozen or requires refrigeration shall be shipped or delivered to a patient in appropriate temperature controlled delivery containers, if the product leaves the premises.

(7)[(~~6~~)] The PIC[~~pharmacist in charge~~] shall be responsible for assuring that there is a system for the disposal of hazardous waste in a manner that does not endanger the public health. [~~(7) A quality assurance program documented by the pharmacist shall be available to provide accountability for the manufacturing and distribution of sterile parenteral products.~~]

Section 5. Hazardous Drugs. (1) Effective January 1, 2018, all non-sterile preparations that contain hazardous substances shall be compounded pursuant to USP Chapter 795.

(2) Effective January 1, 2018, all sterile compounded preparations that contain hazardous substances shall be compounded pursuant to Chapter 797.[~~Licensed pharmacies that prepare oncology agents shall meet the following additional requirements in order to insure the protection of the personnel involved:~~

~~(1) All oncology agents shall be compounded in a vertical flow, Class II, biological safety cabinet, and other products may be compounded in this cabinet;~~

~~(2) Protective apparel shall be worn by personnel compounding oncology drugs, and this shall include disposable gloves and gowns;~~

~~(3) Proper aseptic and safety techniques shall be used by personnel compounding oncology agents;~~

~~(4) Appropriate disposable procedures for cytotoxic waste shall be developed that comply with applicable state and federal regulations;~~

~~(5) Written procedures for handling both major and minor spills of cytotoxic agents shall be developed; and~~

~~(6) Prepared doses of oncology drugs shall be dispensed, shipped, or delivered in a manner to minimize the risk of accidental rupture of the primary container and labeled with a distinctive cautionary label as being hazardous.~~

~~Section 6. There shall be a documented, ongoing quality control program that monitors personnel performance, equipment, and facilities. Quality assurance procedures, at a minimum, shall include:~~

~~(1) Recall procedures;~~

~~(2) Storage and dating;~~

~~(3) Educational procedures for staff;~~

~~(4) Sterile procedures;~~

~~(5) Hood or clean room annual certification by an independent contractor in accordance with federal standard 209B and NSF standard No. 49;~~

~~(6) Prefilter cleaning and replacement when appropriate;~~

~~(7) Justification of the chosen expiration dates for compounded parenteral products; and~~

~~(8) Documentation of quality assurance audits at regular, planned intervals, including infection control and sterile technique audits.~~]

Section 6.[~~7.~~] Violation of any provision of this administrative regulation shall constitute unethical or unprofessional conduct in accordance with KRS 315.121.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) USP 795, Revision Bulletin, Official January 1, 2014; and

(b) USP 797, Revision Bulletin, Official June 1, 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: May 10, 2017

FILED WITH LRC: May 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2017, at 9:00 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this 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 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 June 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Steve Hart, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Steve.Hart@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Steve Hart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum standards of practice for compounding non-sterile, sterile, and hazardous preparations.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure the safety of compounded products provided to the citizens of this Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statues: This administrative regulation establishes compounding requirements for pharmacies and pharmacists; the Board is authorized to promulgate administrative regulations pertaining to pharmacies and pharmacists.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: Pharmacies and pharmacists will have notice of minimum standards for compounded preparations which are required to be promulgated by administrative regulation pursuant to KRS 13A.100(1).

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes that compounded preparations shall be compounded pursuant to standards of United States Pharmacopeia (USP), which is already recognized by the Cabinet for Health and Family Services.

(b) The necessity of the amendment to this administrative regulation: The amendment establishes the standards under which compounded products shall be prepared.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes: health and sanitation standards as authorized by KRS 315.035(6); duties of the pharmacist-in-charge, as required by KRS 315.020(1) and 315.0351(7), to be knowledgeable in the preparation of compounded products to ensure quality assurance; and standards pertaining to pharmacies and pharmacists, authorized by KRS 315.191(1)(a) and (g).

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes clear standards of practice for compounded preparations, that will serve to protect the public.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately 1200 pharmacies will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacists and pharmacies will have to comply with USP standards that were established in 2004. USP standards are already recognized by the Cabinet for Health and Family Services and approximately 40 boards of pharmacy in the United States.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to pharmacies that are in compliance with USP standards that have been in place since 2004.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this regulation greatly insures patient safety.

(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 board.

(b) On a continuing basis: No new costs will be incurred by the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation shall be accomplished through inspections. The Board of Pharmacy generates its own revenues without contribution by the General Assembly.

(7) Provide an assessment of whether an 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 because of the amendment to 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 that prepare compounded sterile, non-sterile or hazardous products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy 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 315.191(1)(a) and (g) authorize the Board to promulgate administrative regulations to regulate and control pharmacies and pharmacists. The Board may promulgate health and sanitation standards pursuant to KRS 315.035(6). KRS 315.020(1) and 315.0351(7) require a pharmacist-in-charge in all pharmacies.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional cost for the agency, since enforcement of compounding is and has been a responsibility of inspectors.

(d) How much will it cost to administer this program for subsequent years? No additional cost for the agency, since enforcement of compounding is and has been a responsibility of inspectors.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 314.041, 314.051(3), (6), 314.103, 314.109, 314.470

STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination, an applicant shall:

(a) Submit:

1. A properly executed application for licensure, as required by and incorporated by reference in 201 KAR 20:370, Section 1(1);

2. The licensure application fee as established in 201 KAR 20:240;

3. A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six

(6) months of the date of the application;

4. A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

5. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);

6. A letter of explanation that addresses each conviction, if applicable;

7. A certified copy of any disciplinary action taken on any professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on any professional or business license in another jurisdiction; and

8. Evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications;

(b) Notify the board as soon as a new address is established after submitting the application;

(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(d) While taking the examination, abide by and cooperate with security procedures adopted by the board; and

(e) Apply to take and pass the National Council Licensure Examination.

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the board receives the results of the examination[~~or until the provisional license expires, whichever comes first~~].

(3)(a) Except as provided in paragraph (b) of this subsection, the name of the applicant shall appear on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates.

(b) If the name does not appear on the list, the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements.

(c) The Certified List of Out-of-state Program of Nursing Graduates shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4)(a) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(b) The applicant shall complete the one and one half (1.5) contact hour continuing education course on pediatric abusive head trauma as required by 201 KAR 20:215, Section 5(3)(b).

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a)3 of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of their transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.;

(4) The candidate's program of nursing; and

(5) An individual or agency who submits an applicant's or licensee's written authorization for their release, if applicable.

Section 4. Provisional License. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.

(b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480, Section 1(1) and (4), are met.

(3) To qualify as direct supervision pursuant to KRS 314.041(5) and KRS 314.051(6), the nurse responsible for the applicant shall be physically present in the facility and immediately available to the applicant during work hours while the applicant holds a provisional license.

(4) The nurse responsible for the applicant shall be currently licensed or privileged to practice pursuant to KRS 314.470 as a nurse in Kentucky.

(5) Upon notification to the board that the applicant has failed the NCLEX examination, the provisional license shall be voided.

Section 5. (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certified List of Kentucky Program of Nursing Graduates", 6/10, Kentucky Board of Nursing; and

(b) "Certified List of Out-of-State Program of Nursing Graduates", 6/10, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

JIMMY ISENBERG, President

APPROVED BY AGENCY: April 6, 2017

FILED WITH LRC: April 24, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2017 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) June 30, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for licensure by

examination as a Registered Nurse (RN) or a Licensed Practical Nurse (LPN).

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.041 and KRS 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.041 and KRS 314.051 which requires the Board to set requirements for licensure by examination.

(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 setting requirements for licensure by 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: The amendment contains two housekeeping provisions (how long an application remains valid and making it clear that pediatric abusive head trauma education is required). It also makes clear what an applicant who has attended nursing school in Puerto Rico is required to do to apply.

(b) The necessity of the amendment to this administrative regulation: The regulation needed clean-up.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By updating the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: applicants for licensure by examination, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for licensure will have to follow the requirements.

(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 imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 194A.540, 314.031, 314.041, 314.051, 314.091, 314.103, 314.109, 314.470, 314.991

STATUTORY AUTHORITY: KRS 314.041(7), 314.051(8), 314.101(4), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(7) and 314.051(8) authorize the board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by endorsement. This administrative regulation establishes the requirements for licensure by endorsement and establishes the requirements for a temporary work permit for an applicant to practice nursing while the application for a license is being processed.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:

(a)1. Have completed a state approved program of nursing equivalent to Kentucky requirements; or

2. Have completed that portion of a state-approved program of nursing that is equivalent to a Kentucky program of nursing;

(b) Have taken and passed the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 4 of this administrative regulation;

(c) Complete the application form, as required by 201 KAR 20:370, Section 1(1);

(d) Submit the current fee for a licensure application, as established by 201 KAR 20:240;

(e) Report and submit a certified or attested copy of each disciplinary action taken or pending on a nursing or other professional or business license by another jurisdiction and a letter of explanation;

(f) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction as required by 201 KAR 20:370,

Section 1(3);

(g) Request the U.S. jurisdiction, territory, or foreign country of initial licensure to submit to the board a verification of licensure by examination, which shall include the following information:

1. a. Name of the program of nursing completed and date of graduation; or

b. Name of the program of nursing attended and date of completion of the requirements for eligibility to take the licensure examination in that jurisdiction; and

2. A statement that the applicant's license has not been revoked, suspended, limited, probated, or otherwise disciplined by the licensing authority and is not subject to disciplinary action;

(h) Submit a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI;

(i) Submit evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications as approved by the board; and

(j) Submit a report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application.

(2) An application shall be valid for a period of six (6) months. The applicant shall:

(a) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed; and

(b) Notify the board in writing as soon as a new address is established after submitting the application.

(3) After six (6) months if the requirements for licensure have not been met, the applicant shall:

(a) Submit a new application;

(b) Submit the current licensure application fee; and

(c) Meet the requirements established in this section.

(4)(a) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(b) The applicant shall complete the one and one half (1.5) contact hour continuing education course on pediatric abusive head trauma as required by 201 KAR 20:215, Section 5(3)(b).

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted under subsection (1)(i) of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of their transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fourteen (14) contact hours in continuing education for each year since the last year in which the applicant is able to demonstrate at least 100 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure;

(b) Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; or

(c) Has not been engaged in nursing practice during the five (5) years preceding the date of the application. This applicant shall[:

~~1. Complete a refresher course approved by the board, pursuant to 201 KAR 20:220, which shall have been completed within two (2) years of the date of the application; or~~

~~2.~~] Complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(3) At least fourteen (14) contact hours shall have been earned within the twelve (12) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 3. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets the requirements of Section 1(1)(a), (b), (c), (d), (e), (f), (i), (j), and (k) of this administrative regulation shall be issued a temporary work permit, but not until the report is received from the FBI and any conviction is addressed by the board.

(2) A temporary work permit shall be valid for a period not to exceed six (6) months.

(3) An individual who practices as a nurse in Kentucky without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and shall be subject to the penalties listed in KRS 314.091 and 314.991.

Section 4. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or the National Council Licensure Examination shall provide evidence to the board that the examination met the following standards of equivalency:

(1) Accepted psychometric procedures shall be used in the development of the examination;

(2) The examination shall be available to the board in the English language;

(3) The examination test plan blueprint shall be available for board review and adequately identifies test content and content weighting;

(4) Test items shall be available for board review and demonstrate the testing of competency necessary for safe practice;

(5) At least one (1) of the reliability estimates for the examination shall be 0.80 or higher;

(6) The examination shall be revised after each administration to ensure currency and security of content; and

(7) The examination shall be given under strict security measures.

Section 5. Applicants for LPN license pursuant to KRS 314.041(13). An applicant for an LPN license pursuant to KRS 314.041(13) shall meet the requirements of this administrative regulation.

Section 6. (1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

JIMMY ISENBERG, President

APPROVED BY AGENCY: April 6, 2017

FILED WITH LRC: April 24, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2017 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) June 30, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for licensure by endorsement as a Registered Nurse (RN) or a Licensed Practical Nurse (LPN).

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.041 and KRS 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.041 and KRS 314.051 which requires the Board to set requirements for licensure by endorsement.

(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 setting requirements for licensure by endorsement.

(2) If 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 contains two housekeeping provisions (removing a reference to refresher courses and making it clear that pediatric abusive head trauma education is required). It also makes clear what an applicant who has attended nursing school in Puerto Rico is required to do to apply.

(b) The necessity of the amendment to this administrative regulation: The regulation needed clean-up.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By updating the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: applicants for licensure by endorsement, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
Applicants for licensure will have to follow the requirements.

(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 imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:225. Reinstatement of license.

RELATES TO: KRS 164.772, 194A.540, 314.041(11), 314.042(6), 314.051(11), 314.071, 314.073, 314.075, 314.085(1), 314.091, 314.103, 314.109

STATUTORY AUTHORITY: KRS 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.041(11), 314.042(6), and 314.051(11) allow a person whose license has lapsed due to failure to renew to be able to reinstate the license. KRS 314.091 authorizes the board to discipline a licensee for a violation of KRS Chapter 314 or 201 KAR Chapter 20. This administrative regulation establishes procedures for reinstatement of a license that has lapsed or has been subject to disciplinary action.

Section 1. Reinstatement of Lapsed or Retired License. (1) A license shall be lapsed if it has expired because of the licensee's failure to:

(a) Submit a completed and timely application for renewal;

(b) Submit data required to enable the board to complete the processing of an application;(c) Submit the current application fee; or

(d) Meet all requirements for renewal of a license, in accordance with KRS 314.071.

(2) A lapsed or retired license may be reinstated by:

(a) Submitting a completed application form required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (l);

(c) Submitting a completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application, the board receiving the report from the FBI, and any conviction is addressed by the board;

(d) Submitting a criminal record check report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(e) Submitting a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);

(f) Submitting a letter of explanation that addresses each conviction, if applicable;

(g) Submitting a certified copy of any disciplinary action taken on a nursing or other professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on a nursing or other professional or business license in another jurisdiction; and

(h) Meeting all other requirements of this section.

(3)(a) If an individual applies for reinstatement of a lapsed license to active status, the applicant shall complete fourteen (14) contact hours of continuing education for each year since the date of last active licensure, if the date of last active licensure is within five (5) years of the application for reinstatement, but more than one (1) year from the date of last active licensure.

1. Fourteen (14) hours of continuing education shall have been earned within twelve (12) months of the date of the application.

2. Continuing education earned more than five (5) years preceding the date of application shall not be counted toward meeting this requirement.

(b) If an applicant has not been engaged in nursing practice during the five (5) years preceding the date of the application, the applicant shall[~~:~~

~~1. Complete a refresher course approved by the board, pursuant to 201 KAR 20:220. The refresher course shall have been completed within two (2) years of the date of the application; or~~

~~2.~~] Complete at least 120 contact hours of continuing education earned within one (1) year of the date of the application.

(c) An individual may use the continuing competency methods set out in 201 KAR 20:215, Section 3, for reinstatement if that individual allowed the license to lapse and applies for reinstatement of a lapsed license within one (1) year from the date of lapse.

(d) Continuing competency used for reinstatement pursuant to paragraph (c) of this subsection shall not be used for renewal of the license.

(4)(a) If the applicant has been currently licensed and actively engaged in nursing practice in another jurisdiction for at least 500 hours during the preceding five (5) years, the requirements of subsection (3) of this section shall not apply.

(b) The applicant shall submit evidence to verify active practice.

(5) In addition to the requirements of this administrative regulation, an applicant whose license has lapsed for one (1) year or more shall submit evidence of completion of the jurisprudence examination required by KRS 314.041(11) for registered nurses and KRS 314.051(11) for licensed practical nurses as approved by the board.

Section 2. Reinstatement of License Subject to Disciplinary Action. (1) If a license has been revoked, an individual may apply for reinstatement by:

(a) Completing the appropriate application required by 201 KAR 20:370, Section 1(1)(a) or (c);

(b) Paying the current application fee required by 201 KAR 20:240, Section 1(2)(g) or (l);

(c) Meeting the terms of the disciplinary order; and

(d) Retaking the licensure examination and achieving a passing score.

(2) A hearing shall be held to determine if the issuance of a license would no longer be a threat to public safety and health.

(3)(a) If a license has been suspended or voluntarily surrendered, an individual may apply for reinstatement by:

1. Completing an application required by 201 KAR 20:370, Section 1(1)(a) or (c);

2. Paying the fee required by 201 KAR 20:240, Section 1(2)(g) or (l); and

3. Notifying the board, in writing, that the requirements of the decision or agreed order have been met.

(b) If the decision or agreed order requires that a hearing be held, the individual shall notify the board, in writing, to request that a hearing be scheduled.

(4) An individual whose license has been suspended or voluntarily surrendered shall be required to comply with the continuing education requirements of KRS 314.073 for the period during which the license was suspended or surrendered.

(5)(a) If a license has been probated and the individual has allowed the license to expire prior to the end of the probationary period, and the individual later applies for reinstatement, the license shall be reinstated subject to the remaining probationary period.

(b) The individual shall comply with all requirements for reinstatement, in accordance with KRS 314.071.

(6)(a) A person may seek reinstatement of a license pursuant to subsection (3) of this section, if an order of immediate temporary suspension has been issued pursuant to:

1. KRS 314.085(1) because of a person's failure to obtain an evaluation and the person subsequently obtains the evaluation;

2. KRS 314.075 because of a person's submission of a bad check and the person subsequently makes the check good; or

3. KRS 164.772 because of a notice from the Kentucky Higher Education Assistance Authority that a person is in default on a student loan and the Kentucky Higher Education Assistance Authority subsequently notifies the board that the person is no longer in default.

(b) A request for reinstatement of a license following the issuance of an order of immediate temporary suspension as listed in paragraph (a) of this subsection shall be denied, if in the opinion of the board, continuance of the temporary suspension is necessary in order to protect the public.

Section 3. Miscellaneous Requirements. (1) (a) A copy of an official name change document shall be submitted by the applicant if making application, if applicable.

(b) Verification of the name change shall be made by submitting a copy of a:

1. Court order;

2. Marriage certificate;

3. Divorce decree; or

4. Social Security card.

(2) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 1996 shall earn three (3) hours of continuing education in domestic violence within three (3) years of reinstatement of the license as required by KRS 194A.540.

(3) An individual who holds a nursing license that was revoked by disciplinary order of the board prior to December 31, 1987 shall meet all requirements of Section 2 of this administrative regulation except Section 2(1)(d) of this administrative regulation.

(4) An individual whose license lapsed, was suspended, or voluntarily surrendered prior to July 15, 2010 shall earn one and one-half (1.5) hours of continuing education in pediatric abusive head trauma as required by KRS 314.073(6) within three (3) years of reinstatement of the license.

JIMMY ISENBERG, President

APPROVED BY AGENCY: April 19, 2017

FILED WITH LRC: April 24, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2017 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing

is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) June 30, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for reinstatement of a license as a Registered Nurse (RN) or a Licensed Practical Nurse (LPN).

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.041 and KRS 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.041 and KRS 314.051 which requires the Board to set requirements for reinstatement of license.

(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 setting requirements for reinstatement of license.

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

(a) How the amendment will change this existing administrative regulation: The amendment contains one housekeeping provision: removal of a reference to a refresher course.

(b) The necessity of the amendment to this administrative regulation: Another administrative regulation of the Board was recently amended to remove references to a refresher course, which caused the need for this amendment..

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By updating the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: applicants for reinstatement of license, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
Applicants for licensure will have to follow the requirements.

(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 imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:480. Licensure of graduates of foreign nursing schools.

RELATES TO: KRS 314.041, 314.051

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041 and 314.051 authorize the board to issue a license to a graduate of a foreign nursing school. This administrative regulation establishes the requirements for the licensure of graduates of foreign nursing schools.

Section 1. Applicants for Licensure by Examination. (1) An applicant for licensure by examination who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:070, Section 1, except for Section 1(3) of that administrative regulation.

(2) If licensed in another country[~~, or in a jurisdiction or territory governed by the United States,~~] evidence shall be submitted by the applicant or an organization on behalf of the applicant that the license has not been revoked, suspended, probated, or otherwise disciplined in the licensing country.

(3) An applicant shall maintain proof of legal permanent or temporary residency under the laws and regulations of the United States.

(4)(a) An applicant for licensure as a registered nurse[~~or a licensed practical nurse~~] shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.

(b) An applicant for licensure as a licensed practical nurse shall obtain a letter issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen Certificate have been met[~~If an applicant chooses to take the NCLEX for the VisaScreen, he shall notify the board in writing of that choice~~].

(5) An applicant for licensure by examination may be made eligible to take the NCLEX examination prior to obtaining a Social Security number. However, the applicant shall not be licensed until he provides a Social Security number.

Section 2. Applicants for Licensure by Endorsement. (1) An applicant for licensure by endorsement who is a graduate of a foreign nursing school shall meet the requirements established in 201 KAR 20:110.

(2) A graduate of a foreign nursing school who is not a citizen of the United States shall maintain evidence of legal permanent or temporary residency in the United States.

(3)(a) An applicant for licensure as a registered nurse shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.

(b) An applicant for licensure as a licensed practical nurse shall obtain a letter[~~VisaScreen Certificate~~] issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen have been met.

JIMMY ISENBERG, President

APPROVED BY AGENCY: April 6, 2017

FILED WITH LRC: April 24, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2017 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) June 30, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for licensure of graduates of a foreign nursing school as a Registered Nurse (RN) or a Licensed Practical Nurse (LPN).

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.041 and KRS 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.041 and KRS 314.051 which requires the Board to set requirements for licensure of graduates of a foreign nursing school.

(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 setting requirements for licensure of graduates of a foreign nursing school.

(2) If 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 an applicant for licensure as an LPN is required to do.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because the present version is incorrect.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By updating the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: applicants for licensure by graduates of a foreign nursing school, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
Applicants for licensure will have to follow the requirements.

(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 imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

301 KAR 2:222. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(40), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Blind" means a:

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

(2) "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind or hunt site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(8) "Wildlife Management Area" or "WMA" means a tract of land:

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

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

Section 2. Shot Requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

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

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 3. (1) Except as established in this section or in Section 4 of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl shall not:

1. Establish or hunt from a permanent waterfowl blind; or

2. Hunt within 200 yards of:

a. Another occupied hunt site;

b. Another legal waterfowl hunting party; or

c. An area closed to waterfowl hunting;

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) In order to establish or use a permanent waterfowl blind or hunt site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas, a person:

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky waterfowl permit; and

3. A federal duck stamp.

(4) The holder of a hunt site permit shall:

(a) Construct or establish the blind or hunt site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department due to[~~based on~~] weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access; or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and

2. The daily bag limit for Canada goose is greater than or equal to two (2); and

(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site.

(5) At Ballard WMA:

(a) The duck, coot, merganser, and goose season shall be the

first Wednesday in December through the last Sunday in January;

(b) Youth waterfowl season shall be the first full weekend in February;

(c) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day; and

(d) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 5 of this administrative regulation;

2. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and

3. Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Eve, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from the first Wednesday in December through the last Sunday in January; and

3. Check out the same day by:

a. Visiting the designated Check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.;

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting;

(c) A department blind or hunt site shall be assigned through a daily drawing through the last Sunday in January;

(d) A department blind or hunt site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt site has not been assigned during the daily drawing;

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season;

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat; and

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt site during the regular waterfowl season.

(7) On the Peal unit of Boatwright WMA:

(a) More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

(b) More than four (4) parties shall not hunt at the same time on Fish Lake;

(c) More than three (3) parties shall not hunt at the same time on First Lake or Second Lake; and

(d) A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt site during the regular waterfowl season.

(8) On the Swan Lake Unit of Boatwright WMA:

(a) A person shall not hunt waterfowl from Thanksgiving Day through the first Tuesday in December;

(b) The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

(c) Blind restrictions shall not apply to the Light Goose Conservation Order season.

(9) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site.

(b) Waterfowl refuge areas shall be:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile 51, at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile 55.5, shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, which shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(10) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(11) Big Rivers WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(12) Cedar Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(13) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(14) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road, and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(15) Dix River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(16) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(d) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, Number Four Lake, Town Creek Moist Soil Unit, and Upper Goose Lake, all waterfowl hunting after November 1 shall be:

1. From hunt sites assigned by a random preseason drawing; and

2. Within ten (10) yards of a hunt site, including periods of Mississippi River flooding.

(17) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; or

(d) Within three-quarters (3/4) of a mile from the dam.

(18) Green River Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(19) Kaler Bottoms WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(20) Kentucky River WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(21) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys.

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(22) Obion Creek WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(23) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15.

(c) Shooting hours shall be one-half (1/2) hours before sunrise until 2 p.m.

(d) A person shall not enter a hunting area prior to 4 a.m. daily.

(24) Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(25) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(26) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(27) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(c) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(d) On the Jenny Hole-Highlands Creek and Grassy Pond Powell's Lake units, a person hunting waterfowl shall:

1. Hunt:

a. From a department blind;

b. Within twenty-five (25) yards of a hunt site; or

c. No closer than 200 yards of another hunting party; and

2. Remove decoys and personal items from the area on a daily basis.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f) If hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. A person shall not hunt on a Tuesday or Wednesday;

2. A person shall hunt from a blind assigned by the department through a drawing as established in Section 5 of this administrative regulation;

3. A person may occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;

4. A person shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:

a. The daily bag limit for ducks is greater than three (3); and

b. The daily bag limit for Canada goose is greater than or equal to two (2);

5. If under eighteen (18) years of age, a person shall be accompanied by an adult; and

6. The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.

(g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(i) A hunter drawn to hunt Sloughs WMA through a preseason draw shall submit a completed Sloughs WMA Waterfowl Hunter Survey Report at the conclusion of the hunt or shall be ineligible to participate in the waterfowl blind or quota draw the following year.

(28) South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for waterfowl and dove hunting.

(b) A hunter shall use a department blind.

(c) A department blind shall be available daily on a first-come, first-served basis.

(29) Taylorsville Lake WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(30) Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

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

(31) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

(32) J.C. Williams WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person shall not enter a hunting area prior to 4 a.m. daily.

Section 5. Ballard WMA and Sloughs WMA. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply by:

1. Calling 1-877-598-2401 and completing the telephone application process; or

2. Completing the online Ballard or Sloughs Waterfowl Quota Hunt Form process on the department's Web site at fw.ky.gov;

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt may bring up to three (3) additional hunters.

(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of state parks at:

(a) Barren River;

(b) Grayson Lake;

(c) Greenbo Lake;

(d) Lake Barkley;
(e) Lincoln Homestead;
(f) Nolin Lake;
(g) Paintsville Lake;
(h) Pennyrile Lake;
(i) Rough River Lake; and
(j) Yatesville Lake.

(2) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days that the park office is not open.

(3) During check-in, hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries each Saturday and Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) There shall be a waterfowl blind at Doug Travis WMA assigned by a random pre-season electronic drawing among all mobility-impaired applicants.

(4) A youth or mobility-impaired person shall:

(a) Apply on the department's Web site at fw.ky.gov between November 1 and November 15;[~~register in advance~~] and

(b) Carry a department-provided postcard notification on the day of the hunt.

(5)[~~(4)~~] A mobility-impaired person shall carry[~~also submit~~] a mobility-impaired access permit pursuant to 301 KAR 3:026.

(6)[~~(5)~~] Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(7) At the youth-mentor hunts:

(a)[~~(6)~~] Each youth shall not be accompanied by more than one (1) adult; and[~~.~~]

(b)[~~(7)~~] One (1) adult may accompany two (2) youths.

(8)[~~A mobility-impaired hunter may be accompanied by no more than one (1) assistant who may also hunt.~~

~~(9)~~] A person shall:

(a) Hunt from an established blind; and

(b) Not change blinds.

(9)[~~(10)~~] A blind shall not be used by more than four (4) hunters.

(10)[~~(11)~~] A person shall only discharge a firearm from a blind.

(11)[~~(12)~~] A person shall not possess more than twenty-five (25)[~~fifteen (15)~~] shotshells.

(12)[~~(13)~~] A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(13)[~~(14)~~] A person shall encase a firearm if traveling to and from a blind.

(14)[~~(15)~~] A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall:

(a) Cease hunting by noon; and

(b) Exit the area by 1 p.m.

(15)[~~(16)~~] All decoys and equipment shall be removed at the end of each day's hunt.

(16)[~~(17)~~] A hunter at Minor Clark or Peter Pfeiffer Fish Hatcheries shall report harvest by depositing a completed hunt permit at the designated location.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Sloughs WMA Waterfowl Hunter Survey Report",[~~January~~] 2014 edition;[~~and~~]

(b) "Ballard or Sloughs Waterfowl Quota Hunt Form",[~~January~~] 2014 edition;[~~.~~]

(c) "Hatcheries Youth-Mentor/Mobility-Impaired Canada Goose Hunt Application", 2017 edition; and

(d) "Doug Travis WMA Mobility-Impaired Waterfowl Hunt Application", 2017 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: May 8, 2017

FILED WITH LRC: May 12, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 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 June 30, 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 waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2017-2018 waterfowl hunting requirements on public lands in accordance with the USFWS and Department management objectives.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to establish hunting season dates, bag limits and other hunting requirements. KRS 150.360 authorizes the department to restrict methods and hunting hours for taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the above statutes by managing waterfowl populations and hunting opportunity consistent with state and national management requirements and strategies.

(2) If 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 application procedures for a random drawing for mobility-impaired hunters at Doug Travis WMA and for youth-mentor and mobility-impaired hunts at Minor Clark and Pfeiffer fish hatcheries.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide quality public hunting opportunity with minimal area use conflict that is consistent with meeting state and federal waterfowl management objectives.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters will need to comply with all application procedures and hunting requirements established for public lands in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional opportunity will be provided for mobility-impaired hunters wishing to hunt Doug Travis WMA and additional clarification is provided for hunts at department hatcheries.

(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 additional cost to the agency to implement this administrative regulation initially.

(b) On a continuing basis: There will not be an additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. The same guidelines and limits apply to all hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

RELATES TO: KRS 150.330, 150.340, 150.603

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dove" means mourning dove or white-winged dove.

(2) "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common gallinule, woodcock, snipe, purple gallinule, Virginia rail, or sora rail.

(3) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

(4) "Wildlife Management Area" or "WMA" means a tract of land:

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

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

Section 2. Season Dates. (1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation.

(2) The seasons established in paragraphs (a) through (g) of this subsection shall apply to migratory bird hunting:

(a) Dove, beginning on:

1. September 1 for fifty-six (56) consecutive days;

2. Thanksgiving Day for eleven (11) consecutive days; and

3. The Saturday before Christmas for twenty-three (23) consecutive days;

(b) Woodcock, beginning on the fourth Saturday in October for forty-seven (47) consecutive days, except that the season shall be closed during the first two (2) days of modern gun deer season, as established in 301 KAR 2:172;

(c) Snipe, beginning on:

1. The third Wednesday in September for forty (40) consecutive days; and

2. Thanksgiving Day for sixty-seven (67) consecutive days;

(d) Wood duck, beginning on the third Saturday in September for five (5) consecutive days;

(e) Teal, beginning on the third Saturday in September for nine (9) consecutive days;

(f) Virginia rail, sora rail, common gallinule, and purple gallinule, beginning on September 1 for seventy (70) consecutive days; and

(g) Canada goose, beginning September 16 for fifteen (15) consecutive days except that the following areas, as established in 301 KAR 2:224, shall be closed:

1. Public land in the Ballard Zone;
2. Public land in the West-Central Goose Zone; and
3. The Northeast Goose Zone.

Section 3. Bag and Possession Limits. (1) A person shall not exceed the limits established in paragraphs (a) through (h) of this subsection:

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

(b) Eurasian collared dove: No limit, except that a hunter, if in the field or during transport, shall keep one (1) of the parts established in subparagraphs 1. and 2. of this paragraph attached to the bird:
1. The head; or
2. A fully-feathered wing.

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

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

(e) Virginia and sora rail, singly or in aggregate:
1. Daily limit of twenty-five (25); and
2. Possession limit of seventy-five (75).

(f) Common and purple gallinule, singly or in aggregate:
1. Daily limit of three (3); and
2. Possession limit of nine (9).

(g) Wood duck and teal:
1. Daily limit of six (6), which shall not include more than two (2) wood ducks; and
2. Possession limit of eighteen (18), which shall not include more than six (6) wood ducks.

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

(2) A hunter who possesses a migratory game bird other than a dove, in the field or during transport, shall keep one (1) of the parts established in paragraphs (a) and (b) of this subsection attached to the bird:

(a) The head; or

(b) A fully-feathered wing.

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

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

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(2) If hunting dove on private land, a person shall hunt:

(a) Between 11 a.m. and sunset on September 1; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

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

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

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21 for waterfowl hunting; or

(c) Shot larger than size "T".

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

(1) Hunting waterfowl or doves; or

(2) Accompanying a person hunting waterfowl or doves.

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

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

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

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

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

(a) Ballard WMA;
(b) Boatwright WMA;
(c) Doug Travis WMA;
(d) Duck Island WMA;
(e) Kaler Bottoms WMA;
(f) Kentucky River WMA;
(g) Ohio River Islands WMA;
(h) Sloughs WMA;
(i) South Shore WMA;
(j) Yatesville Lake WMA; and
(k) A WMA wetland management unit that is posted by sign.

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

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

(b) Woodcock.

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

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

(b) Woodcock.

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

(a) Dove or snipe after October 13; or

(b) Woodcock.

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

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

(b) On Deer Creek Fork; or

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

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

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

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

(a) The Greenbrier Creek embayment; and

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

(10) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

Section 8. Youth-Mentor Dove Hunts. (1) There shall be department-sponsored youth-mentor dove hunts on the first Saturday in September in which participants shall be selected by a random computerized drawing.

(2) A youth shall:

(a) Apply on the department's Web site at fw.ky.gov between the first Monday in August and the third Friday in August; and

(b) Carry a department-provided selection notification letter on the day of the hunt.

(3) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(4) At the youth-mentor hunts:

(a) Each youth shall not be accompanied by more than one (1) adult;

(b) One (1) adult may accompany two (2) youths; and

(c) A maximum of two (2) shotguns are allowed per party.

(5) A person shall:

(a) Hunt within fifteen (15) feet of the assigned location stake; and

(b) Not change locations unless another location has been vacated by the assigned hunter.

(6) A person shall only discharge a firearm within fifteen (15) feet of the assigned location stake.

(7) A person shall leave their firearm at the assigned location stake when retrieving birds.

(8) A hunter participating in youth-mentor hunts shall:

(a) Check-in prior to hunting;

(b) Not begin hunting before 2 p.m.;

(c) Cease hunting by 7 p.m.;

(d) Exit the area by 7:30 p.m.; and

(e) Check out before exiting the field.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: May 8, 2017

FILED WITH LRC: May 12, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2017 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through June 30, 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 seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the 2017–2018 migratory bird seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing the migratory bird hunting seasons and area specific requirements, this administrative regulation maintains and manages migratory game bird conservation efforts consistent with national and international management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will restrict the take of all migratory birds on WMAs with a wetland management focus to non-toxic shotshells. Previously only doves and waterfowl had been restricted. It also creates an online application process for youth hunters wishing to participate in department-sponsored youth-mentor dove hunts and establishes youth-mentor dove hunting requirements. All these changes are consistent with the long-term Mississippi Flyway and continental management efforts and are within the USFWS required frameworks.

(b) The necessity of the amendment to this administrative regulation: The deposition of lead shot in wetlands has been shown to poison waterfowl. With the high quality and availability of nontoxic shotshells, it is not necessary to continue the use of lead shotshells in these areas. The amendment also establishes a fair and equitable application process for youth-mentor dove hunts, and establishes reasonable hunting requirements.

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 40,000 migratory bird hunters 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: Rail, snipe, gallinule and woodcock hunters on the identified public lands will have to use steel or other nontoxic shot to hunt. Youth dove hunters will have to apply for a random online drawing versus a "first come first served" signup on youth-mentor hunts.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youths will benefit from a fair and equitable random drawing process in order to participate in youth-mentor dove hunts.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment. It will not be necessary to increase any other fees or increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 CFR Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public lands managed by the Department. The Department imposes more restrictive hunting regulations on these lands in an effort to meet waterfowl management objectives while still providing quality hunting opportunity.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 49:011. General provisions relating to area solid waste management plans.

RELATES TO: KRS 109.041, 224.10-105, KRS 224.10-420, 224.10-440, 224.43-310(5), 224.43-315, 224.43-340[~~(2), (8), (9)~~], 224.43-345, 224.43-505

STATUTORY AUTHORITY: KRS 224.43-340, 224.43-345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.43-340(1) authorizes the cabinet to promulgate administrative regulations pursuant to KRS Chapter 224 for the reduction and management of solid waste. This administrative regulation establishes[~~sets forth~~] general requirements and procedures for submittal, processing, and amending of area solid waste management plans.

Section 1. Preparation of an Area Solid Waste Management Plan. (1) An area solid waste management plan, referred to in this administrative regulation as "the plan," shall contain the information as established[~~specified~~] in KRS 224.43-345.

(2) The plan shall be prepared and formatted in accordance with the[~~document entitled"~~] Guidance for Preparing an Area Solid Waste Management Plan 5-Year Update["], DEP[~~Form~~] 6062[~~(February 2004)~~].

Section 2. Public Information Procedures. (1) The governing body of a solid waste management area shall be responsible for conducting a public information period on the contents of the plan, or an amendment to the plan pursuant to Section 4 of this administrative regulation, prior to[~~its~~] submittal to the cabinet.

(2) The public information period shall include a thirty (30) day comment period that shall commence with the publishing of a public notice by the governing body. The public notice shall[~~in accordance with subsection (3) of this section.~~

~~(3) A public notice shall be published by the governing body that meets the following requirements~~]:

(a)[~~The public notice shall~~] Be of a size to include not less than two (2) column widths and shall be in a display format;

(b)[~~The public notice shall~~] Be published in a daily or weekly newspaper of general circulation in each county in the area designated by the plan; and

(c)[~~The public notice shall~~] Include a description of:

1. The proposed action;

2.[~~,~~] Location where the plan may be reviewed;

3.[~~,~~] Procedures for submitting comments;[~~,~~] and

4. Location of the public hearing, if a hearing is requested.

(3)[~~(4)~~] The governing body shall hold a public hearing if, a hearing is requested, during the public comment period[~~, one is requested~~].

(a) The hearing shall be held within fifteen (15) days of the close of the public comment period[~~, with at least seven (7) days public notice~~].

(b) The public notice for a hearing shall be published at least seven (7) days prior to the hearing in accordance with subsection (2)(b)[~~(3)~~] of this section.

(c) The hearing may occur in conjunction with the governing body's normally scheduled official meeting.

(4)[~~(5)~~] The governing body shall respond in writing to written public comments within fifteen (15) days after the close of the public comment period.

(a) The governing body shall publish a notice in a daily or weekly newspaper of general circulation in each county in the area

designated by the plan that the written response to public comments is available to the public.

(b) The notice shall state where copies of the response are maintained and how it may be obtained.

(c) The governing body shall [~~also~~] mail the response to all comments to each individual who commented on the plan during the public comment period.

Section 3. Submittal and Plan Review Process. (1) All plans shall be submitted no later than the deadlines established[~~specified~~] in KRS 224.43-340 and 224.43-345 and shall be accompanied by an ordinance, resolution, or administrative regulation approving the plan from the appropriate governing body of the solid waste management area.

(2) The[~~original and one (1) copy of the~~] plan shall be sent to the cabinet[~~supervisor, Local Assistance Section, Resource Conservation and Local Assistance Branch, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601~~].

(3) The cabinet shall review each submitted plan for consistency with KRS 224.43-340, KRS 224.43-345, and this administrative regulation.

(4) The cabinet shall notify the governing body in writing if the plan is approved.

(5) If the cabinet disapproves a plan, the cabinet shall notify the governing body in writing of each deficiency with the plan.

(a) The governing body shall have up to ninety (90) days from the date of the first notice of deficiency to correct all deficiencies and submit an approvable plan to the cabinet. The time elapsed during the governing body's correction of deficiencies shall not count toward the cabinet's 120-day review deadline established[~~specified~~] in KRS 224.43-345(2).

(b) The cabinet may issue up to three (3) notices of deficiency during the ninety (90) day period.

(c) The cabinet may require the governing body to repeat the public information process established in[~~described in Section 2 of~~] this administrative regulation for any plans significantly modified during the review process.

(6) If the governing body fails to submit a plan, fails to correct all identified deficiencies[~~within time frames specified by the cabinet~~], or fails to amend a plan in accordance with[~~Section 4 of~~] this administrative regulation, the cabinet shall take appropriate action, which may include[~~take~~] one (1) or more of the following actions:

(a) Initiate enforcement proceedings against the governing body pursuant to KRS 224.10-420 and 224.10-440[~~401 KAR Chapter 40~~];

(b) Withhold any grants or monies for the area and the counties and cities located within the area pursuant to KRS 224.10-105 and KRS 224.43-340 until the governing body is in compliance with its plan, including grants and reimbursements awarded pursuant to[~~under~~] KRS 224.43-505; and

(c) Prepare a plan for the governing body, conduct the public information procedure established[~~specified~~] in Section 2 of this administrative regulation, and charge the governing body all expenses incurred by the cabinet.

Section 4. Plan Amendment Process. (1) A plan may be amended upon either the initiative of the governing body of the solid waste management area or the cabinet if the current plan is inadequate because of new or revised information or to meet the requirements of KRS Chapter 224 and this administrative regulation.

(2)(a) If the cabinet makes a determination that an amendment to a plan is necessary pursuant to[~~under~~] subsection (1) of this section, the cabinet shall inform the governing body in writing of the needed changes.

(b) The governing body shall have ninety (90) days to prepare and submit an amendment in accordance with subsection (5) of this section.

(3)(a) If the governing body makes a determination to amend its plan, the governing body[~~it~~] shall prepare and submit to the cabinet a request to amend that contains the[~~following~~]:

1. Name of the county or area that intends to amend the[~~its~~] plan;

2. Name and address of the governing body;

3. Name, address, and phone number of a contact person;

4. Identification of the pages of the plan to be affected and a brief statement of the nature of the amendment; and

5. A written[~~description outlining the~~] justification, desired outcome, implementation schedules, and the financial impact of the proposed amendment.

(b)1. The cabinet shall review the request to amend within thirty (30) calendar days of receipt and determine if[~~whether~~] a plan amendment is necessary as established in subsection (2)(a) of this section. If the plan amendment is not necessary, the cabinet shall inform the governing body that no amendment is required.

2. If a plan amendment is necessary, the cabinet shall notify the governing body to proceed with the amendment process[~~amending its plan~~] in accordance with subsections (4) and (5) of this section.

(4)(a) The governing body shall publish a public notice regarding the proposed amendment to its plan in accordance with Section 2 of this administrative regulation unless the cabinet informs the governing body in writing that a public notice is not necessary. The cabinet shall not require the governing body to publish a public notice if the proposed amendment is to:

1. Correct a clerical error;[~~:~~]

2. Correct a typographical error;

3. Change the name, address, or phone number of a person identified in the plan;

4. Make revisions to solid waste ordinances pertaining to changes in waste haulers, franchise agreements, or similar service changes in which services are revised and a public notice and comment period have already been conducted as part of the local ordinance approval process; or

5. Make similar minor administrative changes.

(b) Solid waste plan amendments that[~~which~~] require the governing body to undertake the public information process established[~~described~~] in Section 2 of this administrative regulation, shall include any solid waste plan amendment that:

1. Increases fees to the public;

2. Diminishes services to the public;

3. Closes a solid waste facility;

4. Establishes a new solid waste facility;

5. Expands the size or capacity of an existing facility;[~~or~~]

6. Changes the location of a solid waste facility or;

7. Other similar changes to facilities or services that affect the public.

(5) Upon approval by the governing body of the proposed plan amendment, the governing body shall submit[~~the following~~] to the cabinet:

(a) A copy[~~Two (2) copies~~] of each page of the plan that is being amended;

(b) A copy of the public notice, as published, from each newspaper that published the notice verifying the date of publication;

(c) A copy of the ordinance, resolution, or administrative regulation of the governing body approving the amendment and its submission to the cabinet;

(d) Copies of any ordinances, resolutions, or administrative regulations approving the amendment by the first or second class city governing body that developed its portion of the plan, if required;

(e) Copies of any agreements or contracts relating to the plan amendment, if applicable;

(f) Copies of any proposed ordinances, resolutions, administrative regulations, or by-laws relating to the plan amendment, if applicable; and

(g) Upon request, additional documentation necessary for the cabinet to determine that the plan amendment process procedure was properly followed[~~Any other supporting documentation as required by the cabinet~~].

(6) The cabinet shall inform the governing body in writing of the cabinet's decision to approve or disapprove the amendment to the plan.

Section 5. Plan Update Process. (1) The governing body shall submit to the cabinet for reapproval of an updated plan on or before October 1, 2007, and every five (5) years thereafter.

(2) The plan update shall be subject to the public information procedures of Section 2 of this administrative regulation.

(3) The cabinet shall review the plan update in accordance with Section 3 of this administrative regulation.

Section 6. Implementation of the Plan. (1) Each governing body shall implement its plan as approved by the cabinet pursuant to KRS 224.43-345.

(2) If a governing body fails to implement an approved plan, the cabinet:

(a) Shall not endorse projects that generate solid waste pursuant to[~~under~~] the Kentucky intergovernmental review process for the area and the counties and cities located in the area pursuant to KRS 224.43-340 until the governing body is in compliance with its plan;

(b) May withhold any grants, loans or other monies for any grant applicant[~~the area and the counties and cities~~] located in the area pursuant to KRS 224.10-105, including grants and reimbursements awarded pursuant to[~~under~~] KRS 224.43-505, until the governing body is in compliance with the governing body's[~~its~~] plan; and

(c) May initiate enforcement proceedings against the governing body. Enforcement proceedings shall be pursuant to KRS 224.10-420 and 224.10-440[~~224.99-010 and 224.99-020~~].

Section 7. Annual Reports. (1) The annual report, established[~~specified~~] in KRS 224.43-310(5), shall be prepared by the governing body of each solid waste management area. The[~~original and one (1) copy of the~~] report shall be sent to the cabinet[~~supervisor, Local Assistance Section, Resource Conservation and Local Assistance Branch, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601~~].

(2) The annual report shall be prepared and formatted using the["]Solid Waste Management Area Annual Report[~~Form"~~], DEP[~~Form~~] 6061[~~(February 2004), incorporated by reference in Section 8 of this administrative regulation. This form shall be effective January 1, 2005, for the annual report covering calendar year 2005~~].

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Guidance for Preparing a[~~an Area~~] Solid Waste Management Area Plan 5-Year Update", DEP 6062, March 2017[~~November 2016~~]; and

(b) "Solid Waste Management Area Annual Report [~~Form~~]", DEP 6061, March 2017[~~November 2016~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601,[~~(502) 564-6716,~~] Monday through Friday, 8:00[~~8~~] a.m. to 4:30 p.m.

(3) This material may also be obtained on the division's Web site at waste.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 11, 2017

FILED WITH LRC: May 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 2017, at 6:00 p.m. in Training Room A of the Energy and Environment Cabinet at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Mitchell, Internal Policy Analyst, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6713, fax (502) 564-4245, email MichelleM.Mitchell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Mitchell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth specific requirements and procedures for submittal, processing, and amending of area solid waste management plans and annual reports.

(b) The necessity of this administrative regulation: This administrative regulation fulfills the requirements of KRS 224.43-310, KRS 224.43-340 and KRS 224.43-345.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides procedures to the solid waste management areas on updating solid waste management plans and submitting annual reports, required by KRS 224.43-310, KRS 224.43-340 and KRS 224.43-345.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing the procedures for the preparation, submittal, processing and amending of area solid waste management plan updates. This administrative regulation also provides the annual report requirements to solid waste management areas.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will reduce the amount of paperwork submitted to the cabinet from each county or waste management area required to report to the cabinet. The form was revised to eliminate redundancy and streamline the process of reporting. The amendment to this administrative regulation shall allow the cabinet to withhold any grants or monies for any grant applicants pursuant to KRS 224.43-505.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to eliminate redundancy and streamline the process for counties reporting annually to the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statute by revising the annual report form for the administration of KRS 224.43-345 and KRS 224.43-340.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist counties or solid waste management areas in reporting to the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all counties, cities, urban-county governments and solid waste management areas in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The counties, urban-county governments and solid waste management areas will be required to report information on the revised annual report 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 cost to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The counties and cities will have

less paperwork to complete for the annual report as redundancy was eliminated.

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

(a) Initially: There will be no cost associated with the implementation of the amendment to this administrative regulation as the division has already implemented this program.

(b) On a continuing basis: There will be no cost associated with the implementation of the amendment to this administrative regulation as the division has already implemented this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky PRIDE Fund will be the source of funding for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no cost associated with the implementation of the amendment to this administrative regulation as the division has already implemented this program.

(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 to this administrative regulation or amendment. All applicants applying for grant monies are to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact all counties, cities, urban-county governments and solid waste management areas responsible for solid waste management in the Commonwealth of Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation relates to the solid waste management area governing body, responsible for the area solid waste management plan updates and annual reports, required by KRS 224.43-310, KRS 224.43-340 and KRS 224.43-345.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer the Recycling and Local Assistance Program is $687,441.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Recycling and Local Assistance Program is $687,441 annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have no fiscal impact as it sets forth general requirements and procedures for submittal, processing and amending of area solid waste management plans.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration.

RELATES TO: KRS 224.1-010(20), 224.10-420, 224.10-440, 224.43-310, 224.43-315, 224.43-345, 224.43-505, 224.50-878

STATUTORY AUTHORITY: KRS 224.43-340, 224.43-345, 224.43-505

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.43-340 authorizes the cabinet to promulgate administrative regulations pursuant to KRS Chapter 224 for the reduction and management of solid waste. This administrative regulation establishes administrative procedures concerning registration of solid waste collectors and recyclers and the Kentucky Pride Fund established[~~described~~] in KRS 224.43-505.

Section 1. Definitions. (1) "City street cleanup" means the cleanup of litter along a number of city street miles equivalent to one-half (1/2) of a city's total street miles in accordance with KRS 224.43-345(1)(g)4.

(2) "Direct expenses":

(a) Means:

1.[~~(a)~~] For litter abatement[~~anti-litter control~~] program activities, direct expenses include staff time, supplies, contract costs, expenditures related to the operation of equipment, actual disposal costs incurred, and activities, including education, focusing on litter prevention and litter cleanup along public roadways; or

2.[~~Direct expenses do not include the purchase of a motor vehicle or lease of a motor vehicle when the lease includes a purchase option; and~~

~~(b)~~] For illegal open dump cleanup activities, direct expenses include staff time, supplies, contractor costs, expenditures related to the operation of equipment for remediation, and actual disposal costs; and

(b) Does not mean[~~. Direct expenses do not include~~] the purchase of a motor vehicle or lease of a motor vehicle if[~~when~~] the lease includes a purchase option.

(3) "Illegal open dump" means a facility or site used for the disposal of solid waste that:

(a) Is equal to or greater than two (2) consolidated cubic yards; and

(b)1. Does not have a valid solid waste permit issued by the cabinet pursuant to 401 KAR Chapters 47 and 48; or

2. Has a valid solid waste permit issued by the cabinet pursuant to 401 KAR Chapters 47 and 48, but does not meet the standards established by [~~the cabinet in~~] 401 KAR 30:031.

(4) "Litter abatement program" means an anti-litter control program funded by grants pursuant to KRS 224.43-505(2)[~~"In-kind services" means the value of noncash contributions provided by the grant recipient in the form of real property, equipment, supplies, and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program~~].

(5) "Public road cleanup" means the cleanup of litter along a number of public road miles equivalent to one-third (1/3) of the total public road miles in the solid waste management area, excluding total city street miles in accordance with KRS 224.43-345(1)(g)4.

(6) "Recycler":

(a) Means[~~the following~~]:

1.[~~(a)~~] A person who operates a business for the purpose of recycling recovered material, as defined by KRS 224.1-010(20)[~~in KRS 224.01-010(20)~~], collected or diverted from the municipal solid waste stream; and[~~, but~~]

2. Does not mean[~~include~~] a business operated for the exclusive purpose of collecting motor vehicles or motor vehicle parts to be sold for reuse; or

(b) A city or county that is operating a recycling program for the purpose of collecting or diverting recovered material, as defined by KRS 224.1-010(20)[~~in KRS 224.01-010(20)~~], from the municipal

solid waste stream.

(7) "Regional" means a partnership between two (2) political subdivisions that are not within the same county.

(8) "Solid waste collector" means a person who provides collection of municipal solid waste, including collection for the purpose of recycling.

Section 2. Solid Waste Collector and Recycler Registration and Reporting. (1)[~~Except for counties meeting the definition of recycler,~~] By February 1 of each year, each solid waste collector and recycler shall register and report to the county in which it provides[~~they provide~~] the service in accordance with KRS 224.43-315(2) and (3).

(2) Solid waste collectors and recyclers required to register and report, pursuant to KRS 224.43-315(2) and (3), and this administrative regulation, shall use one (1) of the following:

(a) Municipal Solid Waste (MSW) Collector[~~(MSW)~~] and Recycler Registration and Report[~~Reporting Form~~], DEP 5033[~~, January 2004~~]; or

(b) A form approved by the county that contains, at a minimum, the same information as found in the form established[~~specified~~] in paragraph (a) of this subsection.

Section 3. Litter Abatement[~~Anti-litter Control Program Activities. (1) Three (3) public road cleanups shall be performed annually by the county.~~

~~(2) Two (2) city street cleanups shall be performed annually. These cleanups shall be performed by:~~

~~(a) Incorporated cities receiving anti-litter control program grant funds pursuant to Section 4 of this administrative regulation; or~~

~~(b) The county, if the incorporated city does not receive anti-litter control program grant funding pursuant to Section 4 of this administrative regulation.~~

~~(3) Counties shall report all anti-litter control program activities on Anti-Litter Control Program Annual Report Form, DEP 8061.~~

~~(a) This form shall be submitted to the cabinet by March 1 of each year; and~~

~~(b) This form shall be used to meet the requirements established in KRS 224.43-310(5)(e).~~

~~Section 4. Anti-Litter Control~~] Program Grants. (1) A litter abatement[~~An anti-litter control~~] program grant shall be available to:

(a) Counties; and

(b) Those incorporated cities that provide garbage collection service, either:

1. Directly by the city;

2. By contract between the city and the county; or

3. By a contract between the city and a solid waste collector registered pursuant to Section 2 of this administrative regulation.

(2)(a) Litter abatement[~~anti-litter control~~] program grant recipients shall use grant funding for direct expenses[~~, as defined in Section 1(2)(a) of this administrative regulation,~~] associated with public road cleanup and city street cleanup requirements referred to in KRS 224.43-345(1)(g)4[~~KRS 224.43-505(d)5~~].

(b) Litter abatement[~~Anti-litter control~~] program grant recipients shall keep documentation related to grant activities, including grant expenditure documentation, for at least three (3) years.

(3) Counties applying for litter abatement[~~anti-litter control~~] program grant funding shall complete and submit a County Request and Agreement for Litter Abatement[~~Anti-Litter Control~~] Program Grant Funding, DEP 7117,[~~September 2010,~~] to the cabinet by November 1 annually.

(4)(a) Incorporated cities, who meet the qualification of subsection (1)(b) of this section, applying for litter abatement[~~anti-litter control~~] program grant funding shall complete and submit a City Request and Agreement for Litter Abatement[~~Anti-Litter Control~~] Program Grant Funding, DEP 7118,[~~September 2010,~~] to the cabinet by November 1 annually.

(b) A copy of the city's solid waste ordinance or solid waste contract shall be submitted with the application.

(5) Applicants for litter abatement[~~anti-litter control~~] program grant funding shall be in compliance with KRS 224.43-340.

(6)(a) It shall be the responsibility of the litter abatement[~~anti-litter control~~] program grant funding recipient to demonstrate[~~determine~~] compliance with subsection (2) of this section.

(b)[~~1.~~] The head of the governing body of the grant recipient shall certify[~~on Certification of Use of Anti-Litter Control Program Grant Funding, DEP 0059, September 2010,~~] that litter abatement[~~anti-litter control~~] program grant funding was spent in accordance with subsection (2) of this section.

(c) A county shall submit the Solid Waste Management Area Annual Report, DEP 6061, incorporated by reference in 401 KAR 49:011[~~2. Counties shall submit the Certification of Use of Anti-Litter Control Program Grant Funding, DEP 0059, September 2010~~], to the cabinet by March 1, to meet the requirements of[~~with the annual report required by~~] KRS 224.43-310(5) and 401 KAR 49:011, Section 7.

(d) An incorporated city[~~3. Incorporated cities~~] shall submit the City Litter Abatement Program Annual Report and Certification for Grant Funding, DWM 4900[~~Certification of Use of Anti-Litter Control Program Grant Funding, DEP 0059, September 2010~~], to the cabinet by February 1.

(7) Litter abatement[~~Incorporated cities shall submit the Anti-Litter Control Program Annual Report Form, DEP 8061, September 2010, to the cabinet by February 1.~~

~~(8) Anti-litter control~~] program grant funding not spent in the calendar year it is received shall be returned to the cabinet by April 15 of the following year.

(8)[~~(9)~~] Grant recipients that complete and submit a certification in accordance with subsection (6) of this section shall [~~not~~] be presumed to have complied[~~deemed out of compliance~~] with the public road cleanup and city street cleanup requirements of KRS 224.43-345(1)(g)4.

Section 4[~~5~~]. Illegal Open Dump Cleanup Grant Program. (1) A county shall be eligible for illegal open dump cleanup grant funding if the county meets the criteria established[~~described~~] in KRS 224.43-505(3)(b).

(2)(a) A county shall comply with[~~meet the requirement of~~] KRS 224.43-505(3)(b)2 by employing:

1.[~~(a) Employing~~] A solid waste coordinator to implement and enforce KRS 224.43-340 and 224.43-345; or

2. A solid waste coordinator and an enforcement officer to implement and enforce KRS 224.43-340 and 224.43-345.[~~who shall not be an elected official; and~~]

(b) The[~~1. The county, through an ordinance or resolution, may empower the solid waste coordinator with enforcement powers necessary to implement all components of the solid waste management plan described in KRS 224.43-340 and 224.43-345; or~~

~~2. Counties may employ a~~] solid waste coordinator shall not be an elected official[~~and an enforcement officer for the duties required to implement all components of the solid waste management plan described in KRS 224.43-340 and 224.43-345~~].

(3) Eligible counties applying for illegal open dump cleanup grant funding for the cost of eliminating illegal open dumps shall apply[~~annually~~] by:

(a) Submitting[~~the following~~]:

1.[~~(a)~~] Illegal Open Dump Cleanup Grant Program Grant Application, DEP 7125[~~, (January 2011)~~];

2.[~~(b)~~] Illegal Open Dump Cleanup Grant Program Estimated Expense Worksheet, DEP 6086[~~, September 2010~~];

3.[~~(c)~~] Illegal Open Dump Characterization Worksheet, DEP 8063[~~, September 2010~~];

4.[~~and (d)~~] DWM Pre-Inspection Report, including photographs; and

(b) Entering into a grant agreement.

(4) Grant funding shall be used for the direct expenses[~~, as defined in paragraph 1(2)(b) of this administrative regulation,~~] associated with the cleanup of illegal open dumps approved by the cabinet in the original or supplemental application for the applicable grant period.

(5) Illegal open dumps that have already been remediated two (2) times with assistance from the Kentucky Pride Fund during a

five (5) year Areas Solid Waste Management Plan Update period shall not be eligible for grant funding[approved].

(6)[Grant recipients shall submit Illegal Open Dump Cleanup Grant Quarterly Progress Report Form, DEP 8062, September 2010, to the cabinet within thirty (30) days of the end of each quarter.

(7)] Grant recipients shall submit the Illegal Open Dump Cleanup Grant Program Final Expense Worksheet, DEP 6088,[September 2010,] with attached invoices for rental equipment and contractor costs, receipts for disposal and miscellaneous supplies, photographs, and DWM Post-inspection Report to the cabinet demonstrating actual cleanup costs pursuant to subsection (4) of this section for the illegal open dumps approved in the application not later than thirty (30) days after the end of the grant period.

(7)[(8)] Grant recipients shall submit[a final Illegal Open Dump Cleanup Grant Quarterly Progress Report Form, DEP 8062, September 2010, not later than thirty (30) days after the end of the grant period.

(9) If a county has grant funding remaining after all illegal open dumps approved on the original application have been cleaned, the county may submit a supplemental application.

(a) Supplemental applications shall be submitted by the county at least six (6) months prior to the end of the grant period.

(b)1. Supplemental applications shall include all paperwork required in subsection (3) of this section;

2. Supplemental applications shall be accompanied by the Illegal Open Dump Cleanup Grant Program Final Expense Worksheet, DEP 6088, September 2010, with attached invoices for rental equipment and contractor costs, receipts for disposal and miscellaneous supplies, photographs and DWM Post-inspection Report to the cabinet demonstrating actual cleanup costs pursuant to subsection (4) of this section showing that all illegal open dumps approved in the original application have been remediated; and

3. A final Illegal Open Dump Cleanup Grant Quarterly Progress Report Form, DEP 8062, September 2010, shall be submitted with the supplemental application.

(c) The county shall submit] the Illegal Open Dump Cleanup Grant Program Final Expense Worksheet, DEP 6088,[September 2010,] with attached invoices for rental equipment and contractor costs, receipts for disposal and miscellaneous supplies, photographs, and DWM Post-inspection Report to the cabinet demonstrating actual cleanup costs pursuant to subsection (4) of this section for the illegal open dumps approved in the supplemental application not later than thirty (30) days after the end of the grant period.

(8)[(10)] Illegal open dump cleanup grant recipients shall comply with the terms and conditions of the grant agreement.

(9)[(11)] Illegal open dump cleanup grant funding not spent in accordance with KRS 224.43-505 within the grant period shall be returned to the cabinet within forty-five (45) days of notification by the cabinet that grant funding[money] needs to be returned.

Section 5[6]. Recycling Grant Program. (1) Counties, waste management districts, cities, urban-county governments, or other political subdivisions of the state may apply for recycling grants established in KRS 224.43-505(4).

(2) Applicants shall meet the requirements of KRS 224.43-505(4)(a), (b), and (c).

(3) Applications creating regional recycling infrastructure shall be given priority.

(4) Applications for recycling grants shall be applied for by February 1 annually.

(5) Applicants shall submit Kentucky Pride Fund Recycling Grant Application, DEP 7126[, September 2010].

(6)(a) Grant recipients shall submit quarterly reports not later than thirty (30) days after the end of each quarter throughout the grant period on Kentucky Pride Fund Recycling Grant Quarterly Report, DEP 5038[, September 2010].

(b) Grant recipients shall submit the final quarterly report not later than thirty (30) days after the end of the grant period.

(7) Grant recipients shall comply with the terms and conditions of the grant agreement.

(8) Recycling grant funds shall not be awarded to an otherwise eligible entity if the entity is out of compliance with KRS 224.43-315,[KRS] 224.43-340, 224.43-345, 224.43-505, or 224.50-878.

(9) Recycling grant funding not spent in the grant period shall be returned to the cabinet within forty-five (45) days of notification by[from] the cabinet that grant funding needs to be returned.

Section 6[7]. Household Hazardous Waste (HHW) Management Grant Program. (1) Counties, waste management districts, cities, urban-county governments, or other political subdivisions of the state may apply for household hazardous waste management grant funds. The application shall be as established in KRS 224.43-505.

(2) Household hazardous waste management grants shall be applied for annually.

(3) Applicants shall submit Kentucky Pride Fund Household Hazardous Waste Management Grant Application, DEP 7127[, September 2010].

(4) Grant recipients shall be limited to one event annually, unless a supplemental application is submitted.

(5) If a county has grant funding remaining after conducting the approved household hazardous waste collection event on the original application, the county may submit a supplemental application.

(a) Supplemental applications shall be submitted on Kentucky Pride Fund Household Hazardous Waste Management Grant Application, DEP 7127,[September 2010,] not later than sixty (60) days before the end of the grant period.

(b) Kentucky Pride Fund Household Hazardous Waste Management Grant Close-out Report, DEP 6087,[September 2010,] shall be submitted with the supplemental application.

(6) Grant recipients shall submit Kentucky Pride Fund Household Hazardous Waste Management Grant Close-out Report, DEP 6087,[September 2010,] within forty-five (45) days of completion of the event.

(7) Household Hazardous Waste Management Grant funds shall not be awarded to an otherwise eligible entity if the entity is out of compliance with KRS 224.43-315, 224.43-340, 224.43-345, 224.43-505, or 224.50-878.

(8) Household Hazardous Waste Management Grant funding not spent in the grant period shall be returned to the cabinet within forty-five (45) days of notification from the cabinet that grant funding needs to be returned.

Section 7[8]. Grant Extensions. (1) An applicant or registrant [Entities] may request an extension to deadlines established by this administrative regulation or[established by] the cabinet.

(2) The purpose and period of[in writing pursuant to this administrative regulation.] the[extension] request shall be submitted in writing to the cabinet prior to the deadline that is the subject of the request.

(3)[and received by the Recycling and Local Assistance Branch of the Division of Waste Management prior to the deadline.] The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

(4) Deadlines shall not be extended for the litter abatement program grant established in Section 3 of this administrative regulation.

Section 8[9]. Enforcement. (1) An entity failing to comply with the terms of the grant agreements authorized in this administrative regulation shall be ineligible for grants authorized pursuant to[under] KRS 224.43-505 or 224.50-878 until the entity[it] returns to compliance[or for a period of one (1) year].

(2) An entity failing to meet the requirements of 401 KAR 49:011 shall be ineligible for grants authorized pursuant to[under] KRS 224.43-505 or 224.50-878 until the entity[it] returns to compliance.

(3) If a governing body fails to implement an approved plan, the cabinet may initiate enforcement proceedings against the governing body. Enforcement proceedings shall be pursuant to KRS 224.10-420 and 224.10-440.

Section 9[~~10~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Municipal Solid Waste (MSW) Collector and Recycler Registration and Report[~~Reporting Form~~]", DEP 5033, March 2017[~~January 2004~~];

(b) "County Request and Agreement for Litter Abatement[~~Anti-Litter Control~~] Program Grant Funding", DEP 7117, March 2017[~~September 2010~~];

(c) "City Request and Agreement for Litter Abatement[~~Anti-Litter Control~~] Program Grant Funding", DEP 7118, March 2017[~~September 2010~~];

(d) "City Litter Abatement Program Annual Report and Certification for Grant Funding", DWM 4900, March 2017["~~Certification of Use of Anti-Litter Control Program Grant Funding", DEP 0059, September 2010;~~

~~(e) "Anti-Litter Control Program Annual Report Form", DEP 8061, September 2010~~];

(e)[~~(f)~~] "Illegal Open Dump Cleanup Grant Program Grant Application", DEP 7125, March 2017[~~January 2011~~];

(f)[~~(g)~~]" Illegal Open Dump Cleanup Grant Program Estimated Expense Worksheet," DEP 6086, March 2017[~~September 2010~~];

(g)[~~(h)~~]" Illegal Open Dump Characterization Worksheet", DEP 8063, March 2017;[~~September 2010;~~

~~(i) "Illegal Open Dump Cleanup Grant Quarterly Progress Report Form", DEP 8062, September 2010;~~

~~(j)~~](h) "Illegal Open Dump Cleanup Grant Program Final Expense Worksheet", DEP 6088, March 2017[~~September 2010~~];

(i)[~~(k)~~] "Kentucky Pride Fund Recycling Grant Application", DEP 7126, March 2017[~~November 2016~~];

(j)[~~(l)~~] "Kentucky Pride Fund Recycling Grant Quarterly Report [~~Form~~]", DEP 5038, March 2017[~~September 2010~~];

(k)[~~(m)~~] "Kentucky Pride Fund Household Hazardous Waste Management Grant Application", DEP 7127, March 2017[~~November 2016~~]; and

(l)[~~(n)~~] "Kentucky Pride Fund Household Hazardous Waste Management Grant Close-out Report", DEP 6087, March 2017[~~September 2010~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00[~~8~~] a.m. to 4:30 p.m.

(3) This material may also be obtained[~~is also available~~] on the division's Web site[~~page~~] at waste.ky.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 11, 2017

FILED WITH LRC: May 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 2017, at 6:00 p.m. in Training Room A of the Energy and Environment Cabinet at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Mitchell, Internal Policy Analyst, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6713, fax (502) 564-4245, email MichelleM.Mitchell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Mitchell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative procedures concerning the area solid waste management plans described in KRS 224.43-340 and KRS 224.43-345 and the Kentucky Pride Fund described in KRS 224.43-505.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to administer KRS 224.43-345 and KRS 224.43-505.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the statute by establishing procedures for the Kentucky Pride Fund grant programs and by establishing a reporting mechanism for solid waste collectors and recyclers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statute by establishing the Kentucky Pride Fund grant programs.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will reduce the amount of paperwork submitted to the cabinet from each county or waste management area required to report to the cabinet. Quarterly status reports for the illegal open dump grant program will no longer be required. The forms were revised to eliminate redundancy and streamline the process of reporting. Counties meeting the definition of recycler will be required to report on the amount of recyclables collected by weight. Criteria for grant extensions was established. An entity failing to comply with the terms of the grant agreements shall be ineligible for grants until the entity returns to compliance. The name of the "anti-litter control" program will be referred to as the "litter abatement" program and a definition is provided for litter abatement; both terms are used interchangeably in KRS 224.43-505. The supplemental application process in the illegal open dump program will be eliminated and will not affect the ability of counties to receive funding for eligible grants but will streamline and simplify procedures. It clarifies the approval of supplemental grant requests in the household hazardous waste program is dependent on remaining funds. Procedures for requesting grant deadline extensions are clarified. Grant extensions are not relevant for Litter Abatement Program Grants.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to eliminate redundancy and streamline the process for counties reporting annually to the cabinet. The amendment will also allow the cabinet to determine the amount of recyclables collected by each recycler. Criteria for grant extensions will clarify specific guidelines used by the division in determining approval for each grant extension request.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statute by revising forms and providing grant extension criteria necessary for the administration of KRS 224.43-345 and KRS 224.43-505.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist counties or solid waste management areas in reporting to the cabinet, and allow them to request extensions for projects when necessary.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all counties, cities, urban-county governments and solid waste management areas in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The counties, urban-county governments and solid waste management areas will be required to report the annual report information on the revised annual report

form. Counties will no longer be required to report litter abatement program grant funding on a separate form, as it is included in the new annual report form. Counties will also be required to provide information on the amount of recyclables collected from each recycler to the cabinet. Cities will no longer be required to certify and report on two different forms for the litter abatement program grant activities as it has been combined into one 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 cost to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The counties and cities will have less paperwork to complete for the annual report as redundancy was eliminated. Grant recipients will be provided extensions to expend grant funds when adverse weather or other conditions set forth in the administrative regulation are met.

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

(a) Initially: There will be no cost associated with the implementation of the amendment to this administrative regulation as the division has already implemented this program.

(b) On a continuing basis: There will be no cost associated with the implementation of the amendment to this administrative regulation as the division has already implemented this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be funded by the Kentucky Pride Fund, which comes from the Environmental Remediation Fee.

(7) Provide an assessment of whether an 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 cost associated with the implementation of the amendment to this administrative regulation as the division has already implemented this program.

(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 directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation or amendment. All applicants applying for grant monies are to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact all counties, cities, urban-county governments and solid waste management areas responsible for solid waste management in the Commonwealth of Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation relates to the solid waste management area governing body, responsible for solid waste grant funds and solid waste collector and recycler registration, required by KRS 224.43-345 and KRS 224.43-505.

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

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer the Recycling and Local Assistance Program is $687,441.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the Recycling and Local Assistance Program is $687,441 annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation provides a way for political subdivisions of the state, particularly counties and cities, to receive money to properly manage solid waste. There is a statutory provision for counties to pick up litter and to cleanup illegal open dumps. The grant programs for these two activities will allow the county to have funding for these clean ups without an increased burden to the county budget. The grants for recycling and household hazardous waste management grants will allow political subdivisions to apply for grants to effectively manage these materials.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 119.025, 197.410(2), 346.185, 439.340, 439.3401, 439.563, 532.043, 532.060, 532.080, 640.080

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. (1) "Board" is defined by KRS 439.250(5).

(2) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.

(3) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.

(4) "Parole" means the release of an inmate with a signed parole certificate to:

(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision; or

(b) Answer the detainer.

(5) "Parole eligibility date" means the date set by the board for conducting parole hearings at the location designated for an inmate's parole release hearing to take place during the month the inmate becomes eligible for parole.

(6) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence.

(7) "Parole for violent offender" is defined in KRS 439.3401.

(8) "Physical injury" is defined in KRS 500.080(13).

(9) "Serious physical injury" is defined in KRS 500.080(15).

(10) "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.

(11) "SOTP" means Sex Offender Treatment Program.

Section 2. Ineligibility. (1) An eligible sex offender, as defined in KRS 197.410(2), convicted prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:

(a) He has been denied entrance into the Sex Offender Treatment Program;

(b) He has been terminated from the SOTP; or

(c) He has successfully completed the SOTP.

(2) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).

(3) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his postincarceration supervision by the court pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration.

(4) If an inmate is within sixty (60) days of being released by minimum expiration, administrative release, or maximum expiration at the time of his next scheduled parole hearing, the inmate shall not be eligible for parole.

Section 3. Parole Eligibility. (1) Initial parole review. Except as provided by Section 2 of this administrative regulation, a person confined to a state penal institution or county jail shall have his case reviewed by the board, in accordance with the following schedules:

(a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).

(b) For a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

(c) For a felony offense committed after December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

(d) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentence of life	12 years

(e) For a crime:

1. Committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1;

2. Committed on or after July 15, 2002, which is:

a. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;

b. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

c. Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

d. Robbery in the first degree;

3. Committed on or after July 12, 2006, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree; or

4. Committed on or after June 26, 2007, which is:

a. A capital offense;

b. Class A felony;

c. Complicity to a Class A felony;

d. Class B felony involving the death of the victim or serious physical injury to a victim;

e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;

f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);

g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);

h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;

i. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;

j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

l. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentences of life	20 years

(f) For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction committed under paragraph (e) of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (c) of this subsection, parole eligibility shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(2) Subsequent parole review. Except as provided in KRS 439.340(14):

(a) After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board; and

(b) The board, at the initial or a subsequent review, may order a serve-out on a sentence.

(3) Parole review with new felony conviction.

(a) If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

(b)1. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be set on the length on the new sentence only, beginning from the date of his final sentencing, unless the board has previously set a new parole eligibility date.

2. If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.

(c) If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:

1. The recommendation of parole shall automatically be voided; and

2. The new parole eligibility date shall be set based upon the date of original admission on the aggregate sentences.

(4) Parole review for crimes committed while in an institution or while on escape. If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

(a) Except as provided by paragraph (b) of this subsection, in determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution, or on a sentence for a crime committed while on an escape, the total parole eligibility shall be set by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1. The amount of time to be served for parole eligibility on the original sentence;

2. If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;

3. If the inmate has an additional sentence for a crime committed while in the institution, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while in the institution; and

4. If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.

(b) If the board has previously set a parole eligibility date for an inmate described in paragraph (a) of this subsection, and that date is later than that set under paragraph (a) of this subsection, the later date shall be the parole eligibility date.

(c)1. Except as provided by paragraph (b) of this subsection, if a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date.

2.a. If the prisoner later receives a sentence for the escape, the previous deferment shall be automatically voided and the new parole eligibility date shall be set based on the new sentence beginning from the date of sentencing for the new sentence, unless the deferment date set by the board is a later date than that set based on the new sentence.

b. If the deferment date set by the board is a later date, the parole eligibility date shall be the date which last occurs.

(d) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, his parole eligibility date shall be set from the date of his new sentence or from the date previously set by the board, whichever occurs last.

(e) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be void. Upon return to a state institution, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines it may conduct a face-to-face hearing with this person at the institution with a three (3) member panel.

(5) Parole reviews for persons on shock probation or on prerelease probation. If a person is shock probated, or on prerelease probation, and is later returned to the institution as a shock probation violator or prerelease probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

(a) If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

(b) If a person on parole is returned to the institution, has received a new sentence for a crime committed while on parole, and is probated or shock probated on the new sentence, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines, it may conduct a face-to-face hearing with this person at the institution with a panel of at least two (2) members.

Section 4. Emergency Authority. If the Commissioner of the Department of Corrections gives notice to the board of a need to relieve state prison or local jail overpopulation, the board may authorize the Commissioner to release one (1) or more persons who have been granted parole but who remain in custody solely to meet the time service requirements of this administrative regulation, if:

(1) Sixty (60) or fewer days remain between the date of the actual release and the date on which the inmate would otherwise be physically released on parole;

(2) The release would not result in a violation of a statutorily set minimum service of time requirement, including that set out for violent offenders under KRS 439.3401; and

(3) All other release requirements, including victim notification and re-entry planning, are completed.

The Chairperson of the Kentucky Parole Board, with the authorization and approval of a majority of the members of the Kentucky Parole Board, hereby approves the promulgation of the emergency regulation on behalf of the Kentucky Parole Board, as indicated by her signature below.

LELIA A. VAN HOOSE, Chairperson

APPROVED BY AGENCY: April 17, 2017

FILED WITH LRC: April 17, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2017, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: 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.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for determining parole eligibility.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 439.320 and 439.340.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction and information to staff who assist the Kentucky Parole Board concerning eligibility requirements and managing parole review and to inmates concerning their parole eligibility.

(2) If 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 allows the Department of Corrections of Commissioner to request the Parole Board to authorize expedited release of prisoners granted parole in order to relieve overpopulation of jail or prisons.

(b) The necessity of the amendment to this administrative regulation: The amendment allows the expedited release of prisoners to relieve overpopulation of jails or prisons.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations governing parole eligibility. The amendment allows expedited release, which essentially reduces the time served requirement for parole eligibility for prisoners already approved for parole.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows the Parole Board to adjust parole eligibility requirements to assist with reducing overpopulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Kentucky Parole Board members, the staff that assist the Board, offenders eligible for parole or on parole, members of the public that are victims of crime or that are affected by crime, and jails and prisons holding offenders already approved for parole.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Parole Board members, staff that assist the Board, offenders, and jail or prison staff will have to follow the changes made in the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The expedited release will assist jails and prisons with overpopulation.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Budgeted funds.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The administrative regulation and the amendment to it will impact the operations of the Kentucky Parole Board and jails and prisons within Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.320 and 439.340

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

(a) How much 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 generated by this regulation.

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

(c) How much will it cost to administer this program for the first year? No increase in cost is anticipated by this amendment. The amendment is expected to reduce jail costs with the expedited release of prisoners approved for parole.

(d) How much will it cost to administer this program for subsequent years? No increase in cost is anticipated by this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Incorporation by Reference. (1) "Bell County Forestry Camp Policies and Procedures," August 14, 2012, are incorporated by reference. Bell County Forestry Camp Policies and Procedures include:

BCFC 01-08-01	Public Information and News Media Access (Amended 5/15/08)
BCFC 02-01-01	Inmate Canteen (Amended 5/15/08)

[~~BCFC 02-08-01~~ ~~Prisoners' Fund (Amended 8/14/12)~~
~~BCFC 05-02-01~~ ~~Consultants, Research, and Student Interns (Amended 5/15/08)~~]
BCFC 06-01-01 Offender Records (Amended 8/14/12)
BCFC 06-02-01 Storage of Expunged Records (Amended 10/15/01)
BCFC 07-02-01 Preventative Maintenance Plan (Amended 6/15/12)
[~~BCFC 07-04-01~~ ~~Smoking Control (Amended 6/15/12)~~]
BCFC 07-05-01 Permit Required Confined Space (Amended 8/14/12)
[~~BCFC 08-02-01~~ ~~Fire Prevention (Amended 7/8/08)~~]
BCFC 08-03-01 Fire Procedures (Amended 5/15/08)
BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances (Amended 10/15/01)
BCFC 09-05-01 Entry and Exit onto Institutional Grounds (Amended 5/12/17[~~Added 6/15/12~~])
BCFC 09-06-01 Search Policy and Disposition of Contraband (Amended 5/12/17[~~6/15/12~~])
[~~BCFC 09-08-01~~ ~~Drug Abuse Testing (Amended 5/15/08)~~]
BCFC 09-08-02 Breathalyzer Testing (Amended 5/12/17[~~Added 10/15/01~~])
BCFC 09-09-01 Operation of Licensed Vehicles by Inmates (Amended 5/15/08)
BCFC 09-14-01 Bell County Forestry Camp Restricted Areas (Amended 8/14/12)
BCFC 09-27-01 Procedures for Prohibiting Inmate Authority Over Other Inmates (Amended 5/15/08)
BCFC 09-28-01 Canine Unit (Amended 5/12/17[~~8/14/12~~])
BCFC 10-01-01 Temporary [~~Segregation~~] Holding Area (Amended 5/12/17[~~8/14/12~~])
BCFC 11-01-01 Food Services: General Guidelines (Amended 6/15/12)
BCFC 11-02-01 Food Service Security (Amended 6/15/12)
BCFC 11-03-01 Dining Room Guidelines (Amended 8/14/12)
BCFC 11-04-01 Food Service: Meals (Amended 6/15/12)
BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 6/15/12)
BCFC 11-05-01 Food Service: Kitchen and Dining Room Inmate Work Responsibilities (Amended 6/15/12)
BCFC 11-05-02 Health Requirements of Food Handlers (Amended 8/14/12)
BCFC 11-06-01 Food Service: Inspection and Sanitation (Amended 6/15/12)
BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products (Amended 8/14/12)
BCFC 12-01-01 Sanitation, Living Condition Standards, and Clothing Issues (Amended 5/15/08)
BCFC 12-01-02 Bed Areas and Bed Assignments (Amended 5/15/08)
BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry (Amended 5/15/08)
BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule (Amended 5/15/08)
BCFC 12-03-02 Barber Shop Services and Equipment Control (Amended 5/15/08)
BCFC 12-07-01 BCFC Recycling Project (Amended 10/15/01)
BCFC 13-01-01 Medical Services (Amended 5/12/17[~~8/14/12~~])
BCFC 13-02-01 Sick Call and Physician's Weekly Clinic (Amended 5/12/17[~~6/15/12~~])
BCFC 13-03-01 Dental Services (Amended 5/12/17[~~5/15/08~~])
BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 5/12/17[~~5/15/08~~])
BCFC 13-05-01 Emergency Medical Care (Amended 5/12/17[~~8/14/12~~])
BCFC 13-06-01 Consultations (Amended 5/12/17[~~5/15/08~~])
BCFC 13-07-01 Health Records (Amended 6/15/12)
BCFC 13-08-01 Vision and Optometry Services (Amended 5/12/17[~~7/8/08~~])
BCFC 13-09-01 Family Notification: Serious Illness, Serious Physical Injury, or Death (Amended 5/15/08)
BCFC 13-10-01 Health Education: Special Health Care Needs (Amended 5/15/08)
BCFC 13-11-01 Informed Consent (Amended 5/15/08)
BCFC 13-12-01 Mental Health Care (Amended 5/12/17[~~5/15/08~~])
BCFC 13-13-01 Special Health Care Programs (Amended 6/15/12)
BCFC 13-14-01 Use of Pharmaceutical Products (Amended 8/14/12)
BCFC 13-15-01 Parenteral Administration of Medications and Use of Psychotropic Drugs (Amended 8/14/12)
BCFC 13-16-01 Elective Services (Amended 6/15/12)
BCFC 13-18-01 Serious and Infectious Diseases (Amended 5/12/17[~~5/15/08~~])
BCFC 13-19-01 Continuity of Health Care (Amended 5/15/08)
BCFC 13-20-01 Inmates Assigned to Health Services (Amended 5/15/08)
BCFC 13-21-01 Suicide Prevention and Intervention Program (Amended 5/15/08)
BCFC 13-24-01 Inmate Self-Administration of Medication (Amended 5/15/08)
BCFC 13-25-01 Syringes, Needles, and Sharps Control (Amended 5/15/08)
BCFC 13-26-01 Sexual Assault (Amended 5/15/08)
BCFC 14-01-01 Inmate Rights and Responsibilities (Amended 5/15/08)
BCFC 16-01-01 Inmate Visiting (Amended 5/12/17[~~6/15/12~~])
[~~BCFC 16-02-01~~ ~~Telephone Communications (Amended 5/15/08)~~
~~BCFC 16-03-01~~ ~~Inmate Mail Regulations (Amended 5/15/08)~~
~~BCFC 16-03-02~~ ~~Inmate Packages (Amended 5/15/08)~~]
BCFC 17-01-01 BCFC Inmate Receiving and Orientation Process (Amended 5/15/08)
BCFC 17-04-01 BCFC Inmate Property Control (Amended 7/8/08)
BCFC 17-05-01 Inmate Canteen (Amended 5/15/08)
[~~BCFC 18-01-01~~ ~~Institutional Classification Committee (Amended 5/15/08)~~]
BCFC 18-02-01 Identification of Special Needs Inmates (Amended 6/15/12)
BCFC 19-01-01 Work Assignment (Amended 5/15/08)
BCFC 19-02-01 Governmental Services Program (Amended 5/15/08)
BCFC 20-01-01 Academic School (Amended 5/15/08)
BCFC 21-01-01 Library Services (Amended 5/15/08)
BCFC 22-01-01 Recreation and Inmate Activities (Amended 6/15/12)
BCFC 22-02-01 Inmate Clubs and Organizations (Amended 5/15/08)
BCFC 23-01-01 Religious Services (Amended 5/15/08)
BCFC 24-01-01 Social Services and Counseling Program (Amended 5/15/08)
BCFC 24-01-02 Casework Services (Amended 5/15/08)
BCFC 25-01-01 BCFC Pre-release Program (Amended 5/15/08)
BCFC 25-02-01 Community Center Program (Amended 7/8/08)
[~~BCFC 25-02-02~~ ~~Inmate Furlough (Amended 5/15/08)~~]
BCFC 25-04-01 Inmate Discharge Procedure (Amended 5/15/08)
BCFC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 5/15/08)

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

JAMES ERWIN, Acting Commissioner
APPROVED BY AGENCY: May 11, 2017
FILED WITH LRC: May 12, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2017, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was

received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: 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.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Bell County Forestry Camp including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and to meet American Correctional Association (ACA) standard requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Bell County Forestry Camp.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to employees and the inmate population concerning the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment brings the Bell County Forestry Camp into compliance with ACA Standards and updates current practices for the department and its facilities.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes authorize the Secretary or his authorized representative and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Bell County Forestry Camp.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates and visitors information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 63 employees and 300 inmates at the Bell County Forestry Camp and all volunteers and visitors to the institution.

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

(a) List 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, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with any operational changes made 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): No cost is anticipated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No increase in cost is anticipated.

(b) On a continuing basis: No increase in cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Bell County Forestry Camp budgeted funds.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Bell County Forestry Camp.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this regulation does not create any revenue for the Bell County Forestry Camp.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment to this regulation does not create any revenue for the Bell County Forestry Camp.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amendment)

505 KAR 1:130. Department of Juvenile Justice Policies and Procedures: juvenile services in community.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 635.100, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, 635.100, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation

incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Juvenile Services in Community", May 15, 2017[~~October 15, 2015~~], is incorporated by reference and includes the following:

600 Definitions (Amended 5/15/17[~~7/01/15~~]);
601 Initial Contact & Court Support for Public Offenders (Amended 5/15/17[~~10/15/15~~]);
601.1 Initial Contact & Court Support for Youthful Offenders (Amended 5/15/17[~~7/01/15~~]);
601.2 Case Management Screens and Assessments (Amended 5/15/17[~~Added 10/15/15~~]);
602 Individual Client Record (Amended 5/15/17[~~10/15/15~~]);
603 Service Complaints (Amended 10/15/15);
604 Case Planning and Participation in Treatment Planning (Amended 5/15/17[~~10/15/15~~]);
605 Community Supervision (Amended 5/15/17[~~10/15/15~~]);
606 Probation of Public Offenders (Amended 5/15/17[~~10/15/15~~]);
607 Commitment of Public Offenders (Amended 5/15/17[~~10/15/15~~]);
608 Drug Screening and Confirmation Testing (Amended 5/15/17[~~7/01/15~~]);
609 Youth's Benefits (Amended 5/15/17[~~7/01/15~~]);
609.1 Title IV-E Federal Foster Care Maintenance Payments (Amended 5/15/17[~~7/01/15~~]);
609.2 Trust Funds (Amended 7/01/15);
610 Transportation of Committed Youth (Amended 7/01/15);
610.1 Out-of-State and Out-of-Country Travel (Amended 5/15/17[~~10/15/15~~]);
611 Electronic Monitoring (Amended 5/15/17[~~7/01/15~~]);
612 Authorized Leave for Public Offenders, Juvenile Sexual Offenders, and Youthful Offenders in Placement (Amended 10/15/15);
613 Supervised Placement Revocation (Amended 7/01/15);
615 Juvenile Intensive Supervision Team (JIST) (Amended 7/01/15);
616 Youthful Offenders-Confined, Shock Probated, and Transferred to the Department of Corrections (Amended 5/15/17[~~7/01/15~~]);
616.1 Probation of Youthful Offenders (Amended 5/15/17[~~7/01/15~~]);
616.2 Parole of Youthful Offenders (Amended 7/01/15);
617 Incident Reports (Amended 5/15/17[~~7/01/15~~]);
618 AWOL or Escape (Amended 5/15/17[~~7/01/15~~]);
620 Use of Self-Protection Skills (Amended 10/15/15);
621 Mental or Behavioral Health Services, Referrals, and Psychiatric Hospitalization (Amended 10/15/15);
622 Community Mental Health Operations (Amended 5/15/17[~~10/15/15~~]); and
623 Health and Safety for Community and Mental Health Services (Amended 7/01/15).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: May 15, 2017

FILED WITH LRC: May 15, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2017 at 10:00 a.m. Eastern Time at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this 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 June 30, 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: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Codell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the community operations of the Department of Juvenile Justice including the assessment, supervision and case management of juveniles probated or committed to the Department.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065, 15A.0652, KRS 15A.067, KRS 605.150, and KRS 635.095.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation governs every aspect of the program services for the community population of the Department of Juvenile Justice.

(d) How this administrative regulation currently assists, or will assist, in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees and the community population as to their duties, rights, privileges, and responsibilities.

(2) If 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 shall bring the Department of Juvenile Justice in to compliance to reflect actual practice of the agency, such as, the change in the Department's criminogenic needs assessment from the Case Management Needs Assessment to the Criminogenic Needs Questionnaire which will allow for the specific targeting of criminogenic needs in case planning and treatment planning utilizing evidence-based practices in an effort to reduce recidivism.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065, KRS 15A.0652, 15A.067, 605.150, and 635.095.

(c) How the amendment conforms to the content of the authorizing statutes: The policy revisions update the practices or procedures to ensure youth committed or probated to the Department of Juvenile Justice are properly served. Revises guidance and uses of treatment needs identification tools for supervision and commitment and responsibilities of community and mental health staff.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate more efficiently.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 employees of the Department of Juvenile Justice, approximately 1100 youth in all programs, and all visitors and volunteers to Department of Juvenile Justice.

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

policies and procedures, the Department of Juvenile Justice will be providing services more effectively and consistently. Policy amendments will ensure that youth are placed and supervised in the least restrictive placement based on their assessed risk and treatment needs, and to provide staff a clearer understanding of the use of treatment needs identification tools and the use of Evidence-Based Practices.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Community staff will administer a risk and needs assessment on all adjudicated youth. Agency employees will provide services to the youth in the community and all programs in accordance with the procedures outlined in the regulation and the materials incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Estimated costs to the Department of Juvenile Justice to implement all policy revisions are estimated as follows:
Training Costs: Approximately $5000

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Youth shall receive services more effectively and efficiently. DJJ employees and visitors and volunteers will more clearly and concisely understand the services to be provided by Department of Juvenile Justice.

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

(a) Initially: Approximately $5000.00 for staff training

(b) On a continuing basis: Approximately $5000 for annual staff training.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Juvenile Justice General Fund and Restricted Funds if 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: None.

(8) State whether or not this administrative regulation established any fees, or directly or indirectly, increased any fees: None

(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. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated, as well as the Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
Response: Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065, KRS 15A.0652, KRS 15A.067, KRS 15A.160, KRS 15A.210, KRS 15A.305(5), KRS 200.115, KRS 605.150, KRS 635.060, KRS 635.095, KRS 635.100, KRS 640.120, and KRS 645.250.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures shall be for initial staff training of $5000.00 and $5000 for annual training thereafter.

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

(c) How much will it cost to administer this program for the first year? Response: The revised administrative regulations will only impact the Department of Juvenile Justice. The anticipated expenditures shall be for initial staff training of $5000.00 and $5000 for annual training thereafter.

(d) How much will it cost to administer this program for subsequent years? Response: The anticipated expenditures shall be for initial staff training of $5000.00 and $5000 for annual training thereafter.

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 from this regulation.

Expenditures (+/-): Expenditures relate to training staff and auditing programs to ensure compliance.

Other Explanation: This regulation will provide a clear and concise policies and procedures for all youth receiving services from the Department of Juvenile Justice, and reflect the treatment and practice of the agency.

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

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

RELATES TO: KRS 45A, 186.010, 186.440, 186.442, 186.480, 186.531, 186.560, 186.570, 189A.005, 189A.010, 189A.040, 189A.070, 189A.085, 189A.090, 189A.103, 189A.105, 189A.107, 189A.200, 189A.240, 189A.250, 189A.340, 189A.345, 189A.400, 189A.410, 189A.420, 189A.440, 189A.500, 205.712, 18 U.S.C. 2721[~~57 C.F.R. 11772-11787~~]

STATUTORY AUTHORITY: KRS 189A.500[~~189A.085(1)(b), 189A.340(4)(f)~~]

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

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

(2) "Certification" means the approval process required by the Commonwealth of Kentucky for ignition interlock devices and

device providers prior to operating within the state.

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

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

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

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

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

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

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

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

(11) "Ignition interlock service provider" or "service provider" means a certified supplier, installer, service provider, and, if applicable, manufacturer of the certified ignition interlock devices.

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

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

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

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

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

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

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

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

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

(21) "Service call" means an onsite remote service of an ignition interlock device, outside of a fixed facility, including for example:

(a) Diagnostic trouble shooting;

(b) Repair or replacement of a malfunctioning device; or

(c) Removal of a device from an inoperable vehicle.

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

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

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

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

(26) "Violation" means:

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

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

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

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

(e) Failure to pay provider fees as established in Section 2(17) of this administrative regulation.

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

(2)(a) Upon arraignment of an offense under KRS 189A.010 resulting in pretrial license suspension, a defendant seeking authorization to apply for and, if eligible, operate under an ignition interlock license shall file with the court a completed Pretrial Application to Court for Authorization to Apply for an Ignition Interlock License and Device, AOC-495.4, pursuant to KRS 189A.200.

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

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

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

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

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

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

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

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

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

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

(8) A defendant shall submit to the cabinet a completed Ignition Interlock Application, TC 94-175, with a court order authorizing application and proof of insurance and valid vehicle registration.

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

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

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

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

(13) A defendant shall be required to install an ignition interlock

device on one (1) primary motor vehicle registered and titled in his or her name or another's motor vehicle with express notarized, written consent of the owner authorizing installation of the device.

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

(15) Upon a defendant's payment of the appropriate fees, the service provider's technician shall install the device and issue to the defendant a Certificate of Installation for Ignition Interlock Device, TC 94-177.

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

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

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

(17) After ten (10) days' written notice to the defendant, the provider shall notify the appropriate county attorney and the cabinet for nonpayment of fees on an account that is in arrears for thirty (30) days or more.

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

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

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

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

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

(21) A defendant with a license suspension or revocation period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers utilizing the provisions of KRS Chapter 45A and the terms of the RFQ. Initial certification shall be valid for a period of eighteen (18) months. Extensions shall be for a period of two (2) years with two (2) subsequent renewals.

(2) Ignition interlock device providers certified under this administrative regulation shall obtain re-certification in compliance with this administrative regulation prior to providing devices and services.

(3) An ignition interlock device provider seeking certification to provide devices and services within the commonwealth shall comply in all respects with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.

(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device and services if that device is specifically included in its original certification request and is specifically certified by the cabinet pursuant to KRS 189A.500.

(5) An ignition interlock device or service provider shall provide information and training for the operation and maintenance of the device to the defendant and other individuals operating a vehicle with an installed device.

(6)(a) A device and service provider shall be prohibited from removing a device owned by a different provider unless an agreement is in place or for the purpose of replacing a defendant's provider due to that provider's insolvency or business interruption.

(b) The original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.

(7) A device provider shall notify the cabinet within fifteen (15) days of a pending suspension, revocation, or disciplinary action taken against it by a jurisdiction outside the commonwealth. Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal.

(8) The records required by Section 4(2)(e) of this administrative regulation shall be retained by an ignition interlock device provider for five (5) years from the date the device is removed from the defendant's vehicle. The records shall be disposed of in a manner compliant with relevant privacy laws and the provisions contained in this administrative regulation.

Section 4. Certification of Ignition Interlock Devices and Device Providers. (1) An ignition interlock device provider requesting certification of an ignition interlock device shall:

(a) Submit an affidavit that the ignition interlock device sought to be used complies with the applicable specifications and certification requirements contained in the RFQ; and

(b) Submit documentation for each model from either a certified, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds the current NHTSA model specifications at nhtsa.gov/staticfiles/nti/pdf/811859.pdf.

(2) An ignition interlock device provider requesting certification shall:

(a) Submit evidence demonstrating successful experience in the development and maintenance of an ignition interlock service program, including a list of jurisdictions served by the device provider;

(b) Provide a description of the training required including its frequency, for persons employed by, contracted with, or permitted by the provider to install, calibrate, remove, and provide continuing support for the devices;

(c) Provide a plan that includes a location map describing the areas and locations of the provider's proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility in each of the twelve (12) highway districts;

(d) Agree to initial service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The provider shall also agree to provide sufficient notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;

(e) Provide a plan for the receipt, maintenance, and destruction or appropriate return of defendant records consistent with court rules and the confidential maintenance of defendant records as required by the Driver's Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;

(f) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ. The provider's liability insurance shall be expressly considered primary in the policy;

(g) Designate a provider representative authorized to speak on behalf of and bind the device provider, and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;

(h) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by defendants to request assistance in the event of operational problems related to the device and shall include technical assistance and aid in obtaining a roadside service call if needed; and

(i) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts.

(3) Device providers shall notify the appropriate county attorney within twenty-four (24) hours electronically, or no later

than seventy-two (72) hours by mail, fax, or other method approved by the recipient of the following occurrences:

(a) Device tampering or circumvention violations; or

(b) A defendant's failure to comply with a court order pursuant to Section 6(6) of this administrative regulation.

(4) A provider shall indemnify and hold harmless the commonwealth and its employees and agents from all claims, demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removal of an ignition interlock device. If the device provider's report of ignition interlock activities contains a verified error, the cabinet, department, or cabinet or department employees or agents shall be indemnified relevant to the error.

Section 5. Ignition Interlock Device Installation. (1) A provider may charge a defendant for the commodities and services listed in the RFQ, including the following:

(a) Standard ignition interlock device installation, or installation on alternative fuel motor vehicles or a motor vehicle with a push button starter;

(b) Device rental on a monthly basis;

(c) Scheduled device calibrations and monitoring as specified in the RFQ;

(d) Required insurance in case of theft, loss, or damage to the device and its components;

(e) Resets necessary due to the fault of the defendant;

(f) Missed appointments without notice;

(g) Service calls and mileage up to 100 miles at the current rate established by the Kentucky Finance and Administration Cabinet; and

(h) Device removal.

(2)(a) The court shall determine whether a defendant is indigent. A defendant declared indigent shall pay a proportionate amount of the fees agreed to in the RFQ based upon the guidelines established by the Kentucky Supreme Court in Amendment to Administrative Procedures of the Court of Justice, Part XVI, Ignition interlock, Amended Order 2015-13.

(b) A device and service provider shall accept the court ordered amounts paid by an indigent defendant as payment in full.

(3) The defendant shall remit the fees directly to the device or service provider as directed by the device provider. A device provider shall not prohibit the pre-payment of fees for the device and services.

(4) The device provider shall pursue collection of amounts in arrears and recovery of the devices, where applicable, through separate legal action.

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

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

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

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

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

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

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

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

(8) The cabinet shall:

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

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

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

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

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

(a) Photo identification;

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

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

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

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

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

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

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

(6) A device provider shall, within ninety-six (96) hours of receipt of the court's order directing removal of the device, notify the defendant that he or she shall return the vehicle with the installed device for removal.

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

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

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

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

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

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

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

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

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

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

(i) The device provider requests a voluntary suspension.

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

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

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

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

(a) Providing notice to defendants; and

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

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

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

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

(b) A provider who terminates certification or goes out of business shall submit plans for transferring existing defendants to other providers to ensure continuity of service.

(c) A transfer plan shall be submitted to the cabinet for approval by the commissioner within thirty (30) days of the initial notification of intent to cease operations in the commonwealth.

(d) The provider shall be solely responsible for notifying defendants with currently installed devices serviced by the provider, and shall be solely responsible for charges related to installation of a device by a new provider.

Section 8. Surrender of Motor Vehicle Registration Plates. (1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plates pursuant to KRS 189A.085.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's Web site at http://drive.ky.gov.[~~Surrender of Motor Vehicle Registration Plates. (1) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:~~

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

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

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

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

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

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

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

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

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

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

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

~~(e) The ignition interlock device shall:~~

~~1. Record each time the vehicle is started;~~

~~2. Record results of the alcohol concentration test;~~

~~3. Record how long the vehicle is operated; and~~

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

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

~~(g) The ignition interlock device shall require:~~

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

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

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

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

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

~~1. If the retest is not performed; or~~

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

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

~~(2) An ignition interlock device shall be:~~

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

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

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

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

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

~~1. Name of the person performing the installation and calibration;~~

~~2. Dates of activity;~~

~~3. Value and type of standard used;~~

~~4. Unit type and identification number of the ignition interlock device checked; and~~

~~5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number, year and color.~~

~~(4) An ignition interlock device in a lockout condition shall be returned to the site of installation for service.~~

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

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

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

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

~~(b) The license has been granted an exception for employment purposes pursuant to KRS 189A.340, if granted by the court.~~

~~(4) Manufacturers, installers, and servicing and monitoring entities shall apply to the Division of Driver Licensing for approval and placement on the list maintained by the cabinet.~~

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

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

GREG THOMAS, Secretary
JOHN MARK HACK, Commissioner

APPROVED BY AGENCY: April 21, 2017

FILED WITH LRC: April 26, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 2017 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email Ann.Dangelo@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of:

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

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

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

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

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

(a) How the amendment will change this existing administrative regulation: This amendment will replace 601 KAR 2:030, the current ignition interlock administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend and replace 601 KAR 2:030.

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

(d) How the amendment will assist in the effective administration of the statutes: These amendments will clarify provisions in the current administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect:

companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Division of Vehicle Regulation; circuit clerks, and the Administrative Office of the Courts.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in the amount of $105 pursuant to KRS 189A.420(6).

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

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. For local government, costs should be minimal as the process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.

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

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

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

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

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

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

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

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 4:230. Extended hours supplemental licenses.

RELATES TO: KRS 243.030(16), 243.042, 243.050, 243.082, 244.290, 244.480

STATUTORY AUTHORITY: KRS 241.060, 243.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 243.050 authorizes the board to establish alcoholic beverage sales days and times for holders of extended hours supplemental licenses[~~establishes the extended hours supplemental license and authorizes the board~~] by administrative regulation[~~to set the necessary conditions and restrictions upon this class of license~~]. This administrative regulation establishes the alcoholic beverage sales days and times for holders of extended hours supplemental licenses[~~conditions and restrictions for extended hours supplemental licenses~~].

Section 1.[~~Definition. "Prevailing time" means those opening and closing hours applicable to the standard retail license or licenses held by the facility making application for the Extended Hours Supplemental License.~~

~~Section 2. This administrative regulation establishes an~~] Extended Hours Supplemental License Sales Times. A licensee holding an Extended Hours Supplemental License (ESL) is authorized to engage in[~~for~~] the retail sale of alcoholic beverages at the times and days set forth in subsections (1) and (2) of this Section[~~, distilled spirits, wine, and malt beverages by the drink~~]. (1)[~~A convention center holding a~~] Nonquota type 1 licensees and qualified historical site licensees may sell alcoholic beverages each day of the week between 6:00 a.m. and midnight[~~license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing~~].

(2)[~~A horse racetrack holding a nonquota type license, pursuant to KRS 243.082, shall have hours of operation of prevailing time for Monday through Saturday, and Sundays 1 p.m. until prevailing time for weekday closing.~~

~~(3) An automobile racetrack holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time for Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.~~

~~(4) A railroad system holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of~~

~~prevailing time for Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.~~

~~(5) A state park holding a nonquota type 1 license, pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.~~

~~(6)~~] A commercial airlines system or charter flight system holding a nonquota type 1 license, or a retail licensee located within a commercial airport, may sell alcoholic beverages during the twenty-four (24) hours of every day[~~pursuant to KRS 243.082, shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. to 4 a.m.~~

~~(7) A licensee holding a retail drink license pursuant to KRS Chapter 243 located within a commercial airport shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. to 4 a.m.~~

~~(8) A qualified historical site licensee holding an extended hours supplemental license shall have hours of operation of prevailing time Monday through Saturday, and Sunday 1 p.m. until prevailing time for weekday closing.~~

~~Section 3. The supplemental licenses may be issued by the distilled spirits administrator and malt beverage administrator who, pursuant to KRS 243.050, shall consider whether or not the issuance of the license is in the best interest of promoting tourism, conventions, the economic development of Kentucky, or any part thereof~~].

CHRISTINE TROUT, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: May 12, 2017

FILED WITH LRC: May 15, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 2017 at 1:15 p.m. Eastern Time at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on June 30, 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: Stephen B. Humphress, General Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email steve.humphress@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen B. Humphress

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the hours of alcoholic beverage sales by the holders of extended hours supplemental licenses ("ESL").

(b) The necessity of this administrative regulation: This regulation is necessary to establish the hours of alcoholic beverage sales by the holders of ESLs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.050(1) authorizes the promulgation of regulations regarding the hours for alcoholic beverage sales by holders of ESLs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the hours of alcoholic beverage sales by the holders of ESLs.

(2) If 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 permits extended hours of alcoholic beverages sales by all holders of extended hours supplemental licenses.

(b) The necessity of the amendment to this administrative regulation: House Bill 183 amended KRS 244.290 to codify the findings in *Liquor Outlet, LLC v. Alcoholic Beverage Control Bd., 141 S.W.3d 378* (Ky. App. 2004), which held local governments have broad discretion in permitting after-hour and Sunday alcoholic beverage sales by ordinance. Like local ordinances, the ESL license also authorizes after-hours and Sunday alcoholic beverage sales. Accordingly, HB 183 also amended KRS 244.050 to be consistent with the *Liquor Outlet* holding and avoid any inconsistency with KRS 244.290 as amended. The amendment provides the Board with the same discretion as local governments in permitting after-hours and Sunday alcoholic beverage sales.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.050 requires the promulgation of administrative regulations setting the times for after-hours and Sunday alcoholic beverage sales by the holders of ESLs.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides standards for the times for after-hours and Sunday alcoholic beverage sales by the holders of ESLs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect approximately sixty (60) holders of ESL licenses and the Department of Alcoholic Beverage Control.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment provides permissive, not mandatory times, so licensees are not required to change their business operations unless in their best interests.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment provides more flexibility and economic development opportunity to licensees in conducting business. It will also promote tourism.

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

(a) Initially: There are no costs to implement this administrative regulation amendment.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with implementing this administrative regulation, and enforcement costs, if any, would be minimal and would be absorbed into regular employee duties.

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

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

(9) TIERING: Is tiering applied? 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? The Department of Alcoholic Beverage Control is the only government agency expected to be impacted by this administrative regulation amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 243.050 requires the promulgation of administrative regulations setting the times for after-hours and Sunday alcoholic beverage sales by the holders of an ESL. This administrative regulation provides necessary standards for the times for after-hours and Sunday alcoholic beverage sales by the holders of an ESL.

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

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

(c) How much will it cost to administer this program for the first year? There are no costs to administer this administrative regulation amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this administrative regulation amendment for each subsequent year.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There are no expected costs to administer this administrative regulation amendment.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 10:010. Appointment notification of local [~~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 241.110, KRS 241.170, and KRS 241.230 require all local administrators to take the oath prescribed by Section 228 of the Kentucky Constitution[~~KRS 241.130, KRS 241.180, and KRS 241.240 require a local alcoholic beverage control administrator to take an oath and execute a $1,000 bond as a condition of assuming the role as local alcoholic beverage control administrator~~]. This administrative regulation requires a local government to provide written notification to the department when a local[~~alcoholic beverage control~~] administrator is appointed and to provide proof that the oath was taken[~~and the surety bond was posted~~].

Section 1. Definition. "Local[~~alcoholic beverage control~~] administrator" is defined by KRS 241.010(36)[~~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 shall submit the following documents to the department within thirty (30) days of appointment:

(1) A letter, resolution, or ordinance evidencing the local administrator's appointment or the county judge/executive's acceptance of the position; and

(2) Written certification that the oath prescribed by Section 228 of the Kentucky Constitution[~~of office~~] has been administered to the local[~~alcoholic beverage control~~] administrator[~~;~~

~~(2) A copy of the surety bond for the local 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: May 12, 2017

FILED WITH LRC: May 15, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 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 June 30, 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: Stephen B. Humphress, General Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 782-1027, fax (502) 564-7479, email steve.humphress@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen B. Humphress

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the procedures for local governments to notify the department when a local administrator is appointed.

(b) The necessity of this administrative regulation: The regulation is necessary to inform local governments of the procedures for notifying the department when a local 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 notification requirements when a local administrator is appointed. The administrative regulation will assist the department in identifying local alcoholic beverage control administrators.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the bond requirements for local beverage control administrators in compliance with House Bill ("HB") 183.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with HB 183, which removed bond requirements for all local 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: The amendment will clarify that a bond is no longer required for a local alcoholic beverage control administrator.

(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 and local governments are 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 amendment does not require any new action by the identified entities. The amendment removes a requirement that previously existed at the local government level.

(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 anticipated cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local governments will no longer be required to obtain bonds for their local administrators. This will result in cost savings. HB 183 and this amendment allow local governments to regulate alcoholic beverages more quickly at the local level.

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

(a) Initially: No anticipated cost.

(b) On a continuing basis: No anticipated 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. There will be reduced costs to the department to obtain and maintain records relating to bonds. There will be reduced costs to local governments as bonds will no longer be purchased.

(d) How much will it cost to administer this program for subsequent years? There are no future costs expected to amend this administrative regulation. There will be reduced costs to the department and local governments.

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.

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

900 KAR 6:125. Certificate of need annual surveys.

RELATES TO: KRS 216B.015

STATUTORY AUTHORITY: KRS 216B.040(3)(a) [~~216B.040(2)(a)1~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to issue administrative regulations necessary for the proper administration of KRS Chapter 216B[~~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 for submission of annual survey data to the cabinet for publication of annual reports necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Days" means calendar days, unless otherwise specified.

(3) "Long term care facility" means any entity with licensed long term care beds including nursing facility, nursing home, intermediate care, Alzheimer's, intermediate care facility for individuals with and intellectual disability, or personal care.

(4) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing[~~and regulatory functions of~~] health facilities and services.

(5) "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.

(6) "Year" means a calendar year from January 1 through December 31.

Section 2. Entities Completing Surveys. If requested by the cabinet, the following entities shall submit annual utilization surveys:

(1) Licensed ambulatory surgery center[~~centers~~];

(2) Licensed hospital[~~hospitals~~] performing ambulatory surgery services;

(3) Licensed home health agency[~~agencies~~];

(4) Licensed hospice[~~agencies~~];

(5) Licensed hospital[~~hospitals~~];

(6) Licensed private duty nursing agency[~~agencies~~];

(7) Licensed long term care facility[~~Facilities with licensed long term care beds~~];

(8) Licensed facility or service with[~~Entities that hold a certificate of need for~~] MRI equipment;

(9) Licensed facility[~~Facilities~~] with megavoltage radiation equipment;

(10) Licensed psychiatric residential treatment facility[~~facilities; and~~]

(11) Licensed facility or service[~~Facilities~~] with positron emission tomography equipment; and

(12) Licensed chemical dependency treatment facility.

Section 3. Annual Survey Submission. An annual survey, if requested by the cabinet, shall be completed for the previous year and transmitted electronically by accessing the Office of Health Policy's Web site at https://prd.chfs.ky.gov/OHPSurvey/.

Section 4.[~~Surveys shall be submitted annually as follows:~~

~~(1) Kentucky Health Survey Registry Ambulatory Surgery II;~~

~~(2) Kentucky Health Survey Registry Home Health II;~~

~~(3) Kentucky Health Survey Registry Hospice;~~

~~(4) Kentucky Health Survey Registry Hospital;~~

~~(5) Kentucky Health Survey Registry Private Duty Nursing;~~

~~(6) Kentucky Health Survey Registry Long Term Care;~~

~~(7) Kentucky Health Survey Registry Magnetic Resonance Imaging;~~

~~(8) Kentucky Health Survey Registry Megavoltage Radiation (Linear Accelerator);~~

~~(9) Kentucky Health Survey Registry Psychiatric Residential Treatment Facility; and~~

~~(10) Kentucky Health Survey Registry Positron Emission Tomography.~~

~~Section 5.~~] If requested by the cabinet, an annual survey[~~surveys~~] shall be completed and submitted no later than March 15th of each year. If the 15th falls on a weekend or holiday, the submission due date shall be the next working day.

Section 5.[~~6.~~] Extensions for Survey Submission. (1) A request for an extension for submission of data shall be made in writing or via email to the Office of Health Policy.

(2) The request for an extension shall state the facility name, survey log-in identification number, contact person, contact phone number, contact email address, and a detailed reason for the requested extension.

(3) One (1) extension per survey of up to ten (10) days shall be granted.

(4) An additional extension shall only be granted if circumstances beyond the entity's control prevents timely completion of a survey.

Section 6.[~~7.~~] Data Corrections to Draft Annual Reports Utilizing Data Submitted in the Annual Surveys. (1)(a) Prior to the release of a draft report to a facility for its review,
the Office of Health Policy shall review data for completeness and accuracy.

(b) If an error is identified, the facility shall be contacted by the Office of Health Policy and allowed fourteen (14) days to make corrections.

(2)(a) Prior to publication of the reports, the Office of Health Policy shall publish draft reports available only to the entities included in each individual report.

(b) Each facility shall be notified of a Web site and provided with a login identification and password required to access each applicable draft report and shall have fourteen (14) days to review the data for errors.

(c) Corrections shall be submitted in writing or via email to the Office of Health Policy before the expiration of the fourteen (14) day review period.

(3)(a) After publication of the reports, reports shall not be revised as a result of data reported to the Office of Health Policy incorrectly by the facility.

(b) Corrections received after the fourteen (14) day review period shall not be reflected in the published report.

(c) A facility may provide a note in the comments section for the following year's report, referencing the mistake from the previous year.

Section 7.[~~8.~~] Annual Reports. (1) Utilizing data submitted in the annual surveys, the Office of Health Policy shall publish reports annually[~~as follows:~~

~~(a) Kentucky Annual Ambulatory Surgical Services Report;~~

~~(b) Kentucky Annual Home Health Services Report;~~

~~(c) Kentucky Annual Hospice Services Report;~~

~~(d) Kentucky Annual Hospital Utilization and Services Report;~~

~~(e) Kentucky Annual Private Duty Nursing Agency Report;~~

~~(f) Kentucky Annual Long Term Care Services Report;~~

~~(g) Kentucky Annual Magnetic Resonance Imaging Services Report;~~

~~(h) Kentucky Annual Megavoltage Radiation Services Report;~~

~~(i) Kentucky Annual Psychiatric Residential Treatment Facility Report; and~~

~~(j) Kentucky Annual Positron Emission Tomography Report~~].

(2) Electronic copies of annual reports may be obtained at no cost from the Office of Health Policy's Web site at http://chfs.ky.gov/ohp/dhppd/dataresgal.htm. A paper copy may be obtained for a fee of twenty (20) dollars at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621.

Section 8.[~~9.~~] A facility that fails to complete a required annual survey shall be referred to the Office of Inspector General for further action which may impact the facility's license renewal as provided for in 902 KAR 20:008, Section 2(14)(b)4 [~~2(6)~~].[~~Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Kentucky Health Survey Registry Ambulatory Surgery II", screen prints, June 2014;~~

~~(b) "Kentucky Health Survey Registry Home Health II", screen prints, June 2014;~~

~~(c) "Kentucky Health Survey Registry Hospice", screen prints, June 2014;~~

~~(d) "Kentucky Health Survey Registry Hospital", screen prints, June 2014;~~

~~(e) "Kentucky Health Survey Registry Private Duty Nursing", screen prints, June 2014;~~

~~(f) "Kentucky Health Survey Registry Long Term Care", screen prints, June 2014;~~

~~(g) "Kentucky Health Survey Registry Magnetic Resonance Imaging", screen prints, June 2014;~~

~~(h) "Kentucky Health Survey Registry Megavoltage Radiation (Linear Accelerator)", screen prints, June 2014;~~

~~(i) "Kentucky Health Survey Registry Psychiatric Residential Treatment Facility", screen prints, June 2014; and~~

~~(j) "Kentucky Health Survey Registry Positron Emission Tomography", screen prints, June 2014.~~

~~(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.~~]

PAUL A. COOMES, Executive Director
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: May 8, 2017

FILED WITH LRC: May 12, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 21, 2017 at 9:00 a.m. in Conference 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 June 14, 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 the proposed administrative regulation until June 30, 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: Diona Mullins, email diona.mullins@ky.gov, phone 502-564-9592, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for submission of annual utilization survey data to the Office of Health Policy.

(b) The necessity of this administrative regulation: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to issue administrative regulations necessary for the proper administration of KRS Chapter 216B. The amendment is necessary to clarify the requirements for submission of annual utilization survey data to the Office of Health Policy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to issue administrative regulations necessary for the proper administration of KRS Chapter 216B. The amendment is necessary to clarify the requirements for submission of annual utilization survey data to the Office of Health Policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for submission of annual utilization survey data to the Office of Health Policy.

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

(a) How the amendment will change this existing administrative regulation: The regulation has been revised to clarify that annual surveys shall be submitted if requested by the cabinet. It is the Cabinet's desire to eliminate the duplication of reporting by health care facilities. A facility will not be required to complete the annual surveys if the facility is currently submitting administrative claims data which could be used to generate annual utilization reports. The four (4) licensed chemical dependency treatment facilities were added to the list of facilities to be surveyed. Previously, only hospitals with chemical dependency beds were required to submit surveys. The amendment also deletes the incorporation by reference of the survey forms, allowing the Cabinet needed flexibility to revise forms as facilities are phased out of the annual survey process.

(b) The necessity of the amendment to this administrative regulation: The regulation has been revised to clarify that annual surveys shall be submitted if requested by the cabinet. Licensed chemical dependency treatment facilities will also be surveyed. The amendment also deletes the incorporation by reference of the survey forms, allowing the Cabinet needed flexibility to revise forms as facilities are phased out of the annual survey process

(c) How the amendment conforms to the content of the authorizing statutes: It is the Cabinet's desire to eliminate the duplication of reporting by health care facilities. A facility will not be required to complete the annual surveys if the facility is currently submitting administrative claims data which could be used to generate annual utilization reports.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the authorizing statutes by clarifying that annual surveys shall be submitted, if requested by the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment affects the licensed health facilities and services required to submit annual surveys.

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

(a) List 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 four (4) licensed chemical dependency treatment facilities will be required to submit annual utilization surveys. Previously, only hospitals with chemical dependency treatment beds were required to submit surveys.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to submit a survey report is negligible. Our desire is to utilize claims data, eliminating the requirement for providers to have to complete the annual utilization surveys.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Some licensed health facilities will no longer be required to submit utilization surveys if the facilities submit administrative claims data.

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

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation does not impact a state or local government entity.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(3)(a) .

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

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

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

year? This administrative regulation imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS Chapter 13B, 216.2920, 216.2925, 216.2927, 304.14-135[~~-216.2929~~]

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions. (1) "Ambulatory facility" is defined by KRS 216.2920(1).

(2) "Cabinet" is defined by KRS 216.2920(2).

(3) "Coding and transmission specifications", "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", or "Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(4) "Hospital" is defined by KRS 216.2920(6).

(5) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for[~~:~~

~~(a) Inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds; or~~

~~(b)~~] hospice care.

(6) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(7) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.

(8) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(9) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(10) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals. (1) Inpatient hospitalization records. A hospital shall document every hospitalization it provides on a Standard Billing Form and shall, for[~~from~~] every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(2) Outpatient services records.

(a) A hospital shall document on a Standard Billing Form the outpatient services it provides and shall for[~~from~~] every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(b) A hospital shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. A hospital shall submit required data on every patient as provided in Section 12 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities. (1) Outpatient services records.

(a) An ambulatory facility shall submit outpatient services records if the ambulatory facility provides one (1) or more of the following outpatient services:

1. Surgery;
2. Childbirth;
3. Urgent treatment of minor illness or injury;
4. Emergency;
5. Mammography;
6. X-ray;
7. Ultrasound;
8. Computed tomography;
9. Magnetic resonance imaging;
10. Cardiac catheterization;
11. Positron emission tomography; and
12. Megavoltage radiation therapy.

(b) An ambulatory facility shall document on a Standard Billing Form the outpatient services it provides and shall, for every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

An ambulatory facility shall document on a Standard Billing Form the outpatient services it provides and shall, for every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(c)[~~(b)~~] An ambulatory facility shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. An ambulatory facility shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers. (1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payer for billing purposes, regardless of whether the record has actually been submitted to a payer.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payer.

(c) Data on a hospitalization shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation by which[~~where~~] one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by a hospital shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by an ambulatory facility shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) Each provider shall submit data by electronic transmission as specified by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) Each provider shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's data[~~date~~] log and a verification notice.

Section 6. Data Submission Timetable for Providers. (1) Quarterly submissions. Each provider shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data that[~~, which~~] during that quarter became final as specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. A provider may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Providers. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Submission of corrections. The cabinet shall allow a provider thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) A provider shall submit to the cabinet corrected data by electronic transmission within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Percentage error rate.

(a) If[~~When~~] editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) If[~~When~~] editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

Section 8. Fines for Noncompliance for Providers. (1) A provider failing to meet quarterly submission guidelines as established in Sections 6 and 7 of this administrative regulation shall be assessed a fine of $500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine, which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed $1,500 per provider.

Section 9. Extension or Waiver of Data Submission Timelines. (1) A provider experiencing extenuating circumstances or a hardship may request from the cabinet, in writing, a data submission extension or waiver.

(a) A provider shall request an extension or waiver from the Office of Health Policy on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) An extension or waiver shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 10. Appeals for Providers. (1) A provider notified of its noncompliance and assessed a fine pursuant to Section 8(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal,

the provider[~~it~~] shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) An appeal shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 11. Working Contacts for Providers. (1) On or before the last day of the data reporting period, a provider shall report by electronic transmission to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name and telephone number of the replacing person shall be reported immediately to the cabinet.

Section 12. Required Data Elements for Hospitals.[~~(1)~~] A hospital shall ensure that each record submitted to the cabinet contains [~~at least~~] the data elements identified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.[~~this section and as provided on the Standard Billing Form.~~

~~(2) A single asterisk identifies elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.~~

~~(3) Double asterisks identify elements that shall not be blank if present on the record and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.~~

~~(4) Additional data elements, as specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals, shall be required by the cabinet to facilitate proper collection and identification of data.~~

~~Required~~	~~DATA ELEMENT LABEL~~
~~Yes~~	~~*Provider Assigned Patient Control Number~~
~~Yes~~	~~**Provider Assigned Medical Record Number~~
~~Yes~~	~~*Type of Bill (inpatient, outpatient or other)~~
~~Yes~~	~~**Federal Tax Number or Employer Identification Number (EIN)~~
~~Yes~~	~~*Facility-specific NPI~~
~~Yes~~	~~*Statement Covers Period~~
~~Yes~~	~~*Patient City and Zip Code~~
~~Yes~~	~~*Patient Birth date~~
~~Yes~~	~~*Patient Sex~~
~~Yes~~	~~*Admission/Start of Care Date~~
~~Yes~~	~~**Admission Hour~~
~~Yes~~	~~*Type of Admission~~
~~Yes~~	~~*Source of Admission~~
~~Yes~~	~~*Patient Status (at end of service or discharge)~~
~~No~~	~~Occurrence Codes & Dates~~
~~Yes~~	~~**Value Codes and Amounts, including birth weight in grams~~
~~Yes~~	~~*Revenue Codes/Groups~~
~~Yes~~	~~*HCPCS/Rates/Hipps Rate Codes~~
~~Yes~~	~~*Units of Service~~
~~Yes~~	~~*Total Charges by Revenue Code Category~~
~~Yes~~	~~*Payer Identification – Payer Name~~
~~Yes~~	~~*National Provider Identifier~~
~~Yes~~	~~*Diagnosis Version Qualifier - ICD version 9.0 or 10.0~~
~~Yes~~	~~*Principal Diagnosis Code~~
~~Yes~~	~~*Principal Diagnosis Code present on admission identifier for non-Medicare claims~~
~~Yes~~	~~*Principal Diagnosis Code present on admission identifier for Medicare claims~~
~~Yes~~	~~**Secondary and Other Diagnosis Codes~~
~~Yes~~	~~**Secondary and Other Diagnosis code present on admission identifier for non-Medicare claims~~
~~Yes~~	~~**Secondary and Other Diagnosis code present on admission identifier for Medicare claims~~
~~Yes~~	~~*Inpatient Admitting Diagnosis~~
~~Yes~~	~~**Outpatient reason for visit~~
~~Yes~~	~~*External Cause of Injury Code (E-code) if present~~
~~Yes~~	~~*External Cause of Injury (E-code) present on admission identifier on non-Medicare claims if present~~
~~Yes~~	~~*External Cause of Injury (E-code) present on admission identifier on Medicare claims if present~~]
~~Yes~~	~~*Principal Procedure Code & Date if present~~
~~Yes~~	~~**Secondary and Other Procedure Codes & Date if present~~
~~Yes~~	~~*Attending Physician NPI/QUAL/ID~~
~~Yes~~	~~*Operating Clinician ID Number/NPI~~
~~Yes~~	~~**Other Physician NPI/QUAL/ID~~
~~Yes~~	~~*Race~~
~~Yes~~	~~*Ethnicity~~]

Section 13. Required Data Elements for Ambulatory Facilities.[~~(1)~~] An ambulatory facility shall ensure that each record submitted to the cabinet contains[~~at least~~] the data elements identified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities. [~~this section and as provided on the Standard Billing Form.~~

~~(2) A single asterisk identifies elements that shall not be blank and shall contain data~~
~~or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.~~

~~(3) Double asterisks identify elements that shall not be blank if present on the record and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.~~

~~(4) Additional data elements, as specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities, shall be required by the cabinet to facilitate proper collection and identification of data.~~

~~Required~~	~~DATA ELEMENT LABEL~~
~~Yes~~	~~*Patient Birth date~~
~~Yes~~	~~*Patient Sex~~
~~Yes~~	~~*Zip Code~~
~~Yes~~	~~*1st Individual Payer ID#~~
~~Yes~~	~~*Admission/Start of Care Date~~
~~Yes~~	~~*Type of Bill~~
~~Yes~~	~~*Principal Diagnosis Code~~
~~Yes~~	~~**Secondary and Other Diagnosis Codes if present~~
~~Yes~~	~~*Principal Procedure Code & Date~~
~~Yes~~	~~**Secondary and Other Procedure Codes & Date if present~~
~~Yes~~	~~*1st Units of Service~~
~~Yes~~	~~*1st Charge~~
~~Yes~~	~~**Secondary and Other Units of Service and Charge~~
~~Yes~~	~~*Total Charges for the Case~~
~~Yes~~	~~*Attending Clinician NPI~~

~~Yes~~	~~*Provider Assigned Patient ID#~~
~~Yes~~	~~**1st Insurer Group #~~
~~Yes~~	~~**2nd Insurer Group #~~
~~Yes~~	~~*Operating Clinician NPI~~
~~Yes~~	~~*Billing Facility-specific NPI~~
~~Yes~~	~~**Federal Tax Number or Employer Identification Number (EIN)~~
~~Yes~~	~~*Statement Covers Period~~
~~Yes~~	~~*Primary Payer Name~~
~~Yes~~	~~**Secondary Payer Name~~
~~Yes~~	~~*Race~~
~~Yes~~	~~*Ethnicity~~
~~Yes~~	~~*HCPCS/Rates/Hipps Rate Codes~~]

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

(a) "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised October 1, 2017[~~2015~~]; and

(b) "Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised October 1, 2015.

(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 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL A. COOMES, Executive Director
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: May 10, 2017

FILED WITH LRC: May 12, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 21, 2017 at 9:00 a.m. in Conference 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 June 14, 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 the proposed administrative regulation until June 30, 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: Diona Mullins, phone 502-564-9592, email diona.mullins@ky.gov., and Tricia Orme.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for submission of administrative claims data to the Cabinet and instructs specified health care providers on the process necessary to submit copies of administrative claims data to the Cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data. The administrative regulation contains the updated data submission manual for hospitals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to ensure that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data to enable the Cabinet to publish the data and reports as required by KRS 216.9295.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed instructions to specified health care providers relating to the data elements, forms and timetables necessary to comply with the statute.

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

(a) How the amendment will change this existing administrative regulation: The administrative regulation has been revised to allow the collection of hospital claims data for swing beds, nursing facility beds, distinct part unit rehabilitation beds, primary care physician NPI number, referring physician NPI number and updated Kentucky Birth Surveillance Registry ICD 10 Codes. A revision was made to clarify that only ambulatory facilities providing specific services will be required to submit all records.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure accuracy and standardization of the submitted data.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by providing a standardized method of reporting by hospitals and ambulatory care facilities.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will assist in the effective administration of the statutes by providing a standardized method of reporting by hospitals and ambulatory care facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment affects the licensed health facilities and services required to submit claims data.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers required to submit data will follow the revised hospital manual for revised instructions on data submissions.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Data integrity is improved as we are able to collect hospital swing and nursing facility data as well as other revised data elements.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation. The Cabinet currently collects data and has the necessary data collection system in place.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation will be the Office of Health Policy's existing budget. No new funding will be needed to implement this administrative regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Office of Health Policy and may impact any government owned or controlled hospital or ambulatory care facility.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.2923(3) and 216.2925.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

900 KAR 7:040. Release of public data sets for health care discharge data.

RELATES TO: KRS 61.870-61.884, 216.2920, 216.2927,[-] 216.2929

STATUTORY AUTHORITY: KRS 194A.050(1), 216.2923(2)(c)[~~, 216.2925(1), (2)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2923(2)(c) requires the Cabinet for Health and Family Services to promulgate administrative regulations for its transactions related to KRS 216.2920 to 216.2929[~~publish and make available information relating to the health care delivery and finance system that is in the public interest~~]. KRS 216.2927 mandates that personally identifying data collected by the Cabinet for Health and Family Services from health care providers not be released to the general public nor be allowed public inspection under KRS 61.870 to 61.884. This administrative regulation establishes the guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030, while maintaining patient confidentiality and further protecting personally identifying information.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216.2920(2).

(2) "Data" means the information collected pursuant to 900 KAR 7:030.

(3) "Encounter-level" means the data record of a single instance of hospitalization, outpatient service, ambulatory surgery, emergency department, or observation stay billing record contained in a data file.

(4) "Health care provider" is defined by KRS 216.2920(5).

(5) "Public" means a person or group not directly responsible for the collection, maintenance, custody, or dissemination of data for purposes of this administrative regulation.

(6) "Report" means a summary or compilation of data disseminated to the public.

Section 2. Encounter-Level Data. Encounter-level data shall be released in an electronic text file and shall include the following data elements[~~the following standard file format described in the table below~~]:

Encounter-Level Data[~~Standard File Format - Data Element Contained in the File if information is available File Type~~]
Provider ID
Quarter and[&] Year of Discharge
Patient Gender
Patient Age Group
Patient Race or[/] Ethnicity
Patient Resident County
Type of Admission
Source of Admission
All Diagnoses Available for Each Individual Record
All Procedures Available for Each Individual Record
Patient Zip Code[~~Diagnosis 1 (Primary)~~
~~Diagnosis 2~~
~~Diagnosis 3~~
~~Diagnosis 4~~
~~Diagnosis 5~~
~~Diagnosis 6~~
~~Diagnosis 7~~
~~Diagnosis 8~~
~~Diagnosis 9~~
~~Diagnosis 10~~
~~Diagnosis 11~~
~~Diagnosis 12~~
~~Diagnosis 13~~
~~Diagnosis 14~~
~~Diagnosis 15~~
~~Diagnosis 16~~
~~Diagnosis 17~~
~~Diagnosis 18~~
~~Diagnosis 19~~
~~Diagnosis 20~~
~~Diagnosis 21~~
~~Diagnosis 22~~
~~Diagnosis 23~~
~~Diagnosis 24~~
~~Diagnosis 25~~
~~Procedure 1~~
~~Procedure 2~~
~~Procedure 3~~
~~Procedure 4~~
~~Procedure 5~~
~~Procedure 6~~
~~Procedure 7~~
~~Procedure 8~~
~~Procedure 9~~
~~Procedure 10~~
~~Procedure 11~~
~~Procedure 12~~
~~Procedure 13~~
~~Procedure 14~~
~~Procedure 15~~
~~Procedure 16~~
~~Procedure 17~~
~~Procedure 18~~
~~Procedure 19~~
~~Procedure 20~~
~~Procedure 21~~
~~Procedure 22~~

~~Procedure 23~~
~~Procedure 24~~
~~Procedure 25~~]
Length of Stay
Total Charges
Discharge Status
Payer 1 (Primary)
Payer 2
Payer 3
[~~Diagnostic related group~~
~~Medicare Severity - Diagnostic related group~~
~~Major Diagnostic Category~~
~~Diagnosis Version Qualifier~~
~~Event Code 1~~
~~Event Code 2~~]
Do not resuscitate indicator
Diagnosis present on admission indicator

Section 3. Summary Data. (1) The cabinet shall not release data if KRS 216.2927 prohibits its release.

(2) The cabinet may include the following data elements, in any combination thereof, for encounter-level, aggregate, and summary report formats:

(a) Diagnoses and procedures, primary, and any other level;

(b) Diagnosis and procedure groupings, including diagnostic related groups, major diagnostic categories, and agency for health care policy and research clinical classification system;

(c) Patient gender;

(d) Age or age grouping;

(e) Discharge status;

(f) Payor category, all levels;

(g) Charge information, total and ancillary;

(h) County of patient residence;

(i) County of provider;

(j) Ancillary department information;

(k) Length of stay, total, and average;

(l) External cause of injury;

(m) Race or ethnicity; or

(n) Mortality rate. Reports including mortality rates shall be adjusted by severity of illness by reputable grouping software, either on a contract basis or by the cabinet.

(3) Data shall not be withheld from the public or another interested party based solely on an unfavorable profile of a provider or group of providers, if the data is deemed reliable, accurate, and sufficiently free of error, as determined by the cabinet and pursuant to 900 KAR 7:030.

Section 4. Release of Data. (1) A person or agency shall, as a condition for receiving data from the cabinet, sign an [~~"~~]Agreement for Use of Kentucky Health Claims Data[~~"~~]. A person or agency receiving data shall agree to adhere to the confidentiality requirements established in subsection (2) of this section and KRS 216.2927.

(2) To protect patient confidentiality:

(a) A report or summary of data that consists of five (5) or fewer records shall not be released or made public;

(b) A person or agency receiving data shall not redistribute or sell data in the original format;

(c) A person or agency receiving data shall not redistribute or sell a subset of the data or an aggregate product of the data;

(d) Distribution of data received by the cabinet shall be approved by the custodial agency prior to receipt of the data;

(e)[~~(d)~~] The data collected pursuant to 900 KAR 7:030 shall be used only for the purpose of health statistical reporting and analysis or as specified in the user's written request for the data; and

(f)[~~(e)~~] A user shall not attempt to link the public use data set with an individually identifiable record from another data set.

Section 5. Fees. (1) The cabinet shall charge a fee not to exceed $1,500 for the purchase of a single copy of an annual, public-use data set.

(2) A public-use data set shall be available for purchase no later than sixty (60) days after the end of the facility reporting period as established in 900 KAR 7:030. Special requests for data shall be prioritized and completed at the discretion of the custodial agency.

Section 6. Incorporation by Reference. (1) "Agreement for Use of Kentucky Health Claims Data", May 2017[~~September 2008~~], is incorporated by reference.

(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, Executive Director
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: May 10, 2017

FILED WITH LRC: May 12, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 21, 2017 at 9:00 a.m. in Conference 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 June 14, 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 the proposed administrative regulation until June 30, 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: Diona Mullins, phone 502-564-9592, email diona.mullins@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030, while maintaining patient confidentiality and further protecting personally identifying information.

(b) The necessity of this administrative regulation: This administration is necessary to comply with the content of the authorizing statutes KRS 216.2920-216.2929.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216.2920-216.2929 by establishing the guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030.

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

(a) How the amendment will change this existing administrative regulation: The regulation has been revised to clarify that the encounter-level data shall be released in an electronic text file. The listing of data elements to be included in the encounter-level data was also revised. Language was added to state that a person or

agency receiving the data shall not redistribute or sell a subset of the data or an aggregate product of the data. The fee for the data set has been revised to not exceed $1,500. The "Agreement for Use of Kentucky Health Claims Data", incorporated by reference in this regulation, has been revised to strengthen confidentiality requirements.

(b) The necessity of the amendment to this administrative regulation: The regulation has been revised to clarify the content of the data to be released and to strengthen the confidentiality requirements of the user agreement.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216.2923 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations for its transactions related to KRS 216.2920 to 216.2929. KRS 216.2927 mandates that personally identifying data collected by the Cabinet for Health and Family Services from health care providers not be released to the general public nor be allowed public inspection under KRS 61.870 to 61.884. This administrative regulation establishes the guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030, while maintaining patient confidentiality and further protecting personally identifying information.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of the authorizing statutes by clarifying the guidelines for distribution and publication of data collected by the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment affects an entity wishing to obtain a public use data set.

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

(a) List 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 the data being used to produce the public use data sets is already required to be submitted, no action will be required of regulated entities to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The charge for the data set will not exceed $1,500.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that obtain the public use data set will have access to data for research and analysis.

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

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The fee for the public use data set will not exceed $1,500.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fee for the public use data set will not exceed $1,500.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts any entity that elects to purchase the public use data set and the Cabinet for Health and Family Services, Office of Health Policy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.2920-2929.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? No additional costs will be incurred to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this amendment. The public use data sets are already produced as part of our normal operations so additional funding will not be required.

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 Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 95:040. Radon Contractor Certification Program.

RELATES TO: KRS Chapter 13B, 211.180(1)(a), 211.9101 - 211.9135

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.9109, 211.9111, 211.9115, 211.9121, 211.9127, 211.9135(3)

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 [~~211.9135(1) and (2) require the Cabinet for Health and Family Services to be the regulatory agency for the control of radon and radon activities in the Commonwealth of Kentucky, including laboratory analysis, mitigation, and measurements~~]. KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce KRS 211.9101 to 211.9135. This administrative regulation establishes[~~general~~] requirements for the certification of an individual or laboratory to[~~individuals who~~] perform radon measurement, radon mitigation, or laboratory analysis.

Section 1. Definitions. (1) "AARST" means the American Association of Radon Scientists and Technologists.

(2) "ABIH" means the American Board of Industrial Hygiene.

(3) "AIHA" means the American Industrial Hygiene Association.

(4) "ANSI" means the American National Standards Institute.

(5) "ASTM" means ASTM International.[~~(3) "ANSI-AARST" means those standard operating procedures or practices developed and maintained by the AARST Consortium on National Radon Standards for radon measurement, mitigation, or laboratory analysis.~~

~~(4) "Commercial building" is defined by KRS 211.9101(7).~~

~~(5) "EPA" means the Environmental Protection Agency.~~]

(6) "Mitigation system" is defined by KRS 211.9101(21).

(7)[~~"Multi-family housing" means a commercial building with~~

~~attached family dwellings that:~~

~~(a) Are occupied by residents who are primarily permanent in nature;~~

~~(b) Are greater than four (4) units or three (3) stories in height; and~~

~~(c) Contain an independent heating, ventilation, and air conditioning (HVAC) system.~~

~~(8)~~] "NRPP" means the National Radon Proficiency Program.

(8)[~~(9) "NRSB" means the National Radon Safety Board.~~

~~(10)~~] "Picocuries per liter" or "pCi/L" means a unit of radioactivity corresponding to one (1) decay every twenty-seven (27) seconds in a volume of one (1) liter, or 0.037 decays per second in every liter of air.

(9) "WHO" means the World Health Organization [~~(11) "Residential building" is defined by KRS 211.9101(28)~~].

Section 2. Certification Requirements. (1) A person shall be eligible to be certified as a radon measurement contractor or a radon mitigation contractor if the individual:

(a) Submits to the cabinet:

1. A completed[~~An application on cabinet Form~~] DFS-375, Application for Certification for Radon Contractors and Laboratories;

2.[~~A two (2) inch by two (2) inch passport photo;~~

~~3.~~] Verification of completion of a cabinet-approved[~~an AARST-NRPP or NRSB~~] course and exam pursuant to Section 5(3) of this administrative regulation;

3.[~~4.~~] The fee[~~fees~~] established in Section 3(2) of this administrative regulation;

4.[~~5.~~] A quality assurance plan that meets the requirements established in Section 4(1) or[~~and~~] (2) of this administrative regulation; and

5.[~~6.~~] Evidence of financial responsibility in accordance with KRS 211.9109(1)(f); and

(b) Adheres to the requirements established in KRS 211.9123 if the individual is a non-resident of Kentucky.

(2) A radon laboratory shall be eligible for certification if the entity:

(a) Employs a minimum of one (1) individual who is a Kentucky certified radon measurement contractor;

(b) Submits to the cabinet:

1. A completed[~~An application on cabinet form~~] DFS-375, Application for Certification for Radon Contractors and Laboratories;

2. The fee[~~fees~~] established in Section 3(2) of this administrative regulation; and

3. A quality assurance plan as established in Section 4(3) of this administrative regulation; and

(c) Adheres to the requirements established in KRS 211.9123 if the entity is a non-resident analytical laboratory that is seeking reciprocity.

(3) A contractor with a dual certification as a radon measurement contractor and a radon mitigation contractor shall:

(a) Maintain a separate license for each discipline; and

(b) Adhere to the limitations established in KRS 211.9117(1) and (2).

(4) Only radon measurements performed by a certified radon measurement contractor shall be reported or disclosed to another party.

(5) A certified radon measurement contractor employee working exclusively for a radon laboratory shall not be required to meet the insurance and quality assurance requirements established[~~outlined~~] in subsection (1) of this section.

Section 3. Schedule of Fees. (1) The fees required by subsection (2) of this section shall be:

(a) Nonrefundable; and

(b) Submitted with an application for initial certification or certification renewal.

(2)(a) The fee for initial certification shall be $250.

(b) The annual renewal fee shall be $250.

(c) The fee for a duplicate certificate shall be twenty (20) dollars.

(d) The fee for late renewal shall be $100.

Section 4. Quality Assurance Plan and Standard Operating Procedures. (1) A person certified as a radon measurement contractor shall submit for cabinet approval a quality control program plan that includes:

(a) A [~~quality~~] statement committing to provide quality work;

(b)[~~A description of the management and structure of the organization;~~

~~(c)~~] A listing of personnel and personnel qualifications and training;

(c)[~~(d)~~] A description of types of radon measurements performed and other related services offered;

(d)[~~(e)~~] A description of measurement types and devices the measurement contractor will utilize in conducting measurements;

(e)[~~(f) A list of equipment serial numbers, model numbers, and calibration records used in performing analytical analysis;~~

~~(g) A list of manufacturers and test types used while conducting measurement for laboratory analysis;~~

~~(h) A worker protection program that includes the methods utilized to minimize or reduce the amount of radon or radon progeny exposures in the work area;~~

~~(i) Procedures for procuring and storing measurement devices and materials;~~

~~(j) Procedures for maintaining documents and records;~~

~~(k) Procedures for calibrating and testing instruments;~~

~~(l) A corrective action program;~~

~~(m) Examples of forms, reports, and correspondence used in communications;~~

~~(n) A description of the quality assurance measures including the:~~

~~1. Evaluation criteria; and~~

~~2. Frequency of the evaluations;~~

~~(o)~~] A statement of compliance with cabinet-approved[~~ANSI-AARST~~] standard operating procedures pursuant to Section 5(3) of this administrative regulation; and

(f)[~~(p)~~] The location where records are retained in accordance with KRS 211.9131(3).

(2) A person certified as a radon mitigation contractor shall submit to the cabinet a quality control program plan that includes:

(a) A[~~quality~~] statement committing to provide quality work;

(b)[~~A description of the management and structure of the organization;~~

~~(c)~~] A listing of personnel and personnel qualifications and training;

(c)[~~(d)~~] A description of all types of radon mitigation methods performed and other related services offered;

(d)[~~(e)~~] A description of diagnostic testing methods utilized in designing mitigation systems;[~~(f) A worker protection program that includes the methods utilized to minimize or reduce the amount of radon or radon progeny exposures in the work area;~~

~~(g) Procedures for maintaining documents and records;~~

~~(h) Procedures for calibrating and testing instruments;~~

~~(i) A corrective action program;~~

~~(k) Examples of forms, reports, and correspondence used in communications;~~

~~(l) A description of the quality assurance measures including the:~~

~~1. Evaluation criteria; and~~

~~2. Frequency of the evaluations;~~] and

(e)[~~(m)~~] A statement of compliance with cabinet-approved[~~ANSI-AARST~~] standard operating procedures pursuant to Section 5(3) of this administrative regulation.

(3) A certified radon laboratory shall submit to the cabinet a quality control program plan that includes:

(a) A statement committing to provide quality work;

(b) A listing of personnel and personnel qualifications and training;

(c) A description of laboratory services performed and other related services offered;

(d) Documentation of enrollment and good standing within an independent laboratory accreditation program; and

(e) A requirement that all radon laboratory analyses shall be

conducted in compliance with applicable state and federal laws.

(4) A[person certified as a radon measurement contractor shall conduct measurements in accordance with the following standard operating procedures and quality assurance protocols:

(a) Residential building measurement: ANSI-AARST Protocols for Radon Measurements in Homes (MAH 2005);

(b) Multi-family building measurement: ANSI-AARST Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings (MAMF-2012); and

(c) Quality assurance protocols: EPA Protocols for Radon and Radon Decay Product Measurements in Homes (EPA 402-R-92-003).

(4) A person certified as a radon mitigation contractor shall conduct mitigations in accordance with the following standards:

(a) Residential building active mitigation: ANSI-AARST Active Soil Depressurization Radon Mitigation Standards (ASD RMS) for Low Rise Residential Buildings;

(b) Multi-family active mitigation: ANSI-AARST Radon Mitigation Standards for Multifamily Buildings (RMS-MF(PS)-2013); and

(c) Residential building passive mitigation: ANSI-AARST Reducing Radon in New Construction of 1&2 Family Dwellings and Townhouses (CCAH-2013).

(5) All] mitigation system[systems] shall:

(a) Be designed to reduce a radon concentration in each area within the footprint of the building as low as reasonably achievable (ALARA); or[and]

(b) Achieve a radon level below the U.S. Environmental Protection Agency's action level of four and zero-tenths (4.0) picocuries per liter for all post mitigation testing.

(5) Prior to mitigation, educational material about radon levels shall be provided to the client.

(6)[Failure to achieve a reduction below the EPA's action level of four and zero-tenths (4.0) picocuries per liter shall require additional radon mitigation and testing until the level is achieved.

(7)] Upon modification to a component of the quality assurance program plan, the radon measurement or mitigation contractor shall resubmit the plan to[for approval by] the cabinet[prior to implementation of the modifications].

(7) If a deviation from cabinet-approved operating procedures occurs, the measurement or mitigation contractor shall document the reason for the deviation in the inspection report provided to the client.

Section 5. Training and Continuing Education Requirements. (1) Continuing Education.

(a) Measurement contractors shall acquire eight (8) hours of continuing education credits per year.

(b) Mitigation contractors shall acquire eight (8) hours of continuing education credits per year.

(c) A certified person shall be responsible for submitting proof of continuing education in accordance with KRS 211.9109, 211.9111 [211.911], 211.9115, or 211.9127.

(d)[A person dually certified as a radon measurement and mitigation contractor shall acquire sixteen (16) hours of continuing educational credits per year.

(e)] Continuing education units shall be obtained from a cabinet[NRPP or NRSB] approved course in accordance with subsection (3) of this section[courses].

(2) Certification Courses.

(a) Measurement contractor certification courses shall be a minimum of sixteen (16) hours of supervised instruction.

(b) Mitigation contractor certification courses shall[be]:

1. Be a minimum of sixteen (16) hours of supervised instruction; and

2. Include an additional four (4) hours of hands-on field work at a mitigation site.

(3) A radon training course or standard operating procedure shall be cabinet-approved if issued by the:

(a) AARST;

(b) ABIH;

(c) AIHA;

(d) ANSI;

(e) ASTM;

(f) NRPP; or

(g) WHO[(c) Measurement and mitigation contractors shall obtain an additional one (1) hour of course content on the requirements of this administrative regulation and KRS 211.9101 through 211.9135].

Section 6. Renewal of Certification. (1) Each annual certification shall expire on June 30.

(2) A person seeking renewal of certification shall:

(a) Meet the requirements in accordance with Section 2 of this administrative regulation; and

(b) Submit to the cabinet a minimum of thirty (30) calendar days prior to certification expiration:

1. A completed renewal application on[cabinet Form] DFS-375, Application for Certification for Radon Contractors and Laboratories[, a minimum of thirty (30) calendar days prior to certification expiration. Form DFS-375 shall be deemed submitted on the date that it is received by the cabinet];

2. The fee[fees] established in Section 3 of this administrative regulation;

3. Proof of fulfillment of continuing education requirements as established in Section 5(1) of this administrative regulation;

4. An updated quality assurance plan that meets the applicable requirements established in Section 4 of this administrative regulation; and

5. Evidence of financial responsibility in accordance with KRS 211.9109(1)(f).

(3) A certification[Certifications] not renewed within thirty (30) days after the renewal date shall pay a late renewal fee as established in Section 3(2)(d) of this administrative regulation.

(4) A certification[Certifications] not renewed within ninety (90) days after the renewal date shall lapse and may only be reinstated in accordance with KRS 211.9121(3).

Section 7. Termination of Certification and Inactive Certification. (1) A certified radon measurement contractor or radon mitigation contractor shall notify[be responsible for notifying] the cabinet in writing upon electing to terminate certification.

(2) A person previously certified by the cabinet and not engaged in radon measurement or mitigation in the Commonwealth but desiring to maintain certification may request and be granted inactive status.

(a) If inactive status is granted, the person shall:

1. Pay the certification fee established in Section 3(2)(b) of this administrative regulation; and

2. Be exempt from the continuing education requirements.

(b) A certified radon contractor on inactive status may petition the cabinet for renewal of active certification. If a certified radon contractor on inactive status wishes to renew active certification, the petitioner shall meet the requirements of this administrative regulation.

Section 8. Certification Denial, Suspension, or Revocation. A certification[Certifications] shall be subject to denial, suspension, or revocation in accordance with KRS 211.9125.

Section 9. Reporting Requirements. (1) A person, business entity, or analytical laboratory shall submit a report to the cabinet on a semi-annual[quarterly] basis after a:

(a) Radon or radon progeny test;

(b) Radon mitigation activity;

(c) Modification to any component of the radon contractor's quality assurance program plan; or

(d) Request from the cabinet.

(2) The report shall include the:

(a) ZIP Code or[of] location of the building; and

(b)[Name and telephone number of the owner or owners of the building where the radon testing or mitigation activities were conducted; and

(c)] Results of[any] tests performed.

(3) The results for each measurement conducted shall include the:

(a)[~~Method used for radon or radon decay product testing;~~

~~(b) Conditions under which the test or tests were conducted;~~

~~(c) Location or locations within the building where the test or tests were conducted;~~

~~(d)~~] Results of the test or tests in picocuries per liter (pCi/L) of radon gas;

(b)[~~(e)~~] Date on which the test or tests were conducted; and

(c)[~~(f) Purpose of the test or tests.~~

~~(4) The mitigation report shall include the:~~

~~(a)~~] Type of structure measured[~~mitigated;~~

~~(b) Type of mitigation system installed;~~

~~(c) Location of mitigation system within the structure;~~

~~(d) Post-mitigation measurements;~~

~~(e) Floor plan of the structure with the location of a mitigation system; and~~

~~(f) Diagnostic and communication testing~~].

Section 10. Administrative Hearings. A person, business entity, or analytical laboratory[~~Persons, business entities, and analytical laboratories~~] shall be afforded an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section 11. Penalties. The cabinet may assess civil penalties in accordance with KRS 211.9125 against any individual in violation of any cabinet administrative regulation pertaining to radon measurement, mitigation, or laboratory analysis.

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

~~(a) Form~~]"DFS-375, Application for Certification for Radon Contractors and Laboratories", 5/2017, is incorporated by reference[~~9/2012;~~

~~(b) "Protocols for Radon Measurements in Homes (MAH 2005)", 9/2005;~~

~~(c) "Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings (MAMF-2012)", 2012;~~

~~(d) "Protocols for Radon and Radon Decay Products Measurements in Homes (EPA 402-R-92-003)", 5/1993;~~

~~(e) "Active Soil Depressurization Radon Mitigation Standards (ASD RMS) for Low Rise Residential Buildings", 6/2006;~~

~~(f) "Radon Mitigation Standards for Multifamily Buildings (RMS-MF(PS) 2013)", 2013; and~~

~~(g) "Reducing Radon in New Construction of 1&2 Family Dwellings and Townhouses (CCAH-2013)", 12/2013~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621[~~40602~~], Monday through Friday, 8 a.m. to 4:30 p.m.

HIRAM C. POLK, JR., MD, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: May 10, 2017

FILED WITH LRC: May 12, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 21, 2017, at 9:00 a.m. in DCLC Room 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 June 14, 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 this proposed administrative regulation until June 30, 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: Laura Begin, phone 502-564-3970, ext. 4066, email Laura.Begin@ky.gov., and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the certification of an individual or laboratory to perform radon measurement, mitigation, or analysis.

(b) The necessity of this administrative regulation: KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce KRS 211.9101 to 211.9135, which contains the statutory requirements for radon measurement, mitigation, laboratory analysis, and quality control.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is consistent with the requirements contained in KRS 211.9107 to 211.9135.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce the radon certification program and requirements contained in statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment eliminates all requirements beyond what is required by KRS 211.9107 to 211.9135. The amendment eliminates much of what was required to be included in the quality assurance plan; allows more options for standards, protocols, and training to be followed; and lessens reporting requirements by extending the due date for reports and reducing the information required to be contained in reports. The amendment makes corresponding changes in the incorporated form and includes revisions made for compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation contains burdensome requirements beyond what is required by the authorizing statutes. As part of Governor Bevin's Red Tape Reduction initiative, unnecessary burdensome requirements are being eliminated.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment administrative regulation is consistent with the requirements of KRS 211.9107 to 211.9135.

(d) How the amendment will assist in the effective administration of the statutes: The amendment makes compliance with this administrative regulation less burdensome to regulated entities. The amendment is consistent with the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Radon Advisory Committee stated that there are approximately 30 radon measurement businesses, 20 radon mitigation businesses, and 20 radon laboratories in Kentucky. These are required by statute to be certified through this certification program. According to the Radon Advisory Committee, there are approximately 350 home inspection businesses that may want to perform radon measurements. Five known professional organizations are impacted by this administrative regulation – American Association of Radon Professionals, Kentucky Real Estate Inspection Association, Kentucky Home Builders Association, National Environmental Health Association, and National Radon Safety Board. There are 120 local health departments that may have staff trained for radon measurement and radon mitigation system approval. The promulgating body, the Cabinet for Health and Family Services, is the radon control agency for the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: Compliance with this administrative regulation by regulated entities will be easier to obtain and maintain due to the elimination or reduction of requirements included in this amendment. The amendment will also result in less administrative burden to the promulgating body.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Active certification and compliance with state law.

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

(a) Initially: Based on the number of regulated entities provided by the Radon Advisory Committee, the certification program will cost the administrative body approximately $200,000 initially.

(b) On a continuing basis: Based on the number of regulated entities provided by the Radon Advisory Committee, the projected costs of administering this program for subsequent years is expected to be approximately $175,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The certification fees contained in 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 associated with this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation contains certification fees, not amended in this amendment.

(9) TIERING: Is tiering applied? No. Radon measurement or mitigation professionals and laboratories are required to be certified with the specific exceptions listed in KRS 211.9107.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 is the radon control agency for the Commonwealth. This amendment will lessen the administrative burden on the agency. Local health departments may be requested to investigate complaints.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the secretary of the cabinet to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce KRS 211.9101 to 211.9135.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are approximately 70 entities projected to request certification at $250/year. Expected revenue would be $17,500 per 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? Approximately $17,500 per year.

(c) How much will it cost to administer this program for the first year? Based on the number of regulated entities provided by the Radon Advisory Committee, the cost of initial trainings, two full-time field inspectors, and an administrative person to operate this program is projected to be approximately $200,000 per year.

(d) How much will it cost to administer this program for subsequent years? Based on the number of regulated entities provided by the Radon Advisory Committee, for subsequent years, the cost is projected to be approximately $175,000 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:

NEW ADMINISTRATIVE REGULATIONS

FINANCE AND ADMINISTRATION CABINET
Kentucky Judicial Form Retirement System
(New Administrative Regulation)

4 KAR 1:050. Code of Professional Conduct.

RELATES TO: KRS 21.440, 21.450, 21.530, 21.540, 21.550, and 21.560

STATUTORY AUTHORITY: KRS 21.450(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.450(4) authorizes the board of trustees of the Judicial Form Retirement System to establish ethics policies and procedures by promulgation of administrative regulations. This administrative regulation establishes ethics policies and procedures.

Section 1. Definitions.

(1) "Board" means the Board of Trustees of the System.

(2) "Family Member" means a spouse, parent, sibling, grandparent, grandchild, or child of a Trustee.

(3) "System" means the Judicial Form Retirement System.

(4) "Trustee" means a Trustee of the Board.

Section 2. Informed Basis. (1) A Trustee shall discharge all duties on an informed basis based on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by the executive director of the System, legal counsel, public accountants, actuaries, or other persons as to matters which the Trustee honestly believes are within the person's professional or expert competence.

Section 3. Official Position. (1) No Trustee, alone or through others, shall knowingly use or attempt to use his official position to secure or create privileges, exemptions or advantages to the derogation of the public interest at large.

Section 4. Gifts. (1) No Trustee, nor the Trustee's spouse, or dependent child, shall knowingly accept any gifts or gratuities, including campaign contributions, travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five (25) dollars in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the System, or from any group or association which has as its primary purpose the representation of those persons or businesses.

Section 5. Disclosure. (1) A Trustee shall disclose to the other Trustees, any direct or indirect interest in any undertaking that puts the Trustee's personal interest in conflict with that of the System. The disclosure shall be made in writing or shall be recorded in the minutes of a formal meeting. A Trustee who is required to publicly disclose a direct or indirect interest shall abstain from all decisions concerning his interest if the decision should affect the Trustee or the Trustee's business, profession or occupation in a manner different from the business, profession or occupation of the other Trustees.

(2) A Trustee shall annually file a financial disclosure report with the System, using either the financial disclosure form required by KRS 61.710 to 61.780, or a form which includes the following disclosures:

(a) A description of any financial interest the Trustee has in any company or firm that does business with the System.

(b) A description of any personal financial interests, direct or indirect, not listed in Section 5(2)(a) above, for the Trustee and any Family Member which could conflict or appear to conflict with the Trustee's duties and responsibilities to the System.

(c) A description of employment or compensation which the Trustee receives from any contractors or vendors of the System.

(d) A description of any interest in property, tangible or intangible, or any other assets or business which may constitute or cause a conflict of interest with the Trustee's duties.

(3) Any Trustee who knowingly and willfully provides false, misleading, or incomplete information on the required disclosure form shall be subject to disciplinary action, up to and including, removal from the Board. The form shall be maintained in the System office and shall be made available to the public upon request.

Section 6. Incorporation by Reference. (1) "Financial Disclosure Report" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Judicial Retirement System, 305 Ann Street, Suite 302, Whitaker Bank Building, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 5:00 p.m.

LEWIS G. PAISLEY, Chairman

APPROVED BY AGENCY: April 28, 2017

FILED WITH LRC: May 11, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2017 at 10:00 A.M. at Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202. 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 this date, the hearing may be canceled. 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 June 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200, email: apauw@rwsvlaw.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alan D. Pauw

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes ethics policies and procedures of Kentucky Judicial Form Retirement System in accordance with KRS 21.450(4).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish compliance with obligations of KRS 21.450(4) to establish ethics policies and procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute because it establishes the System's ethics policies and includes an annual disclosure requirement relating to financial and conflicts of interest.

(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 establishing Kentucky Judicial Form Retirement System's ethics policies and procedures.

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

(a) How the amendment will change this existing administrative regulation: Not applicable, this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable, this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable, this is a new administrative regulation.

(d) How the amendment will assist in the effective

administration of the statutes: Not applicable, this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to eight members of the Board of Trustees of the Judicial Form Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: N/A

(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): The benefits accrue to the Board as a whole to assist it in ensuring that its actions are based on the actions and considerations of its members unaffected by financial and conflicts of interest.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the administrative account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, all members of the Board of Trustees are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Judicial Form Retirement System; Kentucky Judicial Retirement Plan; Kentucky Legislators Retirement Plan and the members of the Board of Trustees of the System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 21.450(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. None.

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

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

(c) How much will it cost to administer this program for the first year? The System estimates minor costs to prepare disclosure forms for its Board of Trustees.

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

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

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

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Repealer)

200 KAR 5:081. Repeal of 200 KAR 5:080.

RELATES TO: KRS 45A.010, 45A.085, 45A.095

STATUTORY AUTHORITY: KRS 45A.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code, KRS Chapter 45A. This administrative regulation established the parameters under which an executive branch agency could enter into a written contract for sponsorship from a business under the Kentucky Model Procurement Code. During the 2017 session of the Kentucky General Assembly, HB 484 was passed creating new sections of KRS Chapter 45A and amending others to outline the use of sponsorships in statute. Therefore, this administrative regulation is no longer needed or will not be amended in the future, and must be repealed in accordance with KRS 13A.310.

Section 1. 200 KAR 5:080, Sponsorships, is hereby repealed.

WILLIAM M. LANDRUM, Secretary

APPROVED BY AGENCY: May 8, 2017

FILED WITH LRC: May 9, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 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 June 30, 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, Tax Policy Research Consultant, Finance and Administration Cabinet, 702 Capitol Avenue, Suite 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 200 KAR 5:080, Sponsorships.

(b) The necessity of this administrative regulation: HB 484 amended KRS 45A to outline the authorized use of sponsorships by an executive branch agency in statute. A regulation may not repeat statutory language, therefore, this administrative regulation is no longer necessary and must be repealed in accordance with KRS 13A.310.

(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.310 to repeal regulations that will no longer be considered necessary or updated in the future.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will ensure that the Finance and Administration Cabinet complies

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 statues: 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 a current administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, primarily the Division of Procurement Services, 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:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Repealer)

401 KAR 49:091. Repeal of 401 KAR 49:040, 401 KAR 49:090, and 401 KAR 49:210.

RELATES TO: KRS 224, 224A, 224.43, 224.50

STATUTORY AUTHORITY: KRS 224.10-100, 224A.270, 224.50-820, 224.50-834

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) provides the Energy and Environment Cabinet the authority to repeal 401 KAR 49:040, 401 KAR 49:090, and 401 KAR 49:210. The administrative regulation, 401 KAR 49:040, is being repealed as Senate Bill 249, once effective, will remove the statutory authority by repealing KRS 224.43-710. KRS 224.50-834, the statute mandating 401 KAR 49:090, Waste Tire Trust Fund Loan Program, was repealed in 1998, removing the need for this administrative regulation. Therefore, this administrative regulation repeals 401 KAR 49:090. KRS 224A.270, the statute mandating 401 KAR 49:210, Solid Waste Revolving Fund, was repealed in 2002, removing the need for this regulation. These regulations are being repealed as a result of the Governor's Red Tape Reduction Initiative to consolidate and streamline the administrative regulations. This administrative regulation repeals 401 KAR 49:090, 401 KAR 49:090, and 401 KAR 49:210.

Section 1. The following administrative regulations are hereby repealed:

(1) 401 KAR 49:040, Solid Waste Planning Assistance Program;

(2) 401 KAR 49:090, Waste Tire Trust Fund Loan Program; and

(3) 401 KAR 49:210, Solid Waste Revolving Fund.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: May 11, 2017

FILED WITH LRC: May 12, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 2017, at 6:00 p.m. in Training Room A of the Energy and Environment Cabinet at 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Mitchel, Internal Policy Analyst, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-6713, fax (502) 564-4245, email MichelleM.Mitchell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Mitchell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 401 KAR 49: 040, Solid Waste

Planning Assistance Program; 401 KAR 49:090, Waste Tire Trust Fund Loan Program; and 401 KAR 49:210, Solid Waste Revolving Fund. KRS 224.43-710, the statute mandating 401 KAR 49: 040, Solid Waste Planning Assistance Program, was only utilized during the first cycle of the Five-Year Solid Waste Management Plan updates and not used since then. The administrative regulation, 401 KAR 49:040, is being repealed as Senate Bill 249, once effective, will remove the statutory authority by repealing KRS 224.43-710. KRS 224.50-834, the statute mandating 401 KAR 49:090 Waste Tire Trust Fund Loan Program was repealed in 1998. KRS 224A.270, the statute mandating 401 KAR 49:210, Solid Waste Revolving Fund, was repealed in 2002.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 401 KAR 49:040, 402 KAR 49:090, and 401 KAR 49:210 as they are no longer statutorily mandated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will ensure that the Department for Environmental Protection 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: This is not applicable as this is a repealer administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not applicable as this is a repealer administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not applicable as this is a repealer administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not applicable as this is a repealer administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No individuals, businesses, organizations, or state and local governments are affected by this administrative regulation; it is no longer mandated by KRS Chapter 224.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions associated with the repeal of these administrative regulations.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue with the repeal of these administrative regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is no cost associated with the repeal of these administrative regulations.

(a) Initially: There is no cost associated with the repeal of these administrative regulations.

(b) On a continuing basis: There is no cost associated with the repeal of these administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding associated with 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 are no fees or funding associated with the repeal of these administrative regulations.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees are established or increased with the repeal of these administrative regulations.

(9) TIERING: Is tiering applied? No, this is a repeal of existing regulations that are 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? This administrative regulation will not impact individuals, businesses, organizations, or state and local governments as it is no longer mandated by KRS Chapter 224.

(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.

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

(c) How much will it cost to administer this program for the first year? This repeal will not cost the agency additional funding.

(d) How much will it cost to administer this program for subsequent years? This repeal will not cost the agency additional funding.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have no fiscal impact as it repeals three administrative regulations.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(Repealer)

901 KAR 5:061. Repeal of 901 KAR 5:060.

RELATES TO: KRS 213.031

STATUTORY AUTHORITY: KRS 194A.050(1), 213.021

NECESSITY, FUNCTION, AND CONFORMITY: KRS 213.021 requires the cabinet to promulgate administrative regulations to carry out the provisions of KRS Chapter 213. KRS 213.031 requires the cabinet to regulate the registration of births in Kentucky. This administrative regulation repeals 901 KAR 5:060 to eliminate the discretionary language allowing the Office of Vital Statistics to reissue birth certificates at no charge under specific circumstances.

Section 1. 901 KAR 5:060, Birth certificate reissued; circumstances, is hereby repealed.

HIRAM C. POLK, JR., MD, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: May 8, 2017

FILED WITH LRC: May 12, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on June 21, 2017, at 9:00 a.m. in DCLC Room 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 June 14, 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 this proposed administrative regulation until June 30, 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: Laura Begin, Laura.Begin@ky.gov, phone 502-564-3970, ext. 4066, and Tricia Orme.

(1) Provide a brief summary of:

(a) What this administrative regulation does: In accordance with KRS 13A.310(3)(a), this administrative regulation repeals 901 KAR 5:060.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to repeal 901 KAR 5:060, which is not statutorily mandated or enforced by the Office of Vital Statistics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 13A.310 by repealing an obsolete regulation that is no longer enforced by the Office of Vital Statistics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 901 KAR 5:061 is consistent with Governor Bevin's Red Tape Reduction initiative to repeal obsolete regulations. This administrative regulation is in accordance with KRS 13A.310(3)(a).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 901 KAR 5:060 impacts only the Office of Vital Statistics. The repeal does not impact individuals, businesses, organizations, or local governments.

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

(a) List 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.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will result in the repeal of an obsolete administrative regulation.

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

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the administrative body associated with this administrative regulation or the enforcement of such.

(7) Provide an assessment of whether an 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 associated with this administrative regulation.

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable as this administrative regulation repeals 901 KAR 5:060.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 repeal of 901 KAR 5:060 impacts only the Office of Vital Statistics and no action is required.

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), 213.021.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? There are no costs to the administrative body associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to the administrative body associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(New Administrative Regulation)

901 KAR 5:120. Induced termination of pregnancy reporting.

RELATES TO: KRS 61.870-61.884, Chapter 213, 311.595, 311.710-311.830

STATUTORY AUTHORITY: KRS 194A.050(1), 213.021, 213.101(1), (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 protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to

operate programs and fulfill the responsibilities vested in the cabinet. KRS 213.101(1) requires each induced termination of pregnancy that occurs in the commonwealth to be reported to the Office of Vital Statistics. KRS 213.101(6) requires the Office of Vital Statistics to promulgate administrative regulations to assist in compliance with that statute. This administrative regulation establishes the reporting criteria for induced termination of pregnancy.

Section 1. Definitions. (1) "Probable post-fertilization age" means, in reasonable medical judgment and with reasonable probability, the age of the unborn child, as calculated from fertilization, at the time the abortion is performed or induced or attempted to be performed or induced.

(2) "Reasonable medical judgment" means a medical judgement that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(3) "Serious risk of substantial and irreversible impairment of a major bodily function" means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function.

Section 2. Reporting. (1) Within fifteen (15) days after the end of the month in which an induced termination of pregnancy occurs in Kentucky:

(a) A person in charge of an institution at which the termination occurs shall complete and file a report with the Office of Vital Statistics; or

(b) If the termination is performed outside of an institution, the attending physician shall complete and file a report with the Office of Vital Statistics.

(2) The report shall be filed irrelevant of the gestational age or probable post-fertilization age of the fetus at the time.

(3) The report shall be made through an electronic database prescribed by the cabinet or on VS-913, Report of Induced Termination of Pregnancy.

(4) The report shall:

(a) Contain the information required to be certified in writing or determined by KRS 311.710-830 as follows:

1. The probable post-fertilization age of the unborn child;

2. Whether the termination was necessary to prevent the death of the pregnant woman or to avoid a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman; and

3. The method or technique utilized; and

(b) Not contain information which could identify a physician, woman, or man involved.

(5) The name of the person filing the report and the reporting institution shall not be subject to disclosure under KRS 61.870-884.

(6) Pursuant to KRS 213.106, a report:

(a) Is a statistical report to be used only for medical and health purposes; and

(b) Shall not be incorporated into the permanent official records of the Office of Vital Statistics.

Section 3. Penalties. Pursuant to KRS 213.101:

(1) A person or institution that fails to submit a report by the end of thirty (30) days following the date established in Section 2 of this administrative regulation shall be subject to a late fee of $500 for each additional thirty (30) day period or portion of a thirty (30) day period the report is overdue;

(2) A person or institution that fails to submit a complete report more than one (1) year following the date established in Section 2 of this administrative regulation may be required by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to contempt of court;

(3) Failure to comply with reporting requirements may subject a person or institution to actions affecting a license pursuant to KRS 311.595; and

(4) Intentional falsification of a report is deemed a Class A misdemeanor.

Section 4. Incorporation by Reference. (1) Form VS-913, "Report of Induced Termination of Pregnancy", 5/2017, is incorporated by reference.

(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, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: May 10, 2017

FILED WITH LRC: May 12, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 21, 2017, at 9:00 a.m. in DCLC Room 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 June 14, 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 this proposed administrative regulation until June 30, 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: Laura Begin, Laura.Begin@ky.gov, phone 502-564-3970, ext. 4066, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reporting criteria for induced terminations of pregnancies that occur in the commonwealth.

(b) The necessity of this administrative regulation: Senate Bill 5 of Regular Session 2017 amended KRS 213.101 to increase the reporting requirements for induced terminations of pregnancies occurring in the commonwealth. The amendment also requires the Office of Vital Statistics to compile an annual report of statistics reported for the previous year and promulgate an administrative regulation to assist in compliance with the reporting requirements. SB 5 was passed as emergency legislation and signed by Governor Bevin on January 9, 2017. This administrative regulation meets the regulation requirement of the legislation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 213.101(6) requires the Office of Vital Statistics to promulgate administrative regulations in accordance with KRS Chapter 13A to assist in compliance with induced termination reporting requirements. That is the purpose of this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria required to be reported to the Office of Vital Statistics, includes penalties established by statute, and incorporates the required reporting form.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The EMW Women's Surgical Center Ambulatory Gynecological Surgery is expected to obtain and report the required information. This facility is already using a reporting form updated as a result of the passed legislation. The required information may also be obtained and reported by other facilities such as hospitals in the instance of a life-threatening emergency. The person in charge of an institution where an induced termination occurs or, if outside of an institution, the attending physician will complete and submit the incorporated reporting form. The Office of Vital Statistics is required to compile the reported statistical data into an annual report. Reporting requirements previously in effect show that 3,312 induced terminations of pregnancies were performed in the commonwealth in 2016.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Reporting requirements existed previously. SB 5 and this administrative regulation only added a few data fields to what was reported and penalties for reporting violations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no cost to comply with this administrative regulation, however there are costs associated with noncompliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with state law and the avoidance of penalties.

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

(a) Initially: The cost to update the electronic reporting system to include the additional reporting requirements is approximately $20,000. The administrative cost of receiving, maintaining, and using statistical information in an annual report for the public is estimated to cost over $100,000.

(b) On a continuing basis: The reporting requirements are estimated to have an administrative cost of approximately $100,000 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A person or institution that fails to meet the reporting requirements contained in this administrative regulation shall be subject to a late fee of $500.00 for each additional 30-day period or portion thereof that the report is overdue.

(7) Provide an assessment of whether an 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 associated with this administrative regulation.

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

(9) TIERING: Is tiering applied? No. The reporting requirements contained in this administrative regulation apply to all induced terminations of pregnancies occurring in the commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Vital Statistics will receive the required reporting information and use the statistical data in the compiling of an annual report.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) requires the secretary of the cabinet to adopt administrative regulations necessary to protect the health of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the Cabinet. KRS 213.101(1) requires each induced termination of pregnancy that occurs in the commonwealth to be reported to the Office of Vital Statistics. KRS 213.101(6) requires the Office of Vital Statistics to promulgate administrative regulations to assist in compliance.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 cost to update the electronic reporting system to include the additional reporting requirements is approximately $20,000. The administrative cost of receiving, maintaining, and using statistical information in an annual report for the public is estimated to cost over $100,000.

(d) How much will it cost to administer this program for subsequent years? The program has an estimated administrative cost of approximately $100,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of May 11, 2017

Call to Order and Roll Call
The May meeting of the Administrative Regulation Review Subcommittee was held on Thursday, May 11, 2017, at 1 p.m. in Room 149 of the Capitol Annex. Senator Harris, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the April 2017 meeting were approved.

Present were:
Members: Senators Perry Clark, Alice Forgy Kerr, and Ernie Harris; and Representatives Marylou Marzian, Jason Petrie, Tommy Turner and Ken Upchurch.

LRC Staff: Sarah Amburgey, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Ben Boggs, Lisa Lang, Education Professional Standards Board; Nathan Goldman, Board of Nursing; Gabe Jenkins, Kyle Sams, David Wicker, Department of Fish and Wildlife Resources; Oran McFarlan, Department of Corrections; Ann Dangelo, Rick Taylor, Transportation Cabinet; Chandra Venettozzi, DJ Wasson, Office of Health Benefit Exchange; Laura Begin, Margaret Jones, Hollie Sands, Department for Public Health; Brit Anderson MD, Sheena Burch, Michelle Cardwell, Erika Calihan, Bethany Clark, Jennifer Evely, Ashley Kennedy, Tracy Kielman, Michelle Malicote, Kara Meredith, Sally OBoyle, Mary DeLodder, Pat Purcell MD, Jonathan Sayat MD, Patty Swiney MD, Sue Violette, Jamie Bloyd, Pediatric Cancer Research Trust Fund, Jill Hunter, Donna Little, Steve Miller, Department for Medicaid Services.

The Administrative Regulation Review Subcommittee met on Thursday, May 11, 2017, and submits this report:
Administrative Regulations Reviewed by the Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Assessment
16 KAR 6:020. Assessment requirements for occupation-based career and technical education teachers. Lisa Lang, general counsel, and Benn Boggs, director of educator preparation assessment internship, represented the board.

GENERAL GOVERNMENT CABINET: Board of Nursing
201 KAR 20:056. Advanced practice registered nurse license and certification requirements. Nathan Goldman, general counsel, represented the board.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; and (2) to amend Sections 1, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

TOURISM, ARTS, AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game
301 KAR 2:075. Wildlife rehabilitation permit. Gabe Jenkins, deer and elk coordinator, and David Wicker, general counsel, represented the department.
In response to questions by Co-Chair Harris, Mr. Jenkins stated that captive cervids subject to rehabilitation were required to be released after 180 days. Kentucky had not had a case of chronic wasting disease.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:083. Holding and intrastate transportation of captive cervids.

301 KAR 2:178. Deer hunting on Wildlife Management Areas, state parks, other public lands and federally controlled areas.
A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to make a technical formatting correction; and (2) to amend Section 7 to remove Perryville Battlefield State Historic Site from the list of state deer hunting opportunities in November. 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 6:040. Kentucky State Penitentiary. Oran McFarlan, staff attorney, represented the department.
In response to questions by Co-Chair Harris, Mr. McFarlan stated that this administrative regulation represented the annual amendment to the Kentucky State Penitentiary policies. Requirements among the different institutions were generally consistent; however, there were institution-specific requirements due to differences in the populations and facilities.
A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference: (1) to comply with the drafting requirements of KRS Chapter 13A; and (2) for consistency with other departmental policies. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Motor Carriers
601 KAR 1:018. Special overweight or overdimensional motor vehicle load permits. Ann D'Angelo, assistant general counsel, and Rick Taylor, deputy commissioner, represented the department.
In response to questions by Co-Chair Harris, Mr. Taylor stated that the fee related to the overweight or overdimensional vehicles transporting aluminum was established, not in this administrative regulation, but in the statute. The department needed to follow up this amendment with another amendment in the future to address HB 184 2017 GA changes to the overweight or overdimensional vehicles transporting metal commodities. This administrative regulation included an amendment to address HB 265 2017 GA, which revised the definition for "nondivisible." This administrative regulation also established provisions for self-propelled specialized mobile equipment, such as self-propelled cranes.
A motion was made and seconded to approve the following amendments: to amend Sections 2, 5, 6, 8, and 15 through 18 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Kentucky Health Benefit and Information Exchange: Kentucky Health Benefit Exchange
900 KAR 10:041. Repeal of 900 KAR 10:040 and 900 KAR 10:050. Chandra Venettozzi, health data administrator, and D. J. Wasson, division director, represented the exchange.

Department for Public Health: Division of Epidemiology and Health Planning: Communicable Diseases
902 KAR 2:060. Immunization schedules for attending child day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools. Laura Begin, regulation coordinator; Margaret Jones, nurse service administrator; and Hollie Sands, MPG, epidemiologist, represented the department. Brit Anderson, MD, pediatrician; Tracy Kielman, director, Kentucky Immunization Coalition; Stephanie Lyndsey, CEO, Signature Healthcare of North Hardin; Michelle Malicote, registered nurse, Madison County School District; Kara Meredith,

CEO, Signature Healthcare of North Hardin; Pat Purcell, MD, American Academy of Pediatrics: Kentucky Chapter; Jonathan Sayat, MD, pediatrician; and Patty Swiney, MD, Kentucky Academy of Family Physicians, appeared in support of this administrative regulation. Sheena Burch, citizen; Michelle Cardwell, parent; Erika Calihan, parent; Bethany Clark, parent; Mary Delodder, parent; Jennifer Evely, parent; Ashley Kennedy, Kentucky Vaccine Rights Coalition; and Sally O'Boyle, parent, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Harris, Ms. Begin stated this administrative regulation established immunization requirements for school and day care entry. The current version of this administrative regulation required a medical provider's approval for a parent or guardian's religious exemption to immunization. Less than one (1) percent of Kentucky children had a religious exemption; however, it was a serious issue that needed to be addressed. The department received three (3) main complaints that precipitated the proposed amendments to this administrative regulation. The complaints included requiring a medical provider's approval for what should have been the parent or guardian's religious decision. The requirement for a medical provider's approval seemed to exceed KRS 214.036, which required a written, sworn statement of religious objection to immunization. Another complaint regarding the required medical provider's approval was that a co-pay for an appointment was often required to obtain the medical provider's consent. A third complaint was that it was difficult to find a medical provider willing to consent to the religious exemption to immunization. As a result of the complaints, the department formed a work group, consisting of individuals from the Kentucky Immunization Program, the Division of Maternal and Child Health, the Kentucky Department of Education, and school nurses. The work group developed amendments to this administrative regulation over a two (2) to three (3) year period to address complaints related to the religious exemption to immunization. After filing the proposed amendments, the department received 141 public comments. In response to those public comments, the department proposed further amendments to this administrative regulation, which among other changes clarified that the Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations form may be obtained online, shall be completed in the presence of a notary, and shall be submitted upon enrollment to a school or day care. The revised declination form included a list of each immunization so that a parent or guardian had the option of only declining certain ones and included informed consent (risk of exposure) language about each type of immunization. Confusion regarding the forms was most likely related to the current effective version, versus the proposed version being amended at this Subcommittee meeting. Once the final version became effective, the discrepancies should end, and the form should be easily attainable. The department also received public comments from some physicians who stated that the mandate to use the electronic immunization registry was too burdensome at this time; therefore, the department further amended this administrative regulation to remove that requirement. There were public comments that it would be difficult to comply with this administrative regulation during the current school year; therefore, the department further amended this administrative regulation to delay the effective date until 2018.

Dr. Purcell stated the American Academy of Pediatrics: Kentucky Chapter strongly supported this administrative regulation. The immunization against meningitis for sixteen (16) year olds was especially important to prepare students for the socialization activities of adolescent high school and college life, such as sports and camping.

In response to questions by Representative Petrie, Ms. Begin stated that the Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations form was the form incorporated by reference in this administrative regulation for the purpose of declining immunization. KRS 214.036 required a written, sworn statement of religious objection to immunization. KRS 214.036 did not require that the written, sworn statement include language regarding informed consent. The department opted to include that language after the removal of the requirement for a medical provider's approval. The rationale was that the informed consent language would replace information that may have otherwise been provided by a medical provider during the approval process. The department agreed to amend this administrative regulation at this Subcommittee meeting to revise the notary language to include after "sworn to," "or affirmed under oath," in order to provide for individuals who may be morally opposed to swearing an oath. The department preferred a standardized form in order to relieve the administrative burden of different forms of the sworn or affirmed statement. A parent or guardian with a religious objection to immunization was required to submit this form; however, there wasn't language in this administrative regulation that explicitly required a school to accept this form, rather than another written, sworn or affirmed statement.

In response to questions by Ms. O'Boyle, Ms. Begin stated that the sworn statement in the presence of a notary included swearing that the selected information on the form was truthful, not merely notarizing for the purpose of affirming identity of the parent or guardian. The department agreed to amend this administrative regulation at this Subcommittee meeting to revise the notary language to include affirmation, as an option in lieu of swearing.

In response to a question by Senator Clark, Co-Chair Harris stated that Subcommittee Staff indicated that the exemption due to religious objection was the only non-medical option for declining immunization because that was the only reason authorized by KRS 214.036. Senator Clark stated that a parent or guardian should be able to decline for any conscientious objection, not only on religious grounds.

Representative Marzian stated that, as a nurse of thirty-eight (38) years, the matter of immunization was extremely important. When the first polio immunization became available, many families rushed to have the immunization to prevent the serious and potentially deadly disease that was polio. Polio had been nearly eradicated; however, polio was now making a comeback because of immunization exemptions. There had been other incidents of outbreaks. For example, California had recently experienced an outbreak of measles due to immunization exemptions. The religious exemption provided a good balance, but the informed consent was an important component of the exemption process. It was also important to remember that all drugs included potential side effects, even an aspirin. Immunizations had been carefully researched and verified.

Co-Chair Harris explained the amendment that had been agreed to by the department. In addition to revision to the sworn oath, as already discussed, the amendment also changed the informed consent language for each immunization type. In lieu of "I have been informed that by not receiving this vaccine, my child will be at increased risk . . .," which may be construed as self-incriminating language, the amended language stated: "I acknowledge that there are increased risks associated if exposed to this disease. Serious symptoms . . ." include . . .

Ms. Calihan stated that, as a mother of three (3) children, it was her responsibility to ensure that her children were cared for in the best way possible. She would not sign the Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations form, including with the amendments to the form made at this Subcommittee meeting, because the form violated parents' freedom of conscience in that it indicted the parent who signed. God, not the state, established rights. The form compelled self-incrimination by requiring a sworn statement as to the risks of disease exposure, without a similar statement regarding the risks of immunization; therefore, the form was unbalanced. The informed consent language included on the form went above and beyond what was required by KRS 214.036. The form should be amended to either remove the informed consent language altogether or counterbalance language regarding the risks of exposure to disease with language regarding the risk of immunization. An example of language pertaining to the risks associated with immunization, might include for example: "I also understand that by vaccinating my child, I am injecting him or her with known toxins, as well as aborted human DNA, and placing him or her at risk for side effects, such as but not limited to, as stated

on the vaccine insert: the disease for which he or she is being vaccinated, encephalitis, allergies, asthma, chronic arthritis, anaphylaxis, Guillain-Barre syndrome, death, etc." While western medicine had made great strides for humanity, our accomplishments had created in us an arrogance. We exempted pharmaceutical companies from lawsuits by children harmed from immunization, which placed an onus on parents to be vigilant regarding immunization. Ms. Calihan asked the Subcommittee not to allow this administrative regulation to trample parents' God-given rights.

Ms. Delodder stated that she agreed with all of the comments made by Ms. Calihan and had additional concerns regarding the Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations form. The current form was available on the Department of Education's Web site; however, there was also a form on the Cabinet for Health and Family Services Web site. The two (2) forms were very different, and there was confusion among parents, schools, and health departments as to which form to use.

Ms. O'Boyle stated that she agreed with the comments made by Ms. Calihan. KRS 214.036 allowed parents or guardians, based on religious grounds, to decline immunization for children. The statute required only a written, sworn statement, not the informed consent language or even a standardized form. This administrative regulation should not require more than what is required by the authorizing statute. If a form with informed consent was required, it should include language regarding the risks associated with immunization. In response to questions by Ms. O'Boyle, Representative Petrie stated that a notary had at least two (2) possible functions. One (1) function was to verify identity as an official witness. Another function was to administer an oath, which was synonymous with swearing.

Ms. Burch stated that she appreciated the religious exemption to immunization. Informed consent was the cornerstone of healthcare; however, the informed consent language in the form should be more informative and objective and less accusatory and subjective. An example of language pertaining to the risks associated with immunization, might include for example: "I have been informed of the benefits and the serious risks that accompany vaccinations." To truly constitute informed consent, language should be included regarding the risks associated with declining immunization as well as the risks of immunization. The Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations form should be easily available, and the correct version of the form should be evident to avoid the confusion that has occurred over availability and different versions.

Ms. Clark stated that she could not legally or morally sign the Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations form, including with the amendments to the form made at this Subcommittee meeting. She was authorized a religious exemption by KRS 214.036; however, this administrative regulation then coerced an agreement to language to which she could not agree.

Ms. Evely stated that she agreed with the comments that had been made by other parents at this Subcommittee meeting. One (1) of her daughters was in the process of overcoming an injury from pediatric immunization, and another daughter was battling leukemia. The informed consent language in the declination form was incriminatory to the parent or guardian and did not include the risks of immunization, which were many. Because of her daughter's leukemia, it was dangerous for either child to receive immunizations of live viruses, and the family opposed immunization on religious grounds.

Ms. Malicote stated that there was a pertussis outbreak in Estill County, which had resulted in several cases in neighboring Madison County. This administrative regulation established the mandatory immunization schedule for school and day care attendance and allowed for religious exemption from immunization. Kentucky was finally following the Centers for Disease Control recommendations for a second meningococcal immunization for sixteen (16) year olds and a hepatitis A immunization. This administrative regulation also established that eventually all providers shall use the Kentucky Immunization Registry. The registry has been an important resource to verify that all students have been immunized. The registry was an important tool for ensuring immunization coverage by consolidating immunization information from multiple providers. Immunization coverage was necessary for protecting children from illness and for healthy communities.

Ms. Cardwell stated that after one (1) of her three (3) children was acutely injured by immunization, she educated herself regarding the related issues. The essential issue was a matter of science. There were numerous peer-reviewed medical journals that raised concerns regarding immunization schedules. In an advanced pharmacology class, Ms. Cardwell learned that each patient should have a medical review to determine appropriate medical decisions and prescriptions. The pharmaceutical industry was exempt from lawsuits regarding immunization. The only other industry with these sorts of exemptions was nuclear waste disposal. Some immunizations contained aborted diploid fetal cells; strains of viruses from monkey renal cells; formaldehyde; polysorbate 80, which crosses the blood – brain barrier and loosens tight junctions allowing viruses to enter; and retroviruses, the long-term effects of which were essentially unknown. After learning of some immunization components, Ms. Cardwell became opposed to some immunizations based on scientific, safety, and religious concerns. Immunizations have been a benefit to humanity, but a one (1) size-fits-all approach did not take into account individual medical situations. The large number of immunizations risked the effectiveness of the immunization system as a whole. The United States was a democracy, not a paternalistic control state. It was important to ensure that democracy through religious rights and the right to bodily integrity in the healthcare system.

Representative Petrie stated that, outside of the argument of whether immunization was beneficial or not, the relevant statues, among other provisions, established that a provider shall not be required to immunize a child if the parent or guardian has a religious objection. KRS 214.036 required only a written, sworn statement of religious objection to immunization. Informed consent was not a component of the authorizing statutes; therefore, this administrative regulation exceeded its statutory authority. A motion was made by Representative Petrie to find this administrative regulation deficient. There being no second to the motion, the motion to find this administrative regulation deficient failed.

Co-Chair Harris stated that Kentucky should be proud to have recognized a religious exemption from immunization. The same principal of parental decision making applied in the case of religious exemption from immunization as it applied to other issues, such as home schooling. This administrative regulation would move on to the second committee, which would most likely be the Interim Joint Committee on Health and Welfare.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8 to update the edition date for the Commonwealth of Kentucky Parent or Guardian's Declination on Religious Grounds to Required Immunizations form; and (2) to amend the form to: (a) revise the notary language to include after "sworn to," "or affirmed under oath;" and (b) for each immunization type, in lieu of "I have been informed that by not receiving this vaccine, my child will be at increased risk . . .," insert "I acknowledge that there are increased risks associated if exposed to this disease. Serious symptoms . . ." Without objection, and with agreement of the agency, the amendments were approved.

Division of Prevention and Quality Improvement: Programs for the Underserved

902 KAR 21:030. Pediatric Cancer Research and Treatment Grant Program. Laura Begin, regulation coordinator, and Jamie Bloyd, president, Kentucky Pediatric Cancer Research Trust Fund, represented the division.

In response to a question by Co-Chair Harris, Ms. Bloyd stated that this administrative regulation was the result of efforts that began in the fall of 2014. This administrative regulation was of personal importance to Senator Wise and Ms. Bloyd because both were the parents of sons who survived neuroblastoma. This

administrative regulation established the application process for determining fund allocations. The fund raised $13,000 in the first year, which was a small start but the fund had significant plans for the future. It was important in funding the research and treatment of pediatric cancer to establish criteria to ensure purposeful allocation of resources. The fund's criteria was aligned with the State Cancer Action Plan. In Kentucky, approximately 200 children each year were diagnosed with pediatric cancer. Most were male and averaged approximately six (6) years of age at diagnosis. Kentucky had a nationally high incidence of pediatric cancers, especially central nervous system tumors and retinoblastoma. One (1) goal of the fund was to research why Kentucky had such a high incidence of these pediatric cancers. Another goal was to get access for children diagnosed with pediatric cancer to treatment at Children's Oncology Group Hospital because pediatric cancer patients treated in pediatric hospitals tended to have better outcomes than those treated in hospitals that were not specifically equipped to treat children. Governor Bevin, Kentucky's First Lady, Senator Wise, and many others were involved in the important efforts of the fund. The objective of the fund was pediatric cancer research and treatment that would be innovative and effective.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Division of Policy and Operations: Medicaid Services

907 KAR 1:065. Payments for price-based nursing facility services. Jill Hunter, deputy commissioner; Donna Little, regulatory compliance senior policy advisor; and Steve Miller, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 4, 6, 7, 8, and 11 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 5 to establish that a change in designation from: (a) rural to urban shall take effect on July 1, 2017; and (b) urban to rural shall not take effect until July 1, 2018. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the May 11, 2017, Subcommittee agenda:

GENERAL GOVERNMENT CABINET: Board of Pharmacy

201 KAR 2:074. Pharmacy services in hospitals or other organized health care facilities.

Office of Occupations and Professions: Board of Psychology

201 KAR 26:125. Health service provider designation.

201 KAR 26:130. Grievance.

201 KAR 26:140. Procedures for disciplinary hearings.

201 KAR 26:145. Code of conduct.

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

201 KAR 26:160. Fee schedule.

201 KAR 26:165. Inactive status.

201 KAR 26:171. Requirements for supervision.

201 KAR 26:175. Continuing education.

201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.

201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.

201 KAR 26:190. Requirements for supervised professional experience.

201 KAR 26:200. Education requirements for licensure as a psychologist.

201 KAR 26:210. Educational requirements for licensure as a licensed psychological associate.

201 KAR 26:215. Nonresident status.

201 KAR 26:225. Renewal and reinstatement.

201 KAR 26:250. Employment of a psychological associate.

201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

201 KAR 26:290. Licensed psychological practitioner: application procedures.

Board for Licensing for Marriage and Family Therapists

201 KAR 32:050. Code of ethics.

201 KAR 32:060. Continuing education requirements.

Board of Interpreters for the Deaf and Hard of Hearing

201 KAR 39:001. Definitions for 201 KAR Chapter 39.

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

201 KAR 39:050. Renewal of licenses, extension of temporary licenses and reinstatement.

201 KAR 39:070. Application and qualifications for temporary licensure.

Board of Medical Imaging and Radiation Therapy

201 KAR 46:040. Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses.

201 KAR 46:060. Continuing education requirements.

201 KAR 46:070. Violations and enforcement.

201 KAR 46:090. Complaint process and administrative hearings.

ENERGY AND ENVIRONMENT CABINET: Office of the Secretary: Administration

400 KAR 1:001. Definitions for 400 KAR Chapter 1.

400 KAR 1:031. Repeal of 400 KAR 1:030.

400 KAR 1:090. Administrative hearings practice provisions.

400 KAR 1:100. General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223, and 224.

Department of Environmental Protection: Division of Air Quality: Environmental Protection

401 KAR 100:011. Repeal of 100:010.

Department of Natural Resources: Division of Mine Reclamation and Enforcement: Surface Effects of Noncoal Mining

405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions relating to a mineral operation.

General Provisions

405 KAR 7:092. Administrative hearings and assessment conferences relating to matters brought under KRS Chapter 350 relating to surface coal mining and reclamation operations, and coal exploration operations.

405 KAR 7:093. Repeal of 405 KAR 7:091.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workplace Development: Office of Employment and Training: Unemployment Insurance

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

The Subcommittee adjourned at 2:30 p.m. until June 13, 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 **L - 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 **L - 15**

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 **L - 30**

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 **L - 33**

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.

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 *Administrative Register of Kentucky* but had not yet gone into effect when the *2016 Kentucky Administrative Regulations Service* was published.

SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

Regulation Number	42 Ky.R. Page No.	Effective Date
9 KAR 1:040E	2866	5-13-2016
Replaced		See 43 Ky.R.
301 KAR 2:221E	1699	11-3-2015
Replaced	2939	1-4-16
Resubmitted	2868	5-11-2016
Replaced		See 43 Ky.R.
301 KAR 2:222E	1701	11-3-2015
Replaced	2940	1-4-16
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:

Regulation Number	42 Ky.R. Page No.	Effective Date
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
200 KAR 30:060		
Repealed	2997	10-7-2016
200 KAR 30:070		
Amended	2919	
Withdrawn by agency		7-29-2016
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 by agency		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.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	42 Ky.R. Page No.	Effective Date
201 KAR 46:070		
Amended	2933	See 43 Ky.R.
301 KAR 2:095		
Amended	2819	7-19-2016
301 KAR 2:122		
Amended	2820	See 43 Ky.R.
301 KAR 2:176		
Amended	2935	See 43 Ky.R.
301 KAR 2:221		
Amended	2937	See 43 Ky.R.
301 KAR 2:222		
Amended	2940	See 43 Ky.R.
301 KAR 2:225		
Amended	2944	8-4-2016
301 KAR 2:226		
Amended	2822	See 43 Ky.R.
301 KAR 5:040		
Amended	2947	See 43 Ky.R.
401 KAR 31:040		
Amended	2949	See 43 Ky.R.
401 KAR 51:010		
Amended	2824	See 43 Ky.R.
401 KAR 53:010		
Amended	2830	See 43 Ky.R.
501 KAR 6:020		
Amended	2630	
AmComments	2908	See 43 Ky.R.
501 KAR 6:170		
Amended	2632	
As Amended	2890	7-1-2016
600 KAR 1:030		
Repealed	2846	8-2-2016
600 KAR 1:031*(r)*	2846	8-2-2016
600 KAR 1:045		
Repealed	2846	8-2-2016
600 KAR 2:010		
Repealed	2847	8-2-2016
600 KAR 2:011*(r)*	2847	8-2-2016
600 KAR 2:020		
Repealed	2847	8-2-2016
600 KAR 2:030		
Repealed	2847	8-2-2016
600 KAR 2:040		
Repealed	2847	8-2-2016
601 KAR 1:030		
Repealed	2849	8-2-2016
601 KAR 1:031		
Repealed	2849	8-2-2016
601 KAR 1:032*(r)*	2849	8-2-2016
601 KAR 1:045		
Repealed	2849	8-2-2016
601 KAR 1:050		
Repealed	2849	8-2-2016
601 KAR 1:065		
Repealed	2849	8-2-2016
601 KAR 1:070		
Repealed	2849	8-2-2016
601 KAR 2:030		
Amended	2833	
Withdrawn by agency		10-27-2016
601 KAR 9:055		
Repealed	2850	8-2-2016
601 KAR 9:056*(r)*	2850	8-2-2016
601 KAR 15:010		
Repealed	2851	8-2-2016
601 KAR 15:020		
Repealed	2851	8-2-2016
601 KAR 15:030*(r)*	2851	8-2-2016
704 KAR 3:470		
Repealed	2998	9-2-2016
704 KAR 3:471*(r)*	2998	9-2-2016
780 KAR 4:030		
Repealed	2999	9-2-2016
780 KAR 4:031*(r)*	2999	9-2-2016
780 KAR 7:060		
Amended	2951	See 43 Ky.R.
780 KAR 7:070		
Repealed	3000	9-2-2016
780 KAR 7:071*(r)*	3000	9-2-2016
803 KAR 2:300		
Amended	2953	9-2-2016
803 KAR 2:307		
Amended	2955	See 43 Ky.R.
803 KAR 2:308		
Amended	2957	9-2-2016
803 KAR 2:317		
Amended	2958	9-2-2016
803 KAR 2:318		
Amended	2960	9-2-2016
803 KAR 2:320		
Amended	2962	9-2-2016
803 KAR 2:400		
Amended	2968	See 43 Ky.R.
803 KAR 2:403		
Amended	2970	9-2-2016
803 KAR 2:404		
Amended	2972	9-2-2016
803 KAR 2:421		
Amended	2974	9-2-2016
803 KAR 2:425		
Amended	2976	9-2-2016
803 KAR 2:500		
Amended	2978	9-2-2016
803 KAR 25:010		
Amended	2634	See 43 Ky.R.
803 KAR 25:009		
Repealed	2686	10-7-2016
803 KAR 25:014*(r)*	2686	10-7-2016
803 KAR 25:089		
Amended	2980	10-7-2016
804 KAR 4:400		
Amended	2839	
Withdrawn by agency		7-13-2016
804 KAR 9:040		
Amended	2648	9-2-2016
808 KAR 9:050	2852	See 43 Ky.R.
815 KAR 6:010		
Amended	2265	
AmComments	2596	
As Amended	2891	7-1-2016
815 KAR 6:040		
Amended	2269	
As Amended	2894	7-1-2016
815 KAR 6:080		
Amended	2270	
As Amended	2895	7-1-2016
815 KAR 6:090		
Amended	2272	
AmComments	2600	
As Amended	2895	7-1-2016
815 KAR 7:120		
Amended	2650	6-22-2016
815 KAR 7:125		
Amended	2653	6-22-2016
815 KAR 8:095	2687	
As Amended	2897	6-22-2016
815 KAR 20:084	2688	
As Amended	2898	6-22-2016
815 KAR 20:191		
Amended	2655	
As Amended	2899	6-22-2016
815 KAR 20:195		

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.

VOLUME 43

SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

9 KAR 1:040E		See 42 Ky.R.
Replaced	392	10-7-2016
13 KAR 4:010E	657	10-14-2016
Replaced	1163	1-30-2017
101 KAR 2:034E	873	11-15-2016
Replaced	1004	3-3-2017
101 KAR 2:180E	877	11-15-2016
Replaced	1008	3-3-2017
101 KAR 3:045E	880	11-15-2016
Replaced	1011	3-3-2017
101 KAR 2:210E	517	9-15-2016
Replaced	599	1-6-2017
103 KAR 15:180E	168	
Replaced	266	11-4-2016
200 KAR 2:006E	659	9-15-2016
Replaced	1164	2-3-2017
201 KAR 47:010E	519	8-25-2016
Replaced	1170	2-3-2017
201 KAR 47:020E	522	8-25-2016
Replaced	1172	2-3-2017
202 KAR 10:030E	1120	11-14-2016
Replaced	1553	3-31-2017
301 KAR 2:221E		See 42 Ky.R.
Replaced	202	8-4-2016
301 KAR 2:222E		See 42 Ky.R.
Replaced	203	8-4-2016
301 KAR 2:225E	2112	5-12-2017
401 KAR 31:040E		See 42 Ky.R.
Replaced	207	8-4-2016
501 KAR 1:030E	2115	4-17-2017
787 KAR 2:040E	1922	3-31-2017
601 KAR 2:030E	888	10-27-2016
Expired		4-25-2017
Resubmitted	2118	4-26-2017
804 KAR 4:400E	171	7-15-2016
Replaced	546	11-4-2016
804 KAR 4:410E	172	7-15-2016
Replaced	547	11-4-2016
804 KAR 11:010E	174	7-15-2016
Replaced	752	1-6-2017
806 KAR 9:360E	894	10-25-2016
Replaced	1735	5-5-2017
900 KAR 5:020E	665	9-27-2016
Replaced	1420	3-31-2017
900 KAR 10:200E	896	11-1-2016
Replaced	1125	3-3-2017
902 KAR 2:020E	5	6-15-2016
Replaced	568	11-16-2016
902 KAR 20:091E	901	11-1-2016
Replaced	1752	5-5-2017
902 KAR 55:015E	912	11-15-2016
Replaced	1381	3-3-2017
907 KAR 1:041E(r)	1924	3-31-2017
907 KAR 1:045E	915	11-1-2016
Replaced	1768	5-5-2017
907 KAR 1:047E	921	11-1-2016
Replaced	1772	5-5-2017
907 KAR 3:206E(r)	1925	3-31-2017
907 KAR 7:010E	176	6-30-2016
Withdrawn by agency		9-13-2016
907 KAR 7:015E	187	6-30-2016
Withdrawn by agency		9-13-2016
907 KAR 15:005E	925	11-1-2016
Replaced	1958	6-2-2017
907 KAR 15:010E	928	11-1-2016
Replaced	1959	6-2-2017
907 KAR 15:015E	941	11-1-2016
Replaced	1971	6-2-2017
907 KAR 17:015E	1144	12-1-2016
Expired		5-30-2017
907 KAR 17:035E	1149	12-1-2016
Replaced	1978	6-2-2017
907 KAR 17:040E	1152	12-1-2016
Replaced	1980	6-2-2017
907 KAR 23:001E	1927	3-31-2017
907 KAR 23:010E	1930	3-31-2017
907 KAR 23:020E	1935	3-31-2017
921 KAR 2:015E	1154	12-14-2016
Replaced	1321	3-31-2017
921 KAR 3:035E		See 42 Ky.R.
Replaced	218	8-17-2016
922 KAR 1:320E		See 42 Ky.R.
Replaced	45	8-17-2016
922 KAR 1:360E	666	9-28-2016
Replaced	826	2-3-2017
922 KAR 2:020E		See 42 Ky.R.
Replaced	221	8-17-2016
922 KAR 2:160E		See 42 Ky.R.
Replaced	225	8-17-2016
922 KAR 2:260E		See 42 Ky.R.
Replaced	65	8-17-2016

ORDINARY ADMINISTRATIVE REGULATIONS:

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‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))

(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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21.400	4 KAR 1:010
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21.402	4 KAR 1:010
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21.405	4 KAR 1:010
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21.410	4 KAR 1:010
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21.415	4 KAR 1:010
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21.420	4 KAR 1:010
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21.425	4 KAR 1:010
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21.427	4 KAR 1:010
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21.440	4 KAR 1:010
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	4 KAR 1:050
21.460	4 KAR 1:010
	4 KAR 1:040
21.470	4 KAR 1:010
	4 KAR 1:040
21.480	4 KAR 1:010
	4 KAR 1:040
21.510	4 KAR 1:010
	4 KAR 1:040
21.525	4 KAR 1:010
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21.530	4 KAR 1:010
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21.540	4 KAR 1:010
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21.550	4 KAR 1:010
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21.560	4 KAR 1:010
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39E.040	106 KAR 1:081
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39E.080	106 KAR 1:111
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39E.110	106 KAR 1:081
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39E.120	106 KAR 1:081
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39E.140	106 KAR 1:081
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39E.150	106 KAR 1:081
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45.101	200 KAR 2:006
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45A.010	200 KAR 5:081
45A.030	200 KAR 5:355
45A.070	603 KAR 2:020
45A.077	200 KAR 5:355
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45A.085	200 KAR 5:081
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45A.090	200 KAR 5:355
45A.095	200 KAR 5:081
45A.180	200 KAR 5:355
45A.183	200 KAR 5:355
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61.878	601 KAR 1:113
61.930	601 KAR 1:113
61.931	601 KAR 1:113
65.245	202 KAR 10:030
67.750	30 KAR 7:010
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67.767	30 KAR 7:010
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67A.620	921 KAR 1:410
95.620	921 KAR 1:410
95.878	921 KAR 1:410
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134.160	103 KAR 5:120
136.070	103 KAR 20:011
136.320	103 KAR 15:180
136.330	103 KAR 15:180
136.340	103 KAR 15:180
136.350	103 KAR 15:180
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136.392	739 KAR 2:040
138.130	103 KAR 41:021
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141.0401	103 KAR 15:180
141.050	103 KAR 3:011
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141.068	103 KAR 3:011
141.200	103 KAR 15:021
141.206	103 KAR 19:031
141.420	103 KAR 15:021
141.432	103 KAR 15:180
141.433	103 KAR 15:180
141.434	103 KAR 15:180
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146.200-146.990	401 KAR 4:070
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146.530	400 KAR 1:001
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146.990	400 KAR 1:001
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148.853	804 KAR 4:370
149.344	400 KAR 1:001
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149.346	400 KAR 1:001
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150.015	301 KAR 2:075
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150.170	301 KAR 1:152
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150.177	301 KAR 2:172
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150.190	301 KAR 2:132
150.195	301 KAR 2:075
150.240	301 KAR 3:022
150.275	301 KAR 3:022
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150.330	301 KAR 2:221
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150.370	301 KAR 2:049
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150.411	301 KAR 2:172
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150.485	301 KAR 3:022
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150.620	301 KAR 1:201
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150.660	301 KAR 3:022
150.720	301 KAR 3:022
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151.297	400 KAR 1:001
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156.095	16 KAR 2:020
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156.101	16 KAR 7:010
156.160	702 KAR 6:090
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156.850	780 KAR 4:012
156.852	780 KAR 4:012
157.070	702 KAR 7:065
157.618	750 KAR 1:030
158.007	11 KAR 15:090
158.030	703 KAR 4:041
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158.816	16 KAR 2:020
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161.120	16 KAR 1:010
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161.095	16 KAR 1:010
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164.295	13 KAR 2:110
164.518	11 KAR 4:080
164.772	804 KAR 4:400
164.744	11 KAR 4:080
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164A.575	755 KAR 1:080
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175B.020	202 KAR 10:010
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175B.030	202 KAR 10:010
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175B.035	202 KAR 10:010
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175B.037	202 KAR 10:010
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175B.040	202 KAR 10:010
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175B.095	202 KAR 10:010
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176.070	603 KAR 1:031
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186.442	601 KAR 2:030
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189A.040	601 KAR 2:030
189A.070	601 KAR 2:030
189A.085	601 KAR 2:030
189A.090	601 KAR 2:030
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189A.200	601 KAR 2:030
189A.240	601 KAR 2:030
189A.250	601 KAR 2:030
189A.340	601 KAR 2:030
189A.345	601 KAR 2:030
189A.400	601 KAR 2:030
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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 to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc.ky.gov/KAR/frntpage.htm.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

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