ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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SATURDAY, JULY 1, 2017

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

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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet July 13, 2017, at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1-2** of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2017 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 49:080. Solid waste grant funds and solid waste collector and recycler registration.
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901 KAR 5:120. Induced termination of pregnancy reporting.

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Payment and Services
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401 KAR 8:020. Public and semipublic water systems; submetering; general provisions. (Comments Received, SOC ext., due 7/14/2017)
401 KAR 8:040. Laboratory certification. (Deferred from June)
401 KAR 8:075. Consumer confidence reports and public notification. (Comments Received, SOC ext., due 7/14/2017)
401 KAR 8:100. Design, construction, and approval of facilities and approval timetable for 401 KAR Chapter 8. (Comments Received, SOC ext., due 7/14/2017)
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907 KAR 23:020 & E. Reimbursement for outpatient drugs. ("E" expires 10/26/2017) (Comments Received, SOC ext., due 7/14/2017)

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, mailing address, e-mail address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
301 KAR 1:152E

This emergency administrative regulation establishes the requirements for the department's Asian Carp and Scaled Rough Fish Harvest Program. Asian carp continue to proliferate and negatively impact Kentucky Lake and Lake Barkley in western Kentucky. They consume the base of the aquatic food chain necessary for recruitment of important sportfish, such as bass and crappie. The department's Asian Carp and Scaled Rough Fish Harvest Program was created to help control the population of these invasive, exotic species, but there is an immediate need in these two (2) lakes to increase the number of licensed commercial fishermen who are adept at catching Asian carp in order to protect these aquatic environments. The department can satisfy the need for more commercial fishermen by waiving the commercial fishing license fee of those fishermen who will exclusively net for Asian carp. That fee is currently $150 for residents and $600 for nonresidents. An ordinary administrative regulation will not suffice because the two (2) year old fish, who are about to become reproductively active, need to be caught before they can spawn. This emergency regulation needs to be placed into effect immediately in order to protect Kentucky's aquatic environment. This emergency administrative 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 1:152E. Asian Carp and Scaled Rough Fish Harvest Program.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990
STATUTORY AUTHORITY: KRS 150.025(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the department's Asian Carp and Scaled Rough Fish Harvest Program.

Section 1. Definitions. (1) "Asian carp" means:
(a) Bighead carp;
(b) Black carp;
(c) Grass carp; or
(d) Silver carp.
(2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.
(3) "Program participant" means a commercial fisherman who is:
(a) Enrolled in the Asian carp and scaled rough fish harvest program; and
(b) Fishing in restricted water.
(4) "Restricted water" means those areas, pursuant to 301 KAR 1:140, 1:150, and 1:155, where:
(a) Commercial fishing is prohibited; or
(b) Commercial fishing with gill or trammel nets is prohibited.
(5) "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish pursuant to 301 KAR 1:060.
(6) "Whip net set" means a gill or trammel net that is set to encircle and harvest Asian carp and scaled rough fish.

Section 2. Qualifications. A commercial fisherman shall:
(1) Contact the department and request to be included in the program; and
(2) Possess a valid Kentucky commercial fishing license.

Section 3. Program Participant Requirements. A program participant shall:
(1) Call the department at 800-858-1549 prior to the requested fishing date and provide the information established in paragraphs (a) through (e) of this subsection:
(a) The participant's name;
(b) The fish buyer's name and phone number;
(c) Date requested;
(d) The location in the restricted water to be fished; and
(e) The name or location of the boat ramp that will be used;
(2) Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty-five (35) percent scaled rough fish over a one (1) month period<u>, except that a commercial fisherman whose license fee has been waived pursuant to Section 4 of this administrative regulation shall only harvest Asian carp and not retain any by-catch</u>;
(3) Only fish:
(a) On dates approved by the department; and
(b) At a location approved by the department;
(4) Immediately notify the department if the participant changes the:
(a) Fishing location in the restricted water body; or
(b) Boat ramp being used;
(5) Only use a whip net set:
(a) With a minimum bar mesh size of three and one-quarter (3.25) inches;
(b) That is always tended by a program participant when set less than three (3) feet below the surface of the water;
(c) That is not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and
(d) That is not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;
(6) Complete and submit to the department a Daily Harvest and Release Summary Card immediately after each day's fishing;
(7) Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 of this administrative regulation;
(8) Immediately release all by-catch;
(9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, pursuant to the requirements of 301 KAR 1:155; and
(10) Be suspended from the program:
(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection (2) of this section are not met; and
(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

Section 4. <u>Commercial Fishing License Fee Waiver. The commercial fishing license fees as established in 301 KAR 3:022 shall be waived for a commercial fisherman who only harvests Asian carp in restricted waters.</u>

<u>Section 5.</u> Department Requirements. (1) The department shall:
(a) Maintain a list of program participants and their contact information, which shall be:
1. Provided to known fish buyers; and
2. Updated at least weekly; and
(b) Review all restricted water fishing requests as established in Section 3 of this administrative regulation.
(2) The department shall approve a qualified fishing request by assigning:
(a) A fishing location and boat ramp to a program participant, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and

(b) The time period when fishing may occur, not to exceed a three (3) consecutive day period.

(3) The department shall not approve a fishing request for reasons established in paragraphs (a) through (c) of this subsection:

(a) Higher than normal by-catch is likely to occur at that location and time;

(b) Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time; or

(c) A requested date falls on:

1. Memorial Day;

2. Labor Day;

3. July 4; or

4. A Saturday or prior to sunset on a Sunday from April 1 through September 30.

Section 6[~~5~~]. Program disqualification. (1) A program participant whose commercial fishing license becomes revoked or suspended pursuant to 301 KAR 1:155 shall be disqualified from participating in the Asian Carp and Scaled Rough Fish Harvest Program while that license is revoked or suspended.

(2) Any participant who is disqualified from participation in the program may appeal the decision in accordance with KRS Chapter 13B.

Section 7[~~6~~]. Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.

(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, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner
REGINA STIVERS
For DON PARKINSON, Secretary
APPROVED BY AGENCY: May 24, 2017
FILED WITH LRC: May 26, 2017 at noon
CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Asian Carp and Scaled Rough Fish Harvest Program, which allows commercial harvest of Asian carp and scaled rough fish in waters currently restricted to commercial fishing.

(b) The necessity of this administrative regulation: The regulation is necessary to provide an important mechanism for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating.

(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 set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the purpose of the statute by establishing a process for nuisance fish removal from waters of the Commonwealth.

(2) If 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 waives the commercial fishing license fees for those fishermen who intend to harvest Asian carp only.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide an increased incentive to resident and nonresident commercial fishermen to harvest Asian carp before the spawning season for the two-year old age class of these fishes. It is critical that an increased number of commercial fishermen assist the department in controlling these invasive exotic species in order to immediately protect Kentucky's aquatic environments.

(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: This regulation will affect potential commercial fishermen who are willing to exclusively target their efforts toward the capture and control of Asian carp. Additionally, this regulation may positively affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Resident and nonresident commercial fishermen who wish to have their license fees waived will have to target their efforts at removing only Asian carp. They will not be able to keep other rough fish.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen who wish to participate will benefit by receiving a free commercial fishing license.

(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 to the department to implement this administrative regulation.

(b) On a continuing basis: There now will be no continual cost to the Department.

(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: No increase in fees is needed to fund this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program.

(9) TIERING: Is tiering applied? Yes. Tiering is applied to this regulation because commercial fishermen who wish to only catch Asian carp will have their license fees waived provided they do not keep other rough fish.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Fisheries Division and Law Enforcement Division 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 set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 directly generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government, but local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? There will be a minimal cost to the department to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost to the department to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 3:066E

This emergency administrative regulation is being promulgated to remove the exclusion for pharmaceutical services from the description of a Medicaid-covered service, which means that a Medicaid-eligible recipient may receive nonemergency medical transportation services if the recipient is traveling to or from a Medicaid-covered service (even if to a pharmacy); the service is determined to be of medical necessity; and free transportation, which is appropriate for the recipient's medical needs, is not available or use of an appropriate and operational household vehicle is not available. 42 C.F.R. 431.53 requires transportation for beneficiaries to and from providers, without an exclusion for pharmacies. The Centers for Medicare and Medicaid Services has conditionally approved the Department for Medicaid Services' human service transportation delivery program waiver, contingent upon the removal of the previously-established exclusion for pharmacy services. This amendment is therefore necessary, in accordance with KRS 13A.190(1)(a)2. and 3., to prevent a loss of federal funds and to meet the deadline for promulgation of the regulatory change established by CMS to bring Kentucky's administrative regulation into compliance with 42 C.F.R. 431.53. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Emergency Amendment)

907 KAR 3:066E. Nonemergency medical transportation waiver services and payments.

RELATES TO: KRS[~~96 A.010,~~] 96A.095,[~~96A.170,~~] 205.520, 281.010[~~281.014(5)~~], 281.605(9), 281.635(5)[~~(9)~~], 281.872, 281.875, 42 C.F.R. 431.53, 440.170[~~440.710~~], 42 U.S.C. 1396n(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 205.520(3), 42 C.F.R. 431.53, 42 U.S.C. 1396a[~~194A.025, 194.030(2), 195.020, 281.014, 281.872, 281.875, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] 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 to qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services[~~Health Care Financing Administration~~] to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

Section 1. Definitions. (1) "Capitated rate" means one (1) amount paid each month:

(a) For each Medicaid recipient covered under authority of the waiver; and

(b) That is:

1. Not[~~. The capitated rate shall not be~~] a statewide rate; and

2.[~~but shall be~~] Set individually for each human service transportation delivery region as established in 603 KAR 7:080.

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

(3) "Human service transportation" means provision of mass transportation and taxi services to transport an individual who is eligible to receive Medicaid transportation services.

(4) "Nonemergency medical transportation" means medical transportation not of an emergency nature, excluding ambulance stretcher services, provided to an eligible[~~a~~] Medicaid recipient by the Transportation Cabinet pursuant to an agreement between the Transportation Cabinet and the department.

(5) "Waiver authority" means the provisions contained in 42 U.S.C. 1396n(b).

Section 2. Interagency Agreement. Pursuant to waiver authority granted by the Centers for Medicare and Medicaid Services[~~Health Care Financing Administration, U.S. Department for Health and Human Services~~], the Department for Medicaid Services may enter into an agreement with the Transportation Cabinet for the provision of nonemergency medical transportation to a Medicaid recipient.

Section 3. Coverage. (1) The coverage provisions established in 603 KAR 7:080 shall comply with this administrative regulation.

(2) A Medicaid-eligible recipient may receive nonemergency medical transportation services if the recipient meets the following conditions:

(a) The recipient is traveling to or from a Medicaid-covered service[~~, exclusive of pharmaceutical services~~];

(b) The service is determined to be of medical necessity; and

(c) Free transportation, which is appropriate for the recipient's medical needs, is not available or use of an appropriate and operational household vehicle is not available.

Section 4. Reimbursement. (1) The Transportation Cabinet shall be reimbursed at a monthly capitated rate set by the department for each Medicaid recipient receiving services pursuant to this administrative regulation.

(2) The capitated rate shall not exceed the Medicaid Program's usual aggregate cost on a projected statewide basis of providing nonemergency medical transportation services to the covered group of recipients.

Section 5. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.[~~;~~]

(2) An appeal of a negative action regarding Medicaid eligibility

of an individual shall be in accordance with 907 KAR 1:560.[~~; or~~]

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 6. Implementation. The provisions of this administrative regulation shall be applicable for nonemergency transportation waiver services provided in accordance with KRS Chapter 45A and Section 2 of this administrative regulation[~~on or after April 12, 2000~~].

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 14, 2017 at 2 p.m.

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, emailTricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov., or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services, to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services, to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services, to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the exclusion for pharmaceutical services from the description of a Medicaid-covered service, which means that a Medicaid-eligible recipient may receive nonemergency medical transportation services if the recipient is traveling to or from a Medicaid-covered service (even if to a pharmacy); the service is determined to be of medical necessity; and free transportation, which is appropriate for the recipient's medical needs, is not available or use of an appropriate and operational household vehicle is not available. The amendment also corrects citations and makes other drafting and formatting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: 42 C.F.R. 431.53 requires transportation for beneficiaries to and from providers, without an exclusion for pharmacies. The Centers for Medicare and Medicaid Services has conditionally approved the Department for Medicaid Services' human service transportation delivery program waiver, contingent upon the removal of the previously-established exclusion for pharmacy services. This amendment is therefore necessary to prevent a loss of federal funds and meet the deadline for promulgation of the regulatory change established by CMS to bring Kentucky's administrative regulation into compliance with 42 C.F.R. 431.53.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by removing the exclusion for pharmaceutical services from the description of nonemergency medical transportation services. 42 C.F.R. 431.53 requires transportation for beneficiaries to and from providers, without an exclusion for pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by removing an exclusion that was not authorized by 42 C.F.R. 431.53 for nonemergency medical transportation services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all individuals who qualify for nonemergency medical transportation services as well as all providers of those transportation services. The number of individuals and providers affected cannot be determined.

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

(a) List 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 nonemergency medical transportation service providers will be required to transport each Medicaid-eligible recipient who meets the specified requirements to or from a Medicaid-covered service, including to a pharmacy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Removing the exclusion for pharmaceutical services will increase the nonemergency medical transportation annual costs by about $9 million.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit to the providers and the Department for Medicaid Services will be compliance with 42 C.F.R. 431.53. The main benefit to Medicaid-eligible recipients will be the ability to receive nonemergency medical transportation to and from a pharmacy service.

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

(a) Initially: Removing the exclusion for pharmaceutical services will cost about $9 million in increased nonemergency medical transportation costs annually.

(b) On a continuing basis: Removing the exclusion for pharmaceutical services will cost about $9 million in increased nonemergency medical transportation costs annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.520(3), 42 C.F.R. 431.53, 42 U.S.C. 1396a

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

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

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

(c) How much will it cost to administer this program for the first year? Removing the exclusion for pharmaceutical services will cost about $9 million in increased nonemergency medical transportation costs annually.

(d) How much will it cost to administer this program for subsequent years? Removing the exclusion for pharmaceutical services will cost about $9 million in increased nonemergency medical transportation costs 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431.53, 42 U.S.C. 1396a

2. State compliance standards. 42 C.F.R. 431.53 requires transportation for beneficiaries to and from providers, without an exclusion for pharmacies. The Centers for Medicare and Medicaid Services has conditionally approved the Department for Medicaid Services' human service transportation delivery program waiver, contingent upon the removal of the previously-established exclusion for pharmacy services. This amendment is therefore necessary to prevent a loss of federal funds and meet the deadline for promulgation of the regulatory change established by CMS to bring Kentucky's administrative regulation into compliance with 42 C.F.R. 431.53.

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 431.53 requires transportation for beneficiaries to and from providers, without an exclusion for pharmacies.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter or different responsibilities than the federal requirements. The amendment aligns this administrative regulation with the federal regulation, 42 C.F.R. 431.53.

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

OFFICE OF THE ATTORNEY GENERAL
Office of Consumer Protection
(As Amended at ARRS, June 13, 2017)

40 KAR 2:145. Funeral planning declaration form.

RELATES TO: KRS ***311.1911 et seq.,*** 367.93101, 367.93103, 367.93105, 367.93107, 367.93109, 367.93111, 367.93113, 367.93115, 367.93117, 367.93121, 367.97501, 367.97514, 367.97524, 367.97527

STATUTORY AUTHORITY: KRS 367.93101(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.93101(3) requires the Office of the Attorney General to promulgate administrative regulations to prescribe a funeral planning declaration form. This administrative regulation prescribes the funeral planning declaration form identified in KRS 367.93101(3) and described in KRS 367.93101 to 367.93121, by which an individual declarant may set forth the declarant's preferences regarding the manner of disposition of the declarant's remains.

Section 1. Funeral Planning Declaration. The Funeral Planning Declaration, Form FPD-1, required by KRS 367.93101(3), shall contain***[the following information]***:

(1) The date the declaration is made;

(2) The name of the declarant;

(3) A statement providing that the declarant shall be at least eighteen (18) years of age and of sound mind;

(4) A statement providing that the declarant willingly and voluntarily makes known the declarant's instructions concerning funeral services, funeral and cemetery merchandise, ceremonies, and the disposition of the declarant's remains after the declarant's death;

(5) A statement that by executing the declaration any previous declaration is revoked;

(6) Statements informing the declarant of the following concerning a designee:

(a) A designee is an individual designated and directed by the terms of the declaration to carry out the declarant's funeral plan or make arrangements concerning disposition of the declarant's remains, funeral services, cemetery merchandise, funeral merchandise, or ceremonies;

(b) If the declarant does not designate a designee in the declaration, the declarant shall provide instructions concerning funeral services, ceremonies, and the disposition of the declarant's remains;

(c) A person is not considered to be entitled to any part of the declarant's estate solely by virtue of being designated in the declaration to serve as the declarant's designee;

(d) The declarant's designee shall not be a provider of funeral or cemetery services, or employed by[~~responsible for any aspect of disposition of the declarant's remains, or associated with~~] any entity responsible for providing funeral or cemetery services or disposing of the declarant's remains, unless the designee is related to the declarant by birth, marriage, or adoption;

(e) A designee shall not be a witness to the declaration; and

(f) If the designee or alternate designee fail to assume an obligation set forth in the Funeral Planning Declaration, Form FPD-1, within five (5) days of notification of the declarant's death, the authority to make arrangements shall devolve pursuant to the terms of the Funeral Planning Declaration, Form FPD-1, or KRS 367.93117;

(7) If the declarant elects, a statement identifying the name of a designee who shall carry out the instructions that are set forth in the declaration;

(8) If the declarant elects to name an alternate designee, a statement identifying the name of an alternate designee if the designee is unwilling or unable to act;

(9) If the declarant elects to not select a designee, a statement that the declarant elects to not select a designee and that the declarant directs that the instructions listed in the declaration for funeral services, ceremonies, and the disposition of the declarant's remains be followed;

(10) Instructions for actions to be taken after the declarant's death, indicating by initials or marks beside each instruction selected by the declarant, from the following:

(a) Concerning disposition of the declarant's body, one (1) of the following:

1. The declarant directs that the declarant's body be buried and, if so, where;

2. The declarant directs that the declarant's cremated remains be disposed of by one (1) of the following methods, or, if no method of disposition is selected, the declarant leaves the decision to the designee:

a. By placing the cremated remains in a grave, crypt, or niche and, if so, where;

b. By scattering them in a scattering area; or

c. On private property with the consent of the owner;

3. The declarant directs that the declarant's body be entombed and, if so, where;

4. The declarant directs that the declarant's body be donated as an anatomical gift pursuant to KRS 311.1911, et. seq., if the declarant has not selected another method for donation of the declarant's body; or

5. The declarant intentionally makes no decision concerning the disposition of the declarant's body and leaves the decision to the designee;

(b) Concerning arrangements, any of the following selected by the declarant:

1. The declarant directs that funeral services be obtained and, if so, from whom, or, if no person from whom to obtain funeral services is selected, then the designee may decide;

2. The declarant directs that funeral and ceremonial arrangements are to be made and, if so, providing instructions regarding the funeral and ceremonial arrangements;

3. The declarant directs the selection of a grave memorial, monument, or marker, and, if so, providing instructions regarding the grave memorial, monument, or marker;

4. The declarant directs the selection of funeral and cemetery merchandise and other property for the disposition of the declarant's remains, funeral, or other ceremonial arrangements, and, if so, providing instructions regarding the funeral and cemetery merchandise and other property for the disposition of the declarant's remains, funeral, or other ceremonial arrangements; or

5. The declarant directs that the designee make all arrangements concerning ceremonies and other funeral or burial services;

(c) Any additional instructions requested by the declarant; and

(d) A statement that the declarant directs that the declarant's designee make alternate arrangements to the best of the designee's ability if it is impossible to make an arrangement specified in the Funeral Planning Declaration, Form FPD-1, because:

1. A funeral home or other service or merchandise provider is out of business, impossible to locate, or otherwise unable to provide the specified service; or

2. The specified arrangement is impossible, illegal, or exceeds the funds available or is inconsistent with the terms of the pre-arranged funeral or cemetery contract;

(11) A statement that it is the declarant's intention that the declarant's Funeral Planning Declaration, Form FPD-1, be honored by the declarant's family and others as the final expression of the declarant's intentions concerning the declarant's funeral and the disposition of the declarant's body after the declarant's death, and

that the declarant understands the full import of this declaration;

(12) Concerning execution of the Funeral Planning Declaration, Form FPD-1:

(a) The signature of the declarant or another person in the declarant's presence and at the declarant's direction, the signature date, and the city, county, and state of the declarant's residence; and

(b) If applicable, the printed name of the person who signed at the declarant's direction;

(13) The signatures of two (2) witnesses, printed name, and date of signature of each witness, immediately following a statement that ***each[~~the~~]*** witness believes***;***

(a) The declarant to be of sound mind and to have willfully and voluntarily executed the Funeral Planning Declaration, Form FPD-1***;***

(b)[~~,~~] That the witness did not sign the declarant's signature or at the direction of the declarant***;***

(c)[~~,~~] That the witness is not a[~~ parent, spouse, child, or~~] designee of the declarant***;***

(d)[~~,~~][~~that the witness is not entitled to any part of the declarant's estate,~~] That the declarant signed the declaration in the presence of the witness***;[~~,~~]*** and

(e) That the witness is competent and at least eighteen (18) years of age; and

(14) An acknowledgement before a notary public or other person authorized to administer oaths, including the signature and title of the notary public or other person authorized to administer oaths, and the date of the signature, immediately following a statement that the declarant appeared before the notary public or other person authorized to administer oaths and acknowledged that the declarant voluntarily dated and signed the Funeral Planning Declaration, Form FPD-1, or directed the Funeral Planning Declaration, Form FPD-1, to be signed and dated in the declarant's presence, and the date of the acknowledgement.

Section 2. Incorporation by Reference. (1) "Funeral Planning Declaration", Form FPD-1, 04-17[~~10/16~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ANDY BESHEAR, Attorney General

APPROVED BY AGENCY: April 12, 2017

FILED WITH LRC: April 13, 2017 at 1 p.m.

CONTACT PERSON: Kevin R. Winstead, Assistant Attorney General, Kentucky Attorney General's Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 696-5389, fax (502) 573-8317, email kevin.winstead@ky.gov.

OFFICE OF THE ATTORNEY GENERAL
Office of Consumer Protection
(As Amended at ARRS, June 13, 2017)

40 KAR 2:150. Cremation forms and inspections.

RELATES TO: KRS 367.93103, 367.93105, 367.93115, 367.93117, 367.97501, 367.97504, 367.97507, 367.97511, 367.97514, 367.97517, 367.97521, 367.97524, 367.97527***, 391.010***

STATUTORY AUTHORITY: KRS 367.97501, 367.97504, 367.97534

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.97534(5) authorizes the Attorney General to promulgate administrative regulations necessary to carry out the provisions of KRS 367.97501 to 367.97537. This administrative regulation establishes forms related to cremation as required by KRS 367.97501, 367.97504, and 367.97514. This administrative regulation ***establishes[~~also identifies~~]*** the records and information that shall be retained by the crematory operator as identified in KRS 367.97504(5), and establishes guidelines for crematory inspections regarding KRS 367.97504(1) and (5), 367.97511(4), 367.97514(5), and 367.97534.

Section 1. Cremation Authorization Form. The Cremation Authorization, Form CR-1, required by KRS 367.97524, shall contain***[~~the following information~~]***:

(1) The name of the crematory authority;

(2) The address of the crematory authority, including the city, state, and zip code;

(3) The telephone number of the crematory authority;

(4) A statement informing the authorizing agent that it is the policy of the crematory authority that it will accept a declarant or decedent for cremation only after all necessary authorizations have been obtained, and all prerequisites to be performed by the state regarding the death have taken place and any required forms or permits are attached;

(5) The name, address (including the city, state, and zip code), age, date of birth, and gender of the declarant or decedent, and the place and date of death;

(6) Whether or not the declarant's or decedent's death was due to an infectious disease and, if so, an explanation;

(7) A statement that pacemakers, radioactive, silicon or other implants, mechanical devices or prosthesis may create a hazardous condition if placed in cremation chamber and subjected to heat, and that the authorizing agent instructs the crematory authority or funeral home to remove all devices that may become hazardous during the cremation process;

(8) Whether the declarant's or decedent's remains contain any devices, including mechanical, prosthetic, implants or materials, which may have been implanted in or attached to the declarant or decedent, or any other device that may become hazardous during the cremation process;

(9) A description of any devices, including mechanical, prosthetic, implants, or materials, which may have been implanted in or attached to the declarant or decedent, or any other device that may become hazardous during the cremation process;

(10) A statement informing the authorizing agent of the following concerning identification of the declarant or decedent:

(a) Kentucky law requires the individual's remains to be identified before cremation can take place; and

(b) The individual making the identification ***may[~~can~~]*** be the authorizing agent, a family member, friend, coroner, or any other person who has personal knowledge of the decedent or the ability to make positive identification and who accepts any liability arising from the identification;

(11) The name of the individual identifying the decedent's remains prior to cremation, the relationship of that individual to the decedent, and the signature of the individual identifying the body for cremation;

(12) Statements informing the authorizing agent of the following regarding cremation authorization:

(a) The person legally entitled to order the cremation of a declarant or decedent is the authorizing agent; and

(b) The right to control the disposition of the remains of a declarant or decedent devolves according to the order of authority of classes of authorizing agents listed in subsection (13) of this section;

(13) The selection of the class of authorizing agents having the right to authorize the cremation of the declarant's or decedent's body, in the following order of authority:

(a) The individual executing a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, and that the original Funeral Planning Declaration shall be attached;

(b) The person named as the designee or alternate designee in a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145, and that the original Funeral Planning Declaration shall be attached;

(c) The person named in a United States Department of Defense form Record of Emergency Data (DD Form 93) or a successor form adopted by the United States Department of Defense, if the decedent died while serving in any branch of the

United States Armed Forces, and the original form shall be attached;

(d) The decedent through a Preneed Cremation Authorization, Form CR-3 completed and executed before July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3, and that the original Preneed Cremation Authorization, Form CR-3 shall be attached;

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

(f) The surviving adult child of the declarant or decedent, or a majority of the adult children if more than one (1) adult child is surviving, or less than a majority of the surviving adult children by attesting in writing showing the reasonable efforts to notify the other adult surviving children of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult children. The number of surviving adult children shall be written in the completed Cremation Authorization, Form CR-1;

(g) The surviving parent or parents of the declarant or decedent, or if one (1) parent is absent, the parent who is present has the right to control the disposition by attesting in writing showing the reasonable efforts to notify the absent parent. The number of surviving parents shall be written in the completed Cremation Authorization, Form CR-1;

(h) The surviving adult grandchild of the declarant or decedent, or a majority of the adult grandchildren if more than one (1) adult grandchild is surviving, or less than a majority of the surviving adult grandchildren by attesting in writing showing the reasonable efforts to notify the other adult surviving grandchildren of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult grandchildren. The number of surviving adult grandchildren shall be written in the completed Cremation Authorization, Form CR-1;

(i) The surviving adult sibling of the declarant or decedent, or a majority of the adult siblings if more than one (1) adult sibling is surviving, or less than a majority of the surviving adult siblings by attesting in writing showing the reasonable efforts to notify the other adult surviving siblings of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the surviving adult siblings. The number of surviving adult siblings shall be written in the completed Cremation Authorization, Form CR-1;

(j) The surviving individual or individuals of the next degree of kinship under KRS 391.010 to inherit the estate of the declarant or decedent, or a majority of those in the same degree of kinship if more than one (1) individual of the same degree is surviving, or less than a majority of the surviving individuals of the same degree of kinship by attesting in writing showing the reasonable efforts to notify the other individuals of the same degree of kinship of their intentions and that they are not aware of any opposition to the final disposition instructions by more than half of the individuals of the same degree of kinship. The number of surviving individuals of the same degree of kinship, and a description of the relationship to the declarant or decedent, shall be written in the completed Cremation Authorization, Form CR-1;[~~and~~]

(k) If none of the persons listed in paragraphs (a) through (j) of this subsection are available, one (1) of the following who attests[~~a person willing to act and arrange for the final disposition of the declarant or decedent, including a funeral home, that has a valid prepaid funeral plan that makes arrangements for the disposition of the declarant or decedent, by attesting~~] in writing showing the good-faith effort made to contact any living individuals in an order of authority class described in paragraphs (a) to (j) of this subsection:

1. A person willing to act and arrange for the final disposition of the decedent; or

2. A funeral home that has a valid prepaid funeral plan that makes arrangements for the disposition of the decedent's remains, if the funeral director makes the written attestation described in this subsection; and

(l) The district court in the county of the decedent's residence or the county in which the funeral home or the crematory is located;

(14) Statements informing the authorizing agent of the following regarding other rights and responsibilities concerning cremations:

(a) The declarant or authorizing agent shall carefully read and understand the statements described in this subsection before signing the authorization;

(b) The declarant or authorizing agent shall direct the crematory authority on the final disposition of the cremated remains;

(c) The crematory authority shall not conduct any cremation nor accept a body for cremation unless it has a Cremation Authorization, Form CR-1 signed by the authorizing agent clearly stating the final disposition;

(d) The original form shall be attached to the Cremation Authorization, Form CR-1 if:

1. The cremation is being performed pursuant to a Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145; or

2. A Preneed Cremation Authorization, Form CR-3 that was completed and executed before July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3;

(e) All cremations are performed individually and it is unlawful to cremate the remains of more than one (1) individual within the same cremation chamber at the same time;

(f) The consumer may choose cremation without choosing embalming services;

(g) If the crematory authority does not have a refrigerated holding facility, it shall not accept human remains for anything other than immediate cremation;

(h) The consumer is not required to purchase a casket for the purpose of cremation;

(i) The crematory authority requires that the body of the declarant or decedent shall be delivered for cremation in a suitable, closed container that shall be either a casket or an alternative cremation container for cremation, but the crematory authority shall not require that the body be placed in a casket before cremation or that the body be cremated in a casket, nor shall a crematory authority refuse to accept human remains for cremation because ***the remains***[~~***they***~~] are not in a casket;

(j) The container in which the body is delivered to the crematory for cremation shall ***be***:

1.[~~***Be***~~] Composed of readily-combustible materials suitable for cremation;

2.[~~***Be***~~] Able to be closed to provide a complete covering for the human remains;

3.[~~***Be***~~] Resistant to leakage or spillage; and

4.[~~***Be***~~] Rigid enough to support the weight of the declarant or decedent;

(k) The crematory authority may inspect the casket or alternative container, including opening it if necessary, and the crematory authority shall not accept for holding a cremation container from which there is any evidence of leakage of the body fluids from the human remains in the container;

(l) The type of casket or cremation container selected for cremation;

(m) Due to the nature of the cremation process any personal possessions or valuable materials, such as dental gold or jewelry, as well as any body prostheses or dental bridgework, that are left with the declarant or decedent and not removed from the casket or alternative cremation container prior to cremation shall be destroyed or shall otherwise not be recoverable, unless authority to do so otherwise is specifically granted in writing;

(n) As the casket or alternative container will usually not be opened by the crematory authority to remove valuables, to allow for final viewing or for any other reason unless there is leakage or damage, the authorizing agent understands that arrangements shall be made to remove any possessions or valuables prior to the time the declarant or decedent is transported to the crematory authority;

(o) Cremated remains, to the extent possible, shall not be contaminated with foreign material;

(p) All noncombustible materials, such as dental bridgework, and materials from the casket or alternative cremation container, such as hinges, latches, and nails, shall be separated and removed, to the extent possible, by visible or magnetic selection and shall be disposed of by the crematory authority with similar materials from other cremations in a nonrecoverable manner, so that only human bone fragments and organic ash, including both human remains and container remains, remain, unless those objects are used for identification or as may be requested by the authorizing agent;

(q) As the cremated remains often contain recognizable bone fragments, unless otherwise specified, after bone fragments have been separated from the other material, they shall be mechanically processed or pulverized, which includes crushing or grinding into granulated particles of unidentifiable dimensions, virtually unrecognizable as human remains, prior to placement into the designated container; and

(r) While every effort shall be made to avoid commingling of cremated remains, inadvertent or incidental commingling of minute particles of cremated remains from the residue of previous cremations is a possibility, and the authorizing agent understands and accepts this fact;

(15) Instructions on disposition of the cremated remains, indicating whether the cremated remains will be:

(a) Interred and, if so, where;

(b) Scattered in a scattering area or garden and, if so, where;

(c) In any manner on private property with the permission of the owner and, if so, where;

(d) Delivered either in person or by a method that has an internal tracking system that provides a receipt signed by the person accepting delivery and, if so, to whom; or

(e) Picked up at the crematory office and, if so, by whom;

(16) The date the remains were received by the crematory authority, the cremation number, the date of cremation, and the name of the person performing the cremation;

(17) A statement informing the declarant or authorizing agent of the following regarding execution of the Cremation Authorization, Form CR-1:

(a) Executing the Cremation Authorization, Form CR-1 as authorizing agent, or as declarant, designee, or alternate designee if using a Funeral Planning Declaration, Form FPD-1, grants consent to the cremation of the decedent;

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

1. That all representations and statements contained on the Cremation Authorization, Form CR-1 are true and correct;

2. That the statements contained on the Cremation Authorization, Form CR-1 were made to induce the crematory authority to cremate the human remains of the declarant or decedent; and

3. That the person executing the Cremation Authorization, Form CR-1 has read and understands the provisions contained on the Cremation Authorization, Form CR-1; and

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

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

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

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

(18) Signature of each authorizing agent granting consent to the cremation of the decedent;

(19) The name of each authorizing agent and the relationship of the authorizing agent to the declarant or decedent;

(20) The address of the authorizing agent, including the city, state, and zip code;

(21) The telephone number of the authorizing agent;

(22) The name, address, city, state, zip code, telephone number, and signature of the funeral director or other individual as witness for the authorizing agent; and

(23) The date and location where the authorizing agent signed the Cremation Authorization, Form CR-1.

Section 2. Crematory Annual Report Form. The Crematory Annual Report, Form CR-2, required by KRS 367.97504(6), shall contain***[~~the following information~~]***:

(1) The name of the crematory authority;

(2) The address of the crematory authority, including the city, state, and zip code;

(3) The number of retorts operated by the crematory authority;

(4) The number of cremations performed by the crematory authority in each retort during the preceding calendar year;

(5) The total number of cremations performed by the crematory authority during the preceding calendar year;

(6) A numerical breakdown of the disposition of cremated remains in the preceding year, indicating the number:

(a) Scattered;

(b) Interred, either in a niche or in-ground burial;

(c) Returned to the family or funeral home; or

(d) With other means of disposition. The other means of disposition used shall be briefly described;

(7) A list of the names and registration numbers of all crematory operators who worked for the crematory authority during the preceding year;

(8) The signature of the individual completing the form and the date on which the form was completed; and

(9) A statement requiring the remittance of a ten (10) dollar check or money order for the annual registration fee.

Section 3. Preneed Cremation Authorization Form. (1) The Preneed Cremation Authorization, Form CR-3, shall not be completed or executed on or after July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3.

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

(a) The name of the crematory authority;

(b) The address, including the city, state, and zip code;

(c) The telephone number of the crematory authority;

(d) The name of the authorizing agent;

(e) The address of the authorizing agent, including the city, state, and zip code;

(f) The home telephone number of the authorizing agent;

(g) The age and gender of the authorizing agent;

(h) Whether the decedent authorizing agent has any infectious or contagious disease and, if so, an explanation;

(i) Whether the decedent authorizing agent's body contains a pacemaker, prosthesis, radioactive implant, or any other device that could be explosive;

(j) Whether the decedent authorizing agent has been treated with therapeutic radionuclides such as Strontium 89 or any other treatment that would result in residual radioactive material remaining as part of the decedent authorizing agent's remains and, if so, what the treatment was and the last date it was administered;

(k) A statement specifying that all cremations are performed individually and that it is unlawful to cremate the remains of more than one (1) individual within the same cremation chamber at the same time;

(l) A statement informing the authorizing agent that the agent may choose cremation without choosing embalming services and that if the crematory chosen does not have a refrigerated holding facility it shall not accept human remains for anything other than immediate cremation;

(m) A statement informing the authorizing agent ***that***[~~of the following~~]:

1. The agent is not required to purchase a casket for the purpose of cremation;

2. The crematory authority shall require the decedent authorizing agent to be delivered for cremation in a suitable container**,** which shall be either a casket or an alternative cremation container; and

3. An alternative cremation container shall ***be***[~~meet the following standards~~]:

a.[~~Be~~] Composed of readily-combustible materials suitable for cremation;

b.[~~Be~~] Able to be closed to provide a complete covering for the human remains;

c.[~~Be~~] Resistant to leakage or spillage; and

d.[~~Be~~] Rigid enough to support the weight of the decedent;

(n) A statement informing the authorizing agent that the crematory may inspect the casket or alternative container, including opening if necessary, and if there is leakage or damage, the crematory shall refuse to accept the decedent authorizing agent's remains for the purpose of cremation or refrigeration;

(o) The type of casket or alternative container selected for cremation;

(p) A statement informing the authorizing agent ***that***[~~of the following~~]:

1. Due to the nature of the cremation process any personal possessions or valuable materials, such as dental gold or jewelry, as well as any body prostheses or dental bridgework, that are left with the decedent authorizing agent and not removed from the casket or alternative container prior to cremation shall be destroyed or shall otherwise not be recoverable; and

2. The casket or alternative container will usually not be opened by the crematory authority to permit the removal of valuables, to allow for final viewing or for any other reason unless there is leakage or damage, so the authorizing agent shall make arrangements to have any possessions or valuables removed prior to the time the remains are transported to the crematory authority;

(q) A statement informing the authorizing agent ***that***[~~of the following~~]:

1. To the extent possible, cremated remains shall not be contaminated with foreign material;

2. All noncombustible materials such as dental bridgework, and materials from the casket or alternative container, such as hinges, latches, and nails, shall be separated and removed, to the extent possible, by visible or magnetic selection and shall be disposed of by the crematory authority with similar materials from other cremations in a nonrecoverable manner, so that only human bone fragments and organic ash, including both human remains and container remains, remain;

3. As the cremated remains often contain recognizable bone fragments, unless otherwise specified, after the bone fragments have been separated from the other material, they shall be mechanically processed or pulverized, which includes crushing or grinding into granulated particles of unidentifiable dimensions, virtually unrecognizable as human remains, prior to placement into the designated container; and

4. While every effort shall be made to avoid commingling of cremated remains, inadvertent or incidental commingling of minute particles of cremated remains from the residue of previous cremations is a possibility, and the authorizing agent understands and accepts this fact;

(r) A statement informing the authorizing agent ***that***[~~of the following~~]:

1. The original copy of the Preneed Cremation Authorization, Form CR-3 shall be retained by the firm or person with which the arrangements are being made and a copy shall be provided to the authorizing agent; and

2. A person arranging his or her own cremation shall have the right to transfer or cancel this authorization at any time prior to death by notifying by certified mail, the firm or person with which the preneed authorization form is filed;

(s) A statement informing the authorizing agent that if there are not different or inconsistent instructions provided to the crematory authority at the time of death, the crematory authority shall release or dispose of the cremated remains as indicated on this Preneed Cremation Authorization, Form CR-3;

(t) A statement informing the authorizing agent ***that***[~~of the following~~]:

1. If there is a conflict between the authorizing agent's preneed authorization and the demands of the next class of authorizing agent, the crematory authority shall not accept for cremation the authorizing agent's remains without an order deciding the issues entered by the district court of the county of the decedent authorizing agent's residence or the county where the funeral home or the crematory authority is located;

2. The order may be issued by the court after a petition for a resolution has been initiated by any natural person in the next class of authorizing agent or the crematory authority; and

3. Unless extraordinary circumstances exist, the court shall give due deference to the desires of the decedent authorizing agent as expressed in the Preneed Cremation Authorization, Form CR-3;

(u) Instructions on the disposition of the cremated remains, indicating whether the cremated remains will be:

1. Interred and, if so, where;

2. Scattered in a scattering area or garden and, if so, where;

3. Scattered on private property with the permission of the owner and, if so, where;

4. Delivered either in person or by registered mail and, if so, to whom; or

5. Picked up at the crematory office and, if so, by whom;

(v) The printed name, signature, address (including city, state, and zip code) and home telephone of the authorizing agent, explicitly authorizing the crematory authority to cremate the human remains of the authorizing agent;

(w) The date and location where the authorizing agent signed the Preneed Cremation Authorization, Form CR-3;

(x) The signature of the funeral director or other individual as witness for the authorizing agent;

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

(z) The address of the funeral director or other individual acting as witness for the authorizing agent, including the city, state, and zip code; and

(aa) The telephone number of the funeral director or other individual acting as witness for the authorizing agent.

Section 4. Statement of Supervision Form. The Statement of Supervision for Registered Crematory Retort Operators, Form CR-4, required by KRS 367.97514(6), shall contain the[~~following information~~]:

(1)[~~The~~] Name of the crematory retort operator who was supervised;

(2)[~~The~~] Name of the employer crematory authority;

(3)[~~The~~] Name of the supervising crematory operator, verifying that the crematory retort operator completed forty-eight (48) hours of on the job training supervised by the crematory operator;

(4)[~~The~~] Date on which the form was signed;

(5)[~~The~~] Signature of the crematory retort operator;

(6)[~~The~~] Signature of the crematory operator who supervised the crematory retort operator; and

(7)[~~The~~] Registration number of the crematory operator.

Section 5. Crematory Authority License Application Form. The Crematory Authority License Application, Form CR-5 required by KRS 367.97504(1), shall contain[~~the following information~~]:

(1) A statement informing the applicant that a crematory authority license shall be obtained from the Attorney General at least thirty (30) days prior to the opening of the crematory authority to conduct cremations;

(2) A statement informing the applicant that a $100 registration

fee shall accompany the application, and that the application shall be signed by a person, officer, or agent with authority to do so, under oath, and the signature shall be notarized;

(3) The date of the application;

(4) The full legal name of the applicant;

(5) The crematory name, if different from the applicant;

(6) The business telephone number;

(7) The physical address of the crematory, including the city, county, state, and zip code;

(8) Mailing address, including city, state, and zip code, of the crematory authority, if different from the physical address;

(9) The form of organization of the crematory, indicating whether it is a:

(a) Corporation, and if so indicate the state of incorporation;

(b) Limited liability company, and if so indicate the state of organization;

(c) Partnership, and if so indicate the state of formation;

(d) Individual; or

(e) Other, and if so, please explain and indicate the state of formation;

(10) Evidence of authority to transact business in the Commonwealth of Kentucky, including a copy of the applicant's certificate of authority to transact business in the Commonwealth of Kentucky issued by the Kentucky Secretary of State, or other evidence of authority to transact business in the Commonwealth of Kentucky and describing the other evidence;

(11) The name, position, home address, including the city, state, and zip code, driver's license number and state of issuance, and date of birth, of every owner of the applicant, or if the applicant is a business entity, every member, officer, and director of the applicant;

(12) The name, address, including city, state, and zip code, and account number, if applicable, of one (1) financial reference. Suitable financial references shall include financial institutions and industry suppliers. Personal references shall not be acceptable;

(13) The name and address, including city, state, and zip code, of the financial institution at which the applicant has its business bank account;

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

(15) Whether the applicant intends to solicit preneed funeral contracts. If yes, a completed application for a ***Preneed Merchandise Sellers Application***[~~preneed burial sellers license~~], Form CPN-6, incorporated by reference in 40 KAR 2:155, shall be attached;

(16) A statement from the applicant's retort manufacturer, which shall include[~~the following information~~]:

(a) The date on which the manufacturer delivered the retort to the applicant;

(b) Whether the manufacturer installed the retort and, if so, when the installation occurred; and

(c) Whether the retort was tested upon installation and, if so, the results of those tests;

(17) A statement informing the applicant that by submitting the application, the applicant represents, agrees to, and states under penalty of law, ***that***[~~the following~~]:

(a)[~~That~~] The information provided is true and accurate to the best of the applicant's knowledge;

(b)[~~That~~] The applicant is required to notify the Attorney General immediately of any change in the information required by this section and that KRS 367.97504(2) governs when a new license application form is required to be filed;

(c)[~~That~~] The applicant is not insolvent, has not conducted business in a fraudulent manner, and is duly authorized to do business in the state;

(d)[~~That~~] The applicant is in a position to commence operating a crematory and that all relevant state and local permits required have been issued;

(e)[~~That no~~] Final judgment or conviction for any crime involving moral turpitude has ***not*** been entered against the applicant;

(f)[~~That~~] The license may be denied pursuant to KRS 367.97504, and may be denied, suspended, or revoked pursuant to KRS 367.97534;

(g)[~~That~~] The applicant understands that, pursuant to KRS 367.97504(2), changes in the persons, firm, partnership, ownership, association, or corporate structure as originally named in the application render the license, if granted, void, and that the crematory authority shall file a new application before the changes shall be official; and

(h)[~~That~~] The applicant is authorized to complete the application on behalf of the applicant crematory; and

(18) A dated and notarized signature of the person making the application on behalf of the crematory, and that person's title or position held.

Section 6. Required Records of the Crematory Authority. The records maintained by the crematory authority required by KRS 367.97504(5) shall include[~~the following~~]:

(1) For all cremations occurring within the last ten (10) years:

(a) A copy of the completed Cremation Authorization, Form CR-1 and, if applicable, the Preneed Cremation Authorization, Form CR-3 completed and executed prior to July 15, 2016, which was the effective date of the amendments to KRS 367.97501 and 367.97527, which phased out the Preneed Cremation Authorization, Form CR-3; or

(b) The Funeral Planning Declaration, Form FPD-1 as incorporated by reference in 40 KAR 2:145;

(2) A copy of the identification required to be attached to the outside of the cremation container by KRS 367.97507(2) and 367.97514(2); and

(3) A copy of any stainless steel identification tag that is placed with the human remains prior to cremation, is subjected to the cremation process with the human remains, survives the cremation process, and is left with the cremated remains after the cremation process is complete.

Section 7. Inspection of Crematory Authorities. An inspection of the crematory authority and its records, as required by KRS 367.97504(5), shall include annual, unannounced inspections of all crematory authority facilities and records and may include:

(1) An inspection of the crematory authority to determine if it is in active operation or is in a position to commence operation;

(2) An inspection of the retort for proper operation;

(3) An inspection of the crematory authority facility to determine if it is secure from unauthorized access;

(4) An inspection of the crematory authority facility to determine if the crematory authority license is displayed in a conspicuous place;

(5) An inspection of the refrigerated holding facility used for holding human remains to determine if it is secure from unauthorized access and functioning properly; and

(6) An inspection of crematory records for all cremations occurring within ten (10) years of the date of the inspection, including all information required to be kept by KRS 367.97504(5) and this administrative regulation.

Section 8. Inspection Completion Certificate. Each crematory authority that successfully passes an annual inspection shall receive an Inspection Completion Certificate, which shall contain[~~the following~~]:

(1) The name of the crematory authority;

(2) The address of the crematory authority, including city, state, and zip code;

(3) A certified statement that an inspection has been performed by the Kentucky Attorney General's Office;

(4) The date on which the inspection was performed; and

(5) The signature of an authorized representative of the Attorney General's Office.

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

(a) "Cremation Authorization", Form CR-1, 04-17[~~10-16~~];

(b) "Crematory Annual Report", Form CR-2, 11-02;

(c) "Preneed Cremation Authorization", Form CR-3, 11-02;

(d) "Statement of Supervision for Registered Crematory Retort Operators", Form CR-4, 11-02; and

(e) "Crematory Authority License Application", Form CR-5, 07-16.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ANDY BESHEAR, Attorney General

APPROVED BY AGENCY: April 12, 2017

FILED WITH LRC: April 13, 2017 at 1 p.m.

CONTACT PERSON: Kevin R. Winstead, Assistant Attorney General, Kentucky Attorney General's Office of Consumer Protection, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601 phone (502) 696-5389 fax (502) 573-8317, email kevin.winstead@ky.gov.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, June 13, 2017)

201 KAR 2:074. Pharmacy services in hospitals or other organized health care facilities.

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121

STATUTORY AUTHORITY: 315.002, 315.005, KRS 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and requires the board to ***ensure[~~insure~~]*** the safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in hospitals or other organized health care facilities.

Section 1. Definitions. (1) "Automated pharmacy system" means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information and shall be either:

(a) A decentralized automated pharmacy system that is located outside the pharmacy department, but within the same institution, and under the supervision of a pharmacist; or

(b) A centralized automated pharmacy system from which medications are prepared for final distribution that require the approval of a pharmacist.

(2) "Institutional pharmacy" means:[~~that portion of an acute care hospital licensed pursuant to 902 KAR 20:016 or a pharmacy serving an other organized health care facility engaged in the manufacture, production, sale, or distribution of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, or disease.~~]

(a) ***A*** pharmacy in an acute care hospital licensed pursuant to 902 KAR 20:016;

(b) A pharmacy serving an other organized health care facility; or

(c) An onsite pharmacy serving an infusion center where medication is administered.

(3) "Investigational drug" means a drug that has not been approved for use in the United States, but for which an investigational drug application has been approved by the FDA.

(4) "Other organized health care facility" means a facility:

(a) With a primary purpose to provide medical care and treatment to inpatients; and

(b) That is:

1. An intermediate care facility;
2. A skilled nursing facility;
3. A hospital other than an acute care hospital licensed pursuant to 902 KAR 20:016;
4. A licensed personal care home;
5. A licensed family care home;
6. A nursing home;
7. A nursing facility;
8. An intermediate care facility for mental retardation; or
9. An Alzheimer's nursing home.

(5) "Unit dose distribution" means a system in which drug therapy profiles are maintained in the pharmacy and doses are scheduled, prepared, and delivered in a ready-to-administer form to the patient care area as the doses are needed.

Section 2. Pharmacy Administration. (1) General.

(a) The pharmacy, organized as a separate department or service, shall be directed by a pharmacist, who shall be thoroughly knowledgeable about institutional pharmacy practice and management.

(b) The director of pharmacy services shall be responsible for departmental management and the development and implementation of goals and objectives to meet the needs of the institution and shall be responsible to the chief executive officer of the institution or the chief executive officer's designee.

(c) If the director of pharmacy services is not employed full time, the institution shall establish an ongoing arrangement in writing with a pharmacist to provide services required by this administrative regulation and KRS 315.020(1).

(d) If a hospital pharmacy is decentralized, each decentralized section or separate organizational element shall be under the immediate supervision of a pharmacist responsible to the director of pharmacy services.

(2) Pharmacy personnel.

(a) The institutional pharmacy shall maintain additional pharmacists in cooperation with the institution's administration, either full time or part time, as required to operate safely and effectively to meet the needs of the patients.

(b) If nonpharmacist personnel are employed, nonpharmacist personnel shall perform all duties under the supervision of a pharmacist and shall not be assigned and shall not perform duties that are to be performed only by a pharmacist.

(3) Responsibilities.

(a)1. Lines of authority and areas of responsibility within the pharmacy shall be clearly defined.

2. Written job descriptions for all categories of pharmacy personnel shall be prepared and revised as necessary.

(b)1. There shall be policies and procedures to provide for selection of drugs as well as a distribution system to serve the needs of the patient.

2. Provision for procurement of drugs in an emergency situation shall be provided for.

(4) Supportive personnel.

(a) Sufficient supportive personnel (technical, clerical, and other) shall be available in order to optimize the participation of pharmacists in activities requiring professional judgment.

(b) The training and supervision of supportive personnel shall be the responsibility of the pharmacist.

(5) Availability.

(a) The services of a pharmacist shall be available continuously. If around-the-clock operation of the pharmacy is not feasible, the pharmacist shall be available on an on-call basis, and an adequate night drug cabinet shall be established. The pharmacy itself shall not be designated as the night drug cabinet.

(b) A hospital not having a full-time pharmacist, but in which drugs are prepackaged or relabeled or transferred from one (1) container to another, shall obtain a pharmacy permit and have at least a part-time pharmacist designated to perform those functions or to provide personal supervision of those functions.

Section 3. Physical Facility. (1) The institutional pharmacy shall have adequate space, equipment, and supplies sufficient to provide for safe and efficient drug storage, preparation, and distribution, patient education and consultation, drug information services, and proper management of the department.

(2) Legal requirements. The physical facility shall meet state and federal regulations and shall be accessible by authorized

pharmacy personnel only.

(3)(a) A currently licensed hospital shall be exempt from the provisions of subsection (2) of this section if it:

1. Is authorized by the Department for Health and Human Services to provide pharmacy services; and

2. Does not currently possess a pharmacy permit.

(b) A currently licensed hospital exempt from the provisions of subsection (2) of this section shall permit access by authorized personnel only.

(4) Location. Locked storage or locked medication carts shall be provided for use in each nursing unit or service area.

(5) Reference materials. The pharmacy shall have current pharmaceutical reference materials in accordance with 201 KAR 2:090. References related to the following subjects shall also be available:

(a) Drug identification;

(b) Toxicology;

(c) Drug interactions;

(d) Parenteral drug compatibility; and

(e) Microbiology.

Section 4. Drug Distribution and Control. (1) General. The institutional pharmacy shall be responsible for the procurement, distribution, and control of all drugs and parenteral solutions used within the institution. Policies and procedures governing these functions shall be developed by the pharmacist with input from other involved hospital, infusion center, or other organized health care facility staff (for example, nurses) and committees (for example, pharmacy and therapeutics committee and patient care committee).

(2) Dispensing. The pharmacist shall dispense medications only on the order of a licensed medical practitioner.

(3) Prescriber's order. The pharmacist shall review the medication order***[within a reasonable amount of time]***.

(4) Recordkeeping. The pharmacist shall maintain appropriate records of each medication order. The records shall be retained for the time and in the manner prescribed by state and federal law.

(5) Patient medication profile. A medication profile shall be maintained for all inpatients and for those ambulatory patients routinely receiving care at the institution. The pharmacist shall utilize this profile to properly review, schedule, prepare, and distribute medications except in an emergency situation.

(6) Labeling and packaging.

(a) Each licensee shall comply with U.S.P. Standards established pursuant to federal law and all state and federal laws and regulations regarding labeling and packaging.

(b) Labeling and packaging of medications used for outpatients shall meet the requirements of state and federal law.

(7) Dispensing. The pharmacist shall dispense medications by the unit dose distribution system if feasible. If the unit dose distribution system is not utilized, adequate safeguards shall be in place to protect patients.

(8) Stop orders. There shall be established written stop order policies or other methods of assuring that drug orders are not continued inappropriately in accordance with the status of the patient.

(9) Administration.

(a) Drugs shall be administered only upon order of a licensed medical practitioner.

(b) The institutional pharmacy shall participate in the establishment of policies and procedures regarding the administration of medications. Specific procedures shall be developed in cooperation with appropriate hospital, infusion center, or other health care facility personnel and shall include personnel authorized to schedule, prepare, and administer medications.

(10)(a) Unused medication. The institutional pharmacy shall establish policies and procedures for the disposition of patients' unused medications.

(b) Medication in unit dose form may be reissued if package integrity has been maintained and the product has not expired.

(11) Hospital floor stocks.

(a) Floor stocks of drugs shall be kept as small as possible. The pharmacist in charge shall be responsible for authenticating the need for floor stock.

(b) A pharmacist shall review all orders distributed through floor stock***[within a reasonable amount of time]***.

(c) The pharmacist in charge shall be responsible for defining those areas of the hospital requiring floor stock (for example, emergency room, surgery, critical care, or medical or surgical wards).

(d) All drug storage areas within the hospital shall be routinely inspected by pharmacy personnel at least monthly, and documentation shall be maintained to ensure that:

1. Unusable items shall not be present; and

2. All stock items shall be properly labeled and stored.

(e) This subsection shall not apply to other organized health care facilities.

(f) This subsection shall apply to infusion centers where medications are administered with an onsite pharmacy.

(12) Drug recall. There shall be a system for removing from use a drug that has been recalled.

(13) Sample medications. The institutional pharmacy shall establish policies and procedures regarding medical representatives and the obtaining, storage, and dispensing of complimentary packages of medications.

(14) Emergency drugs.

(a) The institutional pharmacy shall establish policies and procedures for supplying emergency drugs.

(b) For expediency and efficiency, emergency drugs shall be limited in number to include only those whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of sudden and unforeseen patient emergencies.

(c) Emergency stocks shall be routinely inspected by pharmacy personnel on a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels.

(15) Investigational drugs.

(a) Policies and procedures controlling the use of investigational drugs (if used in the institution) shall be developed and followed.

(b) The pharmacy shall be responsible for storing, packaging, labeling, distributing, maintaining inventory records (including lot numbers and expiration date), and providing information about investigational drugs (including proper disposal).

(16) Controlled substances. All permit holders shall comply with state and federal laws regarding controlled substances.

Section 5. Assuring Rational Drug Therapy. (1) Appropriate clinical information about patients shall be available and accessible to the pharmacist for use in daily practice activities.

(2) The pharmacist shall be a member of the pharmacy and therapeutics committee and any other committees where input concerning the use of drugs is required.

(3) The pharmacist shall provide a means to ensure that patients receive adequate information about the drugs they receive. Patient education activities shall be in coordination with the nursing and medical staffs and patient education department, if any.

Section 6. Responsibility. The pharmacist-in-charge of a pharmacy utilizing an automated pharmacy system shall be responsible for:

(1) An initial validation of system accuracy prior to use for distribution to patients;

(2) Ensuring the system:

(a) Is properly maintained;

(b) Is in good working order;

(c) Accurately dispenses the correct strength, dosage form, and quantity of drug prescribed; and

(d) Complies with the recordkeeping, access, and security safeguards pursuant to all applicable state and federal laws;

(3) Assuring medications are reviewed prior to loading into an automated pharmacy system and distribution;

(4) Implementing an ongoing quality assurance program that monitors performance of the pharmacy compounding robotics,

which is evidenced by written policies and procedures and requires a continued documented validation of doses distributed on a routine basis and annual review of the quality assurance program;

(5) Establishing policies and procedures if there is a system failure of an automated pharmacy system;

(6) Providing the board with prior written notice of installation or removal of an automated pharmacy system. This notification shall include the:

(a) Name and address of the pharmacy; and

(b) Initial location of the automated pharmacy system;

(7) Oversight for assigning, discontinuing, or changing personnel access to the system, including establishment of written policies and procedures for security and control;

(8) Reviewing personnel access on at least an annual basis;

(9) Assuring that the decentralized automated pharmacy system stock is checked at least monthly in accordance with established policies and procedures, including checking for:

(a) Accuracy;

(b) Integrity of packaging; and

(c) Expiration dates;

(10) Maintaining in the pharmacy the following documentation relating to an automated pharmacy system:

(a) The name and address of the pharmacy or inpatient health care facility where the system is being used;

(b) The automated pharmacy system manufacturer's name, model, serial number, and software version;

(c) A description of how the system is used;

(d) Written quality assurance procedures and accompanying documentation of use to determine continued appropriate use of the system as established in subsections (7) and (8) of this section; and

(e) Written policies and procedures for system operation, safety, security, accuracy, emergency medication access, access, and malfunction which includes clearly defined down time and procedures; and

(11) Maintaining adequate security systems and procedures, evidenced by written policies and procedures to:

(a) Prevent unauthorized access;

(b) Maintain patient confidentiality;

(c) Allow user access modification; and

(d) Comply with federal and state laws.

Section 7. Standards. (1)(a) All events involving the contents of the automated pharmacy system shall be recorded electronically.

(b) Records shall be maintained by the pharmacy and be available to the board and shall include the following:

1. The date, time, and location of the system accessed;

2. Identification of the individual accessing the system;

3. Type of transaction;

4. Name, strength, dosage form, and quantity of drug accessed; and

5. Name of the patient for whom the drug was ordered, if applicable.

(2) All medications to be stocked into the centralized automated pharmacy system shall have been previously validated for bar code accuracy by a pharmacist, pharmacist intern, or certified pharmacy technician. Integrity and accuracy shall be validated by a pharmacist.

(3) The stocking of medications in a decentralized automated pharmacy system utilizing bar code technology shall be done by a pharmacist, pharmacist intern, or a certified pharmacy technician.

(4) The stocking of medications in a decentralized automated pharmacy system without bar code technology shall be done by a pharmacist, pharmacist intern, or a certified pharmacy technician. Integrity and accuracy shall be validated by a pharmacist.

(5) If a hospital licensed pursuant to 902 KAR 20:016 utilizes technology that validates appropriate drug, dose, dosage form, route of administration, time of administration, and patient at the exact time of medication administration, the stocking of the decentralized automated pharmacy system shall be done by a pharmacist, pharmacist intern, or certified pharmacy technician.

(6) A record of medications stocked in an automated pharmacy system shall be maintained for at least five (5) years and shall include:

(a) The name of the person repacking the medications; and

(b) Documentation of the pharmacist checking the medications.

(7) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws.

(8) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, in accordance with federal and state laws.

(9) All medications initially received in the pharmacy for use in an automated pharmacy system shall be quarantined until validation of bar code accuracy and existence of the item in the database powering automated pharmacy system by a certified pharmacy technician, pharmacist intern, or pharmacist.

(10) If a medication needs to be repackaged:

(a) A pharmacist, pharmacist intern, or certified pharmacy technician shall:

1. Perform the repackaging and validate the presence of an accurate bar code on the unit dose packaging; and

2. Document the repackaging process including:

a. Manufacturer;

b. Date and time of repackaging;

c. The person repackaging;

d. The lot number or batch number;

e. The expiration date; and

f. The quantity repackaged; and

(b) A pharmacist shall:

1. Validate for accuracy and integrity prior to the addition to the automated pharmacy system; and

2. Document the validation including:

a. The date and time of the validation;

b. The name of the pharmacist validating;

c. The lot number or batch number;

d. The expiration date; and

e. The quantity validated.

(11) A medication returned to the pharmacy from a patient care area shall follow the processes established pursuant to Section 4(10) of this administrative regulation.

(12) A medication distributed by the centralized automated pharmacy system shall be distributed in the delivery device utilized by that system.

(13) A medication distributed by an automated pharmacy system shall be accessed and administered by a professional licensed to administer medications.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: March 8, 2017

FILED WITH LRC: March 14, 2017 at 4 p.m.

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GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, June 13, 2017)

201 KAR 22:070. Requirements for foreign-educated physical therapists.

RELATES TO: KRS 327.050, 327.060

STATUTORY AUTHORITY: KRS 327.040(1), (11), 327.060(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the Board of Physical Therapy to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.060(3) authorizes the board to approve services to provide an evaluation of a foreign-educated physical therapist applicant's educational credentials. This administrative regulation establishes the requirements a foreign-educated physical therapist shall satisfy to become credentialed in the state of Kentucky.

Section 1. A foreign-educated physical therapist applicant shall be credentialed if the applicant:

(1) Complies with the requirements of KRS 327.060(1)(b); and

(2) In accordance with KRS 327.060(1)(b), meets the following requirements:

(a) Furnishes the board a favorable educational credentials evaluation report from a credentialing agency that uses the appropriate edition of the "Coursework Evaluation Tool" (CWT) copyrighted by the Federation of State Boards of Physical Therapy (FSBPT). An academic deficiency in general education coursework identified by the CWT shall be satisfied by the applicant through submission of evidence identifying one (1) of the following:

1. Completion of appropriate coursework at a regionally accredited academic institution:

2. Continuing education in a course approved by the board; or

3. Submission of a portfolio including a detailed resume and description of relevant work experience approved by the board;

(b) Shows proof of English Language Proficiency:

1. A score of not less than fifty (50) on the Test of Spoken English (TSE);

2. Verification that the applicant has achieved the following minimum scores for each category of the Test of English as a Foreign Language, TOEFLE Internet-based test (TOEFL iBT): Writing, twenty-two[~~four~~] (22)(~~24~~), Speaking, twenty-four[~~six~~] (24)(~~26~~), Listening, twenty-one (21)[~~eighteen (18)~~], Reading, twenty-two[~~one~~] (22)[(~~21~~)]; with an overall score of not less than eighty-nine (89); or

3. Verification that English is the native language of the country of origin.

(c) Submits a satisfactorily-completed application and appropriate fee as required by 201 KAR 22:135;

(d) Completes the Jurisprudence Exam;

(e) Obtains a passing score on the National Physical Therapy Examination (NPTE). The requirements of 201 KAR 22:020, Section 2(3)***[and (4)]*** shall be applicable to examination candidates; and

(f) Has successfully completed a minimum of three (3) months and no more than six (6) months of practice under the on-site supervision of a physical therapist credentialed under KRS Chapter 327 at a Kentucky facility previously approved by the board which satisfies the following requirements:

1. The supervised practice shall be a minimum of 390 hours in a three (3) month period, in a facility which is serving as a clinical education site for students enrolled in a program in physical therapist education accredited by the Commission for Accreditation of Physical Therapy Education (CAPTE);

2. The applicant shall furnish the board a favorable evaluation of on-site supervision performed by a clinical supervisor who utilizes the "Performance Evaluation Tool for Foreign Educated Therapists Completing a Supervised Clinical Practice in the United States" copyrighted by FSBPT[~~work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no ones (1.0) or twos (2.0) on a four (4.0) point scale has been achieved utilizing the Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing~~]. The clinical supervisor shall submit the evaluation to the board after three (3) months of practice, and if required, after the sixth month, when the required score denoting clinical competency shall have been reached;

3. The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of a CAPTE accredited program; and

4. The supervisor shall countersign all of the candidate's physical therapy records within fourteen (14) days.

Section 2. Temporary Permits for Foreign-educated Physical Therapist Applicants. (1) An applicant who has not satisfactorily completed three (3) months of supervised practice as a physical therapist shall be issued a temporary permit to complete Section 1(2)(f) of this administrative regulation if the applicant has:

(a) Completed the requirements of Section 1(2)(a) through (e) of this administrative regulation; and

(b) Submitted an approved***["]***Supervisory Agreement for Physical Therapists Educated in a Foreign Country***["]***.

(2) The temporary permit shall be revoked if the applicant has not satisfactorily completed the supervised practice within a six (6) month period.

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

(a)["~~Evaluation Form to Assess Physical Therapy Skills of Foreign Educated Applicant for Credentialing", August, 2011; and~~

~~(b)~~] "Supervisory Agreement for Physical Therapists Educated in a Foreign Country", February, 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT D. MAJORS, Executive Director

APPROVED BY AGENCY: April 7, 2017

FILED WITH LRC: April 12, 2017 at 2 p.m.

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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:125. Health service provider designation.

RELATES TO: KRS 319.050***[(7)]***

STATUTORY AUTHORITY: KRS 319.032(2), 319.050(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(7) requires that the designation of "health service provider" shall be required[~~granted~~] for a licensed psychologist who supervises a psychological health care service. ***KRS 319.032(2) authorizes the board to promulgate administrative regulations necessary to administer KRS Chapter 319.*** This administrative regulation establishes the requirements for the granting of that designation.

Section 1. (1) The designation "health service provider" shall refer to a licensed psychologist***[defined in KRS 319.050(7)]*** who is authorized ***under KRS 319.050(7) and this administrative regulation*** to supervise a certified psychologist, temporarily licensed psychologist, licensed psychological associate, or a graduate-level psychology student[~~, intern, or resident pursuing a course of graduate study in psychology~~] in providing[~~delivering~~] psychological health care services.

(2)***(a) Except as provided by paragraph (b) of this subsection,*** a licensed psychologist who does not have the designation "health service provider" shall not supervise psychological health care services.

(b) A temporarily licensed psychologist or a licensed psychologist may provide concurrent supervision to graduate students while under supervision of a psychologist with a health service provider designation.

Section 2. Psychological health care services shall include delivery of diagnosis, assessment, psychotherapy, treatment, or other therapeutic services to individuals, couples, families, or groups whose growth, adjustment, or functioning is impaired or who otherwise seek psychological health care services.

Section 3. ***(1)*** A health service provider shall be a licensed psychologist who has completed appropriate training and supervised experience in psychological health service delivery at

the doctoral level. The training and experience may occur in a variety of psychological health care delivery sites***. The training and supervised experience shall include:***

(a) 1,800 hours of supervised experience as established in subsection (2) of this section; or

(b) Certification as established in subsection (3) of this section.

(2) 1,800 Hours of Supervised Experience. (a) The 1,800 hours of supervised experience shall be within one (1) or more health care settings in which the licensed psychologist delivered direct psychological health care services, pursuant to Section 2 of this administrative regulation, in addition to the 3,600 supervised experience hours required for licensure as a licensed psychologist under 201 KAR 26:190.

(b) The supervision shall be provided by a licensed psychologist with the health service provider designation approved by the board and shall consist of one (1) hour of individual supervision each week.

(3) Certification. The licensed psychologist shall:

(a)1. Hold a Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization;

2. Be board-certified by the American Board of Professional Psychology (ABPP) or a successor organization; or

3. Hold a Certificate from the National Register of Health Service Providers in Psychology or a successor organization;

(b) Have a minimum equivalent of five (5) years of full time practice at the independent practice level; and

(c) Have had no disciplinary action taken by a licensure board or on record in the ASPPB data base.[~~and:~~

~~(1) Shall include~~][, in addition to the supervised experience required for licensure as a licensed psychologist,] ***[~~1,800 hours of supervised experience within one (1) or more health care settings in which the provider delivered direct psychological health care services, pursuant to Section 2 of this administrative regulation, in addition to the 3,600 supervised experience hours required for licensure as a licensed psychologist under 201 KAR 26:190. Supervision shall be provided by a licensed psychologist with the health service provider designation approved by the board and shall consist of one (1) hour of individual supervision each week; or~~***

~~(2) The licensed psychologist holds the Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization, or is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization, or the licensed psychologist 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 practice level and has had no disciplinary action taken by a licensure board or on record in the ASPPB data base.~~][~~Section 4. A licensed psychologist who does not have the designation "health service provider" shall not supervise psychological health care services.~~

~~Section 5. In addition to completion of a doctoral training program in an area of psychological health service delivery, a candidate for health service provider designation shall complete all supervised experience requirements in a health care setting as established in this administrative regulation, consistent with the requirements of 201 KAR 26:190~~]***[~~.~~]***

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

APPROVED BY AGENCY: March 15, 2017

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

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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:130. Grievance[~~Complaint~~] procedure.

RELATES TO: KRS 319.005, ***319.032,*** 319.082, 319.118, 319.990

STATUTORY AUTHORITY: KRS 319.032(1)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(k) requires the board to promulgate ***administrative*** regulations that ***establish[~~establishes~~]*** the procedure for investigating complaints or suspected violations of ***KRS Chapter 319[~~this chapter~~]*** and notifying proper law enforcement authorities. KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology or using the title of psychologist, licensed psychologist, certified psychologist, licensed psychological practitioner or licensed psychological associate. KRS 319.082 delineates the causes for which disciplinary action may be taken against a ***credential[~~licensed~~]*** holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to develop guidelines for use in complaints involving alleged sexual misconduct by a licensed holder, and for training of investigators in these matters. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of complaints.

Section 1. Definitions. (1)***[~~"Act" means Chapter 319 of the Kentucky Revised Statutes.~~***

(2)] "Administrative complaint" means a formal administrative pleading authorized by the board that sets forth charges against a ***credential[~~licensed~~]*** holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(2)[~~(3)~~] "Board" is defined in KRS 319.010(2), and for purposes of this administrative regulation, shall also refer to a hearing panel.

(3)[~~(4)~~][~~(3)~~] "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or ***201 KAR Chapter 26[~~the administrative regulations promulgated thereunder~~]***.

[~~(4) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth charges against a licensed holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.~~]

(4)[~~(5)~~] "Grievance[~~Initiating complaint~~]" means any allegation alleging misconduct by a licensed holder or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.

(5)[~~(6)~~] "Order" means the whole or any part of a final disposition of a hearing.

(6)[~~(7)~~] "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(7)[~~(8) "Presiding officer" means the person appointed by the board to preside at a hearing pursuant to KRS 319.032(1)(h), and shall include either a hearing officer or a member of the hearing panel.~~

(9)] "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Grievance[~~Initiating Complaint~~]. (1) Source of grievance[~~initiating complaint~~]. A grievance[~~complaint~~] may be initiated by the board, by the public**,** or by any governmental agency. A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid ***grievance[~~complaint~~]***.

(2) Form of a grievance[~~initiating complaint~~]. A grievance[~~initiating complaints~~] shall be in writing and shall clearly identify the person against whom the ***grievance[~~complaint~~]*** is being made. Further, the grievance [~~complaint~~] shall contain the

date, and shall identify by signature the person making the grievance[~~complaint~~], and shall contain a clear and concise statement of the facts giving rise to the grievance[~~complaint~~].

(3) Receipt of a grievance[~~initiating complaint~~]. A grievance [~~complaint~~] may be received by any board member, credential holder designated by the board, by the Office of the Attorney General, or by any staff member.

(4) Response[~~Reply~~] of respondent. A copy of the grievance [~~initiating complaint~~] shall be mailed to the respondent. The respondent shall file with the board a written response to the ***grievance[~~initiating complaint~~]*** within fifteen (15) days of the date on which the grievance[~~initiating complaint~~] was mailed.

(5) Consideration of a grievance[~~initiating complaint~~]. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or a panel of the board shall review the grievance[~~initiating complaint~~]and response. At that time, the board shall determine if an investigation is warranted, and if so, the board may appoint one (1) of its members or any agent or representative of the board to conduct an investigation of the grievance[~~complaint~~].

(6)[~~(a) If there is reasonable cause to believe that a license holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the license holder or applicant to submit to an examination by a psychologist or a physician designated by the board to determine the license holder's or applicant's psychological or physical status to practice psychology.~~

~~(b) The expense of this examination shall be borne by the board.~~

~~(c) The board shall then consider the findings and conclusion of the examination and the final investigative report at its next regularly-scheduled meeting or soon thereafter.~~

~~(7)~~] Investigation.

(a) The person about whom the grievance[~~initiating complaint~~] has been considered shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time he or she may respond further to the allegations of the grievance[~~initiating complaint~~]. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of grievance[~~complaint~~] and investigative report.

1. The board shall determine if there has been a prima facie violation of KRS 319.082 based on consideration of the:

a. Grievance;

b. Investigative report, if an investigation was warranted under subsection (5) of this section; and

c. Psychological or physical examination, if one was ordered under Section 6 of this administrative regulation.

2. If the investigator is a member of the board, the member shall not vote.

3. If it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the board shall notify the person making the grievance and the respondent that no further action shall be taken at the present time.

4. If it is determined that there is a prima facie violation, the board shall:

a. Issue an administrative complaint against the credential holder or applicant; and

b. File suit to enjoin the violator or seek criminal prosecution pursuant to KRS 319.990.[~~Based on consideration of the grievance~~][complaint]***[~~, the investigative report, if any, and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act. If the investigator is a member of the board, he or she shall not vote. If it is determined that the facts alleged in the grievance~~]***[complaint]***[~~or investigative report do not constitute a prima facie violation of the statute or administrative regulations, the board shall notify the person making the grievance~~]***[complaint]***[~~and the respondent that no further action shall be taken at the present time. If it is determined that there is a prima facie violation of KRS 319.082 or administrative regulations, the board shall issue an administrative~~]***[a formal]***[~~complaint against the license holder or applicant. In the case of a prima facie violation of KRS 319.005, the board shall file suit to enjoin the violator or shall seek criminal prosecution pursuant to KRS 319.990.~~]***

Section 3. Administrative[~~Formal~~] Complaint. If the board determines that the grievance[~~initiating complaint~~] shall be made ***an administrative[~~a formal~~]*** complaint, the***[~~following~~]*** actions ***listed in this section*** shall be initiated***[~~:~~]***

(1) Issuance of administrative[~~formal~~] complaint. The board shall provide the respondent with a written administrative[~~formal~~] complaint which shall set forth:

(a) Each offense charged;

(b) Notice of the respondent's right to be represented by counsel;

(c) Notice of the respondent's right to subpoena witnesses in the respondent's behalf; and

(d) Notice of the respondent's right to appeal after an adverse adjudication.

(2) Service of administrative[~~formal~~] complaint. Service of process shall be provided in accordance with KRS 13B.050(2).

(3) Issuance of hearing notice. Notice of the hearing shall be provided as required by KRS 13B.050(1) and (3).

Section 4. Administrative[~~Formal~~] Response. Within twenty (20) days of service of the formal complaint, the respondent shall file with the board a written response to the specific allegations set forth in the administrative[~~formal~~] complaint. Allegations not properly responded to shall be deemed admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Allegations of Sexual Misconduct by a License Holder. (1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism adopted by the board for identification.

(2) Upon request, the testimony of the alleged victim may be taken by deposition in order to assure his or her confidentiality.

(3) To protect the confidentiality of all parties, the board may issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.

(4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of the hearing procedures in closed session.

Section 6. Fitness for Duty Examination. (1) If there is reasonable cause to believe that a ***credential[~~license~~]*** holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the ***credential[~~license~~]*** holder or applicant to submit to an examination by a psychologist or other health care provider designated by the board to determine the ***credential[~~license~~]*** holder's or applicant's competence to practice psychology.

(2) The expense of this examination shall be borne by the board.

(3) The board shall then consider the findings and conclusion of the examination.

(4) A copy of the examination shall be mailed to the respondent. The respondent may file with the board a written response to the examination within fifteen (15) days of the date on which the findings and conclusion of the examination was mailed.

(5)***(a)*** Based on consideration of the psychological or physical examination, the board shall determine if there has been a prima facie violation of ***KRS 319.082.***

(b)[~~the Act.~~] If it is determined that the findings and conclusion of the examination do not constitute a prima facie violation of ***KRS 319.082[~~the statute or administrative regulations~~]***, the board

shall notify the person.

(c) If it is determined that there is a prima facie violation of KRS 319.082***[or administrative regulations]***, the board shall issue an administrative complaint against the ***credential[license]*** holder or applicant.

Section 7. Board Member Training for Cases of Sexual Misconduct. (1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(e).

(2) ***An[No]*** investigator shall ***not*** be assigned to cases where sexual misconduct has been alleged until ***the required[such]*** training has been completed.

(3) Training shall consist of a three (3) hour course which includes the content specified by KRS 319.032***(1)(e)*** and may be delivered by means of either live presentation, individual tutorial, or videotape.

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

APPROVED BY AGENCY: March 15, 2017

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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:140. Procedures for disciplinary hearings.

RELATES TO: KRS ***Chapter 13B,*** 319.092

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.092 mandates a hearing upon the filing of a grievance[complaint] alleging a violation of KRS Chapter 319 to be conducted in accordance with the provisions of KRS Chapter 13B. ***KRS 319.032(2) authorizes the board to promulgate administrative regulations necessary to administer KRS Chapter 319.*** This administrative regulation establishes procedures which supplement the provisions of KRS Chapter 13B.

Section 1. Composition of the Hearing Panel. (1) Disciplinary actions may[shall] be heard by a hearing panel consisting of either a [the] hearing officer and at least one (1) board member appointed by the board, or upon unanimous decision of the board, only by a hearing officer.

(2) A board member who has participated in the investigation of a grievance[an initiating complaint] or who has personal knowledge of the facts giving rise to the grievance[complaint] or for other reasons is unable to render a fair and impartial decision shall not sit as a member of the panel hearing that particular complaint.

(3) Separation of functions. ***A[No]*** member, officer, or employee of the board who is engaged in the performance of investigative or prosecutorial functions for the board in a particular case or a factually related case, shall ***not*** participate in or advise in the decision of the disciplinary action, except as a witness or counsel in the hearing.

Section 2. Right of Administrative Hearing from a Denial of ***Initial Licensure*** or Refusal to Renew, ***[or]*** Restore, or Reinstate a License. (1) The board shall issue written notice of the denial informing the applicant:

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

1. The statutory or regulatory violation; and

2. The factual basis on which the denial is based; and

(b) That the applicant may appeal the pending denial to the board within twenty (20) calendar days after receipt of this notification, excluding the day he or she receives notice.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

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

(4) The documentary evidence shall be limited to the application and supporting documents submitted to the board during the application process.

(5) A renewal applicant may petition the board, in writing, for a stay of the denial of the license until completion of the administrative hearing process.

Section 3. Revocation of Probation. (1) If the board moves to revoke probation, the board shall issue written notice of the revocation and inform the probationee:

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

(b) Of each probation term violated;

(c) Of the sanction to be imposed; and

(d) That the probationee may appeal the revocation to the board within twenty (20) calendar days of the date of notification of revocation***, excluding the day he or she receives notice***. The notification shall be sent to the last known address on file with the board for the ***credential[certificate]*** holder.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

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

Section 4. A request for an administrative hearing shall be sent to the Kentucky Board of Examiners of Psychology by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by hand-delivery to 911 Leawood Drive, Frankfort, Kentucky 40601.

Section 5. An administrative hearing shall be governed in accordance with KRS Chapter 13B.

Section 6. ***Hearing Fee.*** If the Final Order of the board is adverse to a ***credential holder[licensee]*** or applicant, ***[or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board, the costs in an amount equal to the cost of stenographic services, the cost of the hearing officer shall be assessed against the licensee or applicant, and the board's attorney fees. In a case of financial hardship, the board may waive all or part of the fee.***

Section 7. Hearing Fee. If the board finds against the respondent on any charge,] or if the hearing is scheduled at the request of a credential holder or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 319, a hearing fee in an amount equal to the costs of stenographic services***,[and]*** the costs of the services of a hearing officer, if any, ***and the board's attorney fees*** shall be assessed against the respondent. In case of financial hardship, the board may waive all or part of the fee.

Section ***7[8]***.[Section 3.] Notification of Action Taken. A public notification[press release] describing all final disciplinary actions taken by the board to suspend, revoke, or refuse to issue or renew a license, restrict, or place a credential holder on probation shall be provided as mandated by ***KRS 319.092(6)[federal law]***, and to the Association for State and Provincial Psychology Boards for publication in their data base[, and at least to the newspapers with the largest circulation in Louisville, Lexington, Frankfort, the city of business of the respondent and to the AP wire service. Nothing in this administrative regulation shall be construed to limit KRS

~~319.092(5)~~].

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.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:145. Code of conduct.

RELATES TO: KRS ***202A.400, 209A.030,*** 319.032, 319.082***, 422.317, 620.030, 645.270***
STATUTORY AUTHORITY: KRS 319.032(1)(c)***, (2)***
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(c) requires the board to ***promulgate administrative regulations to*** establish requirements for disciplining a credential holder of this board, whether a licensed psychologist, certified psychologist, certified psychologist with autonomous functioning, licensed psychological practitioner, licensed psychological associate, an applicant***,*** or a holder of a temporary license. This administrative regulation establishes a code of conduct for a person practicing psychology.

Section 1. Definitions. (1) "Client" means a person who meets the requirements established in Section ***3[2]*** of this administrative regulation.
(2) "Confidential information" means information revealed by a client or clients or otherwise obtained by a credential holder in a professional relationship
(3) "Court order" means the written or oral communication of a member of the judiciary, or other court magistrate or administrator, if the authority has been lawfully delegated to the magistrate or administrator.
(4) "Credential holder" is defined by KRS 319.010(3).
(5) "Professional relationship" means a mutually agreed upon relationship between a credential holder and a client for the purpose of the client obtaining the credential holder's professional expertise.
(6) "Professional service" means all actions of the credential holder in the context of a professional relationship with a client.
(7) "Supervisee" means a person who functions under the extended authority of the credential holder to provide psychological services.

Section 2. Responsibility to Clients. (1) A credential holder shall promote the well-being of a client and, if required by ***KRS 202A.400 or 645.270[law]***, the safety and well-being of an individual whose life might be affected by the client's behavior or circumstance.
(2) A credential holder shall not verbally abuse or harass or physically threaten or assault a client, supervisee, board member, or agent of the board.

Section 3. Client Requirements. (1) Identification of a client. A client shall be a person who receives:
(a) An evaluation, assessment, or psychological testing;
(b) Other professional psychological services for the treatment or amelioration of an emotional, mental, nervous, addictive or behavioral disorder or distress, or a mental health condition; or
(c) Psychological consultation in the context of a professional relationship.
(2) A corporate entity or other organization shall be considered the client if the professional contract is to provide a psychological service of benefit to the corporate entity or organization.
(3) A legal guardian of a minor or legally incompetent adult shall be considered the client for a decision-making purposes.
(4) A person identified as a client pursuant to subsections (1)-(3) of this section shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to the person.

Section 4.[~~3.~~] Competence. (1) Limits on practice. The credential holder shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.
(2) Maintaining competency. The credential holder shall maintain current competency in the areas in which he or she practices, through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge.
(3) Adding new services and techniques. The credential holder, if developing competency in a service or technique that is new either to the credential holder or new to the profession, shall engage in ongoing consultation with other psychologists or relevant professionals and shall obtain appropriate education and training. The credential holder shall inform a client of the innovative nature and the known risks associated with the service, so that the client can exercise freedom of choice concerning the service.
(4) Referral. The credential holder shall make or recommend referral to other professional, technical, or administrative resources if a referral is clearly in the best interests of the client.
(5) Sufficient professional information. A credential holder rendering a formal professional opinion in a report, letter, or testimony about a person shall not do so without direct and substantial professional contact with or a formal assessment of that person.
(6) Maintenance and retention of records.
(a) The credential holder rendering professional services to an individual client, or services billed to a third-party payor, shall maintain professional records that include:
1. The presenting problem, purpose***,*** or diagnosis;
2. The fee arrangement;
3. The date and substance of each professional contact or service;
4. Test results or other evaluative results obtained and the basic test data from which the results were derived;
5. Notation and results of a formal consult with another provider; and
6. A copy of all test or other evaluative reports prepared as part of the professional relationship.
(b) The credential holder shall ensure that all records are maintained for a period of not less than six (6) years after the last date that services were rendered.
(c) The credential holder shall store and dispose of written, electronic***,*** and other records in a manner which shall ensure their confidentiality.
(d) For each person supervised pursuant to KRS Chapter 319, the credential holder shall maintain for a period of not less than six
(6) years after the last date of supervision a record of each supervisory session that shall include the type, place, date, and general content of the session.
(7) Continuity of care. The credential holder shall make arrangements for another appropriate professional or professionals to provide for an emergency need of a client, as appropriate, during a period of his or her foreseeable absence from professional availability.

Section 5.[~~4.~~] Impaired Objectivity and Dual Relationships. (1) Impaired credential holder.
(a) The credential holder shall not undertake or continue a professional relationship with a client if the objectivity or competency of the credential holder is impaired due to a mental, emotional, physiologic, pharmacologic, or substance abuse condition.
(b) If an impairment develops after a professional relationship has been initiated, the credential holder shall:
1. Terminate the relationship in an appropriate manner;
2. Notify the client in writing of the termination; and

3. Assist the client in obtaining services from another professional.

(2) Prohibited dual relationships.

(a) The credential holder shall not undertake or continue a professional relationship with a client if the objectivity or competency of the credential holder is impaired because of the credential holder's present or previous familial, social, sexual, emotional, financial, supervisory, administrative, or legal relationship with the client or a relevant person associated with or related to the client.

(b) The credential holder, in interacting with a client, shall not:

1. Engage in verbal or physical behavior toward the client which is sexually seductive, demeaning, or harassing;

2. Engage in sexual intercourse or other physical intimacy with the client; or

3. Enter into a potentially exploitative relationship with the client.

(c) The prohibitions established in paragraph (b) of this subsection shall extend indefinitely if the client is clearly vulnerable, by reason of emotional or cognitive disorder, to exploitative influence by the credential holder.

(3)[(8)] A credential holder shall not engage in the practice of psychology if under the influence of alcohol, another mind-altering or mood-altering drug, or physical or psychological illness which impairs delivery of the services.

Section 6.[~~5.~~] Client Welfare. (1) Providing explanation of procedures. The credential holder shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client. The credential holder shall keep the client fully informed as to the purpose and nature of an evaluation, treatment, or other procedure, and of the client's right to freedom of choice regarding services provided.

(2) Termination of services.

(a) If professional services are terminated, the credential holder shall offer to assist the client in obtaining services from another professional.

(b) The credential holder shall:

1. Terminate a professional relationship if the client is not benefiting from the services; and

2. Prepare the client appropriately for the termination.

(3) Stereotyping. The credential holder shall not impose on the client a stereotype of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual preference, or diagnosis which would interfere with the objective provision of psychological services to the client.

(4) Solicitation of business by clients. The credential holder providing services to an individual client shall not induce that client to solicit business on behalf of the credential holder.

(5) Referrals on request. The credential holder providing services to a client shall make an appropriate referral of the client to another professional if requested to do so by the client.

Section 7.[~~6.~~] Welfare of Supervisees and Research Subjects. (1) Welfare of supervisees. The credential holder shall not exploit a supervisee.

(2) Welfare of research subjects. The credential holder shall respect the dignity and protect the welfare of his or her research subjects, and shall comply with ***920 KAR 1:060 and 45 C.F.R. 46.101 - 46.409[all relevant statutes and administrative regulations concerning treatment of research subjects]***.

Section 8.[~~7.~~] Protecting the Confidentiality of Clients. (1) General. The credential holder shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional services. Except as provided in this section, the credential holder shall obtain the informed written consent of the client prior to disclosing confidential information.

(2) Disclosure without informed written consent. The credential holder shall disclose confidential information without the informed consent of the client if the credential holder has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.

(3) Disclosure if the client is a corporation or other organization. If the client is a corporation or other organization, the requirements for confidentiality established in this section shall:

(a) Apply to information that pertains to:

1. The corporation or organization; or

2. An individual, including personal information, if the information is obtained in the proper course of the contract; and

(b) Not apply to personal information concerning an individual if the individual had a reasonable expectation that the information was:

1. Obtained in a separate professional relationship between the credential holder and the individual; and

2. Subject to the confidentiality requirements established in this section.

(4) Services involving more than one (1) interested party. If more than one (1) party has an appropriate interest in the professional services rendered by the credential holder to a client or clients, the credential holder shall clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.

(5) Multiple clients. If service is rendered to more than one (1) client during a joint session, the credential holder shall at the beginning of the professional relationship clarify to all parties the manner in which confidentiality shall be handled.

(6) Legally dependent clients. At the beginning of a professional relationship the credential holder shall inform a client who is below the age of majority or who has a legal guardian, of the limit the law imposes on the right of confidentiality with respect to his or her communications with the credential holder.

(7) Limited access to client records. The credential holder shall limit access to client records to preserve their confidentiality and shall ensure that all persons working under the credential holder's authority comply with the requirements for confidentiality of client material.

(8) Release of confidential information. The credential holder shall release confidential information upon court order or to conform with state law, including KRS 422.317, or federal law or regulation.

(9) Reporting of abuse or neglect of children and[~~vulnerable~~] adults. The credential holder shall be familiar with the relevant law concerning the reporting of abuse or neglect of children and[~~vulnerable~~] adults, and shall comply with those laws, including KRS 620.030 and KRS 209A.030.

(10) Discussion of client information among professionals. If rendering professional services as part of a team or if interacting with other appropriate professionals concerning the welfare of the client, the credential holder may share confidential information about the client if the credential holder takes reasonable steps to ensure that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.

(11) Disguising confidential information. If case reports or other confidential information is used as the basis of teaching, research, or other published reports, the credential holder shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client identification.

(12) Observation and electronic recording. The credential holder shall ensure that diagnostic interviews or therapeutic sessions with a client are observed or electronically recorded only with the informed written consent of the client.

(13) Confidentiality after termination of professional relationship. The credential holder shall continue to treat as confidential information regarding a client after the professional relationship between the credential holder and the client has ceased.

Section 9.[~~8.~~] Representation of Services. (1) Display of credentials. The credential holder shall display his or her current credential to practice psychology on the premises of his or her professional office.

(2) Misrepresentation of qualifications. The credential holder

shall not misrepresent directly or by implication his or her professional qualifications such as education, experience, or areas of competence.

(3) Misrepresentation of affiliations. The credential holder shall not misrepresent directly or by implication his or her affiliations, or the purposes or characteristics of institutions and organizations with which the credential holder is associated.

(4) False or misleading information. The credential holder shall not include false or misleading information in a public statement concerning professional services offered.

(5) Misrepresentation of services or products. The credential holder shall not associate with or permit his or her name to be used in connection with a service or product in a way which misrepresents:

(a) The service or product;

(b) The degree of his or her responsibility for the service or product; or

(c) The nature of his or her association with the service or product.

(6) Correction of misrepresentation by others. The credential holder shall correct others who misrepresent the credential holder's professional qualifications or affiliations.

Section 10.[~~9.~~] Disclosure of Cost of Services. The credential holder shall not mislead or withhold from a client, prospective client, or third party payor, information about the cost of his or her professional services.

Section 11.[~~10.~~] Assessment Procedures. (1) Confidential information. The credential holder shall treat as confidential assessment results or interpretations regarding an individual.

(2) Protection of integrity of assessment procedures. The credential holder shall not disseminate a psychological test in a way that may invalidate it.

(3) Information for professional users. The credential holder offering an assessment procedure or automated interpretation service to another professional shall accompany this offering by a manual or other printed material which describes the development of the assessment procedure or service, the rationale, evidence of validity and reliability, and characteristics of the normative population. The credential holder shall state the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly. The credential holder shall ensure that advertisements for the assessment procedure or interpretive service are factual.

Section 12.[~~11.~~] Aiding Illegal Practice. (1) Delegating professional responsibility. The credential holder shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide psychological services.

(2) Providing supervision. The credential holder shall exercise appropriate supervision over a supervisee, as required by 201 KAR 26:171.

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

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at

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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychologist. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential as a licensed psychologist and for temporary licensure may be submitted after the requirements established in KRS 319.050(2) are met.

(2) The application ***[~~required by subsection (1) or (2) of this section~~]*** shall be made by submitting a completed Application for Licensure as a Psychologist[~~Form Psy-1~~] to the board. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) recommendations[~~letters of reference~~] from persons qualified to evaluate the applicant's professional ability within five (5) years from the date of application, including two (2) persons who have received a doctorate in psychology (Ph.D.***,*** PsyD., Ed.D.). The recommendations shall be submitted on the Recommendation ***Form*** for Licensure as a Psychologist***[~~form~~]***; and

3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. (1) Pending successful completion of required examinations, an applicant 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 be cosigned by the candidate and the proposed supervisor, who shall be a licensed psychologist approved by the board.

(2) Supervision during the period of temporary licensure shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(3) A report of supervision shall be submitted on a regular basis as required by 201 KAR 26:171, Section 6.

(4) The candidate shall take the national EPPP within one (1) year of the board's written approval of temporary licensure.

(5)***(a) A temporary license shall be valid for one (1) year from the date of the notice of approval by the board.***

(b) During the period of temporary licensure, a candidate shall:

1. Successfully complete all credentials and examination procedures;

2. Pass the EPPP; and

3. Pass the examinations on psychological practice, ethical principles, and the law within one (1) year of the date of the notice of approval by the board for a temporary license.

(c)1. A candidate shall score at least an eighty (80) percent to pass the structured examination of Kentucky mental health law.

2. A candidate shall score a 100 percent to pass the oral examination on ethical principles and professional practice. [~~The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or upon the earliest of the following:~~

[~~(a) The candidate's failure to pass the EPPP within one (1) year of the date of the board's approval for temporary license;~~][~~.~~]

[~~(b) The candidate's failure to pass the examinations on psychological practice, ethical principles, and the law within one (1) year of completion of the required supervised experience; and~~][~~.~~]

[(c) The passage of two (2) years from issuance.]

(6)(a) Under exceptional circumstances and upon written request cosigned by the board approved supervisor, the board may [~~shall~~] approve an extension of the period of temporary licensure.

(b) A licensee shall submit a completed Request for Extension of Temporary Licensure as a Psychologist to request an extension.

Section 3. (1) An individual who submits an ***Application for Licensure as a Psychologist[application required by Section 1(1) or (2) of this administrative regulation]*** and has been approved by another state to take the EPPP shall submit:

(a)***[.]*** The official notice of the results of the EPPP from the state board that approved ***the applicant*** to take the EPPP; or

(b) A request to ASPPB to release the results of the EPPP to the board and notify the board of the submission of the request.

(2) The applicant shall submit the official notice or notification of the request to ASPPB to the board within thirty (30) days of taking the examination.

Section 4. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which candidates who have completed their degree requirements may begin to practice psychology under supervision of a board-approved supervisor, as established in 201 KAR 26:190.

(1) Upon acceptance of employment or the beginning of the required period of supervision, the candidate and the licensed psychologist who shall serve as his or her supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice shall be deemed as grounds for disciplinary action against the candidate and the supervisor.

(2) ***The candidate shall[It is the responsibility of the candidate to]*** ensure that all materials are forwarded to the board within thirty (30) days from the date of employment or supervision. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if ***the[their]*** application material is insufficient to take any action, he or she shall be notified by the board and directed to cease practice until the requirements are met or the necessary documentation has been submitted.

(3) Under no circumstances shall the grace period be extended beyond sixty (60) days. Candidates who fail to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in Section 3(1) of this administrative regulation, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and shall comply with KRS Chapter 319 and 201 KAR Chapter 26.

Section 5. Incomplete Application. An incomplete application shall be denied two (2) years from the date of filing.

Section 6.[~~Section 4~~] Incorporation by Reference. (1) The following material[~~"Form Psy 1", (January 2002 edition),~~] is incorporated by reference:[~~.~~]

(a) "Application for Licensure as a Psychologist", February***[,]*** 2017;

(b) "Recommendation ***Form*** for Licensure as a Psychologist", February***[,]*** 2017; and

(c) "Request for Extension of Temporary Licensure as a Psychologist", February***[,]*** 2017.

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

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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:160. Fee schedule.

RELATES TO: KRS 319.050(2)(a), 319.064***(2)[(1)]***(a), 319.071(1)

STATUTORY AUTHORITY: KRS 319.032(1)(n), 319.071(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(2)(a) and 319.064(1)(a) require an applicant to pay a fee for applying for licensure. KRS 319.071(1) requires a credential holder to pay a renewal fee established by the board. KRS 319.032(1)(n) requires the board to promulgate administrative regulations increasing or decreasing the fees for an applicant or credential holder as the board deems necessary. This administrative regulation establishes the application and renewal fees for credential holders.

Section 1. (1) Except as provided in subsection (3) of this section, an applicant for licensure as a psychologist shall pay the following:

(a) A $100***[nonrefundable]*** application review fee;

(b) The fee for taking the EPPP, which shall be paid directly to the ASPPB examination contractor; ***and***

(c) A $100***[nonrefundable]*** fee for taking the structured oral examination.

(2) Except as provided in subsection (3) of this section, an applicant for licensure as a psychological associate shall pay the following:

(a) A $100***[nonrefundable]*** application review fee; ***and***

(b) The fee for taking the EPPP, which shall be paid directly to the ASPPB examination contractor;

(3) The examination fee established in subsection (1)(b) or (2)(b) of this section shall be waived if a candidate has:

(a) Previously taken the EPPP in another state; and

(b) Achieved a score which would be considered as passing in Kentucky.

(4) Upon successful completion of the application and examination processes, the initial licensure fees shall be as follows:

(a) An applicant for licensure as a psychologist or psychological practitioner shall pay $250 for the first three (3) year period;

(b) An applicant for licensure as a psychological associate shall pay $200 for the first three (3) year period.

(5) Every three (3) years a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall pay to the board a renewal fee of $450.

(6) Every three (3) years a certified psychologist or licensed psychological associate shall pay to the board a renewal fee of $300.

Section 2. The late renewal fee for late renewal during the three (3) month period shall be seventy-five (75) dollars.

Section 3. The reinstatement fee for licensure shall be $100.

Section 4. The fee for registration as a nonresident psychologist shall be $100.

Section 5. (1) If the applicant fails the Examination for Professional Practice in Psychology (EPPP) and applies to retake this examination, the applicant shall submit the examination fee as established by the ASPPB examination contractor directly to the

contractor.

(2) If the applicant fails the structured oral examination and applies to retake this examination, the fee shall be fifty (50) dollars.

[(3) An application for licensure by reciprocity shall be accompanied by a fee of $100.]

Section 6.[~~3.~~] ***An application for licensure by reciprocity shall be accompanied by a fee of $100.***

Section 7. All fees required by this administrative regulation shall be nonrefundable.[(1) The board may refund the fee for the EPPP and the fee for the structured oral examination, if applicable, if an application was:

(a) Approved; and

(b) Withdrawn prior to the applicant taking the examination for professional practice in psychology.

(2) The board shall refund the fee for the EPPP or the structured oral examination, if applicable, if the application to sit for the examination is denied.]

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

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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.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:165. Inactive status.

RELATES TO: KRS 319.071

STATUTORY AUTHORITY: KRS 319.032***(2), 319.071(3)***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.071(3) authorizes the board to grant inactive status for a credential holder for a period of up to three (3) consecutive years. ***KRS 319.032(2) authorizes the board to promulgate administrative regulations necessary to administer KRS Chapter 319.*** This administrative regulation establishes the requirements for inactive status.

Section 1. Inactive status may be granted to a credential holder pursuant to KRS 319.071(3) by submitting a completed Request for Change of License Status. (1) The credential holder shall be relieved of his or her obligation to pay the renewal fee and of maintaining supervision of his or her practice, but shall continue to meet the requirements for continuing education.

(2) The credential holder may return to active status within the three (3) year period upon:

(a) Notification to the board;

(b) Payment of the current renewal fee;

(c) Resumption of any required supervisory relationship with a supervisor acceptable to the board; and

(d) Demonstration of compliance with all continuing education requirements during the period of inactive status.

(3) The three (3) consecutive year period of inactive status shall begin at the date of expiration of the current period of licensure.

(4) If the credential holder does not reactivate his or her credential at the end of the three (3) year period of inactive status, then the credential shall be forfeited and the credential holder shall make a new application to the board and be reexamined by the board before a new credential may be issued. If the credential holder returns to active status within the three (3) year period, his or her new renewal date shall be the date of return to active status.

(5) A credential holder shall submit a ***Renewal Application, incorporated by reference in 201 KAR 26:225,[~~Request for Change of License Status form~~]*** to be reinstated from an inactive status.

Section 2. Incorporation by Reference. (1) "Request for Change of License Status", ***October 2016[~~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: 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.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:171. Requirements for supervision.

RELATES TO: KRS 319.032(1)(l), 319.050(3), (6), 319.056(4), ***(5),*** 319.064(3), ***(5)[(4)]***, 319.082(1), 319.092(3)(d), 319.118(1)

STATUTORY AUTHORITY: KRS 319.032(1)***(l)[(a)]***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)***(l)[(a)]*** requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, licensed psychological associate, candidate for licensure, or a credential holder sanctioned by the board. This administrative regulation establishes the requirements for supervision.

Section 1. ***(1)*** Except ***for graduate students*** as provided in Section 15 of this administrative regulation, a supervisory arrangement shall have the prior approval of the board, with both supervisor and supervisee petitioning the board in writing.

(2) If there is a change in supervisor or in the supervisory arrangement, the supervisor and supervisee shall submit a Request for Change of Supervisor and/or Frequency to the board ***describing the change[~~the description of the supervisory arrangement or a change in the supervisory arrangement~~]*** at least thirty (30) days prior to the effective date of the***[~~arrangement or~~]*** change.

Section 2. (1) All supervision requirements shall:

(a) Be met with individual, face-to-face, weekly contact between supervisor and supervisee except as provided in subsection (2) of this section and Sections 12 and 15 of this administrative regulation; and

(b) Include additional supervision sessions as needed.

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

Section 3. (1) A certified psychologist or licensed psychological associate may petition the board to be relieved of his or her obligation to maintain supervision during which period he or she shall not practice psychology.

(2) The certified psychologist or licensed psychological associate shall obtain a supervisor approved by the board before the resumption of practice.

(3) Upon resumption of practice, the certified psychologist or licensed psychological associate shall document compliance with continuing education requirements and shall report on ***his or her[~~their~~]*** activities and employment related to psychology during the period without supervision.

Section 4. (1) A licensed psychologist with health service provider designation who has been approved by the board as a supervisor shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining approval as a supervisor.

(2) A board approved supervisor shall obtain a minimum of three (3) continuing education hours in supervision theory or techniques in each three (3) year renewal cycle as required by 201 KAR 26:175, Section ***2(5)(a)[~~1(3)~~]***. The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall report to the board an apparent violation of KRS 319.082(1) on the part of the supervisee.

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

(4) The supervisor shall control, direct, or limit the supervisee's practice as appropriate to insure that the supervisee's practice of psychology is competent.

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

(6) For each person supervised pursuant to KRS 319.050(3), (6), 319.056***[~~(3),~~]***(4), ***(5),*** 319.064***(3), (5)[~~(2), (4)~~]***, or 319.092(3)(d), the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

Section 6. (1) In calculating the amount of time spent in full-time practice while under supervision, 1,800 hours of supervised practice shall be equivalent to one (1) year of experience.

(2) The supervisor shall submit a Supervisory Report[~~provide reports~~] to the board of the supervision of each supervisee according to the following schedule:

Credential Status	Reporting Period	Report Due Date(s)
(a) Licensed psychological associate or certified psychologist with 4 or more years of full-time practice, or its equivalent	Every 2 years (with prior board approval)	Anniversary date of supervisee's licensure
(b) Licensed psychological associate or certified psychologist with fewer than 4 years of full-time practice, or its equivalent	Yearly	Anniversary date of supervisee's licensure
(c) Temporarily licensed psychologist	Every 6 months and 1 month prior to structured exam	
(d) Temporarily licensed psychological associate	Every 6 months	
(e) Sanctioned ***credential[~~license~~]*** holder	Quarterly	January, April, July, and October 15th

(3) The report shall include:

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

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

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

Section 7. (1) If a supervisee has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with one another at least once every six (6) months, and they shall provide Supervisory Plans and Goals[~~reports~~] to the board and copies to one another.

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

Section 8. If the supervisee is a licensed psychological associate or a certified psychologist with less than four (4) years of full-time, postlicensure practice, or its equivalent, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

(1) Read and countersign all psychological assessments;

(2) Review treatment plans, progress notes, and correspondence on an as-needed basis to assess the competency of the supervisee to render psychological services;

(3) Jointly establish with the supervisee ***Supervisory Plans and Goals[~~a supervisory plan~~]*** that shall be submitted to the board[~~to the board~~] at the beginning of the supervisory relationship. The ***Supervisory Plans and Goals[~~plan~~]*** shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

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

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process***;[~~.~~]***

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

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

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

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

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

Section 9. If the supervisee is a licensed psychological associate or certified psychologist with more than four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor of record shall:

(1) Review and countersign psychological assessments as needed or appropriate;

(2) Review treatment plans, notes, and correspondence as needed or appropriate;

(3) Jointly establish with the supervisee ***Supervisory Plans and Goals[~~a supervisory plan~~]*** that shall be submitted to the board to the board at the beginning of the supervisory relationship. The ***Supervisory Plans and Goals[~~plan~~]*** shall:

(a) Be updated or revised and submitted to the board with the regular report of supervision;

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

(c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process***;[~~.~~]***

(4) Have direct observation of the supervisee's work on an as-needed basis;

(5) Have direct knowledge of the size and complexity of the supervisee's caseload;

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

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

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

Section 10. (1) The supervisee shall:

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

(b) Seek supervision as needed in addition to a regularly scheduled supervisory session.

(2) The supervisee shall:

(a) Participate with the supervisor in establishing ***Supervisory Plans and Goals[~~supervisory goals~~]*** and in completing the regular Supervisory Reports;

(b) Be jointly responsible with the supervisor for ensuring that a Supervisory Report***[~~or plan~~]*** has been sent to the board in accordance with the reporting schedule established in Section 6***(2)[(1)]*** of this administrative regulation; and

(c) Report to the board an apparent violation of KRS 319.082(1) on the part of the supervisor.

Section 11. Identification of Provider. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the certified psychologist, licensed psychological associate, temporary licensed psychologist, trainee, or other provider and supervised by the licensed psychologist.

Section 12. Frequency of Supervision. (1) A licensed psychological associate or certified psychologist shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following licensure.

(2) After two (2) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board ***using a Request for Change of Supervisor and/or Frequency*** to alter the format, frequency***,*** or duration of supervision ***if[~~as long as~~]*** the proposed change includes a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of supervision is not less than four (4) hours per four (4) week period. This petition may include a request to change the format from individual to group supervision. Supervision requirements for part-time practice may be modified at the discretion of the board upon approval of the submitted plan.

(3)(a) After four (4) years of full-time, postlicensure practice, or its equivalent, the supervisor and supervisee may petition the board for further modification of the format, frequency, or duration of supervision ***using a Request for Change of Supervisor and/or Frequency, if the proposed change includes[~~, with~~]*** a minimum amount of one (1) hour of face-to-face supervision per month. Additional modifications of the format, frequency or duration of supervision may be submitted for approval by the board.

(b) Upon a change of supervisor, a new ***Supervisory Plans and Goals[~~plan for supervision~~]*** shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional supervision than was previously approved by the board.

(c) Upon termination of the supervisor-supervisee relationship, the final ***Supervisory*** Report***[~~of supervision~~]*** shall be submitted to the board within thirty (30) days of the termination.

Section 13. Supervision of a Disciplined ***Credential[~~Licensed~~]*** Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined ***credential[~~licensed~~]*** holder for the period of time defined by the board.

(2) The disciplined ***credential[~~license~~]*** holder shall be responsible for paying the fee for supervision.

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

(4) The supervisor shall:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined ***credential[~~license~~]*** holder and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision; and

4. Review the reporting requirements that shall be met during the period of supervision;

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

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

(e) Make all reasonable efforts to insure that the disciplined ***credential[~~license~~]*** holder's practice is in compliance with KRS Chapter 319 and 201 KAR Chapter 26;

(f) Report to the board any apparent violation of KRS 319.082(1) on the part of the disciplined ***credential[~~license~~]*** holder;

(g) Immediately report to the board in writing; a change in the ability to supervise, or in the ability of the disciplined ***credential[~~license~~]*** holder to function in the practice of psychology in a competent manner;

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

(i) Review treatment plans, notes, and correspondence as needed or appropriate;

(j) Have direct observation of the disciplined ***credential[~~license~~]*** holder's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined ***credential[~~license~~]*** holder's caseload;

(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined ***credential[~~license~~]*** holder; and

(m) Have knowledge of the disciplined ***credential[~~license~~]*** holder's physical and emotional well-being when it has direct bearing on the disciplined ***credential[~~license~~]*** holder's competence to practice.

(5) The supervisor shall control, direct***,*** or limit the disciplined ***credential[~~license~~]*** holder's practice as appropriate to ensure that the disciplined ***credential[~~license~~]*** holder's practice is competent.

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

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined ***credential[~~license~~]*** holder***,*** and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14. Board Liaison for Disciplined ***Credential[~~License~~]*** Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

(1) Recruit the supervising psychologist from a list provided by the board;

(2) Provide the supervising psychologist with the originating complaint, agreed order***,*** or findings of the hearing and supply other material relating to the disciplinary action as deemed appropriate by the liaison;

(3) Ensure that the supervising psychologist is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board pursuant to KRS 319.118(1) and has immunity commensurate with that of a board member;

(4) Provide the supervising psychologist with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to the disciplined ***credential[~~license~~]*** holder. The notification letter shall:

(a) State the name of the supervising psychologist; and

(b) Specify that the disciplined ***credential[~~license~~]*** holder shall meet with the supervising psychologist and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising psychologist and disciplined ***credential[~~license~~]*** holder within thirty (30) days of the date of the

notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined ***credential[~~license~~]*** holder**,** and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the report of supervision to the board for approval. The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting. In the interim, the supervising psychologist and disciplined ***credential[~~license~~]*** holder shall continue to meet;

(8) Remain available to the supervising psychologist to provide assistance and information as needed;

(9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising psychologist;

(10) Review the quarterly report of supervision and forward to the supervision committee of the board for approval; and

(11) Meet with the supervising psychologist and the disciplined ***credential[~~license~~]*** holder at the end of the term of supervision to summarize the supervision.

Section 15. Psychology Graduate Students. Graduate-level psychology students who are providing services in psychological health care settings including independent practice settings shall:

(1) Be supervised by a psychologist licensed by the Board of Examiners of Psychology with health service provider status, licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;

(2) Be registered for credit in his or her course of study;

(3) Clearly identify their status as unlicensed psychology trainees to all clients and payors;

(4) Give to all clients and payors the name of the licensed psychologist responsible for their work; ***and***

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

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

(a) "Supervisory Plans and Goals", ***February 2017[~~October, 2016~~]***;

(b) "Supervisory Report", October***[~~,~~]*** 2016; and

(c) "Request for Change of Supervisor and/or Frequency", October***[~~,~~]*** 2016.

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

APPROVED BY AGENCY: March 15, 2017

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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

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

(b) A ***credential holder[~~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 ***credential holder[~~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 ***credential[~~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 ***credential[~~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 *paragraph (a)1 of this subsection[~~the requirement of subsection 2(a)(1) of this section~~]*. The fees required under *paragraphs (a)2 and (c) of this* 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 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 ***2[~~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

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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.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

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 ***as a Psychologist*** by Reciprocity;

(2) Hold a current valid license in good standing to practice psychology ***that[~~which~~]*** has been granted by at least one (1) state or the District of Columbia or a Canadian province ***that[~~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 examination~~]** of an applicant for licensure by reciprocity. The applicant shall demonstrate an acceptable level of knowledge of Kentucky mental health law. ***An applicant shall score at least an eighty (80) percent to pass the structured examination of Kentucky mental health law. An applicant shall score a 100 percent to pass the oral examination on ethical principles and professional practice.***

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 *be issued[~~issue~~]* in accordance with 201 KAR 26:155, Section 2. The temporary credential shall expire in accordance with 201 KAR 26:155, Section 2*(5)[~~(4)~~]*.

Section **8.[~~7.~~]** Incorporation by Reference. (1) "Application for Licensure ***as a Psychologist*** 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

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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.

RELATES TO: KRS 319.032(1)***(a),*** (i)***, 319.050(2)***
STATUTORY AUTHORITY: KRS 319.032(1)(i)
NECESSITY, FUNCTION, AND CONFORMITY: KRS ***319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure. KRS*** 319.032(1)(i) requires the board to promulgate an administrative regulation governing ***reciprocal agreements with other states[~~the granting of a license as a psychologist to an applicant from another jurisdiction~~]***. This administrative regulation establishes the requirements for granting a license to an applicant who is licensed in another state that does not have an agreement of reciprocity with this board.

Section 1. (1) The board shall consider an applicant for licensure in psychology in Kentucky who:
(a) Is licensed in another state that does not have an agreement of reciprocity with the Kentucky Board of Examiners of Psychology;
(b) Holds a current valid license or certificate, in good standing, to practice psychology that has been granted by:
1. At least one (1) state;
2. The District of Columbia; or
3. A Canadian province that maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards (ASPPB);
(c) Has a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and
(d) Has not been disciplined by any psychology licensure board.
(2) The board shall consider if the applicant meets the requirements established in KRS 319.050(2). If an applicant for licensure does not have the supervised experience as required by KRS 319.050(2)(d), the board may determine that the applicant's practice experience is equivalent to the required supervised experience ***based upon the information submitted in the application***.
(3) An applicant for licensure as a psychologist shall submit:
(a) A completed Application for Licensure of a Psychologist Licensed in Another State with the***[required]*** supplementary documentation ***required by this subsection***;
(b) Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. PsyD., Ed.D.);
(c) An official transcript for all levels of education required for licensure;
(d) A Curriculum Vitae that demonstrates five (5) years of full-time practice of psychology;
(e)[~~Submit~~] To the Examination for Professional Practice in Psychology (EPPP):
1. Developed by the ASPPB examination contractor; and
2. Owned by the ASPPB; [~~and~~]
(f)[~~(c)~~][~~(b) Obtain~~] A verified computerized EPPP scaled score of 500 or greater. The board shall accept the applicant's previous examination results for the national EPPP examination if the original test scores satisfied the doctoral licensure requirement as to criterion level at the time of that examination; and[~~.~~]
(g)[~~(d)~~] Payment of $200.
(4) The board shall review the applicant's:
(a) Record as to complaints or hearings held in previous jurisdictions; and
(b) Professional references.

Section 2. An applicant for licensure as a psychologist shall submit to a structured examination on Kentucky mental health law. ***An applicant shall score at least an eighty (80) percent to pass the structured examination of Kentucky mental health law.***

Section 3. In addition to ***meeting the requirements in Section 2 of this administrative regulation[~~demonstrating an acceptable level of knowledge of Kentucky mental health law~~]***, an applicant for licensure as a psychologist shall submit to a structured oral examination on ethical principles and professional practice administered by two (2) licensed psychologists. (1) Each examiner shall independently rate the applicant's performance.
(2) The applicant shall demonstrate an acceptable level of knowledge in each of the areas in order to pass the examination.
(3) An applicant who receives a pass rating from the two (2) examiners shall have successfully passed the oral examination and shall be eligible to be granted a license as a licensed psychologist.
(4) An applicant shall score a 100 percent to pass the oral examination on ethical principles and professional practice.

Section 4. Incorporation by Reference. (1) "Application for Licensure of a Psychologist Licensed in Another State", 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
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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050, 319.053, 319.056, 319.064
STATUTORY AUTHORITY: KRS 319.032, 319.050(2)(d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS ***319.032(1)(a) and (1)(l) require the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure and supervision. This administrative regulation establishes requirements for supervised professional experience.[~~19.050(2)(d) requires an applicant for licensure as a psychologist to have a minimum of 3,600 hours~~]***[~~at least two (2) years~~]***[~~of supervised professional experience. This administrative regulation establishes those requirements.~~]***

Section 1. Supervisory Requirements for an Applicant for Licensure as a Psychologist. (1) The applicant for licensure as a psychologist with the authorization to provide psychological health care services shall have completed a minimum of 3,600 hours[~~the equivalent of two (2) years~~] of supervised professional experience in accordance with this administrative regulation.
(2) A minimum of 1,800 hours[~~One (1) year~~] of the supervised professional experience shall be a predoctoral internship of 1,800 hours with at least 100 hours of supervisory sessions.
(3) The remaining[~~The other~~] 1,800 hours of supervised experience shall be[~~may be~~] predoctoral, postdoctoral, or a combination of pre- and post-doctoral supervised professional experience acceptable to the board ***based upon the requirements of Sections 2 and 3 of this administrative regulation***.
(4) Supervised experience[~~earned in the doctoral training program~~] shall consist of practica, field placement, or other

professional experiences not including the beginning courses and accompanying practica in assessment and treatment techniques.

(5) At least fifty (50) percent of the supervised[~~professional~~] experience shall be in service-related activities, such as treatment, assessment, interviews, report-writing, case presentations, and consultations. [~~(6) For the 1,800 hours of supervised experience earned in the doctoral training program, there shall be a minimum of 100 hours of supervisory sessions. At least seventy-five (75) percent of these supervisory sessions (seventy-five (75) hours) shall be done with a licensed psychologist supervisor, at least one-third (1/3) of which (twenty-five (25) hours) shall be conducted in an individual, face-to-face format. The other twenty-five (25) percent of the supervisory sessions (twenty-five (25) hours) may be done with a licensed mental health professional. Of the total supervision hours, no more than fifty (50) percent (fifty (50) hours) shall be done via secure interactive videoconferencing.~~

~~(7) If the supervised experience earned in the doctoral training program does not meet the 1,800 hour requirement, additional supervised professional experience satisfactory to the board may be earned with supervision by a board-approved licensed psychologist of a minimum of one (1) hour individual, face-to-face supervision on a weekly basis.~~]

Section 2. For a person applying for licensure as a psychologist, [~~to provide psychological health care services~~] the predoctoral internship shall meet the following criteria:

(1) The experience shall occur within an organized training program, in contrast to supervised experience or on-the-job training and have a planned, programmed sequence of training experiences;

(2) The training program shall have a clearly designated staff psychologist who shall be:

(a) Responsible for the integrity and quality of the training program;

(b) Actively licensed by the Board of Examiners in Psychology; or

(c) Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law; and

(d) For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program***;[~~.~~]***

(3) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;

(4) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The internship shall include a minimum of two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision. There shall also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, and group supervision;

(7) Training shall be postclerkship, postpracticum, and postexternship level;

(8) The internship shall have a written statement or brochure that***:***

(a)1. Describes the goals and content of the internship***; and***

2. States[~~, stated~~] clear expectations for quality and quantity ***[~~the~~]*** of ***the*** trainee's work***; and***

(b) Shall[~~and shall~~] be made available to prospective interns;

(9) The internship experience shall be completed within twenty-four (24) months;

(10) The trainee ***shall have[~~has~~]*** a title such as "intern", "resident," "fellow," or other designation of trainee status; and

(11) The internship agency, preparing institution, and intern ***shall*** have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 3. Additional Required Supervisory Experience. (1) For a person applying for licensure as a psychologist to provide psychological health care services, the 1,800 hours of supervised professional experience***,*** in addition to the internship required by KRS 319.050(2)(d)***,*** shall be a training-oriented professional experience that***:***

(a) May include course-related field experience and practica***; and***

(b) Shall not[~~, not to~~] include the beginning courses and practica

in assessment and treatment techniques.

(2) In addition to training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services, the supervised professional experience shall ***consist of[~~include~~]*** a planned and organized sequence of activities that includes explicit training and supervision in the following areas:

(a) Clinical skill development;

(b) Legal and regulatory issues;

(c) Ethical dilemmas and issues; and

(d) Supervisory skill development.

(3) During the 1,800 hours of supervised professional experience in addition to the internship, the candidate shall:

(a) Be under supervision as required by 201 KAR 26:171; and

(b)Be providing psychological health care services under the supervision of a licensed psychologist or other licensed mental health professional approved by the doctoral training program who is affiliated with the training program or with the practice setting ***in a***:

1.***[~~In a:~~***

~~a.~~] Health care facility or agency;

2.[~~b.~~] Regional mental health or mental retardation board;

3.[~~c.~~] School, college, or university;

4.[~~d.~~] Government agency;

5.[~~e.~~] Independent practice; or

6.[~~(f) In a~~] Formalized postdoctoral internship program.

(4) The applicant and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (2) of this section.

(5) If the supervised professional experience in addition to the internship is in an independent practice, a special application letter shall affirm:

(a) The identity of the applicant, supervisor, and employer;***[~~and~~]***

(b) That the supervising licensed psychologist is not hired, employed, or engaged under contract by the applicant and shall not be terminated by the applicant;

(c) That the applicant is not one (1) of the owners of the independent practice or organization, but rather serves as an employee; and

(d) That the applicant has both administrative and clinical supervision that shall be provided by the independent practice or employer.

(6) If the supervised experience is in a university setting, the application shall also:

(a) Be proffered by a full-time faculty member;

(b) Include a plan that contains each of the areas established in subsection (2) of this section; and

(c) Include a minimum of 400 hours of direct and indirect client involvement that:

1. Is supervised by a licensed psychologist; and

2. Includes:

a. Supervising student clinical work;

b. Diagnostic and interviewing activity that occurs within clinical research projects; or

c. Clinical work in the context of teaching psychotherapy, interviewing, or psychological testing.

(7) The board shall not grant a request for temporary licensure if the request does not contain an explicit and acceptable plan for the supervised experience as required by this section.

Section 4.[~~A licensed psychologist applying for health service~~

~~provider designation shall complete, in addition to the supervised professional experience requirement for licensure as a licensed psychologist, 1,800 hours of supervised experience within one (1) or more health care settings in which the psychologist delivered direct psychological health care services. Supervision shall be provided by a licensed psychologist approved by the board and shall consist of one (1) hour of individual supervision each week.~~

~~Section 5.~~] An applicant for licensure as a psychological associate shall complete supervised experience consisting of course-related field experience, practica, and formal internships adding up to a minimum of 600 supervised hours that shall meet the following criteria:

(1) The experience shall occur within an organized training program***[,]*** and consist of a planned, programmed sequence of training experiences;

(2) The preparing institution's psychology training program shall have a clearly-designated placement director who shall be responsible for the integrity and quality of the experiential component of the training program;

(3) Weekly practicum and internship supervision shall be provided by a staff member of the placement agency, by an affiliate of that agency, or by a university faculty member. At least half of the supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree and license;

(4) Field experiences, practica, and internships shall provide training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The preparing institution shall maintain a written statement or brochure describing the goals and content of the required field experiences, practica, and internships***; and[.]***

(7) Students participating in university-sanctioned supervised experience shall be clearly identified to clients and payors as trainees.

Section 5[~~6~~]. An applicant for licensure as a psychological practitioner shall complete the equivalent of five (5) full-time years of psychological practice under the direct supervision of a licensed psychologist approved by the board, consistent with the requirements of 201 KAR 26:171. (1) For purposes of this requirement, a candidate shall complete the equivalent of five (5) full-time years of supervised experience from the date of initial credentialing as a psychological associate, with a full-time year comprising at least 1800 hours of supervised professional experience.

(2) A school psychologist who is employed in a Kentucky school system, credentialed by the Professional Standards Board, and also credentialed as a psychological associate by this board, may contract for on-going clinical supervision in the school setting with a board-approved licensed psychologist who is neither an employee nor a contractor of the school system.

(a) The supervised professional experience shall meet the conditions of this administrative regulation and may be used by the licensed psychological associate employed by the school system to meet the requirements for application to become a licensed psychological practitioner.

(b) To fulfill the requirements of 201 KAR 26:171, there shall be an explicit written plan approved by the board between the school system, the school psychologist, and the board-approved supervisor that delineates roles and responsibilities, ***without[~~not~~]*** restricting the ability of the school district to direct or control the activities of its employee***.[;]***

(c) A person trained in school psychology, if employed by an agency other than a public school or engaged in practice outside of the school setting, shall obtain clinical supervision in the manner specified by 201 KAR 26:171.

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

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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:200. Education requirements for licensure as a psychologist.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: KRS 319.032, 319.050(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ***319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure. KRS*** 319.050(2)(b) requires that to obtain licensure, a psychologist shall have a doctoral degree in psychology from a regionally accredited educational institution. This administrative regulation establishes requirements for licensure as a psychologist.

Section 1. For purposes of licensure, a doctoral degree in psychology shall:

(1) Be from a recognized institution of higher learning as established in this administrative regulation;

(2) Be clearly identified by the granting institution as a psychology program wherever the program may be administratively housed;

(3) Be specified in pertinent institutional catalogs and brochures as intended to educate and train professional psychologists;

(4) Require a dissertation for the degree as psychological in method and content and an expected product of doctoral training in psychology;

(5) Stand as a recognizable, coherent, organized entity within the institution;

(6) Require within the psychology faculty clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(7) Be an integrated, organized sequence of study;

(8) Require an identifiable psychology faculty and a psychologist responsible for the program;

(9) Require an identifiable body of students who are matriculated in that program for a degree; and

(10) Require a three (3) graduate semester-hour[~~in areas of training for psychologists who deliver or supervise psychological health services, educational experiences with titles such as~~] practicum[~~, internship, or field training~~].

Section 2. (1) In determining the approval of curricular experiences and course work, the board shall consider compliance with the requirements established in paragraphs (a) through (d) of this subsection.

(a) The curriculum shall encompass a minimum of three (3) academic years of full-time graduate study.

(b) A minimum of one (1) full academic year shall be spent in residence at the institution. The year in residence shall consist of a minimum of 250 contact hours or its equivalent of curricular experiences and course work delivered through face-to-face in person context with other students and with faculty of the institution, without regard to the specific physical location in which the course work is conducted.

(c) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:

1. Biological bases of behavior, including the subject matters of physiological psychology, comparative psychology,

neuropsychology, sensation and perception, and psychopharmacology;

2. Cognitive-affective bases of behavior, including the subject matters of learning, thinking, motivation, and emotion;

3. Social bases of behavior, including the subject matters of social psychology group process and organizational psychology and systems; ***and***

4. Individual differences, including the subject matters of personality theory, human development, and abnormal psychology.

(d) In addition to the core program, the curriculum shall include course work in the specialty area of training. For candidates who seek to deliver or supervise psychological health services, that training shall include specific training in diagnosis, psychological testing, assessment of individual differences, and the design and implementation of appropriate intervention techniques, such as psychotherapy, counseling, and consultation.

(2) A deficiency in course work or other requirements shall be corrected by appropriate remedial work.

Section 3. (1) A regionally accredited educational institution shall be accredited by ***one of the following:***

(1) Southern Association of Colleges and Schools;

(2) Middle States Commission on Higher Education;

(3) Middle States Association of Colleges and Schools;

(4) New England Association of Schools and Colleges;

(5) North Central Association of Colleges and Schools;

(6) Northwest Commission on Colleges and Universities;

(7) Northwest Accreditation Commission; and

(8) Western Association of Schools and Colleges.[~~the Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, or Western Association of Schools and Colleges.~~]

(2) Accreditation shall include accreditation by one (1) of the associations established in subsection (1) of this section at Level 4,[{]doctoral degree granting accreditation,[}] or at Level 5,[{]graduate or professional degree granting accreditation[}].

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

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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:210.[~~Definitions of terms used by the Board of Examiners of Psychologists for meeting~~] Educational requirements for licensure as a licensed psychological associate.

RELATES TO: KRS 319.064

STATUTORY AUTHORITY: KRS 319.032(1)(a), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate ***administrative*** regulations that ***establish[~~establishes~~]*** the requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licensure; and ***for*** preparing or selecting and administering examinations on general psychological knowledge [~~Certain terms are used in the statute regulating educational requirements for applicants for a credential. This administrative regulation defines those terms as they relate to licensed psychological associates~~]. ***This administrative regulation establishes educational requirements for licensure as a psychological associate.***

Section 1. Educational Requirements. ***An applicant for licensure as a psychological associate shall meet the following educational requirements:***

(1) ***An applicant shall have*** a master's degree from a recognized institution of higher learning ***that complies with Section 3 of[~~in~~]*** this administrative regulation;

(2) The program, wherever it may be administratively housed, ***shall:***

(a) Be[~~is~~] clearly identified by the granting institution as a psychology program***; and***

(b)[~~.The program shall~~] Specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists;

(3) Any thesis required for the degree ***shall be[~~is~~]*** psychological in method and content and an expected product of master's training in psychology;

(4) The program ***shall stand[~~stands~~]*** as a recognizable, coherent, organized entity within the institution;

(5) Within the psychology faculty there ***shall be[~~is~~]*** clear authority and primary responsibility for the core and specialty areas***,*** whether or not the program cuts across administrative lines;

(6) The program ***shall be[~~is~~]*** an integrated, organized sequence of study;

(7) There ***shall be[~~is~~]*** an identifiable psychology faculty and a psychologist responsible for the program;

(8) The program ***shall have[~~has~~]*** an identifiable body of students who are matriculated in that program for a degree;***[~~and~~]***

(9) The program ***shall include[~~includes~~]*** educational experiences with titles***,*** such as practicum, internship or field training***; and[~~. This accumulated experience must be supervised by a doctoral level psychologist and shall equal 600 hours.~~]***

(10) An applicant for licensure as a psychological associate shall complete a minimum of 600 supervised hours***[~~supervised~~]*** in a course-related field experience, practica, and formal internship***,*** as part of the degree program.

Section 2. (1) In determining the acceptability of curricular experiences and course work, the following factors shall be considered:

(a) The curriculum shall encompass a minimum of forty-five (45) semester hours of graduate study.

(b) In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following content areas. This typically ***shall[~~will~~]*** be met by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) areas:

1. Biological bases of behavior, including the subject matters of physiological psychology, comparative psychology, neuropsychology, sensation and perception, ***and*** psychopharmacology.

2. Cognitive-affective bases of behavior, including the subject matters of learning, thinking, motivation, ***and*** emotion.

3. Social bases of behavior, including the subject matters of social psychology, group process, organizational psychology and systems.

4. Individual differences, including the subject matters of personality theory, human development, ***and*** abnormal psychology.

(c) In addition to the core program, the curriculum shall include appropriate course work***[~~as determined by the board~~]*** in the specialty area of training***,*** including specific training in diagnosis and assessment of individual ***or[~~/~~]*** organizational differences and the design and implementation of appropriate intervention technique, e.g. psychotherapy, counseling, consultation, etc.

(2) The applicant shall provide any ***relevant documentation requested by the board[~~documentation required by the board in the manner and form prescribed by the board~~]*** to confirm compliance with or satisfaction of the requirements of this

administrative regulation[law].

(3) ***A[At the discretion of the board, any]*** deficiency in course work or other requirements may be corrected by appropriate remedial work.

Section 3. A regionally accredited educational institution ***shall mean an[means]*** accreditation by any one (1) of the following:

(1) Southern Association of Colleges and Schools;

(2) Middle States Commission on Higher Education;

(3) Middle States Association of Colleges and Schools;

(4) New England Association of Schools and Colleges;

(5) North Central Association of Colleges and Schools;

(6) Northwest Commission on Colleges and Universities;

(7) Northwest Accreditation Commission; and

(8) Western Association of Schools and Colleges.[Southern Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, North Central Association of Colleges and Schools, North Western Association of Schools and Colleges, and Western Association of Schools and Colleges.]

Section 4. Accreditation ***shall mean an[means]*** accreditation by one (1) of the***[aforementioned]*** associations***, listed in Section 3 of this administrative regulation,*** at Level 3 (master's degree granting accreditation).

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.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:215. Nonresident status.

RELATES TO: KRS 319.015(8)***, 319.082***

STATUTORY AUTHORITY: KRS 319.015(8), 319.032(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ***319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure. KRS*** 319.015(8) authorizes a nonresident psychologist temporarily employed in the state to render psychological services for no more than thirty (30) days every two (2) years and requires the board to establish a registration process for nonresident psychologists. This administrative regulation establishes the requirements for registering in Kentucky as a nonresident psychologist.

Section 1.[~~(1)~~] A nonresident psychologist temporarily employed in the state may render psychological services[~~for no more than thirty (30) days every two (2) years~~] immediately upon:

(1) Written notification of intent to provide psychological services in Kentucky and verification to[~~of~~] the board that the nonresident psychologist:

(a) Holds the Interjurisdictional Practice Certificate (IPC) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization;[~~or~~]

(b) Holds the Certificate of Professional Qualification (CPQ) issued by ASPPB or a successor organization;[~~or~~]

(c) Is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization; or

(d) Is licensed in a jurisdiction with whom this Board has established reciprocity; and[~~.~~]

(2) Payment to the board a fee for registration as a nonresident psychologist established in 201 KAR 26:160, Section 4 [~~A nonresident psychologist temporarily employed in the state may render psychological services no more than thirty (30) days every two (2) years with the approval of the board if the nonresident psychologist is duly licensed in a jurisdiction not established as having reciprocity with the board and holds none of the qualifications described in subsection (1) of this section~~].

Section 2. (1)[~~Pursuant to KRS 319.015(8),~~] A nonresident credential [~~licensee~~] holder who does not satisfy Section 1 ***of this administrative regulation***, is temporarily employed, and seeks to practice[~~temporarily~~] in Kentucky shall [~~file a written registration with the board. The registration shall be a written letter sent to the board~~]:

(a) Submit completed Nonresident Psychological Registration Form and satisfy the requirements of Subsection (2) of this section [~~Indicating his or her desire to practice in Kentucky pursuant to KRS 319.015(8)~~]; and

(b) Pay to the board a fee for registration as a nonresident psychologist established in 201 KAR 26:160, Section 4[~~Stating the dates he or she intends to practice in Kentucky~~].

(2) Board approval shall be contingent upon:

(a) Receipt of documentation that the nonresident psychologist holds a valid license in good standing from another jurisdiction; and

(b) Confirmation that the applicant does not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards.

(3)(a) Nonresident temporary practice**,** pursuant to KRS 319.015(8)**,** shall be conditionally approved by the chair of the board if:

1. The applicant for temporary practice meets the conditions for practice established by KRS 319.015(8); and

2. The applicant has registered with the board.

(b) The conditional approval shall terminate at the next regularly scheduled meeting of the board. At that meeting, the board shall determine whether to approve the temporary practice.

Section 3. A nonresident psychologist temporarily employed in the state may render psychological services no more than thirty (30) days every two (2) years with the approval of the board.

Section 4.[~~3.~~] Upon the completion of the authorized temporary employment period, the nonresident license holder shall submit a written report to the board of each date on which psychological services were rendered in this state, and the location of the site of those services.

Section 5.[~~4.~~]For purposes of this administrative regulation, the provision of psychological services on a given date, regardless of the period of time of those services, shall constitute one (1) day.

Section 6.[~~5.~~] Pursuant to KRS 319.015(8), the provisions of this administrative regulation shall:

(1) Apply to a nonresident psychologist temporarily employed in the state for a period of fewer than thirty (30) days every two (2) years; and

(2) Not be used to begin practice in Kentucky by an applicant for temporary or regular licensure pending credentials review.

Section 7.[~~6.~~] A person licensed to practice psychology in another jurisdiction may practice psychology by electronic or telephonic means in Kentucky if he or she registers with the board and receives board approval for this practice. A person seeking this approval shall follow the provisions set forth in Sections 1 through 4 of this administrative regulation.

Section 8.[~~7.~~] A person licensed to practice psychology in another jurisdiction and who is providing service in response to a declared disaster pursuant to an agreement between the American Red Cross and the American Psychological Association's Disaster Response Network may begin practice in Kentucky upon notification to the board.

Section 9. A person practicing pursuant to the provisions of

KRS 319.015(8) shall be subject to the provisions of KRS 319.082 and 201 KAR 26:145.

Section 10. Incorporation by Reference. (1) "Nonresident Psychological Registration Form", ***February 2017[~~December 2016~~]***, 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: March 15, 2017

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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.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:225. Renewal and reinstatement.

RELATES TO: 319.071

STATUTORY AUTHORITY: KRS 319.032(1)(c), 319.032(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ***319.032(1)(c)[~~319.03(1)(c)~~]*** requires the ***Board of Examiners of Psychology[~~board~~]*** to promulgate an administrative regulation setting the requirements for issuing and denying an applicant for licensure. KRS 319.032***(2)*** authorizes the board to promulgate administrative regulations as it deems necessary for the proper administration of KRS Chapter 319. This administrative regulation establishes the renewal and reinstatement processes.

Section 1. (1) To apply for renewal, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5); and

(c) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1).

(2) After the renewal date but during the three (3) month grace period, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2; and

(d) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1)***.[~~; and~~]***

(3) After the three (3) month grace period but less than three (3) years of cancelation, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2;

(d) Pay to the board a reinstatement fee established in 201 KAR 26:160, Section 3; and

(e) Complete thirty-nine (39) continuing education hours obtained within the three (3) years prior to the date of application for reinstatement.

(4) After three (3) years of cancelation, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:

(a) Submit a new completed application to the board;

(b) Pay to the board the appropriate fee established in 201 KAR 26:160, Section 1; and

(c) Successfully complete the oral and structured examinations on Kentucky mental health law, ethical principles, and professional practice established in 201 KAR 26:230, Section 3(1)(b) and (4).

Section 2. (1) To apply for renewal, a certified psychologist or licensed psychological associate shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(6); and

(c) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1).

(2) After the renewal date but during the three (3) month grace period, a certified psychologist or licensed psychological associate shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(6);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2; and

(d) Complete thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1)***.[~~; and~~]***

(3) After the three (3) month grace period but less than three (3) years of cancelation, a certified psychologist or licensed psychological associate shall:

(a) Submit a completed Renewal Application to the board;

(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);

(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2;

(d) Pay to the board a reinstatement fee established in 201 KAR 26:160, Section 3; and

(e) Complete thirty-nine (39) continuing education hours obtained within the three (3) years prior to the date of application for reinstatement.

(4) After three (3) years of cancelation, a certified psychologist or licensed psychological associate shall:

(a) Submit a new completed application to the board; and

(b) Pay to the board the appropriate fee established in 201 KAR 26:160, Section 1.

Section 3. A person who previously held a credential issued by the board and applies three (3) years or more beyond the date of cancelation shall be required to meet current initial licensure requirements.

Section 4. A credential holder may continue to practice during the grace period.

Section 5. A person shall not engage in the practice of psychology after a license has been canceled.

Section 6. Incorporation by Reference. (1) "Renewal Application", March 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: 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.

GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:250. Employment of a psychological associate.

RELATES TO: KRS 319.032(1)(b), (l), 319.064(5)
STATUTORY AUTHORITY: KRS 319.032(1)(b), (l)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the ***Board of Examiners of Psychology*** ***[board]*** to promulgate an administrative regulation governing the supervision and employment of a licensed psychological associate. KRS 319.064(5) prohibits a licensed psychological associate from practicing independently, except under the employment and supervision of a board approved licensed psychologist. This administrative regulation establishes the requirements for the employment of a licensed psychological associate.

Section 1. Employment of a licensed psychological associate by a regional mental health/mental retardation board, college or university, or government agency shall not be considered independent practice.

Section 2. A licensed psychological associate may be employed in a supervisor's independent practice, if the supervisor is responsible for the direction and control of the practice of the licensed psychological associate.

Section 3. ***(1)*** A special application shall:
(a)[(1)] Be submitted to the board by the supervisor of record and a licensed psychological associate if:
1.a.[(a)1.] The licensed psychological associate is employed in an independent practice; and
b.[2.] The supervisor of record is not the employer; or
2.[(b)] The employer is not an organization listed in Section 1 of this administrative regulation***.[;]***
(b)[(2)] Be approved by the board before the practice begins***.[;]***
(c)[(3)] Identify the licensed psychological associate, supervisor, and employer***.[; and]***
(d)[(4)] Certify that:
1.[(a)] The supervising licensed psychologist is not hired, employed**,** or engaged under contract by the licensed psychological associate [~~and shall not be terminated by the licensed psychological associate~~];
2.[(b)] The licensed psychological associate is not one of the owners of the independent practice or organization, but rather serves as an employee; and
3.[(c)] The licensed psychological associate has both administrative and clinical supervision which are provided by the independent practice or organization.
(2)[(5)] The arrangement described in the application shall be approved by the board before the practice begins.

Section 4. A licensed psychological associate shall not pay, hire**,** or employ a supervisor to provide supervision in accordance with 201 KAR 26:171.

Section 5. A licensed psychological associate who works as an employee for more than one (1) independent practice or organization shall obtain approval from the board ***for[of]*** a supervisor of record for each independent practice or organization and shall comply with 201 KAR 26:171 for approval to have more than two (2) supervisors of record.

Section 6[~~5~~]. In all communications and advertising with the public, the licensed psychological associate's relationship with the employer and the supervisor shall be clearly indicated.

Section 7[~~6~~]. The licensed psychological associate and the supervisor shall comply with the requirements for supervision established in 201 KAR 26:171.

Section 8[~~7~~]. Incorporation by Reference. (1) "Special Application[~~/Employment of a Psychological Associate~~]", (October 2016[~~January 2002~~] edition), 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: March 15, 2017
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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

RELATES TO: KRS 319.064
STATUTORY AUTHORITY: KRS 319.032(1)(a), (c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the ***Board of Examiners of Psychology[board]*** to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological associate. This administrative regulation establishes the requirements for applicants for licensure***[,]*** and the conditions for a temporary license.

Section 1. Application. (1) An application for a credential to perform certain functions as a licensed psychological associate may be submitted after the requirements established in KRS 319.064(2) are met.
(2) The application required by subsection (1) of this section shall be made by submitting a completed Application for Licensure as a Psychological Associate[~~Form Psy-1, as incorporated in 201 KAR 26:155,~~] to the board. The application shall:
(a) Include a certification by the applicant that the:
1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and
2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and
(b) Be accompanied by:
1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;
2. Three (3) letters of reference ***or completed "Recommendation Form for Licensure as a Psychological Associate"*** from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. Psy.D., or Ed.D.); and
3. An official transcript for all levels of education required for licensure.

Section 2. Temporary Licensure. (1) An applicant may request permission to perform functions as a licensed psychological associate on a temporary basis pursuant to KRS 319.064(3).
(2) The request for a temporary credential shall be co-signed by the candidate and the proposed supervisor, who shall be a licensed psychologist approved by the board and who holds the health services provider designation.
(3)***(a) A temporary license shall be valid for one (1) year from the date of the notice of approval by the board.***
(b) During the period of temporary licensure, a candidate shall:
1. Successfully complete all credentials and examination procedures; and

2. Pass the EPPP.

(c)1. A candidate shall score at least an eighty (80) percent to pass the structured examination of Kentucky mental health law.

2. A candidate shall score a 100 percent to pass the oral examination on ethical principles and professional practice.[~~The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or if the candidate fails to pass the EPPP within one (1) year of the date of the notice of approval by the board for a temporary license.~~]

(4)(a) Under exceptional circumstances and upon written request cosigned by the board approved supervisor, the board may approve an extension of the period of temporary licensure.

(b) A licensee shall submit a completed Request for Extension of Temporary Licensure as a Psychological Associate to request an extension.

Section 3. Grace Period for Submission of Credentials. In order to allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which a candidate who has completed his or her degree requirements may begin employment by an agency to practice psychology under supervision with a board-approved supervisor.

(1) Upon acceptance of employment, the candidate and the licensed psychologist who shall serve as the supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice may be***[~~deemed as~~]*** grounds for disciplinary action against the candidate and the supervisor.

(2) It ***shall be[~~is~~]*** the responsibility of the candidate to ensure that all materials are forwarded to the board within thirty (30) days from the date of agency employment. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if their application material is insufficient to take any action, he or she shall be directed to cease practice until the requirements are met.

(3) The grace period shall not be extended beyond sixty (60) days. A candidate who fails to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in subsection (1) of this section, the candidate ***shall[~~is deemed to~~]*** be practicing psychology under the jurisdiction of the board, and ***shall be[~~is~~]*** subject to ***KRS Chapter 319 and 201 KAR Chapter 26[~~relevant laws and regulations~~]***.

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

(a) "Application for Licensure as a Psychological Associate", February 2017;

(b) "Recommendation for Licensure as a Psychological Associate", February 2017; and

(c) "Request for Extension of Temporary Licensure as a Psychological Associate", February 2017.

(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

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GENERAL GOVERNMENT CABINET
Board of Examiners of Psychology
(As Amended at ARRS, June 13, 2017)

201 KAR 26:290. Licensed psychological practitioner: application procedures.

RELATES TO: KRS 319.053

STATUTORY AUTHORITY: 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS ***319.032(1)(a) and (c) require the Board of Examiners of Psychology[~~319.053 requires the board~~]*** to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychological practitioner. This administrative regulation establishes the requirements for ***these*** applicants.

Section 1. Application. (1) An applicant[~~application~~] for licensure[~~a license~~] as a licensed psychological practitioner shall submit a completed Application for Licensure as a Psychological Practitioner[~~may be submitted on form Psy 1, as incorporated in 201 KAR 26:155,~~] after the requirements established in KRS 319.053(1) are met.

(2) The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief;

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A payment[~~check or money order payable~~] to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) letters of completed Recommendation for Licensure as a Psychological Practitioner[~~reference~~] from persons who are familiar with the clinical work of the applicant. One (1) letter shall be from the current board-approved supervisor of record outlining the candidate's scope of practice and the other two (2) letters shall be from licensed mental health professionals acceptable to the board;[~~and~~]

3. An official transcript for all levels of education required for licensure; and[~~.~~]

4. A completed Supervisor Recommendation for Licensure as a Psychological Practitioner.

Section 2. Temporary Licensure. Temporary credentials shall not be issued to persons applying for licensed psychological practitioner status. An applicant may continue to practice under board-approved supervision as a licensed psychological associate or as a certified psychologist pending successful completion of all requirements for a change of status to a licensed psychological practitioner.

(1) The candidate shall obtain an acceptable score on the national (EPPP) examination as established in 201 KAR 26:230, Section 4.

(2) The board shall accept the applicant's previous examination results for the national (EPPP) examination if the original test score satisfied the doctoral licensure requirement as to criterion level at the time of that examination.

(3) The applicant shall pass the structured***[~~oral~~]*** examinations on Kentucky mental health law, ethical principles, and professional practice established in 201 KAR 26:230, Section 4(5). ***An applicant shall score at least an eighty (80) percent to pass the structured examination of Kentucky mental health law. An applicant shall score a 100 percent to pass the oral examination on ethical principles and professional practice.***

[~~(4) An applicant for licensure as a psychologist shall submit:~~]

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

(a) "Application for Licensure as a Psychological Practitioner", February 2017;

(b) "Supervisor Recommendation for Licensure as a Psychological Practitioner", February 2017; and

(c) "Recommendation for Licensure as a Psychological Practitioner", February 2017.

(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

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GENERAL GOVERNMENT
Board of Licensure of Marriage and Family Therapists
(As Amended at ARRS, June 13, 2017)

201 KAR 32:050. Code of ethics.

RELATES TO: KRS 335.320(7), 335.348

STATUTORY AUTHORITY: KRS 335.320(7), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.320***(7) and (9) require[(5) requires]*** the board to promulgate a code of ethics for licensed marriage and family therapists and marriage and family therapist associates. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A marriage and family therapist or a marriage and family therapist associate shall:

(a) Advance and protect the welfare of his ***or her*** client;

(b) Respect the rights of persons seeking his ***or her*** assistance; and

(c) Make***[reasonable]*** efforts to ensure that his ***or her*** services are used appropriately.

(2) A marriage and family therapist or marriage and family therapist associate shall not:

(a) Exploit the trust and dependency of a client;

(b) Engage in a dual relationship with a client, including a social, business, or personal relationship, that may:

1. Impair professional judgment;

2. Incur a risk of exploitation of the client; or

3. Otherwise violate a provision of this administrative regulation. If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a therapist or therapist associate shall take***[appropriate]*** professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur. ***Professional precautions shall include:***

a. Written informed consent by the client of the client's understanding of the general prohibitions against dual relationships;

b. Peer consultation by a licensed professional; and

c. Proper documentation of the precautions taken by the therapist or therapist associate.

(c) Engage in a sexual relationship with a current client,[or with] a former client, or a member of a client's family system[for two (2) years following the termination of therapy];

(d) Use his ***or her*** professional relationship with a client to further his ***or her*** own interests;

(e) Continue therapeutic relationships unless it is reasonably clear that the client is benefiting from the relationship;

(f) Fail to assist a person in obtaining other therapeutic services if the therapist or therapist associate is unable or unwilling***[, for appropriate reasons,]*** to provide professional help ***for appropriate reasons that include a threat or risk of harm to the therapist or therapist associate, a failure to pay for services previously provided, or a severe injury or medical illness suffered by the therapist or therapist associate***;

(g) Abandon or neglect a client in treatment without making ***[reasonable]*** arrangements for the continuation of treatment;

(h) Videotape, record, or permit third party observation of therapy sessions without having first obtained written informed consent from the client;

(i) Engage in sexual or other harassment or exploitation of a client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(j) Diagnose, treat, or advise on problems outside the recognized boundaries of his ***or her*** competence.

Section 2. Confidentiality. (1) A therapist or therapist associate shall respect and guard the confidences of each individual client.

(2) Marriage and family therapists and marriage and family therapist associates shall not disclose a client confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the therapist or therapist associate is a defendant in a civil, criminal, or disciplinary action arising from the therapy, confidences may be disclosed only in the course of that action; or

(d) If a waiver has been obtained in writing, confidential information shall be revealed only in accordance with the terms of the waiver. If more than one (1) person in a family receives therapy, unless a waiver is executed by each family member receiving therapy, who is legally competent to execute a waiver, a therapist or therapist associate shall not disclose information received from any family member.

(3) A marriage and family therapist or marriage and family therapist associate, shall not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(4) A marriage and family therapist or marriage and family therapist associate may use client or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver has been obtained in accordance with subsection (2)(d) of this section; or

(b)***[Appropriate]*** Steps have been taken to protect client identity and confidentiality.

(5) A marriage and family therapist or marriage and family therapist associate shall store or dispose of client records so as to maintain confidentiality.

Section 3. Professional Competence and Integrity. A marriage and family therapist or marriage and family therapist associate shall maintain standards of professional competence and integrity and shall be subject to disciplinary action:

(1)(a) Upon conviction of a felony, or a misdemeanor related to his ***or her*** practice as a marriage and family therapist or marriage and family therapist associate.

(b) Conviction shall include conviction based on:

1. A plea of no contest or an "Alford Plea"; or

2. The suspension or deferral of a sentence.

(2) If his ***or her*** license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of marriage and family therapy;

(4) If he ***or she*** misrepresented or concealed a material fact in obtaining or seeking reinstatement of a license or certificate;

(5) If he ***or she*** has refused to comply with an order issued by the board; or

(6) If he ***or she*** has failed to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board;

(b) Appearing before the board at the time and place designated; or

(c) Properly responding to subpoenas issued by the board; or

(7) Fails to notify the board in writing within ten (10) business days of a change in contact information.

Section 4. Responsibility to a Student or Supervisee. (1) A marriage and family therapist or marriage and family therapist associate shall not exploit the trust and dependency of a student or supervisee.

(2) A marriage and family therapist or marriage and family therapist associate shall:

(a) Be aware of his ***or her*** influential position with respect to a student or supervisee; and

(b) Avoid exploiting the trust and dependency of these persons.

1. A therapist or therapist associate shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with a student or supervisee that may impair professional judgment or increase the risk of exploitation.

2. If a dual relationship cannot be avoided, a therapist or therapist associate shall take***[appropriate]*** professional precautions to ensure judgment is not impaired and no exploitation occurs.

3. A therapist or therapist associate shall not provide therapy to a student, employee or supervisee.

4. A therapist or therapist associate shall not engage in sexual intimacy or contact with a student or supervisee.

(3) A marriage and family therapist or marriage and family therapist associate shall not permit a student or supervisee to perform or to hold himself ***or herself*** out as competent to perform professional services beyond his ***or her*** level of training, experience, and competence.

(4) A marriage and family therapist or marriage and family therapist associate shall not disclose a student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the therapist or therapist associate is a defendant in a civil, criminal, or disciplinary action arising from the supervision, the student's or supervisee's confidence may be disclosed only in the course of that action;

(d) In educational or training settings if there are multiple supervisors, to other professional colleagues who share responsibility for the training of the supervisee; or

(e) If there is a waiver previously obtained in writing, information shall be revealed only in accordance with the terms of the waiver.

Section 5. Financial Arrangements. (1) A marriage and family therapist or marriage and family therapist associate shall make financial arrangements with a client, third party payor, or supervisee that are reasonably understandable and conform to accepted professional practices.

(2) A marriage and family therapist or marriage and family therapist associate shall:

(a) Not offer or accept payment for referrals;

(b) Not charge excessive fees for services;

(c) Disclose his ***or her*** fees to clients and supervisees at the beginning of services; or

(d) Represent facts truthfully to clients, third party payors, and supervisees regarding services rendered.

Section 6. Advertising. A marriage and family therapist shall:

(1) Accurately represent his ***or her*** education, training, and experience relevant to his ***or her*** practice of marriage and family therapy;

(2) Not use professional identification, including a business card, office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

(3) A statement shall be false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or

(c) Is intended to or is likely to create an unjustified expectation.

Section 7. A marriage or family therapist associate may have business cards and letterhead if it is clearly stated that he ***or she*** is an associate. ***An associate[~~He~~]*** shall not ***represent[~~present himself~~]*** or imply that he ***or she*** is licensed to practice as a marriage and family therapist.

MARY BADAMI, Chairperson

APPROVED BY AGENCY: February 13, 2017

FILED WITH LRC: March 2, 2017 at 10 a.m.

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GENERAL GOVERNMENT
Board of Licensure of Marriage and Family Therapists
(As Amended at ARRS, June 13, 2017)

201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 194.540, 210.366, 335.300(4), 335.340

STATUTORY AUTHORITY: KRS 335.320(4), (9), 335.340(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.340(7) authorizes the board to promulgate administrative regulations to establish the fees and other requirements for a permit as a marriage and family therapist and associate. This administrative regulation establishes the requirements for continuing education and the methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours; Computation of Accrual. (1) Effective January 1, 2017, a minimum of fifteen (15) approved continuing education hours shall be accrued by each licensee and a minimum of ten (10) approved continuing education hours shall be accrued by each associate during each one (1) year renewal period.

(2) All hours shall be in "the practice of marriage and family therapy" as defined by KRS 335.300(4) and shall relate to the professional application of psychotherapeutic and systems theories and techniques in the delivery of services to individuals, couples, and families.

(3) Three (3) hours of the[~~fifteen (15)~~] hours required by subsection (1) of this section for licensees and associates shall be accrued in the field of professional marriage and family therapy ethics.

(4) Commencing on January 1, 2017, each licensee and associate shall be required to show proof of completion of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years beginning January 1, 2015 as required by KRS 210.366. These hours shall be in addition to the requirements set forth in subsection (1) of this section unless preapproved by the board as meeting the requirements set forth in subsection (2) of this section or meets requirements of Section 2 of this administrative regulation.

(5) Within three (3) years of initial licensure or certification, all mental health professionals shall successfully complete a three (3) hour training that covers dynamics of domestic violence, elder abuse, neglect, and exploitation; effects of domestic violence and elder abuse, neglect, and exploitation on adult and child victims; legal remedies for protection; lethality and risk issues; model protocols for addressing domestic violence and elder abuse, neglect, and exploitation; available community resources and victim services and reporting requirements as required by KRS 194A.540.

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license

or permit shall be directly related to the professional growth and development of marriage and family therapy practitioners and associates. Education hours shall be earned by completing any of the educational activities established in this subsection. (1) Programs not requiring board review and approval. Programs from the following sources shall be deemed to be relevant to the practice of marriage and family therapy and shall be approved without further review by the board:

(a) Programs provided or approved by the American Association for Marriage and Family Therapy (AAMFT) and its state affiliates;

(b) Academic courses as defined in 201 KAR 32:010; and

(c) Continuing education programs offered by Commission on Accreditation for Marriage and Family Therapy Education accredited institutions.

(2) Programs requiring board review and approval. Programs from the following sources shall be reviewed and may be determined to be relevant and subsequently approved by the board:

(a) Relevant programs including online study courses, manualized training, and face-to-face workshops, by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; and

(c) Relevant publications in a professionally recognized or juried publication. Credit shall not be granted except for those publications that were published within the one (1) year period immediately preceding the renewal date. A licensee shall earn one-half (1/2) of the continuing education hours required for a relevant publication. More than one (1) publication shall not be counted during each renewal period.

Section 3. Continuing Education ***Providers[~~Sponsors~~]***. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall pay the fee as established in 201 KAR 32:030, Section ***9[~~7~~]***, and submit ***a[~~an Application for~~]*** Continuing Education ***Program Provider[~~Sponsor~~]*** Approval ***Application, as incorporated by reference in 201 KAR 32:030, Section 10,*** to the board at least sixty (60) days in advance of the program. The application shall include the:

(a) Type of learning activity;

(b) Subject matter;

(c) Names and qualifications of the instructors; and

(d) Number of continuing education hours offered.

(2) A continuing education activity shall be qualified for preapproval if the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters that integrally relate to the practice of marriage and family therapy;

(c) Contributes to the professional competency of the licensee or associate; and

(d) Is conducted by individuals who have relevant educational training or experience.

Section 4. Responsibilities and Reporting Requirements of Licensees and Associates. (1) Licensees and associates shall:

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

(b) Identify personal continuing education needs;

(c) Take the initiative in seeking continuing professional education activities to meet these needs; and

(d) Seek ways to integrate new knowledge, skills, and attitudes.

(2) Each person holding a license or permit shall:

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

(b) If seeking approval for continuing education from a program not already approved pursuant to Section ***2(2)[3]*** of this administrative regulation and not exempted from requiring board approval pursuant to Section 2(1) of this administrative regulation, submit an application to the board for consideration. The application shall include the:

1. Agenda that is detailed, timed, and includes topics and presenters;
2. Presenter's biography, including education;
3. Credentials of all presenters;
4. All presenters' experience related to topic;
5. Description of training; and
6. Objectives and goals;

(c) Maintain records of continuing education hours. Each licensee and associate shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours. During each renewal period, up to fifteen (15) percent of all licensees and associates shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours shall not otherwise be reported to the board;

(d) Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, or affidavits signed by instructors. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and

(e) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(7) and may result in the refusal to renew, suspension, or revocation of the license or permit.

Section 5. 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 6. Board to Approve Continuing Education Hours; Appeal Upon Approval Denial. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee or associate shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 7. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A request for waiver or extension shall be in writing and submitted within the renewal grace period.

(3) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the licensee or associate accompanied by a verifying document signed by a licensed physician, a physician's assistant, or a nurse practitioner, and shall be received by the board within the grace period.

(4) ***A written request for waiver or extension of time involving undue hardship shall be submitted by the licensee or associate accompanied by a verifying document signed by the licensee or associate, and shall be received by the board within the grace period.***

(5) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(6)[~~(5)~~] If the medical disability***,[~~or~~]*** illness***, or undue hardship*** upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or associate shall reapply for the waiver or extension in writing prior to the expiration of the previous extension or waiver. ***[~~Section 8. Incorporation by Reference. (1) "Application for Continuing Education Program Sponsor Approval", 10/2011 Edition,~~***

~~***Board of Marriage and Family Therapists, is incorporated by reference.***~~

~~***(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]***~~

MARY BADAMI, Chairperson

APPROVED BY AGENCY: February 13, 2017

FILED WITH LRC: March 2, 2017 at 10 a.m.

CONTACT PERSON: Nicole Sergent Biddle, Counsel for Kentucky Board of Licensure for Marriage and Family Therapists, C/O Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-5463, email Nicole.Sergent@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Licensure for Professional Art Therapists
(As Amended at ARRS, June 13, 2017)

201 KAR 34:020. Fees.

RELATES TO: KRS 309.133, 309.134, 309.1335, 309.138

STATUTORY AUTHORITY: KRS 309.1315(1), (4), (13), ***309.1335,*** 309.135

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315(1), (4), and (13), and 309.135 require the board to promulgate an administrative regulation establishing fees for licensure, examination, renewal, and reinstatement of the license. This administrative regulation establishes those fees.

Section 1. Application Fee. (1)(a) The application fee for board review of the Application for Licensed Professional Art Therapist required by 201 KAR 34:025, Section 1(1), shall be $100.

(b) The application fee for board review of the Application for ***Licensed[***~~License~~***]***[~~Licensed~~] Professional Art Therapist Associate required by 201 KAR 34:025, Section 1(2), shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

Section 2. Examination Fee. The applicant shall pay the national examination fee established by the National Art Therapy Credentials Board.

Section 3. Initial Licensure Fee. (1)(a) The initial licensure fee shall be $100 for licensure as a licensed professional art therapist.

(b) The initial licensure fee shall be fifty (50) dollars for licensure as a licensed professional art therapist associate.

(2) If the applicant successfully completes all requirements for licensure, this fee shall cover licensure for the initial two (2) year period.

Section 4. Renewal Fee. (1) The renewal fee for licensed professional art therapist licensure shall be $200 for a two (2) year period.

(2) The renewal fee for licensed professional art therapist associate licensure shall be $100 for a two (2) year period.

Section 5. Late Fee. The late fee for a licensee who applies for renewal within the ninety (90) day grace period established in KRS 309.1335(2)[~~days of his or her original renewal deadline~~] shall be fifty (50) dollars, which shall be paid in addition to the renewal fee set out in Section 4 of this administrative regulation. Any license not renewed within the ninety (90) day grace period shall be suspended. A person shall not engage in the practice professional art therapy with a suspended license.

Section 6. Reinstatement Fee. (1) The reinstatement fee for a licensee who applies for reinstatement more than ninety (90) days but prior to 180 days after the original renewal deadline shall be:

(a) 1. $100 for a licensed professional art therapist; or

2. Fifty (50) dollars for a licensed professional art therapist associate; and

(b) Paid in addition to the renewal fee set out in Section 4 of this ***administrative[***~~administration~~***]***[~~administrative~~] regulation.

(2)(a) A licensed professional art therapist who applies for reinstatement shall submit the LPAT Reinstatement Form.

(b) A licensed professional art therapist associate who applies for reinstatement shall submit the LPATA Reinstatement Form.

Section 7. Board Examination Fee. (1) The board examination fee for completing an examination offered by the board shall be ten (10) dollars per credit hour, but not more than thirty (30) dollars for each board examination.

(2) A board examination fee shall be paid for each board examination listed in regulation 201 KAR 34:030**,** Section 3(3) that a license holder ***renewing an active board issued license*** or board approved supervisor completes and submits to the board.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "LPAT Reinstatement Form", 2010; and

(b) "LPATA Reinstatement Form', 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department ***of[***~~for~~***]*** Professional Licensing[~~Division of Occupations and Professions~~], 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

MARYBETH ORTON, Board Chairman

APPROVED BY AGENCY: April 13, 2017

FILED WITH LRC: April 13, 2017 at 10 a.m.

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GENERAL GOVERNMENT CABINET
Board of Licensure for Professional Art Therapists
(As Amended at ARRS, June 13, 2017)

201 KAR 34:030. Continuing education requirements.

RELATES TO: KRS 309.133, 309.1335(1)(c), 309.134, 309.137

STATUTORY AUTHORITY: KRS 309.1315(1), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315(1) and (9) require the board to promulgate administrative regulations necessary to carry out the provisions of KRS 309.130 to 309.1399 and to establish the criteria for continuing education. KRS 309.1335(1)(c) authorizes the board to promulgate an administrative regulation requiring licensed professional art therapists and licensed professional art therapist associates to complete continuing education requirements as a condition of renewal of their license. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic course" means a course offered by an accredited postsecondary institution that is an:

(a) Art therapy course, designated by an art therapy course title or content, beyond the undergraduate level; or

(b) Academic course, relevant to professional art therapy, beyond the undergraduate level.

(2) "Approved" means recognized by the Kentucky Board of Licensure for Professional Art Therapists.

(3) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(4) "Program" means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or series.

(5) "Provider" means an individual or an organization that provides or sponsors continuing education programs and is

approved by the board.

(6) "Relevant" means having content applicable to the practice of professional art therapy as evaluated by the board.

(7) "Successful completion" means that the license holder has:

(a)***1.*** Satisfactorily met the specific requirements of the program; and

2.[(b)] Earned the continuing education hours; or

(b)[(c)] Received a passing score from the board for completing a board examination.

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of forty (40) continuing education hours shall be accrued by a licensed professional art therapist during the two (2) year licensure period for renewal.

(2) A minimum of eighteen (18) continuing education hours shall be accrued by a licensed professional art therapy associate during the two (2) year licensure period for renewal.

(3) All hours shall be in or related to the field of professional art therapy.

(4) A licensee shall obtain three (3) hours of continuing education on ethics included within the hours required by subsection (1) and (2) of this section during the two (2) year licensure period for renewal.

(5) Continuing education activities shall be in the following content areas in order to be considered relevant:

(a) Psychological and psychotherapeutic theories and practice;

(b) Art therapy assessment;

(c) Art therapy theory and practice;

(d) Client populations;

(e) Art theory and media; and

(f) Professionalism and ethics.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the certificate shall be directly related to the professional growth and development of a professional art therapy practitioner. Hours may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. A program provided or approved by any of the following providers shall be relevant to the practice of professional art therapy and shall be approved without further review by the board:

(a) The American Art Therapy Association, Inc. or any of its state affiliates;

(b) The Art Therapy Credentials Board, Inc.;

(c) The American Association of Marriage and Family Therapy and its state affiliates;

(d) The National Association of Social Workers and its state affiliates;

(e) The American Psychological Association and its state affiliates;

(f) The American Counseling Association and its state affiliates;

(g) The National Board of Certified Counselors and its state affiliates;

(h) The Association for Addiction Professionals (NAADAC) and its state affiliates;

(i) The Department for Behavioral Health, Developmental and Intellectual Disabilities;

(j) The Employee Assistance Professionals Association; and

(k) Academic courses as established in Section 1(1) of this administrative regulation. A general education course, elective, or course designated to meet degree requirements shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board and evaluated whether it is relevant:

(a) A program, including a home study course, webinar, and in-service training provided by another organization, educational institution, or service provider approved by the board;

(b) A program or academic course presented by the license holder. A presenter of a relevant program or academic course shall earn two (2) continuing education hours for each contact hour of instruction. Credit shall not be issued for repeated instruction of the same course;

(c) A publication in a professionally recognized or juried publication. Continuing education hours shall be granted for a relevant publication as follows:

1. Five (5) continuing education hours for each published abstract or book review;

2. Ten (10) continuing education hours for each published article;

3. Twenty (20) continuing education hours for each book chapter or monograph; and

4. Forty (40) continuing education hours for each published book; and

(d) An exhibition in a juried art show. An exhibitor at a juried art show shall earn ten (10) continuing education hours for an exhibition and is limited to one (1) exhibition per renewal cycle.

(3) Board examination. A license holder shall submit an Application for Examination Continuing Education Credit to receive continuing education credit for completing a board examination. ***The board shall only grant board examination continuing education credit to an active license holder renewing an active board issued license and to a board approved supervisor.*** Upon application, ***and payment of the board examination fee established in 201 KAR 34:020, Section 7(1),*** the board shall credit a license holder with three (3) continuing education credit hours for successfully completing a training examination offered by the board. A license holder may complete more than one ***(1)*** board examination but shall be awarded no more than eighteen (18) continuing education credit hours for completing board examinations during a two (2) year licensure period. Three (3) credit hours shall be awarded for successfully completing each of the following board examinations:

(a) Art therapy assessment examination;

(b) Art therapy and client populations examination;

(c) Art therapy theory and practice examination;

(d) Art therapy theory and media examination;

(e) Art therapy professionalism and ethics examination; and

(f) Board-approved supervisor training examination.

(4) A license holder shall submit a written request to the board to repeat a continuing education program or board examination during the two (2) year licensure period. Preapproval shall be required for repeating a program or examination for credit toward the minimum continuing education requirement for renewal. The request to repeat a continuing education program or board examination shall be submitted to the board before repeating the program or examination. A board examination fee shall be paid for repeated examinations.

Section 4. Procedures for Preapproval of Continuing Education Programs. (1) Any entity seeking to obtain approval of a continuing education program shall submit a complete Application for Continuing Education Program Approval prior to its offering and shall apply to the board at least sixty (60) days in advance of the commencement of the program[~~, and shall provide the information required in Section 5 of this administrative regulation~~].

(2) A continuing education program shall be qualified for approval if the board finds the activity being presented:

(a) Is an organized program of learning;

(b) Lists goals and objectives;

(c) Pertains to subject matters which integrally relate to the practice of art therapy;

(d) Contributes to the professional competency of the licensee; and

(e) Is conducted by individuals who have educational training or experience acceptable to the board.

(3)(a) The board may approve a specific continuing education program that is not listed in Section 3(1) of this administrative regulation if the provider of the program:

1. Files a written request for approval;

2. Pays an annual processing fee of seventy-five (75) dollars; and

3. Provides the information on a continuing education program

that it proposes to provide that meets the requirements established in this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the provider to offer the program for a period of one (1) calendar year.

(4)(a) A license holder may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past license period, the license holder has:

1. Requested the review by applying for individual review; and

2. Paid a fee of twenty (20) dollars.

(b) The review shall be based on the standards established by this administrative regulation.

(c) Approval by the board of a nonapproved continuing education activity shall:

1. Qualify as if it has been obtained from an approved provider; and

2. Be limited to the particular offering upon which the request for individual review is based.

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

(2) The applicant shall submit a complete Application for Continuing Education Program Approval that includes***[, but is not limited to,]*** the following information and fees[~~following shall be submitted for board review of a program~~]:

(a) A published course or seminar description;

(b) The name and qualifications of the instructor including resume or vitae;

(c) A copy of the program agenda indicating hours of education, coffee and lunch breaks;

(d) Number of continuing education hours requested;

(e) Official certificate of completion or college transcript from the provider or college;

(f) Letter requesting continuing education credits approval;

(g) The applicable fee identified in Section 4 of this administrative regulation; and

(h) Program evaluation.

Section 6. Responsibilities and Reporting Requirements of License Holders. (1) During the license renewal period, the board shall require up to fifteen (15) percent of all license holders to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A license holder shall:

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

(b) Identify his or her continuing education needs and seek activities that meet those needs;

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

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

(e) Submit to the board, if applicable, a request for approval for continuing education activities not otherwise approved by the board;

(f) Document attendance, participation in, and successful completion of continuing education activity for a period of two (2) years from the date of the renewal; and

(g) Maintain records of continuing education hours;

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

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor;

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

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

(4) A license holder shall comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 309.137(1) and shall result in disciplinary action pursuant to that statutory provision.

Section 7. Carry-over of Continuing Education Hours, Prohibited. Continuing education hours earned in excess of those required under Section 2 of this administrative regulation shall not be carried over into the immediately following license renewal period.

Section 8. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or in part, the person holding a license shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date the notification of the decision denying approval of continuing education hours is mailed; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the license holder;

(b) Illness of the license holder or an immediate family member; [~~or~~]

(c) Death or serious injury of an immediate family member; or

(d) Active duty military service or deployment.

(2) A written request for waiver or extension of time[~~involving medical disability or illness~~] shall be:

(a) Submitted by the person holding the license; [~~and~~]

(b) Accompanied by a verifying document signed by a licensed physician or an authority verifying the need for an extension of time or waiver; and

(c) Received by the board before the expiration of the two (2) year licensure period for renewal and before the beginning of the ninety (90) day grace period established by KRS 309.1335(2) for the license.

(3) A wavier of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability***,[~~or~~]*** illness***, or military service*** upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of professional art therapist licensure shall submit evidence of forty (40) hours of continuing education within the twenty-four (24) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) If the board reinstates a professional art therapist license, the person shall obtain forty (40) hours of continuing education within six (6) months of the date on which licensure is reinstated.

(3) A person requesting reinstatement or reactivation of professional art therapist associate licensure shall submit evidence of eighteen (18) hours of continuing education within the twenty-four (24) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(4) If the board reinstates a professional art therapist associate license, the person shall obtain eighteen (18) hours of continuing education within six (6) months of the date on which licensure is reinstated.

(5) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

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

(a) "Application for Examination Continuing Education Credit", October 2016; and

(b) "Application for Continuing Education Program Approval",

October 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

MARYBETH ORTON, Board Chairman

APPROVED BY AGENCY: April 13, 2017

FILED WITH LRC: April 13, 2017 at 10 a.m.

CONTACT PERSON: John Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5635, fax (502) 696-3925, email marcus.jones@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Licensure for Professional Art Therapists
(As Amended at ARRS, June 13, 2017)

201 KAR 34:050. Complaint procedure.

RELATES TO: KRS 309.137

STATUTORY AUTHORITY: KRS 309.1315(1), (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315 authorizes the board to promulgate administrative regulations establishing a procedure by which the board will institute actions against a licensee for violation of the provisions of KRS ***309.130 to 309.1399 or[~~Chapter 309 and the administrative regulations of~~]*** 201 KAR Chapter 34[~~KRS 309.137, and the administrative regulations promulgated thereto~~] or for professional misconduct. This administrative regulation sets forth the procedure and process by which ***those[~~such~~]***[~~those~~] complaints shall be reviewed by the board.

Section 1. Definitions. (1) "Act" means KRS 309.130 through 309.138.

(2) ***"Chair"["~~Chairman"~~]***["~~Chair"~~] means the chair or vice-chair of the board.

(3) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of the KRS 309.130 through 309.138 or***[~~the administrative regulations~~]*** of 201 KAR Chapter 34[~~promulgated thereunder~~].

(4) "Complaint" means any written allegation of misconduct by an individual licensed by the board or other person which might constitute a violation of KRS 309.130 through 309.138 or***[~~the administrative regulations~~]*** of 201 KAR Chapter 34[~~promulgated thereunder~~].

(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against an individual licensed by the board or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

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

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

Section 2. Receipt of Complaints. (1) A complaint:

(a) May be submitted to the board by an:

1. Individual;

2. Organization; ***or***[~~or~~]

3. Entity***[~~or~~]***

~~4. By the board~~].

(b) Shall be:

1. In writing; and

2. Signed by the person offering the complaint.

(c) May be filed by the board based upon information in its possession ***pursuant to KRS 309.137(3)***.

(2) Upon receipt of a complaint:

(a) A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant. The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the board shall consider the individual's response, complainant's reply to the response, and any other relevant material available and determine whether a formal investigation of the complaint is warranted.

(2) If the board determines that a formal investigation ***is[~~in~~]***[~~is~~] not warranted and that the complaint is without merit, it shall:

(a) Dismiss the complaint; and

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

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the board at the earliest opportunity.

Section 4. Result of Formal Investigation. (1) Upon completion of the formal investigation, the investigator[~~and the board attorney~~] shall present a synopsis of the facts compiled in the investigation of the complaint to the board and a recommendation regarding the disposition of the complaint.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

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

(3) If the board determines that probable cause exists that a violation of the Act or***[~~the administrative regulations promulgated in~~]*** 201 KAR Chapter 34[~~thereunder~~] has occurred, the board shall:

(a) Authorize the board attorney to prepare a formal complaint which states clearly the charge or charges to be considered at the hearing on the matter to be held pursuant to the requirements of KRS Chapter 13B; and

(b) Review the formal complaint which, if approved, shall be signed by the ***chair[~~chairman~~]*** and served upon the individual as required by KRS Chapter 13B.

(4) If the board determines that a person may be in violation of KRS 309.1305(2), it shall:

(a)[~~Order the individual to cease and desist from further violations of KRS 309.1305(2); or~~

~~(b)~~] Forward information to the county attorney of the county of residence of the person allegedly violating KRS 309.1305(2) with a request that appropriate action be taken under KRS 309.1339; or

(b) Initiate action in Franklin Circuit Court to seek injunctive relief to stop the unauthorized practice of licensed professional art therapy.

Section 5. Settlement by Informal Proceedings. (1) The board through counsel and ***a*** board member designated by the board may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

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

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

MARYBETH ORTON, Board Chairman

APPROVED BY AGENCY: April 13, 2017

FILED WITH LRC: April 13, 2017 at 10 a.m.

CONTACT PERSON: John Marcus Jones, Board Counsel, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5635, fax (502) 696-3925, email marcus.jones@ky.gov.

GENERAL GOVERNMENT CABINET
Department of Professional Licensing
Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, June 13, 2017)

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 ***an interpreter [~~interpreters~~]***, ***an*** interpreter intern, or ***a*** 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) ***Meets[~~Can meet~~]*** the requirements for licensure in this state as set forth in KRS ***309.300 to 390.319[~~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[~~that~~]** 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 ***permit[~~certificate~~]***[~~permit~~]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 ***recommend[~~recommended~~]***[~~recommend~~] 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[~~mean~~]** 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 ***(2)*** 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.

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GENERAL GOVERNMENTAL CABINET
Department of Professional Licensing
Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, June 13, 2017)

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

RELATES TO: KRS 309.304(1), 309.312(1)(b)

STATUTORY AUTHORITY: KRS 309.304(3), 309.312(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) require the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate an administrative regulation establishing the requirements for an applicant for licensure as an interpreter for the deaf and hard of hearing. This administrative regulation establishes these requirements.

Section 1. Application. Each applicant for a license shall:

(1) Submit a completed Application for Licensure form to the board;

(2) Pay the application and license fee as set forth in 201 KAR 39:040; and

(3) Submit proof of valid certification from one ***(1) of*** the following nationally recognized organizations***:[;]***

(a) At a level recognized by RID, with the exception of NAD III;

(b) At EIPA level 4.0 and passage of the EIPA written;

(c) TECUnit;[~~or~~]

(d) BEI Advanced or better achieved within three (3) years of application; or

(e) Other certifications as described in 201 KAR 39:080, if applying for licensure via reciprocity.

Section 2. Appeal of Denial of an Application for Licensure. (1) If an Application for Licensure is denied, the applicant shall have the right to appeal that preliminary determination.

(2) An appeal shall be***:***

(a) Submitted to the board***[and shall be:***

(a)] in writing***[and submitted]*** by certified mail; ***and***

(b) Received by the ***board*** within thirty (30) days after the date the applicant receives the notice of preliminary denial by certified mail or ***by*** email message delivered to the addresses stated on the Application for Licensure.

(3)[(c)] The appeal of a preliminary denial of an Application for Licensure shall be held in accordance with the ***provisions[provision]*** of KRS Chapter 13B.

Section 3. Incorporation by Reference. (1) "Application for Licensure", December 2016[August 2015], is incorporated by reference.

(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: February 14, 2017

FILED WITH LRC: February 15, 2017 at 10 a.m.

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GENERAL GOVERNMENTAL CABINET
Department of Professional Licensing
Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, June 13, 2017)

201 KAR 39:050. Renewal of licenses, extension of temporary licenses and reinstatement.

RELATES TO: KRS 309.304(5), 309.312, 309.314

STATUTORY AUTHORITY: KRS 309.304(3), 309.312, 309.314

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3), 309.312, and 309.314 require the Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations to carry the provisions of KRS 309.300 to ***309.319[309.3189]***; to establish certification requirements for licensure; and to establish renewal and reinstatement fees. This administrative regulation establishes requirements for renewal of licenses, extension of temporary licenses, and reinstatement.

Section 1. Renewal of Licenses. A person licensed as an interpreter shall renew that license annually, as required by KRS 309.314(1) by submitting the following to the board:

(1) A completed License Renewal Application form;

(2) The renewal fee as established in 201 KAR 39:040;

(3) Proof of current certification of the licensee as an interpreter for the deaf and hard of hearing by a nationally recognized organization[established in 201 KAR 39:030]; and

(4) Documentation of completion of the continuing education requirement established in 201 KAR 39:090.

Section 2. Grace Period. If a license is not renewed by July 1, it may be renewed during the following sixty (60) day period, in accordance with KRS 309.314, by:

(1) Complying with the requirements established in Section 1 of this administrative regulation; and

(2) Submitting the late renewal fee established in 201 KAR 39:040.

Section 3. (1) Reinstatement. A license not renewed prior to the close of the sixty (60) day grace period, in accordance with KRS 309.314(4), may be reinstated upon:

(a) Payment of the renewal fee plus a reinstatement fee as established by 201 KAR 39:040, Section 4(1);

(b) Submission of a completed Reinstatement Application for Licensed Interpreters[License Reinstatement Application] form to the board;

(c) Submission of evidence of completion of continuing education as required by 201 KAR 39:090, Section 10; and

(d) Proof of current certification of the licensee as an interpreter for the deaf and hard of hearing by a nationally recognized organization[Completion of the requirements of Section 4 of this administrative regulation].

(2) The board may reinstate a temporary license only if the licensee submits proof sufficient to the board of situations such as:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member; or

(c) Death or serious injury of an immediate family member.

(3) A request for reinstatement of a temporary license involving medical disability or illness shall be:

(a) Submitted by the person holding a license; and

(b) Accompanied by a verifying document signed by a licensed physician.

(4) To request reinstatement of a temporary license a licensee shall submit:

(a) Sufficient proof in support of the reinstatement as required by subsections (2) and (3) of this section;

(b) A completed Temporary License Reinstatement Application form;

(c) The appropriate fee set forth in 201 KAR 39:040;

(d) Proof of completion of the continuing education requirements in 201 KAR 39:090;

(e) A letter recommending the reinstatement and extension written by the Mentor(s) of Record for the previous licensure term which describes the progress achieved by the mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and

(f) A revised plan of supervision for the upcoming licensure year.

Section 4. Extensions of Temporary Licenses. (1) Temporary licenses shall expire on July 1 each year. To extend a temporary license, a request for extension shall be submitted by July 1 each year.

(2) To request an extension of a temporary license:

(a) A temporary licensee shall submit:

1. A completed Temporary License Extension Application form;

2. The appropriate fee set forth in 201 KAR 39:040;

3. Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;

4. A letter recommending extension written by the Mentor(s) of Record for the previous licensure term which describes the progress achieved by the mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and

5. A revised plan of supervision for the upcoming licensure year.

(b) A deaf or hard of hearing temporary licensee shall submit:

1. Upon applying for a first, second, or third extension:

a. A completed Temporary License Extension Application form;

b. The appropriate fee set forth in 201 KAR 39:040;

c. Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;

d. A letter recommending extension written by the Mentor(s) of Record which describes the progress achieved by the Mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and

e. A revised plan of supervision for the upcoming licensure year.

2. Upon applying for a fourth and subsequent extensions, a temporary license holder shall submit to the board documentation proving:

a. All requirements listed in paragraph (a) of this subsection; and

b. Proof of passage of the RID CDI Knowledge Exam.

(3) The extensions of temporary licenses under this section shall be subject to the term limitations imposed by 201 KAR 39:070, Section 2(2).

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

(a) "License Renewal Application", ***June 2017[~~December 2016~~]***[~~January 2013~~];

(b) "Reinstatement Application for Licensed Interpreters", December 2016[~~"License Reinstatement Application", March 2013~~];

(c) "Temporary License Reinstatement Application", December 2016[~~March 2013~~]; and

(d) "Temporary License Extension Application", ***June 2017 [~~December 2016~~]*** [~~March 2013~~].

(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 Chai

APPROVED BY AGENCY: March 2, 2017

FILED WITH LRC: March 2, 2017 at 3 p.m.

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GENERAL GOVERNMENTAL CABINET
Department of Professional Licensing
Kentucky Board of Interpreters for the Deaf and Hard of Hearing
(As Amended at ARRS, June 13, 2017)

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***, as incorporated by reference in 201 KAR 39:030***;

(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)***1.*** Verifying documentation signed by a licensed physician or proper military personnel, if applicable; or

2.[~~(c)~~] Documentation that provides evidence ***to support the extension[~~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***, is incorporated by reference***.

(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.

GENERAL GOVERNMENT
Board of Orthotics, Prosthetics and Pedorthics
(As Amended at ARRS, June 13, 2017)

201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist-prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013.

RELATES TO: KRS 319B.010, 319B.030, 319B.110

STATUTORY AUTHORITY: KRS 319B.030(1), (2), 319B.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.030(1) requires the board to establish licensure categories and issue licenses for persons who wish to practice in this state as

a licensed orthotist, licensed prosthetist, licensed orthotist-prosthetist, licensed pedorthist, or licensed orthotic fitter. This administrative regulation establishes the procedure by which those applicants shall apply for a license pursuant to KRS 319B.030.

Section 1. Licensure of an Orthotist, Prosthetist or Orthotist-Prosthetist. An applicant for licensure as an orthotist, prosthetist, or orthotist-prosthetist shall submit:

(1) A completed Kentucky Board of Prosthetics, Orthotics and Pedorthics Application for Licensure;

(2) A certified copy of the applicant's transcript from an accredited college or university showing a minimum of a baccalaureate degree awarded to the applicant;

(3) A certified copy of the applicant's education program in orthotics, prosthetics, or both from an educational program accredited by the Commission on Accreditation of Allied Health Education Program;

(4) Proof of completion of a residency program[~~meeting the standards~~] established in KRS 319B.010(26) for the discipline for which the applicant has applied;

(5) Proof of the applicant's having obtained a passing score on the American Board of Certification (ABC) examination;

(6) The appropriate fee for licensure as required by 201 KAR 44:010; [~~and~~]

(7) Detailed work history, including scope of practice, covering the four (4) year period immediately prior to the date of application; and

(8) A copy of completed current Jurisprudence Examination.

Section 2. Licensure of a Pedorthist. An applicant for licensure as a pedorthist shall submit:

(1) A completed Kentucky Board of Prosthetics, Orthotics and Pedorthics Application for Licensure;

(2) A certified copy of high school diploma or comparable credential;

(3) Proof of completion of an NCOPE-approved pedorthic education program;

(4) Proof of passing the American Board of Certification (ABC) exam;

(5) Proof of a minimum of 1,000 hours of pedorthic patient care, 500 hours shall be completed after the NCOPE-approved education program;

(6) The appropriate fee for licensure as required by 201 KAR 44:010;[~~and~~]

(7) A detailed work history, including scope of practice, covering the four (4) year period prior to the date of application; and

(8) A copy of completed current Jurisprudence Examination.

Section 3. Licensure of an Orthotic Fitter. An applicant for licensure as an orthotic fitter shall submit:

(1) A completed Kentucky Board of Prosthetics, Orthotics and Pedorthics Application for Licensure;

(2) A certified copy of high school diploma or comparable credential;

(3) Proof of completion of an NCOPE-approved orthotic fitter education program or a program approved by the American Board of Certification (ABC) or the Board of Certification/Accreditation, International (BOC);

(4) Proof of passing the American Board of Certification (ABC) ***[American Board of Certification (ABC)]*** or the Board of Certification/Accreditation, International (BOC) exam;

(5) Proof of a minimum of 1,000 hours of orthotic fitter patient care, 500 hours shall be completed after the NCOPE-approved education program or a program approved by the American Board of Certification (ABC) or the Board of Certification/Accreditation, International (BOC);

(6) The appropriate fee for licensure as required by 201 KAR 44:010;[~~and~~]

(7) A detailed work history, including scope of practice, covering the four (4) year period prior to the date of application; and

(8) A copy of completed current Jurisprudence Examination.

Section 4. Incorporation by Reference. (1) "Kentucky Board of Prosthetics, Orthotics and Pedorthics Application for Licensure", March, 2016, is incorporated by reference.

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

PAUL HATCHER, Chair

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: March 17, 2017 at 3 p.m.

CONTACT PERSON: Nicole Sergent, counsel for the Kentucky Board of Prosthetics, Orthotics and Pedorthics, Office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, phone 502-782-8807, fax 502-696-3853, email nicole.sergent@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(As Amended at ARRS, June 13, 2017)

201 KAR 46:035. Practice standards, scopes of practice, and ethical standards.

RELATES TO: 311B.080

STATUTORY AUTHORITY: KRS 311B.050(2), 311B.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050(2) requires the Kentucky Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce KRS Chapter 311B. KRS 311B.080 requires the board to recognize and enforce national practice standards and scopes of practice. This administrative regulation establishes uniform standards for the licensure of individuals who perform medical imaging and radiation therapy for diagnostic and therapeutic purposes while under the supervision of a licensed practitioner of the healing arts.

Section 1. Applicability. A licensee shall only perform medical imaging or radiation therapy for diagnostic medical imaging or therapeutic purposes while under the direct or indirect supervision as specified by a licensee's practice standards, by a licensee's scope of practice, or in the ACR-AAPM Technical Standard for the Management of the Use of Radiation in Fluoroscopic Procedures as listed in Section 3 of this administrative regulation.

Section 2. If a licensee's practice standards,***[by]*** a licensee's scope of practice, or***[in]*** the ACR-AAPM Technical Standard for the Management of the Use of Radiation in Fluoroscopic Procedures fails to specify who may provide direct or indirect supervision, a licensee shall only perform medical imaging or radiation therapy for diagnostic medical imaging or therapeutic purposes while under the direct or indirect supervision of a licensed practitioner of the healing arts.

Section 3. Practice Standards. A licensee shall perform according to practice standards of the discipline for which the licensee holds a credential, as established by the American Society of Radiologic Technologists (ASRT), the American College of Radiology (ACR), the American Association of Physicists in Medicine (AAPM), and the Society of Nuclear Medicine and Molecular Imaging (SNMMI) and incorporated by reference. These standards include the:

(1) Radiography Practice Standards;

(2) Nuclear Medicine Technologist Scope of Practice and Performance Standards;

(3) Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards;

(4) Scope of Practice for the Nuclear Medicine Advanced Associate;

(5) Radiation Therapy Practice Standards;

(6) Bone Densitometry Practice Standards;

(7) Cardiac Interventional and Vascular Interventional Technology Practice Standards;

(8) Computed Tomography Practice Standards;

(9) Limited X-ray Machine Operator Practice Standards;

(10) Mammography Practice Standards;

(11) Radiologist Assistant Practice Standards;

(12) ACR ASRT Joint-Policy Statement-Radiologist Assistant: Roles and Responsibilities; and

(13) ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures.

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

(a) "Radiography Practice Standards", revised June 26, 2016;

(b) "Nuclear Medicine Technologist Scope of Practice and Performance Standards", ***June 2016[revised June 7, 2013]***;

(c) "Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards", revised January 26, 2013;

(d) "Scope of Practice for the Nuclear Medicine Advanced Associate", created 2009;

(e) "Radiation Therapy Practice Standards ", revised June 26, 2016;

(f) "Bone Densitometry Practice Standards", revised June 26, 2016;

(g) "Cardiac Interventional and Vascular Interventional Technology Practice Standards", revised June 26, 2016;

(h) "Computed Tomography Practice Standards", revised June 26, 2016;

(i) "Limited X-ray Machine Operator Practice Standards", revised June 26, 2016;

(j) "Mammography Practice Standards", revised June 26, 2016;

(k) "Radiologist Assistant Practice Standards", revised June 26, 2016;

(l) "ACR ASRT Joint Policy Statement-Radiologist Assistant: Roles and Responsibilities", May 2003;

(m) "ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures", revised 2013 (Resolution 44);

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) American Society of Radiologic Technologists, 15000 Central Ave. SE Albuquerque, NM 87123-3909, http://www.asrt.org/main/standards-regulations/practice-standards;

(b) Society for Nuclear Medicine and Molecular Imaging, 1850 Samuel Morse Drive Reston, Virginia 20190, http://www.snmmi.org; or

(c) The Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

AMY ADKINS, Chair

APPROVED BY AGENCY: April14, 2017

FILED WITH LRC: April 14, 2017 at 9 a.m.

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495, email elizabeth.morgan@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(As Amended at ARRS, June 13, 2017)

201 KAR 46:040. Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses.

RELATES TO: KRS 311B.020, 311B.050,**[~~311B.080,~~]** 311B.100(2), 311B.110, 311B.120, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050, 311B.080, 311B.100(2), 311B.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050 requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to establish the procedures for the issuance and renewal of a license. KRS 311B.100(2) and KRS 311B.110(6) require the board to promulgate administrative regulations to establish the qualifications for an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, and a nuclear medicine technologist. ***This administrative regulation establishes requirements for licensure, renewal, and reinstatement***[**~~KRS 311B.080 requires the board to recognize and enforce national practice standards and scopes of practice. This administrative regulation establishes uniform standards for the licensure of individuals who perform medical imaging and radiation therapy for diagnostic and therapeutic purposes while under the supervision of a licensed practitioner of the healing arts~~]**.

Section 1.[**~~Applicability. This administrative regulation shall apply to individuals who perform medical imaging or radiation therapy for diagnostic medical imaging or therapeutic purposes while under the direct or indirect supervision of a licensed practitioner of the healing arts as specified by practice standards, by scope of practice, and in the ACR-AAPM Technical Standard For The Management Of The Use Of Radiation In Fluoroscopic Procedures as listed in Section 12~~]**[~~11~~][**~~of this administrative regulation.~~**

~~Section 2.~~] Eligibility for an Advanced Imaging Professional, a Medical Imaging Technologist, a Radiographer, a Radiation Therapist, and a Nuclear Medicine Technologist License. A[~~No~~] person shall not be eligible for a license pursuant to this administrative regulation for diagnostic imaging or therapeutic purposes unless the person has:

(1) Satisfactorily passed the national examination administered by the American Registry of Radiologic Technologists or the Nuclear Medicine Technology Certification Board examination; and

(2) Satisfactorily completed a program in radiography, nuclear medicine technology, radiation therapy, or advanced imaging practice that has achieved and maintained programmatic accreditation recognized by the board as described in 201 KAR 46:030.

Section **2.**[**~~3.~~]** Application for Initial License. (1) An applicant shall submit:

(a) A completed and signed application KBMIRT Form 1;

(b) A non-refundable initial application and license fee as established by 201 KAR 46:020, Section 1;

(c) The results of a criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years;

(d) A copy of a government-issued photo ID;

(e) Documentation of active registration or certification with the ARRT or NMTCB; and

(f) Verification of graduation from a program accredited by the Joint Review Committee on Education in Radiologic Technology or the Joint Review Committee on Educational Programs in Nuclear Medicine Technology.

(2) Notwithstanding subsection (1)(f) of this section, if a student enters a program not under probation, and the majority of the education program is completed under the accreditation required under 201 KAR 46:030, then the board may waive the accreditation standard as long as the graduate passes the American Registry of Radiologic Technologists (ARRT) examination on the first attempt.

Section **3.**[**~~4.~~]** Applicant ***from[~~for~~]*** an Unaccredited Educational Program.[**~~(1)~~]** If an applicant **qualifies for licensure under KRS 311B.100*(3)[~~, Section 3(1)~~]*, the applicant shall submit and satisfy the requirements of Section *2[~~3~~]*(1)(a) through (e) of this administrative regulation and shall*[~~also~~]* submit proof [~~does not graduate from an accredited educational program as required in Section 2(2), Section 3(1)(f), or Section 3(2) of this~~**

~~**administrative regulation, the licensing requirements for the accredited educational program requirement may be waived for an applicant if**~~]:

(1) Of[~~**(a) The applicant holds**~~**]** an active valid license or certificate from another jurisdiction's regulatory board to practice as an advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, or nuclear medicine technologist and is in good standing;

(2)*[Proof]* **Of certification or licensure**[~~**(b) The other jurisdiction grants the same privileges to licensees of Kentucky as Kentucky grants to a licensee or certificate holder of that other jurisdiction;**~~

~~**(c) The licensing requirements of the other jurisdiction are determined by the board to be substantially similar to the requirements of KRS Chapter 311B and the administrative regulations in 201 KAR Chapter 46;**~~

~~**(d) The applicant is certified or licensed**~~**]** by a national organization recognized by the board;

(3) That[~~**(e)**~~**]** the applicant has not been disciplined as an advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, or nuclear medicine technologist by any jurisdiction or national organization that has issued a license or certificate to the applicant;***[and]***

(4)[~~**(f) The applicant has provided the board with evidence**~~**]** Of a minimum of five (5) years of work experience as a certified or licensed advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, or nuclear medicine technologist***; and***

(5) That the applicant maintained continuing education requirements during the applicant's period of licensure or certification, which includes copies of any continuing education certificates received for attending from the sponsor[~~**(2) An applicant for reciprocity under this section shall submit and satisfy the requirements of Section 3(1)(a) through (e) of this administrative regulation**~~].

Section **4.**[~~**5.**~~**]** The issued license shall identify the licensee as an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, or a nuclear medicine technologist. The medical imaging technologist license shall also identify any ARRT or NMTCB disciplines awarded to the licensee.

Section **5.**[~~**6.**~~**]**[~~5.~~] The license shall expire annually on the last day of the licensee's birth month.

Section **6.**[~~**7.**~~**]**[~~6.~~] Renewal of License. To renew a license, the licensee shall submit:

(1) KBMIRT Form 2;

(2) Verification of current active status with the ARRT or NMTCB; and

(3) The renewal license fee as established by 201 KAR 46:020, Section 2.

Section **7.**[~~**8.**~~**]**[~~7.~~] Reinstatement of Lapsed License. (1) A licensee who has allowed the license to lapse for more than one (1) month but less than twelve (12) months shall be[~~is~~] eligible to be reinstated upon:

(a) Submission of KBMIRT Form 2;

(b) Submission of[~~,~~] documentation of twenty-four (24) hours of approved continuing education biennially;[~~,~~] and

(c) The payment of reinstatement, late, and renewal fees as established by 201 KAR 46:020, Sections 2,[~~and~~] 7, and 14.

(2) A licensee whose license has lapsed for more than twelve (12) months shall submit:

(a) Verification of current active status with the ARRT or NMTCB;

(b) KBMIRT Form 1;

(c) Continuing education KBMIRT Form 8, as incorporated by reference in 201 KAR 46:060, that documents twenty-four (24) hours of approved continuing education;

(d) The non-refundable initial application and license fee as established by 201 KAR 46:020, Section 1;

(e) The results of a criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years; and

(f) A copy of a government-issued photo ID.

Section **8.**[~~**9.**~~**]** ***Reinstatement of Revoked License. An applicant seeking reinstatement after a license revocation shall follow the same process as a new applicant as required under KRS 311B.100, 311B.110, and this administrative regulation.***

Section 9.[~~8.~~] Temporary License. The board may, upon completion of Form KBMIRT 3, as incorporated by reference in 201 KAR 46:045, and payment of the fee established in 201 KAR 46:020, Section 3, issue a temporary license to an applicant who has successfully completed an approved course of study in radiography, nuclear medicine technology, radiation therapy, or an advanced imaging profession and meets the other requirements of 201 KAR 46:045 other than having taken the required examination. A temporary license[~~licenses~~] shall be effective for one (1) year only and shall[~~are~~] not be renewable.

Section ***(10)[9.]***[~~**10.**~~**]**[~~9.~~] Continuing Education Audit Process. (1) The board shall select a sample of licensees to audit for continuing education compliance.

(2) The board shall send each licensee selected for audit a notification of audit.

(3) Each licensee shall maintain his or her personal files such as certificates or records of credit from approved continuing education programs from the current biennium and immediate prior biennium.

(4) A licensee selected for audit shall provide the board with a copy of his or her certificate or records of completion.

(5) Failure to comply with an audit may result in non-renewal, suspension, or revocation of license.

Section ***(11)[10.]***[~~**11.**~~**]**[~~10.~~] Contrast Procedures. Only individuals holding a license pursuant to this administrative regulation shall perform diagnostic imaging or radiation therapy procedures regulated by KRS Chapter 311B at facilities where contrast studies are performed.

Section ***(12)[11.]***[~~**12.**~~**]**[[~~11.~~]~~**Practice Standards. Individuals licensed pursuant to this administrative regulation shall perform according to practice standards of the discipline for which they hold credentials, as established by the American Society of Radiologic Technologists (ASRT), the American College of Radiology (ACR), the American Association of Physicists in Medicine (AAPM), and the Society of Nuclear Medicine and Molecular Imaging (SNMMI) and incorporated by reference. These standards include the:**~~

~~**(1) Radiography Practice Standards;**~~

~~**(2) Nuclear Medicine Technologist Scope of Practice and Performance Standards;**~~

~~**(3) Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards;**~~

~~**(4) Scope of Practice for the Nuclear Medicine Advanced Associate;**~~

~~**(5) Radiation Therapy Practice Standards;**~~

~~**(6) Bone Densitometry Practice Standards;**~~

~~**(7) Cardiac**~~**]**[~~Cardiovascular~~] [~~**Interventional and Vascular Interventional Technology Practice Standards;**~~

~~**(8) Computed Tomography Practice Standards;**~~

~~**(9) Limited X-ray Machine Operator Practice Standards;**~~

~~**(10) Mammography Practice Standards;**~~

~~**(11) Radiologist Assistant Practice Standards;**~~

~~**(12) ACR ASRT Joint-Policy Statement-Radiologist Assistant: Roles and Responsibilities; and**~~

~~**(13) ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures.**~~

~~**Section 13.**~~**]**[~~12.~~] CT Training for Nuclear Medicine Technologists and Radiation Therapists. Individuals who are

licensed in the primary discipline of nuclear medicine or radiation therapy, are certified by the ARRT or NMTCB, and are seeking post-primary certification in computed tomography (CT) may work under the direct supervision of a licensed and certified CT technologist to gain clinical competency. An individual who wishes to complete clinical training in CT shall submit a Provisional License Application, as incorporated by reference in 201 KAR 46:050, which shall expire twenty-four (24) months from the date of issuance.

Section ***(13)[12.]*[14.]**[13.] PET Training for Radiographers and Radiation Therapists. Individuals who are licensed in the primary discipline of radiography or radiation therapy, are certified by the ARRT, and are seeking post-primary certification in positron emission tomography (PET) may work under the direct supervision of a licensed and certified PET technologist with the permission of an authorized user to gain clinical competency. An individual who wishes to complete clinical training in PET shall submit a Provisional License Application, as incorporated by reference in 201 KAR 46:050, which shall expire twenty-four (24) months from the date of issuance.

Section ***(14)[13.]*[15.]**[14.] Applications for licensure shall be filed with the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601.

Section ***(15)[14.]*[16.]**[15.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a)**["Radiography Practice Standards", revised June 26, 2016]**[16, 2013]**[;**

(b) "Nuclear Medicine Technologist Scope of Practice and Performance Standards", revised June 7, 2013;

(c) "Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards", revised January 26, 2013;

(d) "Scope of Practice for the Nuclear Medicine Advanced Associate", created 2009;

(e) "Radiation Therapy Practice Standards ", revised June 26, 2016][19, 2011]**[;**

(f) "Bone Densitometry Practice Standards", revised June 26, 2016][19, 2011]**[;**

(g) "Cardiac][Cardiovascular] **[Interventional and Vascular Interventional Technology Practice Standards", revised June 26, 2016]**[16, 2013]**[**;

(h) "Computed Tomography Practice Standards", revised June 26, 2016][16, 2013]**[;**

(i) "Limited X-ray Machine Operator Practice Standards", revised June 26, 2016][16, 2013]**[;**

(j) "Mammography Practice Standards", revised June 26, 2016][July 1, 2012]**[;**

(k) "Radiologist Assistant Practice Standards", revised June 26, 2016][July 29, 2014]**[;**

(l) "ACR ASRT Joint Policy Statement-Radiologist Assistant: Roles and Responsibilities", May 2003;

(m) "ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures", revised 2013 (Resolution 44);

(n)] KBMIRT Form 1, "License Application-Medical Imaging or Radiation Therapy", February 2017[March 2015]; and

(b)[(o)] KBMIRT Form 2, "License Renewal Application-Medical Imaging or Radiation Therapy", February 2017[March 2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at**[:**

(a) American Society of Radiologic Technologists, 15000 Central Ave. SE Albuquerque, NM 87123-3909, http://www.asrt.org/main/standards-regulations/practice-standards;

(b) Society for Nuclear Medicine and Molecular Imaging, 1850 Samuel Morse Drive Reston, Virginia 20190, http://www.snmmi.org; or

(c)] the Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.***[]***

AMY ADKINS, Chair

APPROVED BY AGENCY: April 14, 2017

FILED WITH LRC: April 14, 2017 at 9 a.m.

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495; email elizabeth.morgan@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(As Amended at ARRS, June 13, 2017)

201 KAR 46:070. Violations and enforcement.

RELATES TO: KRS 311B.100, 311B.120, 311B.150, 311B.160, 311B.170, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050, 311B.120, 311B.180, 311B.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050 requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce KRS Chapter 311B. KRS 311B.120 and 311B.190 require the board to promulgate administrative regulations to establish appropriate fees and penalties for violations. KRS 311B.180 requires the board to assess penalties against an individual or licensee who performs diagnostic or therapeutic procedures without a valid license. This administrative regulation establishes uniform enforcement procedures regarding the licensure of an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, or a limited x-ray machine operator and penalties for violation of licensure requirements.

Section 1. Denial, Revocation, and Suspension of Licenses. (1) The board may deny, revoke, or suspend the license of a licensee in accordance with KRS 311B.160.

(2) A licensee shall comply with an order of the board.

(3) An order of the board in subsection (2) of this section shall include items such as discovery orders, requests for information, subpoenas, requests for attendance before the board, and responses to complaints.

Section 2. Hearings. (1) The board shall notify the licensee in accordance with KRS 311B.170(1) and (2).

(2) A licensee to whom a notice or order is directed shall comply with KRS 311B.170(3) to avoid license revocation.

(3) The board shall issue the licensee a notice of proposed action in accordance with 201 KAR 46:090.

(4) A licensee may request a conference and appeal the board's action in accordance with KRS 311B.170(5) and 201 KAR 46:090.

Section 3. Penalties. (1)(a) The board shall assess civil penalties in accordance with KRS 311B.180 and 311B.190 against an individual who performs diagnostic or therapeutic procedures without valid licensure.

(b) The board shall investigate an allegation that an individual performed a diagnostic or therapeutic procedure without valid licensure in accordance with 201 KAR 46:090.

(c) The board shall only assess a civil penalty after confirmation through one ***(1)*** of the means enumerated in KRS 311.180(2).

(2) An individual who performs a diagnostic or therapeutic procedure without valid licensure shall be assessed a civil penalty of fifty (50) dollars per day that the procedure occurs.

(3) Civil penalties double the amount assessed against an individual shall be assessed against the employer of the individual without a valid license pursuant to KRS 311B.180.

(4) Any person or employer assessed a civil penalty may request a hearing as specified in[Section 2 of this administrative

~~regulation and~~] 201 KAR 46:090, Section 6.

(5)(a) An individual ***who performs diagnostic or therapeutic procedures without valid licensure*** shall***[~~not~~]*** be subject to a ***civil penalty[~~fine~~]*** of ***no*** more than $1,500.

(b) An employer ***of an individual without a valid license*** shall ***[~~not~~]*** be subject to a ***civil penalty[~~fine~~]*** of ***no*** more than $3,000.

(6) For each day an individual performs a diagnostic or therapeutic procedure without valid licensure if the range is:

(a) One (1) to five (5) days, the individual shall receive a five (5) day suspension;

(b) Six (6) to twenty-nine (29) days, the individual shall receive a suspension for each day a procedure is performed; and

(c) Thirty (30) days or more, the individual receives a forty-five (45) day suspension.

AMY ADKINS, Chair

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at 11 a.m.

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495, email elizabeth.morgan@ky.gov.

GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(As Amended at ARRS, June 13, 2017)

201 KAR 46:090. Complaint Process and Administrative Hearings.

RELATES TO: KRS 311B.050, 311B.100, 311B.120, 311B.150, 311B.160, 311B.170, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050(1), (2), (7), 311B.120, 311B.170, 311B.180, 311B.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050(1) and (2) require the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce the chapter. KRS 311B.050(7) requires the board to investigate violations of the chapter, conduct hearings, resolve allegations, and to impose sanctions or penalties if appropriate. KRS 311B.120, 311B.180, and 311B.190 require the board to promulgate administrative regulations to establish and assess penalties and fees. KRS 311B.170 requires the board to provide an administrative hearing process for a violation of KRS Chapter 311B. KRS Chapter 13B establishes a uniform procedure to be followed by administrative agencies in conducting agency hearings. This administrative regulation establishes, consistent with the requirements of KRS Chapter 13B, the procedures to be followed by the board in hearing appeals of actions taken under the public health laws of the Commonwealth.

Section 1. Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity;

(b) Shall be:

1. In writing; and
2. Signed by the person offering the complaint; and

(c) May be filed by the board based upon information in its possession.

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

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

(c) The board shall evaluate the date of receipt based upon the postmark date, or, if not sent through the mail, the date hand stamped on the complaint.

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

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

(c) The board shall evaluate the date of receipt based upon the postmark date or, if not sent through the mail, the date hand stamped on the response.

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

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

(b) The board shall find whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board finds before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

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

(3) If the board finds that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 3. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint.

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

(b) The board shall find whether there has been a prima facie violation of KRS Chapter 311B or 201 KAR Chapter 46 and if a complaint shall be filed.

(2) If the board finds that a complaint does not warrant the issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

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

(3) If the board finds that a violation has occurred but is not serious, the board shall issue a private written admonishment to the licensee.

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

(b) The licensee shall have the right to file a response in writing to the private written admonishment within thirty (30) days of its receipt and may have it placed in a permanent file.

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

(4) If the board finds that a complaint warrants a disciplinary action, the board shall issue a notice of disciplinary action and inform the licensee:

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

1. The statutory or regulatory violation; and
2. The factual basis on which the disciplinary action is based;

(b) That the licensee may appeal the disciplinary action to the board within twenty (20) days after receipt of this notification, excluding the day he or she receives notice;

(c) That a written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Medical Imaging and Radiation Therapy by mail or by hand-delivery to 42 Fountain Place, Frankfort, Kentucky 40601;

(d) That if the request for an appeal is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request an appeal; and

(e) That the administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 4. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may at any time during this process enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

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

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

Section 5. Right of Appeal of Application. If the board denies an application or renewal for application, the board shall issue a notice of denial informing the applicant:

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

(a) The statutory or regulatory violation; and

(b) The factual basis on which the denial is based;

(2) That the applicant may appeal the pending denial to the board within twenty (20) days after receipt of this notification, excluding the day he or she receives notice;

(3) That a written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Medical Imaging and Radiation Therapy by mail or by hand-delivery to 42 Fountain Place, Frankfort, Kentucky 40601;

(4) That if the request for an appeal is not timely filed, the notice of denial shall be effective upon the expiration of the time for the licensee to request an appeal;[~~and~~]

(5) That the administrative hearing shall be conducted in accordance with KRS Chapter 13B;

(6) ***That*** the documentary evidence shall be limited to the application and supporting documents ***the applicant*** submitted to the board during the application process and that was considered as part of the ***board's*** denial of the application; and

(7) ***That*** if the final order of the board is adverse to an applicant, the board shall impose the costs in an amount equal to the cost of stenographic services, the cost of the hearing officer, and the board's attorney fees against the licensee or applicant. If there is financial hardship, the board may waive all or part of the fee.

Section 6. Procedures Without a License. If the board finds an individual[~~or licensee~~] performed a diagnostic or therapeutic procedure without a valid license, the board shall issue a notice of civil penalty and inform the individual [~~or licensee~~], and employer of the individual[~~or licensee~~]:

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

(a) The statutory or regulatory violation;

(b) The factual basis on which the civil penalty is based; and

(c) The civil penalty to be imposed;

(2) That the individual or employer[~~licensee~~] may appeal the civil penalty to the board within twenty (20) days after receipt of this notification, excluding the day he or she receives notice;

(3) That a written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Medical Imaging and Radiation Therapy by mail or by hand-delivery to 42 Fountain Place, Frankfort, Kentucky 40601;

(4) That if the request for an appeal is not timely filed, the notice of civil penalty shall be effective upon the expiration of the time for the licensee to request an appeal; and

(5) That the administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 7. ***(1)*** A person may petition for reinstatement after three (3) years from the date of a revocation.

(2) A person seeking reinstatement following a revocation shall comply with the requirements of 201 KAR 46:040, Section 8.

AMY ADKINS, Chair

APPROVED BY AGENCY: February 15, 2017

FILED WITH LRC: February 15, 2017 at 11 a.m.

CONTACT PERSON: Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy, 42 Fountain Place, Frankfort, Kentucky 40601, phone (502) 782-5687, fax (502) 782-6495, email elizabeth.morgan@ky.gov.

TOURISM, ARTS, AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 13, 2017)

301 KAR 2:300. Black bear seasons and requirements.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

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 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. This administrative regulation establishes bear hunting and chasing seasons; bear hunting areas; legal methods of take; and permitting, checking, and recording requirements.

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

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5)[~~"Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.~~

~~(6)~~] "Bear" means the species Ursus americanus. [~~(7) "Bear chase area" means a designated area within the Bear Zone where hunters may use dogs to chase bears.~~]

(6)[~~(8)~~] "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(7)[~~(9)~~] "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to harvest one (1) black bear of either sex.

(8) "Bear zone 1" means Bell, Harlan, and Letcher counties, and private land in McCreary County.

(9) "Bear zone 2" means Breathitt, Clay, Clinton, Floyd, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Magoffin, Martin, Owsley, Perry, Pike, Pulaski, Rockcastle, Russell, Wayne, and Whitley counties.

(10) "Bear zone 3" means Adair, Bath, Boyd, Carter, Casey, Clark, Cumberland, Elliot, Estill, Fleming, Garrard, Greenup, Lee, Lewis, Lincoln, Madison, Menifee, Montgomery, Morgan, Powell, Rowan, and Wolfe counties.[~~"Bear zone" means the following Kentucky counties: Bell, Clay, Floyd, Harlan, Knott, Knox, Laurel, Leslie, Letcher, Martin, McCreary, Perry, Pike, Pulaski, Wayne, and Whitley.~~]

(11) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

(12) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(13) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(14) "Youth[~~Junior~~] bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.

(15) "License year" means the period from March 1 through the [~~following~~] last day of February.

(16) "Modern gun" means a rifle, handgun, or shotgun loaded from the rear of the barrel.

(17) "Muzzleloader"["Muzzle-loading firearm"] means a rifle, shotgun, or handgun loaded from the discharging end of the barrel or discharging end of the receiver.

(18) "Youth" means a person under the age of sixteen (16) by the day of the hunt.

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements. (1) Unless exempted by KRS 150.170, a person, while using dogs to chase a bear, shall carry proof of purchase of a valid Kentucky hunting license and a valid:

(a) Bear chase permit; or

(b) Youth[Junior] bear chase permit.

(2) A bear chase permit or youth[junior] bear chase permit shall only be purchased by a resident of Kentucky.

(3) A bear chase permit shall be purchased on the department's Web site at fw.ky.gov from July 1 through December 31.

(4) A person shall not:

(a) Kill or intentionally injure a bear during a chase-only season;

(b) Chase a bear except during daylight hours while a chase season is open;

(c) Chase a bear from a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed; or

(d) Disturb a bear in a den.

(5)[Individual hunt groups shall include no more than five (5) people and eight (8) dogs, except a hunt party may total seven (7) people if two (2) additional youths accompany the party.

(6) Any dog transported in a motorized vehicle by members of a hunt group shall not be considered a member of that hunt group.

(7)] The department shall supply a Bear Chase Survey to each person purchasing a bear chase permit.

(6)[(8)] A person who purchases a bear chase permit shall submit to the department a completed Bear Chase Survey by the last day of January following each bear season.

(7)[(9)] A person who fails to submit a Bear Chase Survey shall be ineligible to purchase a bear chase permit for the following year's chase seasons.

(8)[(10)] A person shall only use a dog to chase a bear on private land with permission of the landowner in bear zones 1, 2, and 3, except that it shall be prohibited to chase bears with dogs in McCreary County[in the following designated areas:

(a) Eastern bear chase area;

(b) Central bear chase area; and

(c) Western bear chase area].

Section 4. Chasing Bears with Dogs. A person shall not use a dog to chase a bear except during the seasons established in subsections (1) and (2) of this section***.[:]***

(1) The chase-only season***[, which]*** shall be from:

(a) August 1 through August 31; and

(b) September 9 through September 30; and

(2) The bear quota hunt with dogs season ***shall be*** pursuant to Section 8(1) of this administrative regulation.

Section 5. Bear Permit Requirements.[(1) Only a resident of Kentucky shall be allowed to purchase a bear permit.

(2)] Unless exempted by KRS 150.170, a person hunting a bear shall possess proof of purchase of a valid Kentucky hunting license and the appropriate valid bear permit or permits while hunting during the seasons established in Section 8(1) of this administrative regulation.

Section 6. Hunter Restrictions. (1) A person shall not:

(a) Harvest a bear except during daylight hours;

(b) Use a dog during the modern gun, archery - crossbow, or muzzleloader season for bears, except leashed tracking dogs may be used to recover a wounded or dead bear;

(c) Hunt bear on a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed;

(d) Harvest:

1. A female bear that has a cub; or

2. A bear that weighs less than seventy-five (75) pounds;

(e) Harvest a bear that is swimming;

(f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den; or

(h) Disturb a bear in a den for the purpose of taking the bear if the bear exits the den.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 7. Weapon Restrictions. (1) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take a bear:

(a) A crossbow or archery equipment loaded with a[non-barbed] broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Of .270 caliber or larger; and

3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzleloader[muzzle-loading firearm] of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .270 caliber or larger designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(2) A crossbow shall contain a working safety device.

(3) A bear hunter shall not use a magazine capable of holding more than ten (10) rounds.

Section 8. Bear Season Dates and Bag Limits. (1) A legal bear hunter shall only kill a bear in the bear zones[zone] during the seasons established in paragraphs (a) through (d) of this subsection:

(a) The archery – crossbow season for bears, which shall be for seven (7) consecutive days beginning on the fourth Saturday in October in bear zones 1 and 2;

(b) The modern gun season for bears, which shall be for seven (7)[three (3)] consecutive days beginning on the third[second] Saturday in December in bear zones 1 and 2;

(c) The bear quota hunt with dogs season, which shall be for fourteen (14) consecutive days beginning on the third Saturday in October in bear zones 1, 2, and 3.

(d) The muzzleloader season for bears, which shall be for nine (9) consecutive days beginning on the second Saturday in December in bear zone 3.[:

1. Two (2) consecutive days beginning on the Saturday after Thanksgiving; and

2. Two (2) consecutive days beginning on the third Saturday in December; and

(d) The youth-only bear season, which shall last for two (2) consecutive days beginning on the Saturday after Christmas.]

(2) A person shall not harvest more than one (1) bear in a license year.

Section 9. Bear Season Closure. (1) The archery - crossbow season for bears in bear zone 1 shall close after daylight hours on the day the following quota has been reached:

(a) Five (5)[Ten (10)] bears; or

(b) Two (2)[Five (5)] female bears.

(2) The archery – crossbow season for bears in bear zone 2 shall close after daylight hours on the day the following quota has been reached:

(a) Ten (10) bears; or

(b) Four (4) female bears.

(3) The modern gun season for bears in bear zone 1 shall close after daylight hours on the day the following quota has been reached:

(a) Five (5)[~~Fifteen (15)~~] bears; or

(b) Two (2)[~~Five (5)~~] female bears.

(4) The modern gun season for bears in bear zone 2 shall close after daylight hours on the day the following quota has been reached:

(a) Fourteen (14) bears; or

(b) Four (4) female bears.

(5)[~~(3)~~] The bear quota hunt with dogs season in bear zone 1 shall close after daylight hours on the day the following quota[~~of five (5) bears~~] has been reached:

(a) Three (3) bears; or

(b) Two (2) female bears.

(6) The bear quota hunt with dogs season for bears in bear zones 2 and 3 shall close after daylight hours on the day the following quota has been reached:

(a) Eight (8) bears; or

(b) Three (3) female bears.

(7) The muzzleloader season for bears in bear zone 3 shall close after daylight hours on the day the following quota has been reached:

(a) Five (5) bears; or

(b) Three (3) female bears.

(8)[~~(4) The youth-only bear season shall close after daylight hours on the day the quota of five (5) bears has been reached.~~

~~(5)~~] A bear hunter shall call 800-858-1549 after 9 p.m. each day of any open bear season to determine if the annual quota has been reached.

Section 10. Bear Quota Hunt with Dogs Requirements. (1) A person shall only harvest a bear with the use of unleashed dogs.

(2) The bear quota hunt with dogs season shall also be open as a chase-only season for any person who possesses a valid bear chase permit, even if the quota has been met.

Section 11. Hunter Orange Clothing Requirements. (1) During any modern gun or muzzleloader[~~muzzle-loading~~] season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

(a) Waterfowl; or

(b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 12. Bear Reserves. (1) The areas within bear zone 1 as [~~the Bear Zone~~] established in paragraphs (a) through (d) of this subsection shall be closed to bear hunting:

(a) Cumberland Gap National Historical Park;

(b) Hensley-Pine Mountain Wildlife Management Area;

(c) Big South Fork National River and Recreation Area; and

(d) The area surrounding Hensley-Pine Mountain Wildlife Management Area: starting at the intersection of Sand Hill Bottom Road and North US Hwy 119 in Cumberland, the boundary proceeds northeast along North US Hwy 119 to the intersection of US Hwy 119 and Kentucky Hwy 2035. The boundary then proceeds west along Kentucky Hwy 2035 to the intersection of Kentucky Hwy 2035 and Kentucky Hwy 931. The boundary continues southwest along Kentucky Hwy 931 to the intersection of Kentucky Hwy 931 and Kentucky Hwy 160, then proceeds southwest along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Kentucky Hwy 463 in Gordon. The boundary then proceeds south and east along Kentucky Hwy 160 to the intersection of Kentucky Hwy 160 and Sand Hill Bottom Road in Cumberland, then south along Sand Hill Bottom Road to the intersection with North US Hwy 119, completing the boundary.

(2) Kentucky resident landowners, their spouses, and dependent children may hunt bears on their own property within the closed area established in subsection (1)(d) of this section.

Section 13. Harvest Recording and Check-in Requirements. (1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

(a) Species taken;

(b) Date taken;

(c) County where taken; and

(d) Sex of the bear.

(2) A person who has harvested a bear[~~during the modern gun season for bears~~] shall:

(a) Retain a completed hunter's log;

(b)[~~Check a harvested bear at a department-operated check station immediately after leaving the field;~~

~~(c)~~] Telecheck the bear by 8 p.m. Eastern Standard Time the day the bear was harvested[~~before leaving the check station~~] by:

1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and

2. Recording the confirmation number on the hunter's log;[~~and~~

~~(d) Attach to the carcass a department issued tag prior to leaving the check station.~~

~~(3) A person who has harvested a bear during the archery – crossbow season, youth-only bear season, or the bear quota hunt with dogs season shall:~~

~~(a) Retain a completed hunter's log;~~

~~(b) Telecheck the bear by 8 p.m. Eastern Standard Time the day the bear was harvested by:~~

~~1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and~~

~~2. Recording the confirmation number on the hunter's log;~~]

(c) Arrange for department personnel to inspect the bear by:

1. Calling the department at 800-858-1549 within twenty-four (24) hours of harvest; and

2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex; and

(d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

Section 14. Incorporation by Reference.[~~(1)~~] The "20__ Bear Chase Survey", 2014 edition[~~following material~~] is incorporated by reference[~~:~~

~~(a) "Eastern Bear Chase Area" map, 2015 edition;~~

~~(b) "Central Bear Chase Area" map, 2015 edition;~~

~~(c) "Western Bear Chase Area" map, 2013 edition; and~~

~~(d) "20__ Bear Chase Survey", 2014 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. to 4:30 p.m., Eastern Time.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: April 10, 2017

FILED WITH LRC: April 14, 2017 at 10 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.

TOURISM, ARTS, AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 13, 2017)

301 KAR 3:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f),

150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits and tags. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 authorizes the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year. (1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twenty (20) dollars;

(b) Statewide annual fishing license (nonresident): fifty (50) dollars;

(c) Joint statewide fishing license (resident): thirty-six (36) dollars;

(d) Statewide three (3) year fishing license (resident): fifty-five (55) dollars; and

(e) Trout permit (resident or nonresident): ten (10) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident) plus ten (10) resident commercial gear tags: $150; and

(b) Commercial fishing license (nonresident) plus ten (10) nonresident commercial gear tags: $600.

(3) Commercial fishing gear tags (not to be sold singly):

(a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars; and

(b) Commercial fishing gear tags (nonresident) block of ten (10) tags: $100.

(4) Hunting licenses:

(a) Statewide hunting license (resident): twenty (20) dollars;

(b) Statewide hunting license (nonresident): $140;

(c) Statewide junior hunting license (resident): six (6) dollars;

(d) Statewide junior hunting license (nonresident): ten (10) dollars;

(e) Shooting preserve hunting license (resident or nonresident): five (5) dollars; and

(f) Migratory game bird and waterfowl permit (resident or nonresident): fifteen (15) dollars.

(5) Combination hunting and fishing license (resident): thirty (30) dollars.

(6) Senior or disabled combination hunting and fishing license (resident): five (5) dollars.

(7) Trapping licenses:

(a) Trapping license (resident): twenty (20) dollars;

(b) Trapping license (resident landowner/tenant): ten (10) dollars;

(c) Trapping license (nonresident): $130; and

(d) Junior trapping license (resident): five (5) dollars.

(8) Game permits:

(a) Resident bear: thirty (30) dollars;

(b) Resident youth bear: ten (10) dollars;

(c) Nonresident bear: $250;

(d) Resident bear chase: thirty (30) dollars;[~~.~~]

(e)[~~(c)~~] Resident youth[~~junior~~] bear chase: ten (10) dollars;

(f)[~~(d)~~] Resident quota cow elk permit: sixty (60) dollars;

(g)[~~(e)~~] Nonresident quota cow elk permit: $400;

(h)[~~(f)~~] Resident quota bull elk permit: $100;

(i)[~~(g)~~] Nonresident quota bull elk permit: $550;

(j)[~~(h)~~] Resident out-of-zone elk permit: thirty (30) dollars;

(k)[~~(i)~~] Nonresident out-of-zone elk permit: $400;

(l)[~~(j)~~] Resident deer permit: thirty-five (35) dollars;

(m)[~~(k)~~] Nonresident deer permit: $120;

(n)[~~(l) Junior game permit,~~] Resident youth deer: ten (10) dollars;

(o)[~~(m) Junior game permit,~~] Nonresident youth deer: fifteen (15) dollars;

(p)[~~(n)~~] Bonus antlerless deer permit (two (2) tags per permit) (resident or nonresident): fifteen (15) dollars;

(q)[~~(o)~~] Bonus quota hunt deer permit (resident or nonresident): thirty (30) dollars;

(r)[~~(p) Game permit,~~] Resident spring turkey: thirty (30) dollars;

(s)[~~(q) Game permit,~~] Nonresident spring turkey: seventy-five (75) dollars;

(t)[~~(r) Game permit,~~] Resident fall turkey: thirty (30) dollars;

(u)[~~(s) Game permit,~~] Nonresident fall turkey: seventy-five (75) dollars;

(v)[~~(t) Junior game permit,~~] Resident youth turkey: ten (10) dollars;

(w)[~~(u) Junior game permit,~~] Nonresident youth turkey: fifteen (15) dollars;

(x)[~~(v) Junior game permit,~~] Resident youth elk: thirty (30) dollars; and

(y)[~~(w) Junior game permit,~~] Nonresident youth elk: forty (40) dollars.

(9) Peabody individual permit: fifteen (15) dollars.

(10)[~~Commercial mussel licenses:~~

~~(a) Musseling license (resident): $400;~~

~~(b) Musseling license (nonresident): $1,600;~~

~~(c) Mussel buyer's license (resident): $600; and~~

~~(d) Mussel buyer's license (nonresident): $1,600.~~

~~(11)~~] Sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory game bird and waterfowl permit, and deer permit: ninety-five (95) dollars.

(11)[~~(12)~~] Junior sportsman's license (resident), which includes a junior hunting license, two (2) junior deer permits, and two (2) junior turkey permits: thirty (30) dollars.

(12)[~~(13)~~] Land Between the Lakes hunting permit: twenty (20) dollars.

(13)[~~(14)~~] Conservation permit: five (5) dollars.

Section 2. Licenses, tags, and permits listed in this section shall be valid for the calendar year issued. (1) Live fish and bait dealer's licenses:

(a) Live fish and bait dealer's license (resident): fifty (50) dollars; and

(b) Live fish and bait dealer's license (nonresident): $150.

(2) Commercial taxidermist license: $150.

(3) Commercial guide licenses:

(a) Commercial guide license (resident): $150; and

(b) Commercial guide license (nonresident): $400.

(4) Shooting area permit: $150.

(5) Dog training area permit: fifty (50) dollars.

(6) Collecting permits:

(a) Educational wildlife collecting permit: twenty-five (25) dollars; and

(b) Scientific wildlife collecting permit: $100.

(7) Nuisance wildlife control operator's[~~operators~~] permit: $100.

(8) Pay lake license:

(a) First two (2) acres or less: $150; and

(b) Per additional acre or part of acre: twenty (20) dollars.

(9) Commercial captive wildlife permit: $150.

(10) Commercial fish propagation permit: fifty (50) dollars.

(11) Wildlife rehabilitator's permit: twenty-five (25) dollars.

(12) Annual wildlife transportation permit: $250.

(13) Peabody Wildlife Management Area annual event permit: $250.

(14) Fish transportation permit: twenty-five (25) dollars.

Section 3. Licenses, tags, and permits listed in this section shall be valid for three (3) years from the date of issue. (1) Falconry permit: seventy-five (75) dollars.

(2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags, and permits listed in this section shall be valid for the date or dates specified on each. (1) Short-term licenses:

(a) One (1) day resident fishing license: seven (7) dollars;

(b) One (1) day nonresident fishing license: ten (10) dollars;

(c) Seven (7) day nonresident fishing license: thirty (30) dollars;

(d) Fifteen (15) day nonresident fishing license: forty (40) dollars;

(e) One (1) day resident hunting license (not valid for deer, elk, or turkey hunting): seven (7) dollars;

(f) One (1) day nonresident hunting license (not valid for deer, elk, or turkey hunting): fifteen (15) dollars;

(g) Seven (7) day nonresident hunting license (not valid for deer, elk, or turkey hunting): fifty-five (55) dollars; and

(h) Three (3) day fur bearer's license: fifty (50) dollars.

(2) Individual wildlife transportation permit: twenty-five (25) dollars.

(3) Special resident commercial fishing permit: $600.

(4) Special nonresident[~~non-resident~~] commercial fishing permit: $900.

(5) Commercial waterfowl shooting area permit: $150.

(6) Shoot to retrieve field trial permits:

(a) Per trial (maximum four (4) days): seventy-five (75) dollars; and

(b) Single day: twenty-five (25) dollars.

(7) Boat dock permit: $100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.

(8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010 and shall contain three (3) tiers:

(a) Tier I: $100;

(b) Tier II: $200;

(c) Tier III: $300; and

(d) The fees shall be pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year permit period.

(9) Peabody individual event permit: twenty-five (25) dollars.

(10) Commercial roe-bearing fish buyer's permit:

(a) Commercial roe-bearing fish buyer's permit (resident): $500; and

(b) Commercial roe-bearing fish buyer's permit (nonresident): $1,000.

(11) Commercial roe-bearing fish harvester's permit:

(a) Commercial roe-bearing fish harvester's permit (resident): $500; and

(b) Commercial roe-bearing fish harvester's permit (nonresident): $1,500.

(12) Otter Creek Outdoor Recreation Area:

(a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and

(b) Daily Special Activities Permit: seven (7) dollars.

(13) Commercial foxhound training enclosure permit: $150.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per unit basis as specified. (1) Ballard waterfowl hunt (per person, per day): fifteen (15) dollars.

(2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.

(3) Horse stall rental (per space, per day): two (2) dollars.

(4) Dog kennel rental (per dog, per day): fifty (50) cents.

(5)[~~Pond stocking fee (per stocking):~~

~~(a) Ponds less than 1.5 surface acres: seventy-five (75) dollars;~~

~~(b) Ponds from 1.5 to 2.9 surface acres: $200; and~~

~~(c) Ponds equal to or greater than 3.0 surface acres: $200 plus $150 for each additional surface acre of water over 3.0 acres prorated on a 0.25 acre basis.~~

~~(6)~~] Commercial captive cervid permit (per facility, per year): $150.

(6)[~~(7)~~] Noncommercial captive cervid permit (per facility; per three years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:

(1) Fur processor's license (resident): $150;

(2) Fur buyer's license (resident): fifty (50) dollars; and

(3) Fur buyer's license (nonresident): $300.

Section 7. The following Otter Creek Outdoor Recreation Act permits shall be valid from July 1 through June 30 of the following year:

(1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and

(2) Annual Special Activities Permit: seventy (70) dollars.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: April 10, 2017

FILED WITH LRC: April 14, 2017 at 10 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.

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(As Amended at ARRS, June 13, 2017)

400 KAR 1:001. Definitions for 400 KAR Chapter 1.

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, 350.0301, 350.0305, 350.032, 350.070, 350.085, 350.090, 350.093, 350.130, 350.255, 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***[~~Chapter 13A,~~]*** 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, 350.0301, 350.0305, 350.255, 350.465, 350.610, 30 C.F.R. Parts 724, 730, [~~724,~~] 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: 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[~~KRS Chapter 350 in pertinent part authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. 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. KRS Chapter 151 in pertinent part authorizes the secretary to promulgate, without notice or hearings administrative regulations with respect to procedural aspects of administrative hearings~~]. This administrative regulation ***establishes definitions for[~~defines~~]*** certain essential terms used in 400 KAR Chapter 1.

Section 1. Definitions.[~~As used in this chapter, the following terms shall have the following meanings:~~]

(1) "Administrative hearing" means a formal adjudicatory hearing conducted before the cabinet pursuant to KRS Chapters[~~Chapter~~] 146, 149, 151, 223, 224, or 350.

(2) "Cabinet" is defined by KRS 149.330(2), 151.100(2), 223.400(3), 224.1-010(9), [~~224.01-010~~] and 350.010(10).

(3) "Chief hearing officer" means the individual duly qualified and designated by the secretary as the chief hearing officer of the office.

(4) "Day" means calendar day unless otherwise specified to be a working day[~~"Defendant" means any person against whom a claim is made in any action filed in the office and includes any person so designated in the caption of an initiating document; term is interchangeable with "respondent"~~].

(5) "Final order" means final order of the secretary.

(6)[~~(5)~~] "Hearing officer" means the individual duly qualified and assigned as presiding officer to conduct an administrative hearing and [~~; term~~] includes the chief hearing officer.

(7) "Individual" means a natural person.

(8)[~~(6)~~] "Initiating document" means a petition for

administrative hearing, an administrative complaint, a show cause order or other document that[which] commences an administrative proceeding.

(9) "Interim report" means statements made by a hearing officer in written form that are not intended to be considered by the secretary and that are not subject to judicial review.

(10)[(7)] "Office" means the office of administrative hearings.

(11)[(8)] "Party" means:

(a) The named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing;[, or]

(b) Any other person who is duly granted intervention in the administrative hearing;[,] and[includes]

(c) Any agency named as a party to the adjudicatory proceeding or entitled or permitted by law to participate fully in the administrative hearing.

(12)[(9)] "Person" is defined by[in] KRS 149.330(7), 151.100(15), 223.400(5), 224.1-010(17),[224.01-010] and 350.010(9).

(13)[(10)] "Petitioner" means the party filing an initiating document in an action before the office[; term is interchangeable with "plaintiff"].

(14)[(11) "Plaintiff" means the party filing an initiating document in an action before the office; term is interchangeable with "petitioner".

(12)] "Pleading" means an[the] initiating document,[the] answer, motion, response, supporting memorandum, brief, notice, and any other document[responsive pleading] authorized to be filed[ordered] by a hearing officer or[authorized] by administrative regulation.

(15)[(13)] "Record" means:

(a) The electronic recording or transcript of a proceeding;

(b) Each hearing officer ruling;

(c) Any pleading;

(d) Documentary and physical evidence received or considered;

(e) A statement of any matter officially noticed;

(f) Each question and offer of proof;

(g) Each objection;

(h) Any legal brief;

(i) A proposed finding and recommended order;

(j) Any exception and response; and

(k) Final order[the transcript of a proceeding, if any, and rulings; and all pleadings, motions, responses, replies and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections and rulings thereon; proposed findings and recommended orders; and legal briefs and orders].

(16)[(14)] "Respondent" means any person against whom a claim is made in any action filed in the office and includes any person so designated in the caption of an initiating document[; term is interchangeable with "defendant"].

(17)[(15)] "Responsive pleading" means the answer or any document required or authorized by administrative regulation or a hearing officer to be filed in response to a pleading.

(18)[(16)] "Secretary" is defined by[in] KRS 146.210(7), 151.100(16), 223.400(6), 224.1-010(24),[224.01-010] and 350.010(11).

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 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.

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(As Amended at ARRS, June 13, 2017)

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, ***39 C.F.R.,*** 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 ***the*** 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 ***filed[~~saved~~]*** as a ***searchable*** 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 ***each party[~~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 ***an initiating document[~~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 ***provided[~~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***, 39 C.F.R.,*** 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 ***a party[~~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 ***a*** 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) ***If[~~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 ***(14)*** days of the change.

Section 11. Prehearing Conference. A hearing officer may order a prehearing conference to be held in person or by telephone ***to***:

(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) ***A[~~No~~]*** response memorandum longer than twenty-five (25) pages in length shall ***not*** 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) ***A[~~No~~]*** reply memorandum longer than ten (10) pages in length shall ***not*** 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) The 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 ***answer to an interrogatory[~~answers to interrogatories~~]***,

(c) An ***admission[~~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 *if[~~provided that~~]* the hearing officer explicitly and rationally justifies *the[~~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 *if[~~provided that~~]* the secretary explicitly and rationally justifies *the[~~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) ***If any party is unwilling to proceed further or if the mediator determines that further efforts would be of no avail, then the mediator shall file a report to the hearing officer that the mediation process has ended. The report shall state the lack of an agreement and shall not make other comment or recommendation.***

(c) If a case is settled prior to or during mediation, an attorney for one (1) of the parties shall:

1. Full Settlement.

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.

2. Partial settlement.

a. 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 listing the issues that have been resolved and the issues that remain for 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; ***and***

(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.

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
(As Amended at ARRS, June 13, 2017)

400 KAR 1:100. General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223, and 224.

RELATES TO: KRS 146.200 - 146.360, 146.990, 149.344, 149.346, 149.348, 151.182, 151.184, 151.297, 151.990, Chapters 223, 224

STATUTORY AUTHORITY: KRS 146.270, 149.344, 149.346, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100, 224.10-410, 224.10-420, 224.10-440, 224.40-310

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection authorize the cabinet to conduct administrative hearings and promulgate administrative regulations. This administrative regulation establishes procedures for conducting administrative hearings.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings authorized by KRS Chapter 146 relating to wild rivers, KRS Chapter 149 relating to timber harvesting, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection, including those matters initiated by a petition for hearing filed on or before ***August 4, 2017[January 1, 2018]***. This administrative regulation governs an administrative hearing, an order, and a final determination of the cabinet.

Section 2. Location of Administrative Hearing. An administrative hearing shall be held in Frankfort at the location designated by the hearing officer unless an alternative location is agreed to by each party or authorized by KRS 224.40-310(5)(e).

Section 3. Administrative Hearing Initiated by the Cabinet. (1) Criteria for filing. The cabinet may initiate an administrative hearing and may seek a remedy identified in subsection (2) of this section if:

(a) The cabinet has reason to believe that a violation of KRS Chapters 146, 149, 151, 223, 224, KAR Titles 400, 401, 402, an administrative regulation, a permit, registration, or certification condition has occurred or is occurring; or

(b) The cabinet has reason to believe a remedy should be sought or an order should be entered against any person to protect the environment or the health and safety of the public.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek one (1) or a combination of the following:

(a) Permit revocation, termination, denial, modification, or suspension;

(b) Bond and other financial assurance forfeiture;

(c) Civil penalty;

(d) A determination, if expressly authorized by statute, that a person shall not be eligible to receive another permit or conduct future activity;

(e) Cost recovery if expressly authorized by statute; or

(f) Any other relief to which the cabinet may be entitled by KRS Chapters 146, 149, 151, 223, 224, KAR Titles 400, 401, and 402.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief; and

3. A copy of any notice or order upon which relief is sought.

(b) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer shall contain:

a.***(i)*** A statement specifically admitting or denying the facts stated in the administrative complaint or amended administrative complaint***; or***

(ii) If[~~unless~~] the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and ***it[~~this~~]*** shall have the effect of a denial;

b. Any defense to each claim for relief; and

c. Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of ***the[~~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.

4. An allegation in a pleading to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted ***if[~~when~~]*** not denied in the answer or responsive pleading.

(c) ***Amendment[~~Amendments~~]***.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an ***amended*** administrative complaint***[~~amended as a matter of right~~]*** or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading ***to the amended administrative complaint***.

3. If the hearing officer grants a motion to amend the administrative complaint, ***the hearing officer shall set*** the time for an answer to be filed***[~~shall be set forth~~]*** in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall bear the ultimate burden of persuasion.

(b) A respondent shall have the burden of persuasion to establish an affirmative defense.

(c) A respondent claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(5) Default.

(a) If the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may***,*** on his own initiative or upon motion***,*** issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 4. Review of a Cabinet Order and Final Determination.

(1) Who may file. A person who considers himself aggrieved by an order or final determination of the cabinet may file a petition for review of the order or final determination. The petition for review shall be filed pursuant to this section. This section also applies to a petition for review of a draft permit for construction or expansion of a waste disposal facility, made pursuant to KRS 224.40-310(6), if the expansion results in substantial additional capacity.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days after the person has had actual notice of the order or final determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section stating that the person waived his right to an administrative hearing.

(3) Content of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief;

(d) If the petition challenges an order or final determination on a permit, the name of the permittee and the permit number; and

(e) If the petition challenges an order or final determination other than a permit, a copy of the order or final determination sought to be reviewed.

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.***a.*** A statement specifically admitting or denying the facts stated in the petition or amended petition***; or***

b. If[~~unless~~] the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and ***it[~~this~~]*** shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the 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 an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted ***if[~~when~~]*** not denied in the answer or responsive pleading.

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend the petition, the hearing officer shall set the time for an answer to be filed***[~~shall be set forth~~]*** in the order granting the motion.

(6) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's order or final determination pending completion of administrative review.

(7) Burden of proof.

(a) The petitioner shall bear the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

(b) A responding party shall have the burden of persuasion to establish an affirmative defense.

(c) A responding party claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer may, at his discretion or upon motion, issue an order to show cause why the petitioner should not be deemed to have waived the right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

(c) If the petitioner fails to appear at an administrative hearing, the petitioner shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition since the petitioner waived the right to an administrative hearing.

Section 5. Procedure for an Order for Remedy under KRS 151.297. (1) Notice.

(a) If the secretary issues an order for remedy pursuant to KRS 151.297, the secretary shall file a copy of the order for remedy in the office.

(b) Upon ***the*** filing of an order for remedy, the office shall issue an administrative summons pursuant to 400 KAR 1:090, Section 5 and shall set the time and place for an administrative hearing. The office may schedule the administrative hearing within five (5) working days from the date the order for remedy was signed by the secretary.

(2) Response.

(a) Unless paragraph (b) of this subsection applies, the person named in the order for remedy prior to or at the administrative hearing shall 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 151.297.

(b) In lieu of a response, the person named in the order for remedy 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 400 KAR 1:090.

(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 order for remedy. The person named in the order for remedy shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 151.297, 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 ***was[has been]*** waived and the order for remedy stands as issued if:

(a) The person named in the order for remedy notified the office that an administrative hearing is not needed; or

(b) The person failed 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 for remedy or the affirmative obligations imposed on a person by the order.

Section 6. Judicial Review, Effect, and a Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 151.186 or 224.10-470, as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by a court of competent jurisdiction.

(3) ***Remand[Remands]*** from ***a*** court. If a matter is remanded from ***a[any]*** court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall file with the office a report recommending the procedure to be followed in order to comply with the court's order. The hearing officer shall review each report and enter a special order governing the handling of the matter remanded for a further proceeding.

Section 7. Requirement to File Written Direct Testimony and Its Use in an Administrative Proceeding Subject to KRS 224.10-440. In proceedings subject to KRS 224.10-440:

(1) In addition to the provisions of 400 KAR 1:090, Section 16(4), pertaining to the admission of written testimony, the hearing officer may require the filing of the written testimony of a witness as if on direct examination, which shall be prepared and filed in the record in advance of the formal administrative hearing.

(2) The hearing officer may require written testimony to be supplemented by additional evidence.

(3) Written testimony shall be accompanied by an affidavit of the witness verifying that the written direct testimony is a true and accurate record of the witness' testimony as if given orally, and that the answers to the questions propounded to the witness are true.

(4) Any witness whose written testimony is prefiled shall appear at the formal administrative hearing unless all parties agree to waive the appearance of the witness.

(5) At the formal administrative hearing, the witness shall again verify that the written direct testimony is a true and accurate record of the witness' testimony as if given orally and that the answers to the questions propounded to the witness are true and the witness shall be available for cross examination.

(6) If a witness fails to verify his written direct testimony or is not available for cross examination at the formal administrative hearing, the written testimony of that witness shall be excluded from the record, unless ***each party agrees[the parties agree]*** otherwise.

(7) Written testimony shall be set forth in a "question and answer" format.

(8) If written testimony, that is based upon a separate document or writing is submitted into the record, that document or writing shall be authenticated and entered into the record as an accompanying exhibit to the written testimony.

(9) Each party shall have a reasonable opportunity prior to the formal administrative hearing to:

(a) Object to all or portions of any written testimony and any accompanying exhibit; and

(b) Obtain a ruling on objections to written testimony or exhibits prior to their introduction at the administrative hearing.

(10)[(11)] Written testimony and accompanying exhibits shall be subject to the same standards of authentication and admissibility as all other testimony and exhibits offered in an administrative hearing.

Section 8.***[Waiver and Waiver Revocation in]*** Administrative Proceedings Subject to KRS 224.10-440. (1) Waiver.

(a) In proceedings subject to KRS 224.10-440, if each party agrees to waive the deadline of KRS 224.10-440(3), a waiver agreement executed by each party or the party's counsel shall be filed in the office.

(b) Waiver of the KRS 224.10-440(3) deadlines shall not be subject to revocation by a party without consent of all parties and the approval of the hearing officer.

(2) Motion for extension of time.

(a) A party or hearing officer seeking an extension of the deadline for completion of the administrative hearing process set forth in KRS 224.10-440(3) shall file in the office a motion for extension that includes a proposed date certain by which the report and recommended order shall be completed.

(b) The motion for extension shall be filed forty-five (45) days prior to the deadline for the hearing officer to transmit the report and recommended order to the secretary, unless good cause is shown for not filing the motion prior to forty-five (45) days before the deadline.

(c) A party or hearing officer objecting to the extension shall file any response in opposition to the motion within seven (7) calendar days from receipt of the motion. The mail rule provisions set forth

in 400 KAR 1:090, Section 4(1)(d) shall not be applicable in calculating the deadline for filing the response.

(d) Upon expiration of the time period for a motion and a response to the motion, the office shall tender the motion and any response to the secretary or the secretary's designee.

(e) The secretary or the secretary's designee shall rule on the motion within ten (10) days from expiration of the time period for filing an objection to any motion for extension.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(As Amended at ARRS, June 13, 2017)

405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions relating to a mineral operation.

RELATES TO: KRS 224.10-410, 224.10-470, 350.010(2), 350.032, 350.060, 350.085, 350.130, 350.240, 350.300, 350.305, 350.990

STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.0301, 350.050, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.0301 requires the cabinet to promulgate administrative regulations establishing formal and informal hearing procedures and administrative conferences. This administrative regulation establishes provisions governing requests for administrative hearings, initiation of administrative hearings by the cabinet, informal settlement conferences, procedures for the conduct of administrative hearings,[~~service,~~] and[~~administrative hearings for~~] orders to abate and alleviate.

Section 1. Definitions. (1) "Cessation order" means an order for cessation and immediate compliance and any similar order issued by an authorized representative of the cabinet pursuant to KRS 350.130 and 405 KAR Chapter 5.

(2) "Department" ***is defined by 405 KAR 5:002[~~means the Department for Natural Resources~~]***.

(3) "Mineral operation" ***is defined by 405 KAR 5:002[~~:~~***

~~(a) Means noncoal mining activities including mining of limestone and dolomite, mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel, mining of clay, mining of tar sand or rock asphalt, and mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes mining activities and all activities necessary and incident to the reclamation of the mine or dredging operation as required by this 405 KAR Chapter 5; and~~

~~(b) Does not mean coal mining or oil shale mining~~].

(4) "Mineral operator" ***is defined by 405 KAR 5:002[~~means any person, partnership, or corporation engaged in mineral operations~~]***.

(5) "Mineral permittee" ***is defined by 405 KAR 5:002[~~means a mineral operator or person holding a permit, or required by KRS Chapter 350 or 405 KAR Chapter 5 to hold a permit, to conduct mineral operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapter 5 are satisfied~~]***.

(6) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet in accordance with KRS 350.130 that:

(a) Sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 5, or permit conditions, which the authorized representative of the cabinet determines to have occurred based upon a cabinet inspection; and

(b) Establishes the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(7) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet in accordance with KRS 350.130 ***if[~~when~~]***:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 5, or any condition of a permit that:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(8) "Permit" ***is defined by 405 KAR 5:002[~~means written approval issued by the cabinet to conduct mineral operations~~]***.

(9) "Permit area" ***is defined by 405 KAR 5:002[~~means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas that are or will be affected by mineral operations under that permit~~]***.

(10) "Significant, imminent environmental harm to land, air, or water resources" ***is defined by 405 KAR 5:002[~~means a situation which is determined as follows:~~***

~~(a) An environmental harm is an adverse impact on land, air, or water resources, including, but not limited to, plant and animal life;~~

~~(b) An environmental harm is imminent if a condition, practice, or violation exists that:~~

~~1. Is causing the harm; or~~

~~2. May be reasonably expected to cause the harm at any time before the end of the reasonable abatement time; or~~

~~(c) An environmental harm is significant, if that harm is appreciable, and not immediately reparable~~].

Section 2. Review of a Cabinet Order and Final Determination Relating to a Mineral Operation. (1) Who may file. A person aggrieved by a determination of the cabinet relating to a mineral operation, including a notice of noncompliance and order for remedial measures, cessation order, or penalty assessment, may file a petition for review of the determination. A petition for review shall be filed pursuant to this section and KRS 350.0301(1).

(2) Time for filing.

(a) A person***[~~filing a petition for review under this section~~]*** shall file in the office a petition within thirty (30) days after the person has had actual notice of the determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall ***dismiss a petition that is not filed in accordance with paragraph (a) of this subsection, stating that the person waived his[~~enter an order dismissing the petition since the person waived the~~]*** right to an administrative hearing.

(3) Contents of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person ***requesting***

review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief; ***[~~and~~]***

(d) A copy of the written determination to be reviewed, if applicable***; and***

(e) If the petition challenges an order or final determination on a permit, the name of the permittee and the permit number.

(4) Public notice. The office shall post notice of the administrative hearing at the department's regional office with jurisdiction over the mine site, at least five (5) days before the administrative hearing.

(5) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or other responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.***a.*** A statement specifically admitting or denying the facts stated in the petition or amended petition***; or***

b. If[~~unless~~] the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and ***it[~~this~~]*** shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the 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 those defenses in ***an answer or[~~a~~]*** responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(6) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent shall have ten (10) days from the filing of an amended petition or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(7) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer ***may, at his discretion or upon motion[~~shall~~]*** issue an order to show cause why ***the petitioner[~~that person~~]*** should not be deemed to have waived ***the[~~his~~]*** right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition ***because[~~since~~]*** the petitioner waived the right to an administrative hearing.

(c) If the ***petitioner[~~person requesting the administrative hearing~~]*** fails to appear at ***an administrative[~~a~~]*** hearing, the ***petitioner[~~person~~]*** shall be deemed to have waived his right to ***an administrative[~~a~~]*** hearing and the hearing officer shall recommend to the secretary the entry of a final order dismissing the petition ***because the petitioner[~~since the person~~]*** waived the right to an administrative hearing.

(9) Burden of proof.

(a) In review of a penalty assessment, a notice of noncompliance and order for remedial measures, cessation order, or the modification, vacation, or termination thereof under this section:

1. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the penalty assessment, notice of noncompliance and order for remedial measures, cessation order, or modification, vacation, or termination thereof; and

2. The petitioner shall have the ultimate burden of persuasion.

(b) In review of a determination of the cabinet other than those set forth in paragraph (a) of this subsection, the petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

(10) Hearing officer determination. The hearing officer determination shall be made in accordance with Section 4 of this administrative regulation.

Section 3. Administrative Hearing Initiated by the Cabinet Relating to a Mineral Operation. (1) Criteria for filing. The cabinet may initiate an administrative hearing ***[~~and may seek suspension or revocation of a permit and forfeiture of the bond~~]*** if:

(a) The cabinet has reason to believe that a violation of KRS Chapter 350, 405 KAR Chapters 5, or a permit condition has occurred or is occurring;

(b) A mineral permittee has failed to:

1. Pay a civil penalty assessed by the cabinet;

2. Undertake a remedial measure mandated by an order of the cabinet; or

3. Abate a violation ***the mineral permittee[~~it~~]*** was determined to have committed by an order of the cabinet;

(c) The provisions of 405 KAR 5:082 apply; or

(d) The cabinet has reason to believe an additional remedy should be sought or an order should be entered against ***a[~~any~~]*** person to protect the environment or the health and safety of the public.

(2) Remedies. In an administrative hearing initiated by the cabinet or in a counterclaim filed in response to a petition filed in accordance with Section 2 of this administrative regulation, the cabinet may seek a combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalty;

(d) A determination, pursuant to KRS 350.085 and 350.130, that ***the[~~a~~]*** person shall not be eligible to receive another permit or conduct future mineral operations; or

(e) Any other relief to which ***the cabinet[~~it~~]*** may be entitled by KRS ***Chapter[~~Chapters 224 and~~]*** 350.

(3) Procedure for an administrative hearing initiated by the cabinet.

(a) Filing of administrative complaint. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief; and

3. A copy of any notice or order ***or determination*** upon which relief is sought.

(b) Public participation. The office shall post notice of the administrative hearing at the department's regional office over the mineral operation, at least five (5) days before the administrative hearing.

(c) Answer or responsive pleading.

1. The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer[~~, which~~] shall contain:

a.(i)[~~1.~~] A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint***; or***

(ii) If[~~unless~~] the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and ***it[~~this~~]*** shall have the effect of a denial;

b.[~~2.~~] Any defense to each claim for relief; and

c.[~~3.~~] Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the 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.

4. An allegation in a pleading to which an answer or responsive pleading is not required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(d) Amendment.

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent shall have ten (10) days from the filing of an amended administrative complaint or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed in the order granting the motion.

(4) Burden of proof.

(a) The cabinet shall have the ultimate burden of persuasion.

(b) A ***respondent[~~responding party~~]*** shall have the burden of persuasion to establish an affirmative defense.

(5) Default.

(a) ***If[~~In a proceeding in which~~]*** the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer may***,*** on his own initiative or upon motion***,*** issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(6) Hearing officer determination and report. The hearing officer determination and report shall be made in accordance with Section 4 of this administrative regulation.

Section 4. Hearing Officer Determination. (1) The hearing officer determination and report shall be made in accordance with 400 KAR 1:090, Section 20 and the provisions of this section.

(2) The hearing officer may recommend suspension or revocation of the permit or forfeiture of the bond if the mineral permittee has violated:

(a) Any provision of KRS Chapter 350;

(b) 405 KAR Chapter 5;

(c) A permit condition; or

(d) A final order, including a failure to pay a civil penalty assessed in a final order of the cabinet.

(3) The hearing officer may recommend, pursuant to KRS 350.085 and 350.130, that a person shall not be eligible to receive another permit or conduct future mineral operations.

(4) If the hearing officer finds a violation exists, the hearing officer may recommend that a person be required to abate, repair, alleviate, or prevent violations of KRS Chapter 350, 405 KAR Chapter 5, or a permit condition.

(5) The hearing officer may in reviewing a permit determination by the cabinet recommend:

(a) That a permit was issued in violation of applicable statutory and regulatory criteria;

(b) Suspension or revocation of the permit; or

(c) ***A*** remedial or compliance action be taken by the mineral permittee.

Section 5. Judicial Review, Effect, and Subsequent Proceedings. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305, as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remand from a court.

(a) If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall ***file with the office[~~be allowed an opportunity to submit to the hearing officer~~]***, a report recommending a procedure to be followed in order to comply with the court's order.

(b) The hearing officer shall review ***the[~~each~~]*** report and enter a special order governing the handling of ***a matter[~~matters~~]*** remanded ***for a further proceeding[~~to it for further proceedings by a court~~]***.

Section 6. Informal Settlement Conference. (1) As an alternative to the administrative hearing established in Section 2 of this administrative regulation, a mineral permittee or other person issued a proposed penalty assessment, notice of noncompliance and order for remedial measures, ***or a*** cessation order, may request an informal conference with the Director, Division of Mine Reclamation and Enforcement. The request shall be made by submitting a written request.

(2) The mineral permittee or other person shall request an informal conference within thirty (30) days of ***the*** issuance of the notice of noncompliance and order for remedial measures, cessation order, or proposed penalty assessment.

(3) A request for an informal conference shall not toll the time for requesting an administrative hearing pursuant to Section 2 of this administrative regulation.

Section 7. Temporary Relief. (1) Temporary Relief Available. Pending the completion of the investigation and ***hearing[~~hearings~~]*** provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a:

(a) Notice of noncompliance and order for remedial measures or a cessation order issued for a mineral operation pursuant to KRS Chapter 350 or 405 KAR Chapter 5; or

(b) A permit or bond release decision of the cabinet.

(2) Temporary Relief Not Available. A hearing officer shall not grant temporary relief for:

(a) The issuance of a permit if the cabinet made a determination to deny a permit in whole or in part; or

(b) The release of a bond if the cabinet made a determination to deny a bond release request.

(3) A hearing officer shall grant or deny temporary relief from a cessation order or bond release decision within five (5) working days of receipt by the office of a temporary relief request, unless waived by the petitioner.

(4) Contents of the Petition. A person shall file a written petition for relief with the office. The petition shall contain:

(a) The permit number;

(b) The name of the mineral permittee;

(c) The date and number of the notice of noncompliance and order for remedial measures or cessation order from which relief is requested, if applicable;

(d) The name and telephone number of the petitioner;

(e) A detailed statement setting forth reasons why the relief should be granted;

(f) Facts supporting a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;

(g) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

(h) If the petition relates to a cessation order, a statement of whether or not the person waives the requirement for the hearing

officer to grant or deny the request for temporary relief within five (5) working days of receipt of the petition by the office; and

(i) A statement of the specific relief requested.

(5)[~~(4)~~] Hearing Process.

(a) In addition to the service requirements of 400 KAR 1:090, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the ***petition in the office[~~application~~]***. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed ***in the office*** and the contents of the petition.

(b) Filing an Objection.

1. The representative of the cabinet and any other party may communicate an objection to the ***petition[~~application~~]*** to the hearing officer and the petitioner by telephone.

2. The representative of the cabinet and any other party may simultaneously reduce any objection to writing.

3. A written objection shall be immediately filed with the office and immediately served upon the petitioner.

4. Ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer.

(c) Scheduling a Hearing.

1. Upon receiving an objection to the petition, the hearing officer shall immediately order a location, time, and date for the administrative hearing by communicating the information to the cabinet, any other party, and the petitioner by telephone.

2. The hearing officer shall reduce the communication to writing in the form of a memorandum to the file.

3. The administrative hearing on the request for temporary relief shall be held in a location acceptable to both the cabinet and the petitioner.

4. If the petitioner did not waive the requirement for the hearing officer to grant or deny temporary relief within five (5) working days of the office's receipt of the petition for temporary relief as set forth in subsections (3) and ***(4)(h)[~~(4)(e)~~]*** of this section, the hearing officer shall schedule the administrative hearing within (5) five days of the office's receipt of the petition for temporary relief.

(d) If an evidentiary hearing is held, the hearing officer may require ***each party[~~the parties~~]*** to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing, which may be orally supplemented on the record at the hearing.

(e) If at any time, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement in subsection (3) of this section.

(6)[~~(5)~~] Standard of review. A hearing officer may grant temporary relief if:

(a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(b) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(7)[~~(6)~~] Timing of hearing officer's determination.

(a) If the petitioner did not waive the requirement for a hearing officer to grant or deny the request for temporary relief of a cessation order or bond release decision within five (5) days of the office's receipt of the petition as required in subsections (3) and ***(4)(h)[~~(4)(e)~~]*** of this section, the hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within three (3) working days; or

2 Within twenty-four (24) hours of completion of the administrative hearing**,** issue a written decision stating the reasons for the finding.

(b) If the petitioner waived the requirement for a hearing officer to grant or deny the request for temporary relief ***of a cessation order or bond release decision*** within five (5) days of the office's receipt of the petition in accordance with subsection (3) and ***(4)(h)[~~(4)(e)~~]*** of this section or the petitioner did not request temporary relief from a cessation order or a bond release decision, then the hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within twenty (20) working days; or

2. Within fifteen (15) days of completion of the administrative hearing issue a written decision stating the reasons for the finding. [~~Section 1. Conduct of Administrative Hearings. (1)(a)1. Requests for an administrative hearing by persons other than the cabinet.~~

~~(1) A person aggrieved by an order or determination of the cabinet may request in writing that an administrative hearing be conducted by the cabinet, pursuant to KRS 350.0301. The request shall be filed with the Office of Administrative Hearings in Frankfort and shall include a short and plain statement identifying the basis of the request and the order or determination being contested.~~

~~2. The request for an administrative hearing shall plainly identify the notice or order being contested if the request involves:~~

~~a. A notice of noncompliance;~~

~~b. An order for cessation and immediate compliance; or~~

~~c. A proposed penalty assessment.~~

~~3. The right to demand an administrative hearing shall be limited to a period of thirty (30) days, in accordance with KRS 350.0301(1).~~

~~(b) Burden of proof.~~

~~1. The cabinet shall have the burden of establishing a prima facie case as to the propriety of:~~

~~a. Notices of noncompliance and orders for remedial measures;~~

~~b. Orders for cessation and immediate compliance; or~~

~~c. The modification, vacation, or termination as established in this section.~~

~~2. The ultimate burden of persuasion shall rest with the petitioner. In all other cases in which the administrative hearing is requested by persons other than the cabinet, the petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.~~

~~(2) Initiation of an administrative hearing by the cabinet.~~

~~(a) The cabinet may initiate an administrative hearing and may seek suspension or revocation of the permit and forfeiture of the bond if:~~

~~1. It has reason to believe that a violation of KRS Chapter 350, 405 KAR Chapter 5, or a permit condition has occurred or is occurring;~~

~~2. A mineral permittee has failed to:~~

~~a. Pay a civil penalty assessed in a final order of the cabinet;~~

~~b. Undertake remedial measures mandated by a final order of the cabinet; or~~

~~c. Abate violations it was determined to have committed by final order of the cabinet;~~

~~3. The cabinet has reason to believe that additional remedies should be sought or that an order should be entered against a person to protect the environment or the health and safety of the public; or~~

~~4. The criteria of 405 KAR 5:082 apply.~~

~~(b) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall have the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense.~~

~~(3) At an administrative hearing held pursuant to subsection (1) or (2) of this section, the cabinet may seek any combination of the following:~~

~~(a) Permit suspension or revocation;~~

~~(b) Bond forfeiture;~~

~~(c) Civil penalties;~~

~~(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations; or~~

~~(e) Relief to which it may be entitled by KRS Chapters 224 and 350.~~

~~(4) If the cabinet revokes or suspends the permit, then mining operations on the permit area shall immediately cease, and the mineral permittee shall:~~

~~(a) Complete reclamation within the time specified in the order, if the permit is revoked; or~~

~~(b) Complete all affirmative obligations to abate all conditions, practices, and violations as specified in the order, if the permit is suspended.~~

~~(5) Informal settlement conferences. As an alternative to the administrative hearings provided at subsection (1) of this section, a permittee or other person issued a notice of noncompliance, order for cessation and immediate compliance, or proposed penalty assessment may request an informal conference with the Director, Division of Mine Reclamation and Enforcement, by submitting a written request.~~

~~(a) The time for requesting an informal conference shall be limited to a period of thirty (30) days following issuance of the notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment.~~

~~(b) A request for informal conference shall not toll the time for requesting an administrative hearing pursuant to subsection (1) of this section.~~

~~(6) Administrative summons.~~

~~(a) Upon request pursuant to subsection (1) of this section, or upon initiation by the cabinet pursuant to subsection (2) of this section, the cabinet shall schedule an administrative hearing to be held not less than twenty-one (21) days after the notice of demand for an administrative hearing, unless the person complained against waives, in writing, the twenty-one (21) day period.~~

~~(b) The administrative summons, including a notice of administrative hearing, shall be served in accordance with Section 2 of this administrative regulation and shall include the following:~~

~~1. A statement of the time, place, and nature of the administrative hearing;~~

~~2. A statement of the legal authority for the administrative hearing;~~

~~3. Reference to the statutes and administrative regulations involved; and~~

~~4. A short statement of the reason for granting of the administrative hearing.~~

~~(c) For all administrative hearings initiated pursuant to subsection (2) of this section, notice shall also be mailed to intervenors and shall be posted at the department's appropriate regional office.~~

~~(7) Prior to an administrative hearing as provided in this administrative regulation, and upon seven (7) days' written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, consolidation of actions, admission of facts and documents to avoid unnecessary proof, limitation of the number of witnesses, and other matters that aid in the disposition of the matter. Final disposition of the matter may be made at the conference by stipulation, settlement, agreed order, summary disposition, or default for nonappearance. The parties may hold additional conferences as necessary to resolve an issue in dispute.~~

~~(8)(a) Any party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas.~~

~~(b) An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practice.~~

~~(c) Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 and 1:040 shall apply to cases before the cabinet, consistent with KRS Chapters 224 and 350.~~

~~(d) The hearing officer shall permit a party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel shall be grounds for the Hearing Officer to issue a default order recommending that the Secretary grant or deny relief as appropriate.~~

~~(e) Failure to appear shall be grounds for the Hearing Officer to issue a default order recommending that the Secretary grant or deny relief as appropriate.~~

~~(9) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.~~

~~(a) If necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except if precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs.~~

~~(b) Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record.~~

~~(c) Subject to these requirements, if an administrative hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts.~~

~~(d) Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge.~~

~~(e) Parties shall be notified either before or during the administrative hearing, or by reference in preliminary reports or otherwise, of the material noticed, including a staff memoranda or data, and the parties shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.~~

~~(10)(a) Each administrative hearing shall be recorded, and a transcript made available on the motion of a party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay copying costs.~~

~~(b) The record of the administrative hearing shall be open to public inspection and copies thereof shall be made available to a person upon payment of the actual cost of reproducing the original except as provided in KRS Chapter 224. The record shall consist of:~~

~~1. All pleadings, motions, and rulings;~~

~~2. Documentary and physical evidence received or considered;~~

~~3. A statement of matters officially noticed;~~

~~4. Questions and offers of proof, objections, and rulings thereon;~~

~~5. Proposed findings and recommended orders; and~~

~~6. Legal briefs.~~

~~(c) If certified by the cabinet as a true and correct copy of the testimony, the transcript shall constitute the official transcript of the evidence.~~

~~(11)(a) After the administrative hearing, the hearing officer shall issue a determination based on the preponderance of evidence appearing in the record as a whole. The determination shall establish if the violation did occur. If the violation occurred, the determination shall specify a recommended penalty and recommended remedial or compliance actions to be taken by the mineral permittee or the person conducting the mineral operation.~~

~~(b) In addition to the requirements of paragraph (a) of this subsection:~~

~~1. The hearing officer may recommend suspension or revocation of the permit or forfeiture of the bond if the mineral permittee has violated any provision of KRS Chapter 350; 405 KAR Chapter 5; a permit condition; or a final order, including failure to pay a civil penalty assessed in a final order of the cabinet;~~

~~2. The hearing officer may recommend, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations;~~

~~3. The hearing officer may recommend that a person be required to abate, repair, alleviate, or prevent violations of KRS Chapter 350; 405 KAR Chapter 5; or a permit condition, if the violations are found to exist on the basis of a preponderance of the evidence; and~~

~~4. For permit determinations, the hearing officer may~~

~~recommend that a permit was issued in violation of applicable statutory and regulatory criteria, and may recommend suspension or revocation of the permit and may further recommend remedial or compliance actions to be taken by the mineral permittee.~~

~~(12) The hearing officer shall recommend the amount of a civil penalty pursuant to KRS 350.990(1) and (2) and the recommendation shall be based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of a computation offered by a party, and shall state with specificity the reason, supported by the record of the administrative hearing, for the penalty assessed in the final written report.~~

~~(13)(a) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law.~~

~~(b) If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension.~~

~~(c) The hearing officer shall mail, postage prepaid, a copy of the report and recommended order to all parties. The parties may file, within fourteen (14) days of receipt of the hearing officer's report and recommended order, exceptions to the report and recommended order. There shall not be other or further submissions.~~

~~(14) The secretary shall consider the report and recommended order and any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the cabinet's final order, or issue the secretary's own final order.~~

~~(15) The cabinet shall mail the final decision of the cabinet to the parties. If an extension of time is granted by the secretary for a hearing officer to complete the report, the cabinet shall notify all parties upon the granting of the extension.~~

~~(16) The secretary shall not grant an extension of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) extensions shall be granted.~~

~~(17) A final order of the cabinet shall be based on substantial evidence appearing in the record as a whole and shall establish the decision of the cabinet and the facts and law upon which the decision is based.~~

~~(18) There shall not be ex parte communications between the parties or representatives of the parties and the hearing officer.~~

~~(19) Any person aggrieved by a final order of the cabinet may seek judicial review as established in KRS 224.10-470 (pertaining to abate and alleviate orders), 350.0305(2) and 350.032(2).~~

~~(20) This administrative regulation shall not prevent the cabinet from taking appropriate action in circuit court.~~

~~Section 2. Service. (1) Except as provided in subsections (3) and (4) of this section, any proposed penalty assessment, notice of administrative hearing, or other document required to be served in accordance with this section shall be served by one (1) of the following methods:~~

~~(a) The cabinet shall send copies of documents to the person to be served or instructed to be served by the initiating party, by certified mail or electronic mail pursuant to KRS 350.130.~~

~~1. The cabinet shall enter this occurrence into the record.~~

~~2. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record.~~

~~3. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) of this section. The return receipt shall be proof of the time, place, and manner of service. To the extent that the United States postal regulations permit 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.~~

~~(b) The cabinet may cause the document, with necessary copies, to be transferred for service to a person authorized by the secretary or by a statute to deliver them, or to a person authorized to deliver service for the purpose of an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service.~~

~~(2)(a) Service is effective upon acceptance of the document by a mineral permittee at the permit address, upon refusal to accept the document by a person at the permit address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, inability to deliver, or failure to claim the document.~~

~~(b) Service of documents by electronic mail shall be effective pursuant to KRS 350.130(7).~~

~~(3) Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.~~

~~(4) In addition to the provisions of subsections (1) through (3) of this section, the provisions of 400 KAR 1:030, shall apply to service resulting from or attendant to administrative hearings established in this administrative regulation.~~

~~Section 3. Temporary Relief. (1)(a) Pending completion of the investigation and administrative hearings provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a notice or order issued pursuant to KRS Chapter 350 or the administrative regulations or a determination by the cabinet to issue a permit or release a bond.~~

~~(b) A petition for temporary relief shall be made in writing and filed with the Office of Administrative Hearing with notice to the Office of Legal Services. The petition shall contain the following:~~

~~1. A detailed statement establishing the reasons temporary relief should be granted;~~

~~2. A showing that there is a substantial likelihood that the petitioner will prevail on the merits upon a final determination of the proceeding;~~

~~3. A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources;~~

~~4. If the petition relates to an order for cessation and immediate compliance, a statement of whether the requirement for a decision on the petition within five (5) working days is waived; and~~

~~5. A statement of the specific relief requested.~~

~~(2) A hearing officer may grant temporary relief after making a written finding that the relief is warranted, and shall state the reasons for the finding. The hearing officer shall grant or deny relief expeditiously. If the petition relates to an order for cessation and immediate compliance, relief shall be granted or denied within five (5) working days of receipt by the office of the petition. A hearing officer may grant temporary relief from notices and orders issued pursuant to 405 KAR Chapter 5 or a determination by the cabinet to issue a permit or release a bond, upon conditions as are deemed appropriate, only upon a finding that:~~

~~(a) The parties were given an opportunity to be heard in a location acceptable to both the cabinet and the petitioner;~~

~~(b) The petitioner has shown that there is a substantial likelihood that the findings on the merits in an administrative hearing conducted before the cabinet will be favorable to the petitioner;~~

~~(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources; and~~

~~(d) The relief sought is not the issuance of a permit if a permit has been denied, in whole or in part, by the cabinet, nor the release of a bond if a bond release request has been denied.~~

~~Section 4. Orders to Abate and Alleviate. (1) If the secretary issues an order to abate and alleviate pursuant to KRS 224.10-410 the cabinet shall provide the permittee or person to whom the order~~

~~was issued an opportunity to be heard not more than ten (10) days following issuance of the order, unless waived in writing by the permittee or person.~~

~~(2) The order to abate and alleviate shall be filed with the Office of Administrative Hearings, which shall issue an administrative summons pursuant to Section 1(6) of this administrative regulation. Neither the scheduling nor holding of an administrative hearing pursuant to this section shall operate to terminate or stay the order, nor operate to relieve the permittee or person or persons named in the order from performing the affirmative obligations imposed in the order to abate and alleviate, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(As Amended at ARRS, June 13, 2017)

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.

RELATES TO: KRS 224.10-410, 350.010, 350.028, 350.0301, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS[~~Chapter 13A~~] 350.020, 350.028, 350.0301, 350.255, 350.465, 350.610, 30 C.F.R. Parts 730, 731, 732, 733, 735, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350[~~in pertinent part~~] requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth hearing, conference, notice, penalty assessment, and other procedural and due process provisions for the permanent regulatory program.[~~This administrative regulation and 405 KAR 7:091 contain the substance of 405 KAR 7:090 which has been repealed.~~]

Section 1. Definitions. (1) "Applicant" ***is defined by 405 KAR 7:001[~~means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable administrative regulations~~]***.

(2) "Application" ***is defined by 405 KAR 7:001[~~means any document and other information filed with the cabinet seeking issuance of a permit; revision; amendment; renewal; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration~~]***.

(3) "Cessation order" ***is defined by 405 KAR 7:001[~~means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA~~]***.

(4) "Coal" ***is defined by 405 KAR 7:001[~~means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77~~]***.

(5) "Coal exploration" ***is defined by 405 KAR 7:001[~~means the field gathering of:~~***

~~(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or~~

~~(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources~~].

(6) "Department" ***is defined by 405 KAR 7:001[~~means the Department for Natural Resources~~]***.

(7) "Knowingly" ***is defined by 405 KAR 7:001[~~means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24~~]***.

(8) "Notice of noncompliance and order for remedial measures" ***is defined by 405 KAR 7:001[~~means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations~~]***.

(9) "Operations" is defined in KRS 350.010(6).

(10) "Operator" is defined in KRS 350.010(8).

(11) "Order for cessation and immediate compliance" ***is defined by 405 KAR 7:001[~~means a written document and order issued by an authorized representative of the cabinet when:~~***

~~(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or~~

~~(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:~~

~~1. Creates an imminent danger to the health or safety of the public; or~~

~~2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources~~].

(12) "Performance bond" ***is defined by 405 KAR 7:001[~~means a surety bond, a collateral bond, or a combination thereof, or bonds subject to the provisions of the Kentucky Reclamation Guaranty Fund pursuant to KRS 350.500 to 350.521, by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan~~]***.

(13) "Permit" ***is defined by 405 KAR 7:001[~~means written approval issued by the cabinet to conduct surface coal mining and reclamation operations~~]***.

(14) "Permit area" ***is defined by 405 KAR 7:001[~~means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit~~]***.

(15) "Permittee" is defined in KRS 350.010(21).

(16) "Reclamation" is defined in KRS 350.010(12).

(17) "Secretary" is defined in KRS 350.010(11).

(18) "Significant, imminent environmental harm" ***is defined by 405 KAR 7:001[~~means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.~~***

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable].

(19) "SMCRA" ***is defined by 405 KAR 7:001[means Surface Mining Control and Reclamation Act of 1977 (Pub.L. 95-87), as amended]***.

(20) "Surface coal mining and reclamation operations" is defined by KRS 350.010(1).

(21) "Transfer, assignment, or sale of permit rights" ***is defined by 405 KAR 7:001[means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet]***.

(22) "Willfully" and "willful violation" ***is defined by 405 KAR 7:001[mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24]***.

Section 2. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350 ***relating to surface coal mining and reclamation operations and coal exploration operations, including those matters initiated by a petition for hearing filed on or before August 4, 2017[, including those pending at the time this administrative regulation becomes effective, and provide for public participation, pertaining to the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4); determinations of performance bond amount, duration, release, and forfeiture; administrative hearings arising under KRS 224.10-410 on orders to abate or alleviate issued to surface coal mining and reclamation operations; and all other matters including participation in administrative hearings by any person adversely affected by a determination of the cabinet, which[in the discretion of the cabinet] are appropriate for adjudication and determination by the cabinet and arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as set forth in KRS Chapter 350 and 405 KAR Chapters 7 through 24]***.[, except that the provisions pertaining to the payment of proposed assessments into an escrow account as set forth in Sections 3 and 6 of this administrative regulation and the waiver of payments as provided in Section 15 of this administrative regulation shall only be applicable to those notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance issued on or subsequent to the effective date of this administrative regulation. If requests for formal hearings have been timely filed at the time this administrative regulation takes effect, cases shall not be dismissed for the reason that they do not conform to the new procedural requirements of this administrative regulation for filing administrative complaints and answers.

Section 2. Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.]

Section 3. Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing. (1) Notification. The cabinet shall notify a person issued a notice of noncompliance and order for remedial measures or a cessation order[an for cessation and immediate compliance] in writing of the cabinet's[its] proposed penalty assessment. The proposed penalty assessment shall be made by authorized personnel of the department.

(2) Criteria. The department, in determining the amount of the proposed penalty assessment, shall give consideration[shall be given] to:

(a) History of previous violations of the permittee or operator[permittee's or operator's history of previous violations] at the particular surface coal mining and reclamation operation;

(b) The seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(c) Whether or not the permittee, operator, or person was negligent; and

(d) The demonstrated good faith of the permittee, operator, or person in attempting to achieve rapid compliance after notification of the violation, except that good faith consideration shall not be applicable to any violation determined not to be correctable.[If a violation has been cited against a person conducting coal exploration operations consideration shall be given to the above factors as applicable in determining the amount of the penalty.]

(3) Service.

(a) Method; time.

1. The department shall serve the notice of proposed penalty assessment along[The notice of proposed penalty assessment shall be served under 405 KAR 7:091, Section 5, together] with copies of applicable worksheets, to the person to whom the notice or order was issued within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

2. The department shall serve the notice of proposed penalty assessment by utilizing one (1) of the following:

(a) Service methods authorized in 400 KAR 1:090, Section 5(3) and (4); or

(b) By electronic mail pursuant to KRS 350.130.

3. Service shall be deemed effective pursuant to 400 KAR 1:090, Section 5(5) or upon delivery of the notice of proposed penalty assessment with copies of worksheets to the recipient's inbox by electronic mail as electronically communicated to the department by an electronic registered receipt.

4.[(b) Failure to timely serve; substantial prejudice.] Failure to serve the proposed penalty assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of the assessment unless:

a. The person against whom the proposed penalty has been assessed proves actual and substantial prejudice as a result of the delay; and

b. The person makes[Makes] a timely written objection to the delay[. An objection shall be timely only if made] on or before the last date to request an assessment conference under subsection (4)(b) of this section.

(4) Options of person issued notice of proposed penalty assessment.

(a) Waiver of rights to challenge proposed penalty assessment if no petition was filed challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that[; final order to enter. The person issued the notice of proposed penalty assessment may choose not to contest the assessment and a final order of the secretary shall be entered finding that]:

a.[1.] The person to whom the notice of noncompliance and order for remedial measures or cessation order[notice or order]

was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;[~~and~~]

b.[2.] The fact of the violation is deemed admitted; and

c.[3.] The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) Waiver of rights to challenge penalty assessment and the person filed a petition challenging the fact of the violation.

1. The person shall notify the department that the person elects not to contest the proposed penalty assessment.

2. If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

a.[1.] The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

b.[2.] The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.***[;]***

(c) Request for an[~~If a petition requesting an administrative hearing as to the fact of the violation has been timely filed pursuant to Section 7 of this administrative regulation, the finding in subparagraph 2 of this paragraph shall be omitted and the proposed penalty assessment shall be due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.~~]assessment conference. The person shall request in writing an assessment conference:

1. Within thirty (30) days of receipt[~~service~~] of the notice of proposed penalty assessment; or

2. Within thirty (30) days from the date[~~if~~] the notice of proposed penalty assessment[~~document~~] is returned to the department as undeliverable, unclaimed or refused; or[~~, thirty (30) days from the date of the return, the person to whom the notice of proposed penalty assessment was sent may request review of the penalty assessment by requesting in writing an assessment conference pursuant to Section 4 of this administrative regulation in which case payment of the proposed assessment into the cabinet's escrow account shall not be required; or~~]

(d)[~~(c)~~] Petition for administrative hearing.

1. The person shall[~~The person to whom a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance was issued may~~] contest the proposed penalty assessment or the fact of the violation[~~or both~~] by submitting a petition for an administrative hearing in accordance with Section 6 or 7 of this administrative regulation, or contest both by filing a petition for an administrative hearing in accordance with Section 6 and 7[~~If an assessment conference has been held pursuant to Section 4 of this administrative regulation, the person may contest the amount assessed in the conference officer's report or the fact of the violation or both by submitting a petition for an administrative hearing in accordance with Section 6 of this administrative regulation~~].

2. The fact of the violation shall[~~may~~] not be contested if it has been adjudicated by a final order of the secretary pursuant to an administrative hearing commenced under Section 7 of this administrative regulation.

(5) Failure to Request a Penalty Assessment Conference. If a person issued a proposed penalty assessment fails to request in writing an assessment conference in a timely manner as set forth in subsection (4)(c) of this section or has not filed a timely petition in accordance with Section 6 of this administrative regulation, then the cabinet shall consider the failure to request an assessment conference a waiver of the person's right to a conference. The secretary shall enter a final order pursuant to paragraphs (a) or (b) of this subsection.

(a) If the person did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of this administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation [~~Nothing in this paragraph shall be construed as infringing upon any person's right to contest the fact of the violation without having to pay the proposed assessment into the cabinet's escrow account if such petition was timely filed in accordance with Section 7 of this administrative regulation~~].

Section 4. Procedures for Assessment Conference. (1)[~~In general.~~

~~(a) Time for filing. Following issuance by the cabinet of a notice of proposed penalty assessment, the person to whom the notice was sent may request an assessment conference on the proposed penalty assessment. The request for an assessment conference shall be filed with the office within thirty (30) days of the date of receipt of the proposed penalty assessment or, if the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return.~~

~~(b) Waiver; final order to enter. Failure to timely request an assessment conference shall constitute a waiver of the right to a conference. If a petition for review of the proposed penalty assessment, has not been timely filed under Section 6 of this administrative regulation a final order shall be entered in conformity with Section 6(1)(c) of this administrative regulation.~~

~~(c)~~] Date and location of conference; failure to timely schedule; substantial prejudice.

(a) If an assessment conference is requested, the cabinet[~~it~~] shall schedule the assessment conference within[~~be scheduled for a date no later than~~] sixty (60) days after the cabinet's receipt of the request, unless all parties agree otherwise.

(b) An assessment conference shall be held in the department's regional office of the mine site subject to the proposed penalty assessment unless the parties agree otherwise.

1. If all the parties or their counsel request to participate by telephone or other electronic means, then the conference officer may hold the assessment conference telephonically or by any other electronic means agreed to by the parties.

2. Any person who attends the assessment conference in person at the department's regional office shall have access to the telephonic conference line or the electronic means utilized during the assessment conference.

(c) Failure by the cabinet to timely schedule an assessment conference shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the assessment conference and proves actual and substantial prejudice as a result of the delay.

(d) The scheduling of the assessment conference shall not operate as a stay of any notice of noncompliance and order for remedial measures or cessation[~~notice or~~]order.

(2) Service; public participation.

(a) The cabinet shall serve notice of the assessment conference [~~shall be~~] pursuant to 400 KAR 1:090, Section 5.[~~served under 405 KAR 7:091, Section 5 and~~]

(b) The cabinet shall also send a copy of the notice of the assessment conference[~~shall also be sent~~] to any person who filed a report that[~~which~~] led to the issuance of the notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] being contested.

(c) The cabinet shall post notice of the assessment conference at the department's regional office of the mine site subject to the

proposed penalty assessment[~~department's appropriate regional office~~] at least five (5) days before the assessment conference.

(d) Any person shall have the right to attend and participate in the assessment conference.

(3) Conference officer; requirements for administrative hearings not applicable. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the requirements for administrative hearings in 401 KAR 1:090 or by the provisions of 400 KAR 1:040.

(4) Report of conference officer. The conference officer shall consider all relevant information pertaining to the proposed penalty assessment. Within thirty (30) days after the assessment conference is held, the conference officer shall issue a report recommending to the secretary to either affirm, raise, lower, or dismiss the proposed penalty assessment.

(5) Service of report; documentation. The conference officer's report shall be [~~promptly~~] served by mail, postage prepaid, and shall include a worksheet if the penalty has been raised or lowered. The reasons underlying the conference officer's report shall be fully documented.

(6)[~~Agreed order.~~

~~(a) Waiver of further review. If an agreed order is entered into, the person assessed shall be deemed to have waived all rights to further review of the fact of the violation and penalty in question. The agreed order shall contain a clause that any petition for review of the fact of the violation filed in accordance with Section 7 of this administrative regulation shall be deemed withdrawn.~~

~~(b) Enforcement of agreed order. If full payment of the amount specified in the agreed order is not received by the cabinet within thirty (30) days after the date of the secretary's signature, the cabinet may take necessary steps to enforce the agreed order.~~

~~(7)~~] Failure to attend; report to issue. If the person requesting an assessment conference fails to attend the scheduled assessment conference, the assessment officer shall within thirty (30) days of the date of the scheduled assessment conference issue a report to the secretary recommending that the proposed penalty assessment be affirmed.

(7)[~~(8)~~] Statements not to be introduced at ***an*** administrative hearing[~~hearings~~]. In any administrative hearing commenced under Sections 6 or 7 of this administrative regulation**,** no evidence as to statements made by a[~~one (1)~~] party at an assessment[~~a~~] conference shall be introduced by another party as evidence or to impeach a witness.

(8) Challenge to conference officer's report.

(a)[~~(9) administrative hearing; who may request.~~] Any person issued a proposed penalty assessment may file a petition requesting [~~request under Section 6 of this administrative regulation~~] an administrative hearing to contest the conference officer's recommended penalty pursuant to the requirements of Section 6 of this administrative regulation.

(b) The cabinet may file a petition to request under Section 5 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty.

(9) Failure to timely file a petition challenging the conference report. If a person issued a proposed penalty assessment fails to ***[~~file a~~]*** timely ***file a*** petition in accordance with Section 6 of this administrative regulation challenging the conference report, the secretary shall issue a final order pursuant to paragraphs (a) or (b) of this subsection.

(a) If the person ***also*** did not file a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order.

(b) If the person filed a timely petition requesting an administrative hearing as to the fact of the violation pursuant to Section 7 of the administrative regulation, then the secretary shall issue a final order finding that:

1. The person to whom the notice of noncompliance and order for remedial measures or cessation order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The proposed penalty is due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation;[~~(10) Failure to timely request; order to enter. If a request for an administrative hearing is not filed with the office within thirty (30) days of mailing of the conference officer's report, an order of the secretary shall be entered and mailed containing the following:~~

~~(a) That the person to whom the notice or order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;~~

~~(b) That the fact of the violation is deemed admitted; and~~

~~(c) That the penalty assessment contained in the conference officer's report is deemed accepted and is due and payable to the cabinet within thirty (30) days after the entry of the final order. If a petition requesting a hearing as to the fact of the violation has been timely filed pursuant to Section 7 of this administrative regulation, the finding set forth in paragraph (b) of this subsection shall be omitted and the penalty assessment contained in the conference officer's report shall be due and payable within thirty (30) days of the mailing of the final order affirming the fact of a violation.~~]

Section 5. Administrative Hearing[~~Hearings~~] Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing***[~~and may seek revocation of the permit and forfeiture of the bond or suspension of the permit~~]*** if[~~whenever~~]:

1. The cabinet[~~It~~] has reason to believe that a violation of KRS Chapter 350; 405 KAR Chapters 7 through 24 has occurred or is occurring;[~~or~~]

2. A violation of a permit condition has occurred or is occurring;[~~or~~]

3.[~~2.~~] A permittee, operator, or person has failed to:

a. Pay a civil penalty assessed by[~~in a final order of~~] the cabinet;[~~or~~]

b.[~~to~~] Undertake remedial measures mandated by an order of the cabinet; or

c.[~~to~~] Abate violations ***the permittee, operator, or person[~~it~~]*** was determined to have committed by an[~~a final~~] order of the cabinet;[~~or~~]

4.[~~3.~~] The provisions of KRS 350.990(9) apply;[~~or~~]

5.[~~4.~~] The cabinet has reason to believe additional remedies should be sought or an order should be entered against ***a[~~any~~]*** person to protect the environment or the health and safety of the public; or

6.[~~5.~~] The criteria of 405 KAR 10:050, Section 3(2) or (3) apply.

(b) The cabinet may initiate an administrative hearing to contest a conference officer's recommended penalty and seek any combination of the relief set forth in subsection (2) of this section[~~, in which case prepayment of the proposed penalty assessment is not required~~].

(c) The cabinet shall initiate an administrative hearing and shall seek revocation of the permit and forfeiture of the bond or suspension of the permit if[~~whenever~~]:

1. The permittee, operator, or person has willfully failed to comply with a cessation order[~~an order for cessation and immediate compliance~~]; or

2. The criteria of 405 KAR 10:050, Section 3(1) apply.

(2) Remedies. In an administrative hearing initiated by the cabinet ***or in a counter claim filed in response to a petition filed in accordance with Section 6, 7, 8, or 9***, the cabinet may seek one (1) or a combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalty[~~penalties~~];

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person[~~or persons~~] shall not be eligible to receive another permit or conduct future operations;

(e) A determination, pursuant to KRS 350.990(9), that any

director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; or

(f) Any other relief to which ***the cabinet[it]*** may be entitled by KRS Chapter 350.

(3) Procedure[~~Procedures~~] for an administrative hearing[~~hearings~~] initiated by the cabinet.

(a) Filing of administrative complaint.***[Content]***[~~Contents~~]. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief;[~~and~~]

3. A copy of any notice,[~~or~~] order, or determination upon which relief is sought; and

4. In a bond forfeiture action, the cabinet shall attach documentation to the petition that the cabinet contacted the bonding company or financial institution providing the bond, to determine if it wanted the right to perform the measures necessary to secure bond release in accordance with KRS 350.130.

(b) Answer or responsive pleading.

1. The respondent[~~person named in an administrative complaint~~] shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint.

2. The answer[which] shall contain:

a.(i)[1.] A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint***; or***

(ii) If[unless] the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and ***it[this]*** shall have the effect of a denial;[~~and~~]

b.[2.] Any defense[~~defenses~~] to each claim for relief; and

c.[3.] Any other matter to be considered on review.

3. Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of the 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.

4. An allegation in a pleading to which an answer or responsive pleading is not required or permitted shall be taken as denied or avoided.

5. An allegation in a pleading to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading.

(c) Amendment[~~Amendments~~].

1. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

2. The respondent[~~person named in the administrative complaint~~] shall have ten (10) days from the filing of an amended administrative complaint[~~amended as a matter of right~~] or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading to the amended administrative complaint.

3. If the hearing officer grants a motion to amend the administrative complaint, the hearing officer shall set the time for an answer to be filed[~~shall be set forth~~] in the order granting the motion.

(4) Burden of proof.[~~If the cabinet initiates an administrative hearing,~~]

(a) The cabinet shall have the ultimate burden of persuasion.

(b) A[~~The~~] ***respondent[responding party]*** shall have the burden of persuasion to establish an affirmative defense.

(c) A ***respondent[responding party]*** claiming an exemption shall have the burden of persuasion to establish the qualification for the exemption.

(5) Default.

(a) If [~~In a proceeding where~~] the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer***[,]*** may on his own initiative or upon motion,[~~shall~~] issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 6. Administrative Hearing for Review of Proposed Assessment. (1) Who may file.[~~Filing petition; waiver.~~] Any person issued a proposed penalty assessment may file with the office a petition for an administrative hearing to review the penalty.

(2) Filing petition; waiver.

(a) A person filing a petition for review of a proposed penalty assessment who did not make a request for a Penalty Assessment Conference pursuant to Section 4 of this administrative regulation shall file the petition[~~be filed~~] in the office within thirty (30) days of:

1. Receipt[~~service~~] of the proposed penalty assessment; or

2.[~~If~~] The return receipt date in the ***department[office]*** of the notice of proposed penalty assessment,[~~is~~] if the proposed penalty assessment is returned undeliverable, unclaimed or refused.[~~, within thirty (30) days of the date of return; or~~]

(b) If the person made a timely request for an assessment conference [~~has been made~~] pursuant to Section 4 of this administrative regulation, the person shall file a petition for review [~~must be filed~~] in the office within thirty (30) days of:

1. Receipt[~~from mailing~~] of the conference officer's report; or

2. The return receipt date in the office of the conference officer's report, if the conference officer's report is returned undeliverable, unclaimed, or refused;

(c) The hearing officer shall not grant an extension of time[~~shall not be granted~~] for filing a petition for review of a proposed penalty assessment[~~as required by this section~~].

(d) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order in accordance with Section 4(9)(a) or (b) ***of this administrative regulation***[~~If a petition for review is not timely filed, the petition, if any, shall be dismissed and a final order shall be entered which contains the following:~~

~~1. That the person to whom the notice or order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment or the assessment as amended by the conference officer;~~

~~2. The fact of the violation is deemed admitted; and~~

~~3. The proposed penalty assessment, or the assessment as amended by the conference officer is deemed admitted and shall be due and payable to the cabinet within thirty (30) days after the entry of the final order. If a petition requesting an administrative hearing on the fact of the violation has been timely filed under Section 7 of this administrative regulation, the finding set forth in subparagraph 2 of this paragraph shall be omitted and the penalty assessment shall be due and payable within thirty (30) days after the entry of a final order affirming the fact of the violation~~].

(3) Content[~~(2) Contents~~] of the petition.[~~; payment required.~~

~~(a)~~] The petition shall include:

(a)[~~1.~~] A short and plain statement indicating the reasons why [~~either~~] the amount of the penalty [~~or the fact of the violation or both~~] is being contested;

(b)[~~2.~~] If the amount of penalty is being contested based upon a misapplication of the penalty formula, a statement indicating how the penalty formula contained in 405 KAR 7:095 was misapplied, along with a proposed penalty utilizing the penalty formula; and

(c)[~~3.~~] Identification by reference to the ***number for the notice of*** noncompliance ***and order for remedial measures*** or cessation order number.

(4)[~~of all violations being contested; and~~

~~4. The identifying number of the cashier's check, certified check, bank draft, or bank money order accompanying the petition.~~

~~(b) The petition shall be accompanied by full payment of the proposed penalty assessment, or the assessment as amended by the conference officer, in the form of a cashier's check, certified check, bank draft, or bank money order made payable to the Kentucky State Treasurer to be placed in an escrow account pending final determination of the assessment; and, on the face of the payment an identification, by reference to the noncompliance or cessation order identification number, of the violations for which payment is being tendered.~~

~~(c) An extension of time shall not be granted for full payment of the proposed assessment. If payment is not timely made, the petition shall be dismissed, and a final order shall be entered in conformity with subsection (1)(c) of this section.~~

~~(3)~~] Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.***a.*** A statement specifically admitting or denying the facts stated in the petition or amended petition***; or***

b. If[~~unless~~] the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and ***it[~~this~~]*** shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or 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 an answer or responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted ***if[~~when~~]*** not denied in the answer or responsive pleading[~~The cabinet shall have thirty (30) days from service of a copy of the petition to file an answer or responsive pleading with the office. An answer shall contain a statement specifically admitting or denying the alleged errors stated in the petition and setting forth other matters to be considered on review~~].

(5)[~~(4)~~] Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent[~~cabinet~~] shall have ten (10) days from the filing of an amended[~~a~~] petition[~~amended as a matter of right~~] or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed shall be set forth in the order granting the motion.[~~(5) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) day period is waived in writing.~~]

(6) Burden of proof.[~~In administrative hearings under this section,~~] The cabinet shall have the burden of going forward to establish a prima facie case as to[~~the fact of the violation and~~] the amount of the penalty assessment and the ultimate burden of persuasion as to the amount of the penalty assessment.[~~The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.~~]

(7) Default.

(a) ***If the petitioner[~~In a proposed penalty assessment proceeding if the person against whom the proposed penalty is assessed~~]*** fails to timely comply with a prehearing order of a hearing officer, the hearing officer***, may at his discretion or upon motion,[~~shall~~]*** issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation[~~subsection 1(c) of this section~~].

(c) If the person against whom the proposed penalty is assessed fails to appear at ***an administrative[~~a~~]*** hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with Section 4(9)(a) or (b) of this administrative regulation[~~subsection 1(c) of this section~~].

(8) Hearing officer[~~officer's~~] report; contents. If an administrative hearing is conducted, the hearing officer shall incorporate in his report and recommended order concerning a civil penalty***, findings of fact***[~~, findings of fact~~] on each of the four (4)[~~,~~] criteria set forth in 405 KAR 7:095, Section 3[~~,~~] and conclusions of law.

Section 7. Administrative Review of a Notice[~~Notices~~] of Noncompliance and Order[~~Orders~~] for Remedial Measures and a Cessation Order[~~Orders for Cessation and Immediate Compliance~~]. (1) Who may file. A person who considers himself aggrieved by the issuance of[~~issued~~] a notice of noncompliance and order for remedial measures or cessation order[~~an order for cessation and immediate compliance~~] by the cabinet pursuant to the provisions of KRS Chapter 350 or administrative regulations [~~or a person having an interest which is or may be adversely affected by such a notice or order~~] may file a petition for review with the office.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within:

1. Thirty (30) days of the receipt of a notice of noncompliance and order for remedial measures or cessation order;[~~notice or order or~~]

2.[~~Within~~] Thirty (30) days of receipt of notice of modification, vacation, or termination of the notice of noncompliance and order for remedial measures or cessation order;[~~notice or order~~] or

3. Thirty (30) days of the return receipt date in the ***department[~~office~~]*** of the notice of noncompliance and order for remedial measures or cessation order if[~~any of the foregoing documents~~] the notice of noncompliance and order for remedial measures or cessation order is returned as undeliverable, unclaimed or refused[~~within thirty (30) days of the date of the return~~].

(b) The hearing officer shall not grant an extension of time [~~shall not be granted~~] for filing a petition for review.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall dismiss a petition that is not filed in accordance with subsection (2)(a) of this section finding the person***[~~to have~~]*** waived his right to an administrative hearing and affirming the notice of noncompliance and order for remedial measures or cessation order[~~If a petition for review is not timely filed, the petition shall be dismissed.~~

~~(c) Failure to file a petition for review of a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance under this section shall not preclude challenging the fact of violation at an administrative hearing requested under Section 6 of this administrative regulation~~].

(3) Content[~~Contents~~] of ***the[~~a~~]*** petition. A person filing a petition for review shall incorporate in the petition regarding each claim for relief [~~the following~~]:

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) ***An explanation of each specific alleged error in the cabinet's determination;***

(d) A copy of the notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] sought to be reviewed; and

(e)[(d)] A statement as to whether or not the person waives the opportunity for an evidentiary hearing;[~~and~~

~~(e) Other relevant information.~~]

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.***a.*** A statement specifically admitting or denying the facts stated in the petition or amended petition***; or***

b. If[~~unless~~] the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and ***it[~~this~~]*** shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or responsive pleading may constitute a waiver of ***the[~~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 ***those defenses in an answer or[~~them in a~~]*** responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading[~~The cabinet and interested parties shall have thirty (30) days from service of a copy of the petition within which to file an answer or other responsive pleading. The answer shall contain a statement specifically admitting or denying the alleged facts stated by the petitioner and setting forth other matters to be considered on review~~].

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent[~~cabinet and other interested parties~~] shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading ***to the amended petition***.

(c) If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Requirement to file subsequent notice of noncompliance and order for remedial measures or cessation order.

(a) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] which modifies, vacates, or terminates the notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] sought to be reviewed.[~~and~~]

(b) Within ten (10) days of receipt, a petitioner shall file a copy of any subsequent cessation order[~~for cessation and immediate compliance~~] for failure to timely abate the violation which is the subject to the notice sought to be reviewed[~~within ten (10) days of receipt of the notice or order~~].

(c) If a petitioner desires to challenge a subsequent notice of noncompliance and order for remedial measures or cessation order [~~notice or order~~], the petitioner must file:

1. A separate petition for review in accordance with ***this section[~~subsection (2)~~]***; or

2. A motion to amend a pending petition with the amended petition attached ***in accordance with this section and*** within the time requirements of subsection (2).

(d) A petition[~~. Petitions~~] for review of a related notice of noncompliance and order for remedial measures or cessation order is [~~notices or orders are~~] subject to consolidation.

(7)[~~Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the hearing at least twenty-one (21) days prior to the hearing, unless the twenty-one (21) day period is waived in writing.~~

~~(8)~~] Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer ***may, at his discretion or upon motion,[~~shall~~]*** shall issue an order to show cause why the ***petitioner[~~person~~]*** should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] and dismissing the petition.

(c) If the ***petitioner[~~person requesting the administrative hearing~~]*** fails to appear at ***an administrative[~~a~~]*** hearing, the person shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order affirming the notice of noncompliance and order for remedial measures or cessation order[~~notice or order~~] and dismissing the petition.

(8)[~~(9)~~] Burden of proof. In review of a notice[~~notices~~] of noncompliance and order[~~orders~~] for remedial measures or cessation order[~~orders for cessation and immediate compliance~~] or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice of noncompliance and order for remedial measures or cessation order[~~notice, order~~], or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner.

Section 8. Request for Review of Permit Determinations. (1) Who may file. The permit applicant, permittee, or person having an interest which is or may be adversely affected by a permit determination of the cabinet may file a petition for review of the following:

(a) Application[~~Applications~~] for a new permit[~~permits~~];

(b) Application[~~Applications~~] for a permit revision[~~revisions~~] and amendment[~~amendments~~], permit renewal[~~renewals~~], and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revision[~~revisions~~] and amendment[~~amendments~~] ordered by the cabinet, except challenges of permit revision[~~revisions~~] ordered as a remedial measure in a notice of noncompliance shall be reviewed in an administrative hearing pursuant to Section[~~6 or~~] 7 of this administrative regulation; and

(d) Application[~~Applications~~] for a coal exploration permit[~~permits~~].

(2) Time to file; waiver.

(a) The permit applicant, permittee, or person having an interest that is or may be adversely affected by a permit determination of the cabinet shall file a petition for review[~~shall be filed~~] with the office within thirty (30) days from the date the permit applicant, permittee, or person had[~~has~~] actual notice of the determination or could reasonably have had notice.

(b) If the hearing officer, upon motion or his own initiative, finds that the permit applicant, permittee, or person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the permit applicant, permittee, or person waived his right to an administrative hearing[~~Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed~~].

(3) Content[~~Contents~~] of the petition. The petition for review shall include:

(a) A clear statement of the facts entitling the person[~~one~~] requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's decision, including reference to the statutory and regulatory provisions allegedly violated;

(c) A request for specific relief; and

(d) A statement whether or not the person requests or waives

the opportunity for an evidentiary hearing.[~~; and~~

~~(e) Other relevant information.~~]

(4) Answer or responsive pleading.

(a) The respondent shall file with the office an answer or responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.***a.*** A statement specifically admitting or denying the facts stated in the petition or amended petition***; or***

b. If[~~unless~~] the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and ***it[~~this~~]*** shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or 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 ***an answer or*** a responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading[~~The cabinet and interested parties shall file an answer or responsive pleading within thirty (30) days of service of the petition. An answer shall contain a statement specifically admitting or denying facts or alleged errors stated in the petition and setting forth other matters to be considered on review~~].

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent[~~An interested party~~] shall have ten (10) days from the filing of an amended[~~a~~] petition[~~amended as a matter of right~~] or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed[~~shall be set forth~~] in the order granting the motion.

(6)[~~Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) day period is waived in writing~~.

~~(7)~~] Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7)[~~(8)~~] Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer ***may, at his discretion or upon motion.[~~shall~~]*** issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(8)[~~(9)~~] Burden of proof.

(a) Petition to review[~~In a proceeding to review a decision on an~~] application for a new permit.[~~:~~]

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application complies with the requirements of KRS Chapter 350 and administrative regulations; or[~~that~~]

b. The permit terms or conditions are improper.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that:

a. The permit application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations;[~~,~~] or[~~that~~]

b. The cabinet should have imposed certain terms or conditions on the permit that were not imposed.

(b) Petition to review[~~In a proceeding to review~~] the approval or disapproval of an application for a permit renewal.

1. A party[~~those parties~~] opposing the renewal of a permit shall have the burden of going forward to establish a prima facie case; and

2. The ultimate burden of persuasion that the permit renewal application should be disapproved or that the cabinet should have imposed certain terms or conditions on the renewal permit that were not imposed.

(c) Petition[~~In a proceeding~~] to review the approval or disapproval of an application for a permit revision or amendment, or an application for the transfer, assignment, or sale of rights granted under permit.[~~:~~]

1. If the permit applicant is seeking review, the permit applicant [~~he~~] shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.[~~; and~~]

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

(d) Petition[~~In a proceeding~~] to review a permit revision or amendment ordered by the cabinet.

1.[~~,~~]The cabinet shall have the burden of going forward to establish a prima facie case that the permit should be revised or amended; and

2. The permittee shall have the ultimate burden of persuasion that the revision or amendment is not appropriate.

(e) Petition[~~In a proceeding~~] to review a decision on an application for a coal exploration permit.[~~:~~]

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

Section 9. Review of a Cabinet Determination[~~Determinations~~]. (1) Who may file. A person who considers himself aggrieved by a determination of the cabinet for which an administrative hearing is not specifically provided in any other section of this administrative regulation may file a petition for review of the determination pursuant to this section.

(2) Time to file; waiver.

(a) A person filing a petition for review under this section shall file in the office a petition[~~The petition for review shall be filed with the office~~] within thirty (30) days after the person[~~petitioner~~] has had actual notice of the determination complained of, or could reasonably have had notice.

(b) The hearing officer shall not grant an extension of time for filing a petition for review pursuant to this section.

(c) If the hearing officer, upon motion or his own initiative, finds that the person failed to timely file the petition for review in accordance with this section, the hearing officer shall issue a report recommending dismissal of the petition. The secretary shall enter an order stating that the person waived his right to an administrative hearing[~~Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed~~].

(3) Content[~~Contents~~] of the petition. The petition for review shall contain:

(a) A statement of the facts entitling the person[~~one requesting review~~] to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;***[and]***

(c) ***A copy of the written determination to be reviewed if applicable; and***

(d) A request for specific relief.[~~; and~~

~~(d) Other relevant information.~~]

(4) Answer or responsive pleading.

(a) The respondent[~~cabinet and interested parties~~] shall file with the office an answer or other responsive pleading within thirty (30) days of service of the petition.

(b) The answer shall contain:

1.***a.*** A statement specifically admitting or denying the facts stated in the petition or amended petition***; or***

b. If[~~unless~~] the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and ***it[~~this~~]*** shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or 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 ***an answer or[~~a~~]*** responsive pleading.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading[~~specifically admitting or denying facts or alleged errors stated in the petition and setting forth any other matters to be considered on review~~].

(5) Amended petition.

(a) A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion.

(b) The respondent[~~cabinet and interested parties~~] shall have ten (10) days from the filing of an amended[~~a~~] petition[~~amended as a matter of right~~] or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading to the amended petition.

(c) If the hearing officer grants a motion to amend a petition, the hearing officer shall set the time for an answer to be filed[~~shall be set forth~~] in the order granting the motion.[~~(6) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) days period is waived in writing.~~]

(6)[~~(7)~~] Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(7)[~~(8)~~] Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer ***may, at his discretion or upon motion,[~~shall~~]*** issue an order to show cause why that person should not be deemed to have waived his right to an administrative hearing and why his petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the ***petitioner[~~person requesting the administrative hearing~~]*** fails to appear at ***an administrative[~~a~~]*** hearing, the ***petitioner[~~person~~]*** shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that he has waived his right to an administrative hearing and dismissing the petition.

(8)[~~(9)~~] Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 10. Proceeding[~~Proceedings~~] for the Suspension or Revocation of a Permit[~~Permits~~] Because of a Pattern of Violations. (1) Initiation of the proceeding[~~proceedings~~].

(a) A proceeding on a show cause order issued by the cabinet pursuant to KRS 350.028(4), 350.465(3)(f), and 405 KAR 12:020, Section 8, shall be initiated by the filing of a copy of the show cause order by the cabinet with the office at the same time the order is issued to the permittee.

(b) A show cause order shall set forth:

1. A list of the unwarranted or willful violations that[~~which~~] contribute to a pattern of violations;

2. A copy of each order or notice that[~~which~~] contains the violations listed as contributing to a pattern of violations;

3. The basis for determining the existence of a pattern of violations; and

4. A recommendation[~~Recommendations~~] whether or not the permit should be suspended or revoked, including the length and terms of a suspension.

(2) Answer. The permittee shall have thirty (30) days from service of the show cause order within which to file an answer with the office, which shall state:

(a) The reasons in detail why a pattern of violations, as established[~~described~~] in 405 KAR 12:020, Section 8, does not exist or has not existed including all reasons for contesting:

1. The fact of the violations alleged by the cabinet as constituting a pattern of violations;

2. The willfulness of the violations; or

3. Whether or not the violations were caused by the unwarranted failure of the permittee;

(b) Mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Other alleged relevant facts; and

(d) Whether or not an evidentiary hearing on the show cause order is desired.

(3) Burden of proof. In a show cause proceeding, the cabinet shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(4) Determination by the hearing officer.

(a) Upon a determination by the hearing officer pursuant to 405 KAR 12:020, Section 8, that a pattern of violations exists or has existed, the hearing officer shall recommend the permit either be suspended or revoked and the permittee be directed to complete necessary remedial measures and reclamation operations. In making the[~~such a~~] recommendation, the hearing officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the hearing officer may recommend preconditions to be satisfied prior to the suspension being lifted.

(5) Default. If the permittee fails to timely file an answer or appear at the administrative hearing, the permittee shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order containing the following:

(a) That each violation listed in the show cause order occurred;

(b) That the violations were caused by the permittee's unwarranted failure or were willfully caused;

(c) That a pattern of violations exists; and

(d) That the permit shall be suspended or revoked in accordance with the recommendation contained in the show cause order. [~~Section 11. Procedures for Abate or Alleviate Orders. (1) In general. If pursuant to KRS 224.10-410, the secretary issues an order to abate or alleviate to a surface coal mining and reclamation operation, the cabinet shall provide the person to whom the order was issued an opportunity to be heard.~~

~~The holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the~~

~~affirmative obligations imposed on a person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.~~

~~(2) Notice.~~

~~(a) Upon issuance of an order to abate or alleviate under the provisions of KRS 224.10-410, the secretary shall file with the office a copy of the order.~~

~~(b) Upon filing an order to abate or alleviate, the office shall issue an administrative summons pursuant to 405 KAR 7:091, Section 6, and shall set the time and place for an administrative hearing to be held not more than ten (10) days from the date the order to abate or alleviate was signed by the secretary.~~

~~(3) Response.~~

~~(a) The person named in the order to abate or alleviate shall prior to or at the hearing file a response to the order specifically admitting or denying facts alleged in the order, setting forth other matters to be considered on review, and setting 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 he does not desire to contest the order.~~

~~(4) Hearing procedure. The administrative hearing shall be held in accordance with 405 KAR 7:091, Section 3. In addition the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the hearing which may be orally supplemented on the record at the hearing, or if written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the administrative hearing.~~

~~(5) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the order to abate or alleviate. The person named in the order to abate or alleviate 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.~~

~~(6) Default. Upon notification by the person named in the order to abate or alleviate that a hearing is not needed or upon failure of the person to appear at the administrative hearing, 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.~~

~~(7) Effect of proceedings. The scheduling of an administrative hearing pursuant to this section shall not operate to terminate or stay the effect of the order or to relieve the person named in the order from performing the affirmative obligations imposed in the order to abate or alleviate.~~]

Section 11[~~12~~]. Temporary Relief. (1) Temporary Relief Available.[(~~a~~)] Pending the completion of the investigation and hearing[~~hearings~~] provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a:

(a) Notice of noncompliance and order for remedial measures or a cessation[~~or~~] order issued pursuant to KRS Chapter 350 or administrative regulations;[~~,~~] or

(b) A permit or bond release decision of the cabinet.

(2) Temporary Relief Not Available. A hearing officer shall not grant temporary relief for:

(a) The issuance of a permit if the cabinet made a determination to deny a permit in whole or in part; or

(b) The release of a bond if the cabinet made a determination to deny a bond release request.

(3) A hearing officer shall grant or deny temporary relief from a cessation order issued pursuant to KRS 350.130(1) or (4), or from a bond release decision within five (5) working days of receipt by the office of a temporary relief request, unless waived by the petitioner.

(4) Contents of the Petition. A person shall file[(~~b~~)] a written petition for relief[~~shall be in writing, and filed~~] with the office. The petition shall contain:

(a) The permit number, the name of the permittee, the date and number of the notice of noncompliance and order for remedial measures or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;

(b)[~~1.~~] A detailed statement setting forth reasons why such relief should be granted;

(c)[~~2.~~] Facts supporting[~~A showing that there is~~] a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;

(d)[~~3.~~] A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

(e)[~~4.~~] If the petition relates to a cessation[~~an~~] order[~~for cessation and immediate compliance~~] issued pursuant to KRS 350.130(1) or (4) or a decision to release a bond, a statement of whether or not the person waives the requirement for[~~a decision~~] the hearing officer to grant or deny the request for temporary relief[~~on the petition~~] within five (5) working days of receipt of the petition by the office[~~is waived~~]; and

(f)[~~5.~~] A statement of the specific relief requested.

(5) Hearing process.

(a) In addition to the service requirements of 400 KAR 1:090, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the petition ***in the office***. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed ***in the office*** and the contents of the petition.

(b) The representative of the cabinet and any other party may indicate their objection to the application by communicating the objection to the hearing officer and the petitioner by telephone. Ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of cabinet and any other party may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the office and immediately served upon the petitioner.

(c) Scheduling a hearing.

1. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time, and date for the administrative hearing by communicating the information to the cabinet, any other party, and the petitioner by telephone.

2. The hearing officer shall reduce the communication to writing in the form of a memorandum to the file.

3. The administrative hearing on the request for temporary relief shall be held in the locality of the permit area, or at any other location acceptable to the cabinet, the petitioner, and any other person named in the action.

4. If the petitioner did not waive the requirement for the hearing officer to grant or deny temporary relief within five (5) working days of the office's receipt of the petition for temporary relief as set forth in subsections (3) and (4)(e) of this section, the hearing officer shall schedule the administrative hearing within (5) five days of the office's receipt of the petition for temporary relief.

(d) If an evidentiary hearing is held the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing, which may be orally supplemented on the record at the hearing.

(e) If at any time, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement in subsection (3) of this section.

(6) Standard of review. A hearing officer may grant temporary relief if:

(a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(b) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(7) Timing of hearing officer's determination.

(a) A hearing officer shall grant or deny relief expeditiously.

(b) If the petitioner did not waive the requirement for a hearing officer to grant or deny the request for temporary relief within five

(5) days of the office's receipt of the petition as required in subsections (3) and (4)(e) of this section, the hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within three (3) working days; or

2. Within twenty-four (24) hours of completion of the administrative hearing issue a written decision stating the reasons for the finding.

(c) If the petitioner waived the requirement for a hearing officer to grant or deny the request for temporary relief within five (5) days of the office's receipt of the petition in accordance with subsections (3) and (4)(e) of this section, or the petitioner did not request temporary relief from a cessation order or a bond release hearing, then hearing officer shall either:

1. Orally rule on the request for temporary relief at the conclusion of the hearing stating the reasons for the decision and issue a written decision stating the reasons for the finding within twenty (20) working days; or

2. Within fifteen (15) days of completion of the administrative hearing issue a written decision stating the reasons for the finding.[~~(c) A hearing officer my grant temporary relief after making a written finding that relief is warranted, and shall state the reasons for the finding. A hearing officer shall grant or deny relief expeditiously; except if the person requests temporary relief from an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4), or from a bond release decision, a hearing officer shall grant or deny temporary relief within five (5) working days of receipt by the office of a request~~.

~~(2) A hearing officer may grant temporary relief from notices and orders of the cabinet issued pursuant to 405 KAR 12:020, Sections 2 and 3 under conditions as is deemed appropriate, if:~~

~~(a) An administrative hearing on the request for temporary relief has been held in the locality of the permit area, or at any other location acceptable to the cabinet and the person to whom the notice or order was issued, in which all parties were given an opportunity to be heard~~;

~~(b) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and~~

~~(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.~~

~~(3) If a person requests temporary relief from a permit or coal exploration determination, the hearing officer under conditions as may be prescribed pending final determination of the proceeding may grant temporary relief if:~~

~~(a) The parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;~~

~~(b) The person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and~~

~~(c) The relief will not affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and~~

~~(d) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the cabinet, nor release of a bond when a bond release request has been denied~~.

~~(4) Determinations on petitions concerning orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4) or bond release decisions shall be handled as follows:~~

~~(a) If the five (5) day requirement set forth in subsection (1) of this section is waived, the hearing officer shall expeditiously conduct a hearing and render a decision on the petition.~~

~~(b) If a waiver of the five (5) day requirement set forth in subsection (1) is not made, the following shall apply:~~

~~1. The five (5) day time for decision shall not begin to run until the petition for temporary relief is filed with the office;~~

~~2. The petition shall identify the permit number, permittee, the date and number of the noncompliance or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;~~

~~3. In addition to the service requirements of 405 KAR 7:091, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the application. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed and the contents of the petition;~~

~~4. The representative of the Department of Law and other parties may indicate their objection to the application by communicating the objection to the hearing officer and the applicant by telephone. However, ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of Department of Law and other parties may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the hearing officer and immediately served upon the petitioner;~~

~~5. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time and date for the administrative hearing by communicating the information to the Department of Law, other parties, and the petitioner by telephone. The hearing officer shall reduce the communications to writing in the form of a memorandum to the file;~~

~~6. If an evidentiary hearing is held:~~

~~a. The hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing which may be orally supplemented on the record at the hearing or where written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing;~~

~~b. The hearing officer shall either rule from the bench on the petition, orally stating the reasons for his decision or shall within twenty-four (24) hours of completion of the hearing issue a written decision. If the hearing officer makes an oral ruling, he shall issue a written decision within three (3) working days; and~~

~~7. If at any time after the initiation of the expedited procedure, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement.~~

~~Section 13. Penalties. (1) Any person who violates any of the provisions of KRS Chapter 350; 405 KAR Chapters 7 through 24; or a permit condition or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit, exploration approval or other authorization, or who violates any determination or order promulgated pursuant to those provisions, may be assessed a civil penalty of not more than $5,000 for each day during which the violation continues. A civil penalty of not more than $5,000 for each day shall be assessed against a person issued an order pursuant to KRS 350.130(4).~~

~~(2) If violation has not been abated during the abatement period set forth in a notice of noncompliance and order for remedial measures or in an order for cessation and immediate compliance, a civil penalty of not less than $750 shall be assessed for each day during which the failure to abate continues, up to a maximum of thirty (30) days, except that:~~

~~(a) A penalty for failure to abate the violation shall not be assessed for more than thirty (30) days for each violation. If the person has not abated the violation within the thirty (30) day period, the cabinet shall take appropriate action pursuant to KRS 350.990(3), (4), (9), or the pattern of violations provisions of KRS 350.028(4) within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate; and~~

~~(b) If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, and the abatement requirements are suspended in a temporary relief proceeding pursuant to Section 12 of this administrative regulation, then the abatement period shall be extended until the date a final order concerning the violation in question is issued.~~

~~(3) A person who engages in surface coal mining and reclamation operations or coal exploration operations without first securing a permit or exploration approval according to KRS~~

~~Chapter 350 and 405 KAR Chapters 7 through 24, shall be assessed a civil penalty of not less than $5,000 nor more than $25,000. Each day shall constitute a separate violation. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where a permittee through inadvertence has exceeded the boundaries of the permit in effect at that time.~~

~~(4) Whenever a corporate permittee violates any provision of KRS Chapter 350 or the administrative regulations or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.~~

~~(5) Penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky or the Environmental and Public Protection Cabinet by the cabinet's Department of Law, or upon the secretary's request, by the attorney general.~~

~~(6)(a) If any party seeks judicial review of a final order of the cabinet involving a penalty, the proposed penalty shall continue to be held in escrow until completion of the review. If judicial review is not sought, the escrowed funds shall be transferred to the cabinet for payment to the Kentucky State Treasurer as provided by law.~~

~~(b) If a final order of the secretary or final decision of a reviewing court results in the reduction or elimination of the proposed penalty, the cabinet shall within thirty (30) days of receipt of the order refund the appropriate amount with interest at the statutory rate from the date of payment into escrow.~~

~~(c) If a final order of the secretary or final decision of a reviewing court increases the penalty, the person to whom the notice or order was issued shall pay the difference to the cabinet within thirty (30) days after receipt of the order.~~]

Section 12[~~14~~]. Petition for Recovery of Costs and Expenses. (1) Who may file and time to file.

(a) A person may file a petition for an award of costs and expenses, including attorneys' fees reasonably incurred, as a result of the person's participation in a proceeding held pursuant to this administrative regulation that[~~which~~] results in an order of the secretary.

(b) A person shall file, with the cabinet within forty-five (45) days of the date of entry of the final order, a[~~The~~] petition for an award of costs and expenses, including attorneys' fees[~~, shall be filed with the cabinet within forty-five (45) days of mailing of the final order~~].

(c) Failure of a person to timely file the petition shall constitute a waiver of the person's right to an award.

(2) Content[~~Contents~~] of the petition. A person shall include in the petition filed under this section[~~shall include~~] the name of the party from whom[~~which~~] costs and expenses are sought and the following [~~shall be submitted in support of the petition~~]:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of the costs and expenses; and

(c) If attorneys' fees are claimed, evidence concerning:

1. The hours expended on the case;

2.[~~,~~]The customary commercial rate of payment for the services in the area;[~~,~~] and

3. The experience, reputation, and ability of the individual or individuals performing the services.

(3) Answer.

(a) The respondent[~~A person served with a copy of the petition~~] shall file with the office within[~~have~~] thirty (30) days from service of the petition[~~within which to file~~] an answer or other responsive pleading.

(b) The answer shall contain:

1.***a.*** A statement specifically admitting or denying the facts stated in the petition or amended petition***; or***

b. If[~~unless~~] the person is without knowledge or information sufficient to form a belief as to the truth of an allegation, then the person shall so state and ***it[~~this~~]*** shall have the effect of a denial;

2. Any defense to each claim for relief; and

3. Any other matter to be considered on review.

(c) Failure to plead any available administrative affirmative defense in a required answer or 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.

(d) An allegation in the petition to which no answer or responsive pleading is required or permitted shall be taken as denied or avoided.

(e) An allegation in the petition to which an answer or responsive pleading is required may be deemed admitted if not denied in the answer or responsive pleading[~~specifically admitting or denying the allegations stated in the petition and setting forth other matters to be considered~~].

(4) Criteria for awarding of costs.[~~Appropriate costs and expenses including attorneys' fees may be awarded as follows:~~]

(a) Appropriate costs and expenses including attorneys' fees may be awarded to a person from the permittee, if:

1. The person initiated[~~initiates~~] an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued[~~upon a~~] finding that, on or after May 18, 1982:[~~,~~]

a. A notice of noncompliance and order for remedial measures or a cessation order[~~notice of noncompliance or order for cessation~~] was properly issued for violations of KRS Chapter 350, ***KAR Title 405[Title 405 KAR]*** or a permit condition;[~~conditions~~] or

b. An[~~That~~] imminent hazard existed; or

2. The person participated in an administrative proceeding reviewing an enforcement action, and a Secretary's Order was issued finding that, on or after May 18, 1982:

a. A notice of noncompliance and order for remedial measures or a cessation order was properly issued for violations of KRS Chapter 350, ***KAR Title 405[~~Title 405 KAR~~]***, or a permit condition; or

b. An imminent hazard existed; and

c. The hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues.

(b) Appropriate costs and expenses including attorneys' fees may be awarded[~~, or~~] to a person other than a permittee or his representative from the cabinet, if:

1. The person initiated[~~initiates~~] or participated[~~participates~~] in any proceeding under KRS Chapter 350; and

2. The hearing officer finds and the secretary concurs[~~upon a finding~~] that the person made a substantial contribution to a full and fair determination of the issues.[~~; or~~]

(c) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from the cabinet if[~~when~~] the permittee demonstrates that the cabinet initiated an administrative hearing or issued a notice of noncompliance and order for remedial measures or a cessation order[~~an order of cessation or a notice of noncompliance or initiated an administrative hearing in~~]:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.[~~; or~~]

(d) Appropriate costs and expenses including attorneys' fees may be awarded to a permittee from a person if[~~where~~] the permittee demonstrates that the person initiated an administrative hearing [~~or conference~~] under this administrative regulation or participated in an administrative hearing or conference:

1. In bad faith; and

2. For the purpose of harassing or embarrassing the permittee.[~~; or~~]

(e) Appropriate costs and expenses including attorneys' fees may be awarded to the cabinet from a person if the cabinet[~~where it~~] demonstrates that:

1. A person applied for review pursuant to this administrative regulation in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth; or

2.[~~that~~] A party participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(5) An award under this section may include reimbursement for costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred.

Section 13. Location of an Administrative ***Hearing[~~Hearings~~]***. (1) An administrative hearing conducted in accordance with this administrative regulation shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the initiating document or an answer.

(2) The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

Section 14. Judicial Review, Effect, and Subsequent Proceeding. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 350.0305 as applicable.

(2) Effect of final order pending judicial review. The commencement of a proceeding for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remand from a court.

(a) If a matter is remanded from a court for a further proceeding, and to the extent the court's directive and time limitations will permit, each party shall be allowed an opportunity to submit to the hearing officer, a report recommending a procedure to be followed in order to comply with the court's order.

(b) The hearing officer shall review each report and enter a special order governing the handling of the matter remanded to it for further proceedings by a court.[~~:~~

~~(a) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred As a result of initiation or participation or both in an administrative hearing or conference under this administrative regulation; and~~

~~(b) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred In seeking the award before the cabinet.~~

~~Section 15. Determinations as to Inability to Prepay. (1) Inability to pay. Notwithstanding the provisions of Section 6(2) of this administrative regulation, an individual, upon filing a petition for review pursuant to Section 6 of this administrative regulation, may, in lieu of paying into the cabinet's escrow account the amount of the proposed assessment, simultaneously submit a petition and affidavit requesting the office to accord the individual a waiver of the requirement to prepay.~~

~~(2) Contents of petition. The petition for waiver of prepayment requirements shall set forth:~~

~~(a) A statement of facts underlying the request for a determination that the individual is unable to comply with Section 6(2) of this administrative regulation; and~~

~~(b) An affidavit, subject to penalties for perjury, setting forth the applicant's income, property owned, outstanding obligations, the number and age of dependents, and a copy of his most recent Kentucky and federal income tax returns.~~

~~(3) Response. Within fifteen (15) days of service of the petition, the cabinet may file an answer or responsive pleading admitting or denying the contents of the petition for waiver. Failure by the cabinet to submit an answer or responsive pleading shall not relieve the office from making an independent determination as to the validity of the contents of the petition for waiver, and whether the waiver should be given.~~

~~(4) Interim report. Within thirty (30) days of filing of the petition, the hearing officer shall issue an interim report accepting or denying the petition for waiver. If the waiver is accepted, it shall be so noted in the record and shall remain in effect, subject to review upon proper motion. If the waiver is denied, the applicant shall be informed in writing and the applicant shall be given thirty (30) days from the mailing of the interim report to pay into the cabinet's escrow account the amount of the assessment as set forth in the notice of proposed assessment or as set forth by the conference officer under the provisions of Section 4 of this administrative regulation.~~

~~(5) Presumptions.~~

~~(a) It shall be prima facie evidence that the individual is unable to comply with Section 6(2) of this administrative regulation if the petition is accompanied by a certified copy of a petition for bankruptcy or the individual is receiving or is eligible to receive public assistance payments at the time a petition for waiver is filed.~~

~~(b) It shall be prima facie evidence a person is not eligible for a waiver if he owns real property; is not receiving, or is not eligible to receive, public assistance payments at the time the affidavit is submitted; or owns more than one (1) motor vehicle.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: March 15, 2017

FILED WITH LRC: March 15, 2017 at noon

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TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS, June 13, 2017)

601 KAR 1:113. Transportation Network Company.

RELATES TO: KRS 17.500, 61.878(1)(c)1.,***[~~61.930(6),~~]*** 61.931(6), 186.050,***[~~186.281,~~]*** 189.290, 189A.010, 281.010, 281.600, 281.630, 281.6301, 281.631, 281.640, 281.650, 281.655, 281.656,***[~~281.912,~~]*** 281.990, 304.3-070, 304.10-010-304.10-070, 304.20-020, 304.39-020(2), 304.39-040, 304.39-320, Chapter 365, 532.060

STATUTORY AUTHORITY: KRS 281.600, 281.630, 281.655

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 authorizes the Department of Vehicle Regulation to promulgate administrative regulations to regulate and establish requirements for the safe operation of motor carriers. KRS 281.630 authorizes the department to establish requirements for a transportation network company to apply for authority to operate in Kentucky. KRS 281.655 requires the department to establish standards for pre-trip acceptance policies and prearranged ride liability policies for transportation network companies. This administrative regulation establishes the standards and application requirements for a transportation network company to operate in Kentucky.

Section 1. Definitions. (1) "Basic reparation benefits" is defined by KRS 304.39-020(2).

(2) "Certificate" is defined by KRS 281.010(8).

(3) "Driver" is defined by KRS 281.010(20).

(4) "Mobile application" is defined by KRS 281.010(30).

(5) "Motor carrier" is defined by KRS 281.010(31).

(6) "Motor carrier vehicle" is defined by KRS 281.010(32).

(7) "Operating Authority" means the authority granted to operate as a TNC in the commonwealth through the application process with the department.

(8) "Passenger" is defined by KRS 281.010(36).

(9) "Personal information is defined by KRS 61.931(6)

(10) "Prearranged ride" is defined by KRS 281.010(39).

(11) "Pre-trip acceptance liability policy" is defined by KRS 281.010(40).

(12) "Regular seat" is defined by KRS 281.010(44).

(13) "Street hail" is defined by KRS 281.010(45).

(14) "Transportation network company" or "TNC" is defined by KRS 281.010(51).

(15) "Transportation network company driver" or "TNC driver" is defined by KRS 281.010(53).

(16) "Transportation network company service" or "TNC service" is defined by KRS 281.010(54).

(17) "Transportation network company vehicle" or "TNC vehicle" is defined by KRS 281.010(55).

(18) "Underinsured vehicle coverage" is defined by KRS

304.39-320(1).

(19) "Uninsured vehicle coverage" is defined by KRS 304.20-020(2).

Section 2. Application and Renewal. (1) A TNC shall register as a business organization with the Kentucky Secretary of State.

(2) The department may waive the filing of the certificate of assumed name if a TNC:

(a) Demonstrates compliance with the relevant provisions of KRS Chapter 365;

(b) Certifies in writing to the department that Kentucky law either prohibits or does not require the filing; and

(c) States the reasons in writing why the filing is not required.

(3) In order to apply for a certificate to operate, a TNC shall submit directly to the Division of Motor Carriers:

(a) A completed Transportation Network Company Authority Application, TC 95-627;

(b) An application fee of $250 pursuant to KRS 281.630(3)(b); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).

(4) A TNC with fifty-one (51) or more vehicles may qualify vehicles to operate by providing to the department through an online data access point:

(a) A completed Transportation Network Company Authority Application, TC 95-627;

(b) An application fee of $250 pursuant to KRS 281.630(3)(b); and

(c) A calendar year bulk qualification fee pursuant to the following schedule:

1. $3,000 for fifty-one (51) to 100 vehicles;
2. $4,500 for 101 to 150 vehicles;
3. $6,000 for 151 to 200 vehicles;
4. $7,500 for 201 to 250 vehicles;
5. $9,000 for 251 to 300 vehicles;
6. $10,500 for 301 to 350 vehicles;
7. $12,000 for 351 to 400 vehicles;
8. $15,000 for 401 to 500 vehicles; and
9. $22,500 for 501 or more vehicles.

(5) A TNC shall annually submit the following to the Division of Motor Carriers to renew a certificate:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605;

(b) A certificate renewal fee of $250 pursuant to KRS 281.630(4)(d); and

(c) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).

(6) If a TNC elects to use the bulk vehicle registration payment option in the TNC's initial or renewal TNC application, the TNC shall not be required to submit additional vehicle qualification information and fees to the Division of Motor Carriers in connection with vehicles that are added during the duration of the period for which the bulk payment was made.

(7) A TNC shall pay a renewal bulk fee by December 15 of each calendar year.

(8) A TNC vehicle shall be added to the TNC's current list by submitting the following to the Division of Motor Carriers:

(a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605; and

(b) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).

(9) An application shall be submitted electronically, by mail, or by hand delivery.

(10) Operating authority obtained pursuant to this section shall not be transferable.

(11)(a) The TNC shall submit the following documents if submitting an application for certificate, annual renewal, or adding a driver during the year:

1. An affidavit from the corporate officer in charge of Kentucky operations certifying that the national criminal background check of TNC drivers established in KRS 281.630 and 281.6301 shall be completed prior to allowing the TNC driver to accept rides through the TNC mobile application; and

2. One (1) copy of the current contractual agreement between the TNC and TNC drivers.

(b) A deficient application shall be returned to the applicant with no formal action taken by the department.

Section 3. Demonstration of Financial Responsibility and Insurance. (1) A TNC shall maintain primary automobile insurance that:

(a) Recognizes that a driver is a TNC driver or using a vehicle to transport passengers for compensation; and

(b) Provides insurance coverage for a TNC driver who is:

1. Logged on to the TNCs mobile application; or

2. Engaged in a prearranged ride.

(2) The following pre-trip acceptance liability policy insurance coverage requirements shall apply if a TNC driver is logged on to the TNC's mobile application and available to receive transportation requests but not engaged in a prearranged ride:

(a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(12);

(b) Basic reparation benefits in accordance with KRS 304.39-020;

(c) Uninsured vehicle coverage in accordance with KRS 304.20-020; and

(d) Underinsured vehicle coverage in accordance with KRS 304.39-320.

(3) The pre-trip acceptance liability policy insurance coverage requirements of KRS 281.655(12) shall be satisfied by one (1) of the following:

(a) Automobile insurance maintained by the TNC;

(b) Automobile insurance maintained by the TNC driver; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(4) The following automobile insurance requirements shall apply while a TNC driver is engaged in a prearranged ride:

(a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(4);

(b) Basic reparation benefits in accordance with KRS 304.39-020;

(c) Uninsured vehicle coverage in accordance with KRS 304.20-020; and

(d) Underinsured vehicle coverage in accordance with KRS 304.39-320.

(5) The prearranged ride liability insurance coverage requirements of KRS 281.655(4) shall be satisfied by one (1) of the following:

(a) Automobile insurance maintained by the TNC;

(b) Automobile insurance maintained by the TNC driver; or

(c) A combination of paragraphs (a) and (b) of this subsection.

(6) If the insurance maintained by a TNC driver has lapsed or does not provide the required coverage, the TNC shall provide the required insurance coverage beginning with the first dollar of a claim. The TNC shall have the duty to defend a claim for damages.

(7) Coverage under an automobile insurance policy maintained by the TNC shall not be dependent on a personal automobile insurer or policy first denying a claim.

(8) The insurance required by this section shall be placed with an insurer licensed pursuant to KRS 304.3-070, or with a surplus lines insurer eligible under KRS 304.10-010 through 304.10-070.

(9) A TNC driver shall carry proof of insurance coverage satisfying KRS Chapter 304, KRS 281.655, and this administrative regulation during his or her use of a vehicle in connection with a TNC's mobile application. In the event of an accident, and upon request, a TNC driver shall provide this insurance coverage information directly to interested parties, automobile insurers, and investigating police officers.

(10) A TNC driver shall disclose directly to interested parties, automobile insurers, the department, and investigating police officers, whether or not he or she was logged on to the TNC's mobile application or on a prearranged ride at the time of an accident.

Section 4. Insurance Exclusions. (1) A Kentucky automobile insurer may exclude the following coverage under a TNC driver's insurance policy for loss or injury that occurs while a TNC driver is logged on to a TNC's mobile application or while a TNC driver provides a prearranged ride:

(a) Liability coverage for bodily injury and property damage;

(b) Personal injury protection coverage as established in KRS Chapter 304;

(c) Uninsured and underinsured motorist coverage;

(d) Medical payments coverage;

(e) Comprehensive physical damage coverage; and

(f) Collision physical damage coverage.

(2) Nothing in this administrative regulation shall require a personal automobile insurer to provide coverage while a driver is:

(a) Logged on to the TNC mobile application;

(b) Engaged in a prearranged ride; or

(c) Using a vehicle to transport passengers for compensation.

(3) Nothing in this administrative regulation shall preclude an insurer from providing coverage for the TNC driver's vehicle.

(4) An automobile insurer whose policy excludes coverage for a TNC vehicle or TNC driver shall have no duty to defend or indemnify a claim for personal or property damages.

(5) An automobile insurer that defends or indemnifies a claim against a TNC driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver.

(6) In a claims coverage investigation, the TNC and an insurer potentially providing coverage shall cooperate to facilitate the exchange of relevant information with directly involved parties.

(7) Information relevant to a claims coverage situation shall include:

(a) The name of the insurer or potential insurer of the TNC driver;

(b) The precise times the TNC driver logged off and on the TNC mobile application in the twelve (12) hour period immediately before and after the incident; and

(c) A complete description of the insurance coverage including the exclusions and limits.

Section 5. Vehicles. (1) A vehicle used by a driver for TNC services shall be qualified by the department to operate by submitting a completed Transportation Network Company Authority Application, TC 95-627 and submitting the fees required in Section 2 of this administrative regulation.

(2) The TNC shall ensure that the vehicles used by TNC drivers to transport passengers shall be subject to an annual inspection by a mechanic[~~approved by an automotive technician who holds a valid automotive service excellence (A.S.E.) certification from the National Institute for Automotive Service Excellence~~].

(3) The annual inspection shall be completed on the vehicle inspection form provided in Transportation Network Company Authority Application, TC 95-627, or a[~~an equivalent~~] vehicle inspection form provided by the TNC within thirty (30) days of the qualification of a vehicle for TNC services.

(4) A TNC shall collect and maintain information on the vehicles being used to provide service by TNC drivers including:

(a) The VIN and license plate number; and

(b) Records of official vehicle inspections by the automotive technician.

(5) Records of vehicle inspection and VIN and license plate numbers shall be kept by the TNC for a minimum of three (3) years from the date of inspection, and the TNC shall make the records available to the department or its representative on request. The information and records may be submitted as personal or proprietary information pursuant to KRS 61.878(1)(c)1 and 61.931(6).

(6) A vehicle used to provide TNC services shall be readily identifiable by the following:

(a) A company specific emblem or decal affixed to the front windshield on the passenger side of the vehicle provided by the TNC; and

(b) An electronic copy of the current TNC certificate.

(7) A driver who is no longer providing TNC service shall destroy or return the decal or emblem to the TNC.

(8) A TNC shall ensure that the vehicles used by drivers to provide TNC services shall:

(a) Have at least four (4) doors; and

(b) Be designed to carry no more than eight (8) persons including the driver[~~; and~~

~~(c) Be no more than ten (10) model years old with an odometer reading of less than 200,000 miles~~].

Section 6. TNC Drivers. (1) A TNC shall require each driver to undergo a national criminal background check before providing TNC services pursuant to KRS 281.6301.

(2) The TNC shall certify the criminal background check during the application process established in Section 2 of this administrative regulation. The national criminal background check shall be either:

(a) A comprehensive background check using fingerprint analysis; or

(b) An individual analysis using a social security number.

(3) The analysis required in subsection (1) of this section shall be conducted by a business or firm engaged in determining criminal background history.

(4) A TNC shall also require that each TNC driver:

(a) Is at least twenty-one (21) years old;

(b) Is the owner or lessee of the TNC vehicle or has a statement from the registered owner authorizing the use of the vehicle for TNC services pursuant to KRS 281.631;

(c) Is listed as an insured of the TNC vehicle;

(d) Has a valid state-issued driver's license and vehicle registration;

(e) Has personal vehicle insurance coverage as established in Section 3 of this administrative regulation;

(f) Has completed an annual driver safety training course approved by the department;

(g) Provides a written or electronic affirmation that he or she is fit and able to operate a motor vehicle to provide TNC services; and

(h) Is in compliance with applicable state law and local ordinances related to the operation of a motor vehicle.

(5) A current list of drivers shall be kept on file with the TNC and made available for inspection by the department on request. A TNC driver's electronic file shall include the following:

(a) A current driving history record to be updated annually;

(b) The current address of the driver;

(c) A copy of a valid state-issued driver's license and the operator's license number;

(d) Proof of his or her personal vehicle insurance coverage;

(e) Proof of personal vehicle registration;

(f) Proof of the written or electronic affirmation that a TNC driver is fit and able to operate a motor vehicle to provide TNC services;

(g) Verification of the criminal background check required in subsection (1) of this section;

(h) Records indicating if a driver has refused to accept a prearranged ride and the reason for doing so;

(i) Records of complaints against a driver; and

(j) A copy of the most current vehicle inspection.

Section 7. Passenger Service. (1) A TNC shall adopt a policy of non-discrimination based on the following:

(a) Destination;

(b) Race or color;

(c) National origin;

(e) Religious belief or affiliation;

(f) Sex and sexual orientation or identity;

(g) Disability;

(h) Age; and

(i) The presence of a passenger's service animal.

(2) A TNC shall notify TNC drivers of the adopted policy of non-discrimination established in subsection (1) of this section.

(3) After acceptance, a TNC driver may refuse to transport a passenger who is acting in an unlawful, disorderly, or endangering

manner but shall comply with the non-discriminatory policy in subsection (1) of this section. A driver may also refuse to transport a passenger with a service animal if the driver has a documented medical allergy.

(4) A TNC driver shall not transport a passenger under the age of fourteen (14) unless accompanied by a person over the age of eighteen (18).

(5) A TNC shall establish policies regarding TNC driver behavior that shall include the following prohibitions:

(a) Being under the influence of alcohol or another substance or combination of substances that impair the driving ability while providing TNC services;

(b) Accepting a street hail by a potential rider;

(c) Directly soliciting a passenger or responding to a direct solicitation; and

(d) Providing services for cash.

(6) A driver shall immediately report the following to the driver's affiliated TNC:

(a) A refusal to transport a passenger and the reasons for the refusal within forty-eight (48) hours after the refusal if the refusal occurred after the ride had been accepted by the driver;

(b) Information regarding a driving citation, incident, or accident within twenty-four (24) hours after the event; or

(c) Information regarding a conviction within twenty-four (24) hours.

(7) A TNC shall provide the following information to the public on its Web site and mobile device application software:

(a) A schedule of its rates or the method used to calculate rates and peak pricing; and

(b) Information indicating a zero tolerance policy related to drug and alcohol usage by its drivers while performing TNC services and a passenger support telephone number or email address where a suspected violation may be immediately reported.

(8) A TNC shall provide the following information to a person requesting a ride through its mobile application:

(a) The expected cost of the trip if requested by a potential passenger;

(b) The first name and a photograph of the TNC driver accepting the ride request; and

(c) A photograph or description, including license plate number, of the vehicle that will be used for the ride.

(9) At the completion of the prearranged ride, a TNC shall electronically provide the passenger with a receipt showing:

(a) The point of origin and destination of the ride;

(b) The duration and distance of the ride;

(c) The cost of the ride broken down into base fare and additional charges; and

(d) The driver's first name.

Section 8. Terms of Service. (1) The TNC shall not require a hold harmless or indemnification clause in the terms of service for a TNC driver or passenger that may be used to evade the insurance requirements of this administrative regulation and KRS Chapter 281.

(2) A TNC shall not disclose to a third party the personally identifiable information of a user of the TNC's mobile application unless:

(a) The TNC obtains the user's consent to disclose personally identifiable information;

(b) The disclosure is required to comply with a legal obligation; or

(c) The disclosure is required to protect or defend the terms of use of the service or to investigate violations of the terms of use.

(3) A TNC may disclose a passenger's name and telephone number to the TNC driver in order to facilitate correct identification of the passenger by the driver or to facilitate communication between the passenger and the driver.

Section 9. Penalties. (1) A TNC that operates in violation of the requirements of this administrative regulation shall be fined $200 pursuant to KRS 281.990(1).

(2) A TNC that operates in violation of the terms of its certificate or permit or operates without a valid permit shall be fined $500 per occurrence pursuant to KRS 281.990(2).

(3) A TNC that fails to produce requested records and information pursuant to KRS 281.820 within forty-eight (48) hours of the request by the department shall be fined $200.

(4) A TNC shall be responsible for an affiliated TNC driver's failure to comply with this administrative regulation if the driver's violation has been previously reported to the TNC in writing and the TNC has failed to take action within ten (10) days of the report.

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

(a) "Transportation Network Company Authority Application", TC 95-627, November, 2014; and

(b) "Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application", TC 95-605, May, 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained by accessing the department's Web site at http://transportation.ky.gov/.

GREG THOMAS, Secretary
JOHN-MARK HACK, Commissioner
D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: April 12, 2017

FILED WITH LRC: April 12, 2017 at 3 p.m.

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

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, June 13, 2017)

815 KAR 7:120. Kentucky Building Code.

RELATES TO: KRS 132.010, 198B.010, 198B.040, 198B.050, 198B.060, 198B.080,***[198B.110,]*** 198B.260, 198B.990, 227.300, 227.550(7)

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the department[~~Kentucky Board of Housing, Buildings and Construction~~] to adopt and promulgate a mandatory uniform statewide building code, based on a model code that[~~, which~~] establishes standards for the construction of buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions. (1)[~~"Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.~~

~~(2)~~] "Building" is defined by KRS 198B.010(4).

(2)[~~(3) "Commissioner" is defined by KRS 198B.010(9).~~

~~(4)~~] "Department" is defined by KRS 198B.010(11).

(3)[~~(5) "Farm" means property:~~

~~(a) Located outside the corporate limits of a municipality on at least ten (10) acres;~~

~~(b) Used for purposes established in the definitions of "agricultural land" and "horticultural land", established in KRS 132.010(9) and (10), respectively; and~~

~~(c) Qualified by and registered with the property valuation administrator in that county.~~

~~(6) "Fire Code Official" means the State Fire Marshal, fire chief, or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety as established in 815 KAR 10:060.~~

~~(7)~~] "Industrialized building system" or "building system" is defined by KRS 198B.010(16).

(4)[~~(8) "KBC" means the Kentucky Building Code as~~

~~established in this administrative regulation.~~

~~(9) "Kentucky Residential Code" means the International Residential Code as incorporated by reference and amended for application in Kentucky by 815 KAR 7:125.~~

~~(10) "Kentucky Standards of Safety" means the requirements established in 815 KAR 10:060, which serve as the fire prevention code for existing buildings as well as a supplement to this code.~~

~~(11)~~] "Manufactured home" is defined by KRS 227.550(7).

(5)[~~(12) "Modular home" means an industrialized building system, which is designed to be used as a residence and that is not a manufactured or mobile home.~~

~~(13) "Ordinary repair" is defined by KRS 198B.010(19).~~

~~(14)~~] "Single-family dwelling" or "one (1) family dwelling" means a single unit that:

(a) Provides complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation; and

(b) Is not connected to another unit or building.

(6)[~~(15)~~] "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(7)[~~(16)~~] "Two (2) family dwelling" means a building containing not more than two (2) dwelling units that are connected.

Section 2. Adoption[~~Administration and Enforcement~~] of the Building Code. (1) The 2012 International Building Code shall be the mandatory state building code for all buildings constructed in Kentucky except that:

(a) The Kentucky amendments in 2013 Kentucky Building Code shall supersede any conflicting provision in the 2012 International Building Code;[~~Notwithstanding the requirements of the 2012 International Building Code, the Kentucky amendments established in the 2013 Kentucky Building Code shall be mandatory and shall supersede any conflicting provision of the international code.~~

~~(2)(a) Except as provided in paragraph (b) and (c) of this subsection and as superseded by the provisions of this administrative regulation and the 2013 Kentucky Building Code, the 2012 International Building Code, shall be the mandatory state building code for all buildings constructed in Kentucky.~~]

(b) One (1) family dwellings,[~~and~~] two (2) family dwellings, and townhouses shall be governed by 815 KAR 7:125; and[~~.~~]

(c) Manufactured homes shall be governed by KRS 227.550 through 227.665.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department. (1) Fast track elective.

(a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.

(b) The additional fifty (50) percent fee shall not be less than $400 and not more than $3,000.

(c) The entire fee shall be paid with the initial plan submission.

(2) New buildings.

(a) The department's inspection fees shall be calculated by multiplying:

1.[~~Multiplying the total building area under construction by~~] The cost per square foot of each occupancy type as listed in subsection (3) of this section; and

2.[~~Computing~~] The square footage of[~~by~~] the outside dimensions of the building.

(b) The fee for a building with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.

(c) The minimum fee for review of plans pursuant to this subsection shall be $285.

(3) Table 121.3.1, Basic Department Fee Schedule. The basic plan review or inspection fee shall be as established in the table in this subsection.

OCCUPANCY TYPE	COST PER SQUARE FOOT
Assembly	Sixteen (16) cents
Business	Fifteen (15) cents
Day care centers	Fifteen (15) cents
Educational	Fifteen (15) cents
High hazard	Sixteen (16) cents
Industrial factories	Fifteen (15) cents
Institutional	Sixteen (16) cents
Mercantile	Fifteen (15) cents
Residential	Fifteen (15) cents
Storage	Fifteen (15) cents
Utility and Miscellaneous	Thirteen (13) cents
Production greenhouse	Ten (10) cents

[~~:~~

~~(a) Assembly occupancies, sixteen (16) cents;~~

~~(b) Business occupancies, fifteen (15) cents;~~

~~(c) Day care centers, fifteen (15) cents;~~

~~(d) Educational occupancies, fifteen (15) cents;~~

~~(e) High hazard occupancies, sixteen (16) cents;~~

~~(f) Industrial factories, fifteen (15) cents;~~

(g) Institutional occupancies, sixteen (16) cents;

~~(h) Mercantile occupancies, fifteen (15) cents;~~

~~(i) Residential occupancies, fifteen (15) cents;~~

~~(j) Storage, fifteen (15) cents; or~~

~~(k) Utility and miscellaneous, thirteen (13) cents.~~]

(4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings[~~, which shall not require the entire building to conform to the Kentucky Building Code,~~] shall be calculated by multiplying the cost per square foot of the occupancy type[~~in accordance with the schedule~~] listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition and any other changes made to the existing building.

(b) The minimum fee for review of plans pursuant to this subsection shall be $285.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure pursuant to the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans pursuant to this subsection shall be $285.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:

1. Multiplying the cost for the alterations or repairs by 0.0030; or

2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans pursuant to this subsection shall be $285.

(7) Specialized fees. In addition to the fees established by subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule. The inspection fee for automatic sprinklers shall be as established in the table in this paragraph;***[~~.~~]***

NUMBER OF SPRINKLERS	FEE
Four (4) – twenty-five (25)	$150
Twenty-six (26) – 100	$200
101 – 200	$250
201 – 300	$275
301 – 400	$325
401 – 750	$375
OVER 750	$375 plus thirty (30) cents per sprinkler over 750

[~~: 1. An inspection of four (4) through twenty-five (25) sprinklers shall be a fee of $150;~~

~~2. An inspection of twenty-six (26) through 100 sprinklers shall be a fee of $200;~~

~~3. An inspection of 101 through 200 sprinklers shall be a fee of $250;~~

~~4. An inspection of 201 through 300 sprinklers shall be a fee of $275;~~

~~5. An inspection of 301 through 400 sprinklers shall be a fee of $325;~~

~~6. An inspection of 401 through 750 sprinklers shall be a fee of $375; and~~

~~7. An inspection of over 750 sprinklers shall be a fee of $375 plus thirty (30) cents per sprinkler over 750.~~]

(b) Fire detection system review fee:

1. Zero through 20,000 square feet shall be $275; and

2. Over 20,000 square feet shall be $275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet***;[~~.~~]***

(c) The standpipe plan review fee shall be $275. The combination stand pipe and riser plans shall be reviewed pursuant to the automatic sprinkler review fee schedule***;[~~.~~]***

(d) Carbon dioxide suppression system review fee:

1. One (1) through 200 pounds of agent shall be $275; and

2. Over 200 pounds of agent shall be $275 plus five (5) cents per pound in excess of 200 pounds***;[~~.~~]***

(e) Clean agent suppression system review fee:

1.a. Up to thirty-five (35) pounds of agent shall be $275; and

b. Over thirty-five (35) pounds shall be $275 plus ten (10) cents per pound in excess of thirty-five (35) pounds; and

2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than $150***;[~~.~~]***

(f) Foam suppression system review fee***;[~~;~~]***[~~.~~]

1. The fee for review of a foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed pursuant to the automatic sprinkler review fee schedule.

3. The fee for review of plans pursuant to subparagraph 1. of this paragraph shall not be less than $275 or more than $1,500***;[~~.~~]***

(g) The commercial range hood review fee shall be $225 per hood***;[~~.~~]***

(h) Dry chemical systems review fee (except range hoods). The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be $275; and

2. Over thirty (30) pounds of agent shall be $275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds***; and[~~.~~]***

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be $100 for the first tank, plus fifty (50) dollars for each additional tank and $100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection, or associated components. [~~(j) Boiler and unfired pressure vessel fees. Plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.~~]

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

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

(a) "2012 International Building Code", First Edition, International Code Council, Inc.; and

(b) "2013 Kentucky Building Code", Fifth Edition[~~Fourth Edition~~], April 2017[~~December 2015~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m.

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

APPROVED BY AGENCY: April 13, 2017

FILED WITH LRC: April 13, 2017 at noon

CONTACT PERSON: David Startsman, Staff Attorney, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startsman@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(As Amended at IJC on Health and Welfare and Family Service, June 21, 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~~]**;

(l) 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 C**ode;

(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", ***6/2017[~~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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Libraries and Archives
Division of Library Services
(Amended After Comments)

725 KAR 2:070. Certification renewal of public librarians.

RELATES TO: KRS 171.250, 171.260, 171.270
STATUTORY AUTHORITY: KRS 171.250(2), 171.270
NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.250(2) authorizes the board to establish the requirements for certificate renewals for public librarians. This administrative regulation establishes the requirements for certificate renewals for public librarians.

Section 1. Definitions. (1) "Board" means the Kentucky State Board for the Certification of Librarians.
(2) "Contact hour" means a unit of measuring continuing education training with one (1) hour of training equal to one (1) contact hour.
(3) "Editorial process" means one (1) or more editors at a publication reviews and approves submitted work.
(4) "Full-time" means working[~~more than~~] 100 or more hours per month.
(5) "Job-related course work or continuing education" means instruction other than in library science that is directly related to the applicant's job.
(6) "Job-related professional organization" means a professional organization other than library science that is directly related to the applicant's job.
(7)[~~(4)~~] "Learning activity" means a class, institute, seminar, or workshop that is planned, coordinated, administered, and evaluated in terms of learning objectives.
(8)[~~(5)~~] "Library **information**[~~information~~] services" means [~~mean~~] duties performed by library employees that require special skills and knowledge to be performed properly.
(9)[~~**"Part-time" means working less than 100 hours per month.**~~
~~(10)~~] "Presenting" means instructional training that lasts ninety (90) minutes or less.
(10)[~~(11)~~][~~(6)~~] "Professional library association**, consortium, council, or board**" means an organization of library staff[~~librarians~~] and persons interested in libraries.
(11)[~~(12)~~] "Teaching" means instructional training that lasts more than ninety (90) minutes.

Section 2. Required Certification Renewal by Public Library Position. (1) A[~~**full-time or part-time**~~] library director serving a population of more than 15,000 shall renew the professional certificate every five (5) years. 100 contact hours of continuing education shall be accumulated within the five (5) year period.
(2) A[~~**full-time or part-time**~~] library director serving a population of 15,000 or[~~and~~] less shall renew at least the paraprofessional certificate every five (5) years. Seventy-five (75)[~~100~~] contact hours of continuing education shall be accumulated within the five (5) year period.
(3) **An[~~A full-time or part-time~~]**[~~An~~] assistant director, bookmobile or outreach staff[~~librarian~~], branch head, or department head shall renew at least the paraprofessional certificate every five (5) years. Seventy-five (75)[~~100~~] contact hours of continuing education shall be accumulated within the five (5) year period.
(4) Any other full-time position providing library **information**[~~information~~] services**, as assigned by local library personnel,**[~~, as assigned by local library personnel,~~] shall renew the library experience certificate every five (5) years. Fifty (50) contact hours of continuing education shall be accumulated within the five (5) year period.

Section 3. Types of Certificates. The following certificates may be renewed for a period of five (5) years:
(1) Professional Certificate I;
(2) Professional Certificate II;
(3) Professional Certificate III;
(4) **Professional Certificate IV;**
(5)[~~Professional Certificate IV;~~
~~(5)~~] Paraprofessional Certificate; or
(6)[~~(5)~~][~~(6)~~] Library Experience certificate.

Section 4. Sources of Learning Activities that Provide Contact Hours. (1) The board shall accept job-related coursework or continuing education offerings from an institution of higher education as follows:
(a) Classes;
(b) Institutes;
(c) Seminars;
(d) Workshops;
(e) Conferences;
(f) Lecture series;
(g) Internships; or
(h) Courses taken for academic credit.[~~(b) Courses taken for academic credit.~~]
(2) The board shall accept activities in a professional library or job-related association**, consortium, council, or board** as follows:
(a) Participation in:
1. Seminars;
2. Workshops;
3. Conferences; or
4. Lecture series; or
(b) The holding of an association**, consortium, council, or board** office, with a statement specifying the learning activity and derived educational benefit.
(3) The board shall accept participation in job-related seminars, workshops, conferences, or lecture series sponsored**[~~or approved~~]** by the Kentucky Department for Libraries and Archives.
(4) **The board shall accept participation in workshops, lecture series, or training programs that shall be documented as job-related. These activities may be sponsored by individual libraries.**
(5)[~~The board shall accept participation in workshops, lecture series, or training programs that shall be documented as job related. These activities may be sponsored by individual libraries.~~
~~(5)~~] The board shall accept **self-directed[~~the following~~]**[~~self-directed~~] learning activities that go[~~,~~] beyond expected job duties**, as follows**[~~, as follows~~]:
(a) Writing reviews of job-related[~~library~~] materials or[~~library-related~~] books, articles, or chapters that are published in statewide, regional, or national library or other job-related professional organization's publications and selected through an editorial process;
(b) Writing or editing an article for a job-related[~~library~~] publication with statewide, regional, or national distribution and selected through an[~~and~~] editorial process;
(c) Writing or editing a book on a job[~~library~~]-related topic selected for publication by a publishing company and published following an editorial process;
(d) Developing and presenting library-related instructional training for library staff, library school students,[~~or~~] library trustees, or other job-related professional organizations;
(e) Preparing and teaching a library or job-related course, workshop, seminar, or institute; or
(f) Listening to or viewing an audio or video recording of a job-related workshop presentation or conference program and submitting a written review indicating what was learned and how it relates to their job.
(5)[~~(6)~~] The board shall require[~~documentation~~] that each learning activity incorporates new subject information[~~matter~~].

Section 5.[~~(1)~~] The conversion calculations for a type of activity to the number of contact hours shall be determined in accordance with the Certification Contact Hours Points Conversion Chart.

Section 6. Application for public librarian certification renewal shall be made to the board by submitting a completed Renewal Application for Certification of Librarianship.

Section 7. A fee of twenty (20) dollars shall be charged for each certificate renewal issued.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certification Contact Hours Conversion Chart", **June 1, 2017[~~March 1, 2017~~]**[~~January 8, 2010~~]; and

(b) "Renewal Application for Certification of Librarianship", March 1, 2017[~~December 15, 2008~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40602-0537, Monday through Friday, 9[~~8~~] a.m. to 4[~~:30~~] p.m.

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: June 15, 2017

FILED WITH LRC: June 15, 2017 at noon

CONTACT PERSON: Terry Manuel, Commissioner, Kentucky Department for Libraries & Archives, 300 Coffee Tree Rd, P.O. Box 537, Frankfort, Kentucky 40602, phone 502-564-8306, fax 502-564-5773, email kdla.certification@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry Manuel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (725 KAR 2:070) establishes the renewal requirements for certification of public library staff. It also states the fee associated with the renewal.

(b) The necessity of this administrative regulation: This administrative regulation is required under KRS 171.250, KRS 171.260 and KRS 171.270.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.250 requires the Kentucky State Board for the Certification of Librarians to establish certification requirements. KRS 171.260 requires the certification of full-time public library staff. KRS 171.270 states the fee for certification renewal of public library staff.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: 725 KAR 2:070 provides a structure for the renewal requirements for certification of public library staff.

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

(a) How the amendment will change this existing administrative regulation: Five new definitions were added. Renewal hours for the paraprofessional certificate were reduced from 100 hours to seventy-five (75) hours. Also the list was expanded of what is approved for certification renewal contact hours.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary for clarification of terms listed in the administrative regulation, expanding opportunities to accrue contact hours for renewal, and addressing the varied work that public library staff performs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 171.250 requires the Kentucky State Board for the Certification of Librarians to establish certification requirements. KRS 171.260 requires the certification of full-time public library staff.

(d) How the amendment will assist in the effective administration of the statues: The amendment provides clarification and options that make administration and compliance less burdensome.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Public library employees of the legally established public libraries in 119 counties. The approximate number of public library staff that are currently certified is 1,488 people.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to take the same actions that they do now with the current KAR, but will have more options in completing the requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Renewal of certification costs each applicant $20, but this is an established fee, not a new fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky public libraries will continue to have trained and qualified staff to help assist their community and citizens of the Commonwealth.

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

(a) Initially: No new cost will be incurred.

(b) On a continuing basis: No new cost will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds appropriated by the Institute of Museums and Library Services

(7) Provide an assessment of whether an 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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation has an already-established fee of $20, but that existing fee has not been changed with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied because certification is open to all full-time public library employees of the legally established public libraries in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department for Libraries and Archives, the Kentucky State Board for the Certification of Librarians, and the legally established public libraries in 119 counties.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.250, KRS 171.260, KRS 171.270

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 make approximately $5,956 in revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will make approximately $5,956 in revenue.

(c) How much will it cost to administer this program for the first year? There will be little impact on the cost of administering the administrative regulation. This is an ongoing program for the Kentucky State Board for the Certification of Librarians, which has been in place since 1942.

(d) How much will it cost to administer this program for subsequent years? There will be little impact on the cost of administering the administrative regulation. This is an ongoing program for the Kentucky State Board for the Certification of

Librarians, which has been in place since 1942.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

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

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

STATUTORY AUTHORITY: KRS 164.7874(3), (16), 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

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

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

(2) "Accredited out-of-state high school" means a high school that is:

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

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

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

(6) "Course" means the equivalent of one (1) credit as determined by the Kentucky Department of Education (KDE) in 704 KAR 3:305.

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

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

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

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

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

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

(13) "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each letter grade awarded for all courses taken during an academic year. The grading scale cutoff scores used to determine the letter grade for each course shall be the same as those used to determine the letter grade for each course reported on the student's official high school transcript.

(2)(a) Except as provided in paragraphs (b) and (c) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A", 3.0 is a "B", 2.0 is a "C", 1.0 is a "D", and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an AP, IB, or CAI course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F".

(c) Beginning with the academic year 2015-2016, for an eligible high school student taking a dual credit course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F". This weighted scale shall not be applicable to a remedial course.

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service. (1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1.a. and b. and shall submit the Home of Record Certification form to the authority.

(b) The authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for requesting:

1. Grade and curriculum information from the local school; and

2. That the local school submit the information to the authority using the Curriculum Certification form and the Data Submission form.

(b) Upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, the authority shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

2. Verify that the out-of-state high school or Department of Defense school is an accredited high school; and

3. Retain the Curriculum Certification form on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

(a) Has earned a base scholarship award in high school;

(b) Has completed the KEES curriculum as set forth in subsection (2) of this section;

(c) Has graduated from a Kentucky high school, except as provided in Section 2(4) or 3 of this administrative regulation; and

(d) Is enrolled in a participating institution in an eligible program.

(2) Except as provided in subsection (4) of this section, the KEES curriculum shall consist of the curriculum standards established in 704 KAR 3:305.

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award for that year upon:

(a) Completion of no fewer than three (3) courses of study; and

(b) Satisfying the provisions of KRS 164.7879.

(4) Except as provided in subsection (5) of this section, a high school may substitute an integrated, applied, interdisciplinary, or higher level course for a required course or required academic and career interest standards-based learning experience if the course:

(a) Provides the same or greater academic rigor and the course covers or exceeds the minimum required content areas established in 703 KAR 4:060; or

(b) Is an honors course, cooperative education course, AP course, IB course, CAI course, dual credit course, or a course taken at a postsecondary education institution.

(5) Beginning with the 2012-2013 academic year, only one (1) cooperative education course per academic year shall count for purposes of satisfying KEES curriculum requirements.

(6) A high school annually shall provide written documentation to a student advising if the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the authority pursuant to 11 KAR 15:010, Section 1(10).

(2) Except as established in subsection (4) of this section, an eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board.

(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

(a) Landscape architecture (04.0601); and

(b) For students that graduated from high school not later than the 2004-2005 academic year, engineering if enrollment in the engineering program has been continuous (14.0101, 14201, 14.0301, 14401, 14501, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1301, 14.1401, 14.1701, 14.1801, 14.1901, 14.2101, 14.2301, 14.2401, 14.2801, 14.9999.01, 14.3501).

(4) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

(a) Has not received eight (8) academic terms of a KEES award;

(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:

1. Pharm. D;

2. The optometry or veterinary medicine programs at an institution, which is a part of the Kentucky Contract Spaces Program; or

3. A program contained on the Equivalent Undergraduate Programs List; and

(c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. (1) Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used to convert scores for SAT exams taken prior to the 2011-2012 academic year:

Table C-2
Concordance Between SAT I Recentered V+M Score and ACT Composite Score

SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table may be used to relate SAT I V+M scores to ACT Composite scores.
The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.
Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).
January 1998

(2) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the 2011-2012 academic year, but prior to March 2016. Only the scores from the critical reasoning and mathematics sections of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2
Concordance Between SAT I Recentered CR+M Score and ACT Composite Score

SAT I CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite	SAT CR+M	ACT Composite
1600	36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	13
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	35	1320	29	1090	24	860	18	630	13
1540	35	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	12
1520	34	1290	29	1060	23	830	17	600	12
1510	34	1280	28	1050	23	820	17	590	12
1500	34	1270	28	1040	22	810	16	580	12
1490	34	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	27	1010	21	780	16	550	11
1460	33	1230	27	1000	21	770	16	540	11
1450	33	1220	27	990	21	760	15	530	11
1440	33	1210	27	980	21	750	15	520	11
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15		
1410	32	1180	26	950	20	720	15		
1400	32	1170	26	940	20	710	14		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table may be used to relate SAT CR+M scores to ACT Composite scores.
The estimates are based on the test scores of 300,437 students who took both the ACT and the SAT CR+M between September 2004 and June 2006. Because the ACT and the SAT CR+M have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.
Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).
June, 2008

(3) Pursuant to KRS 164.7874(3), the SAT and ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after March 2016. Only the scores from the Evidence-Based Reading and Writing Sections (ERW+M) of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2
Concordance Between SAT EBR+M Score and ACT Composite Score

SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite
1600	36	1380	29	1160	24 [~~23~~]	940	18 [~~17~~]	720	13 [~~12~~]
1590	35	1370	29	1150	23	930	17	710	12
1580	35	1360	29	1140	23	920	17	700	12
1570	35	1350	29 [~~28~~]	1130	23 [~~22~~]	910	17	690	12
1560	35 [~~34~~]	1340	28	1120	22	900	17 [~~16~~]	680	12
1550	34	1330	28	1110	22	890	16	670	12 [~~11~~]
1540	34	1320	28	1100	22 [~~21~~]	880	16	660	12 [~~11~~]
1530	34 [~~33~~]	1310	28 [~~27~~]	1090	21	870	16	650	12 [~~11~~]
1520	34 [~~33~~]	1300	27	1080	21	860	16 [~~15~~]	640	12 [~~11~~]
1510	33	1290	27	1070	21	850	15	630	12 [~~11~~]
1500	33	1280	27 [~~26~~]	1060	21 [~~20~~]	840	15	620	11
1490	32	1270	26	1050	20	830	15	610	11
1480	32	1260	26	1040	20	820	15 [~~14~~]	600	11
1470	32	1250	26 [~~25~~]	1030	20	810	15 [~~14~~]	590	11
1460	32 [~~31~~]	1240	26 [~~25~~]	1020	20 [~~19~~]	800	14	580	11
1450	32 [~~31~~]	1230	25	1010	19	790	14	570	11
1440	31	1220	25	1000	19	780	14	560	11
1430	31	1210	25 [~~24~~]	990	19	770	14 [~~13~~]		
1420	31 [~~30~~]	1200	25 [~~24~~]	980	19 [~~18~~]	760	14 [~~13~~]		
1410	30	1190	24	970	18	750	13		
1400	30	1180	24	960	18	740	13		
1390	30 [~~29~~]	1170	24 [~~23~~]	950	18	730	13 [~~12~~]		

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

(a) The student is not a convicted felon;

(b) The date of the student's graduation is May 1999 or thereafter;

(c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and

(d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who has not graduated from high school[~~either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education~~] shall be eligible for a supplemental award if:

(a) The student is not a convicted felon;

(b) The student's 18th birthday occurs on or after January 1, 1999;

(c) The student takes and receives a GED diploma in Kentucky:

1. Prior to being admitted to a participating institution; and

2. Within[~~within~~] five (5) years after[~~of~~] attaining eighteen (18) years of age;

(d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

(a) The parents meet the provisions of KRS 164.7879(2)(c)1.a. and b.;

(b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

(4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(5)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the authority of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of attaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c) and (d), a supplemental award shall be provided for achievement on AP, IB, or CAI examinations to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(2)(a) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the authority on an annual basis.

(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United States Department of Agriculture, Food and Nutrition Service, available at www.fns.usda.gov/school-meals/income-eligibility-guidelines.

Section 10. Administrative Responsibilities and Expenses of Program. (1) The authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund described in KRS 164.7877(1) and (3).

(2) The authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The authority shall develop an allotment schedule for the release of the administrative funds.

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

(a) "Home of Record Certification", June 2005;

(b) "Curriculum Certification", June 2005;

(c) "Data Submission", June 2005; and

(d) "Equivalent Undergraduate Programs List", June 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BECKY LAMB, Chair

APPROVED BY AGENCY: May 25, 2017

FILED WITH LRC: June 14, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, July 24, 2017, at 10:00 a.m. Eastern Time at 100 Airport Road, 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 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through Monday, July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Becky Gilpatrick, 502-696-7394, rgilpatrick@kheaa.com., and Diana L. Barber

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program for the Kentucky Higher Education Assistance Authority (KHEAA).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7877(3) requires KHEAA to administer the funds appropriated to the trust fund for the program; KRS 164.7874(14) requires KHEAA to determine the KEES curriculum's courses of study; KRS 164.7879(3)(c) requires KHEAA to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award; KRS 164.7874(3) requires KHEAA to establish a table to convert an SAT score to an ACT standard; KRS 164.7881(6) requires KHEAA to establish a five (5) year postsecondary education program standard; KRS 164.7881(4)(a) requires KHEAA to establish overall award levels for the program; KRS 164.7879(2)(c) requires KHEAA to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record; and KRS 164.7535 and

164.7881 (4)(c) require KHEAA to identify equivalent undergraduate programs of study. This administrative regulation establishes these requirements related to the KEES program.

(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 program eligibility criteria for administration of the KEES program by KHEAA.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing regulation by updating the SAT Conversion Table to reflect the newest concordance for examinations taken on or after March 2016. Additionally, provide that in order for a student to receive a GED Supplemental KEES award, the GED must be obtained in Kentucky prior to admission to a participating postsecondary institution.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to insure accurate calculation of supplemental KEES awards based on the standardized SAT exam for students who test on or after March 2016. Further, this amendment is necessary to eliminate abuse of the program by graduates of out-of-state high schools who are admitted to participating institutions and then obtain a GED in Kentucky in an attempt obtain a GED Supplemental KEES award.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require KHEAA to promulgate regulations for the administration of the KEES program including the determination of supplemental awards based upon standardized test scores as well as establishing criteria for supplemental awards for GED recipients. This amendment conforms to the authorizing statues by incorporating the most recent concordance for SAT examinations taken on or after March 2016. It also conforms to the authorizing statutes by enhancing the criteria for Supplemental KEES awards for GED recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by enabling the authority to make determinations of supplemental KEES awards based on the most current and accurate concordance of SAT examination scores. Further, it will assist in the effective administration of the statutes by eliminating potential abuses of the program by GED recipients in attempts to obtain supplemental awards to which they are not entitled.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this administrative regulation will affect those high school students who sit for the SAT examination on or after March 2016. Additionally, the proposed amendment will impact those individuals who obtain a GED in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those entities must register for and take the SAT examination on or after March 2016. Those entities must obtain a GED in Kentucky prior to being admitted in a participating postsecondary institution.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those entities who the SAT examination on or after March 2016 will have their supplemental KEES award, if eligible, determined based upon this newest concordance table. Those entities who obtain a GED in Kentucky prior to admission in a participating postsecondary institution will be eligible for a Supplemental KEES award provided the other eligibility criteria are satisfied.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: Any increase in funding as a result of the amendment to this administrative regulation would be nominal at most. Although the changes could increase the overall KEES award of a participating student, this would be negligible.

(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 increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

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

d. How much will it cost to administer this program for subsequent years? No costs are associated with this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:010. Voter identification cards.

RELATES TO: KRS 117.227
STATUTORY AUTHORITY: KRS 117.015
NECESSITY, FUNCTION, AND CONFORMITY: To define the forms of identification that are acceptable in confirming the identity of voters on election day, and to provide uniformity of identification standards throughout the state governed by KRS 117.227. This administrative regulation is required to establish a procedure for documenting the confirmation of identity on precinct voter rosters.

Section 1. In addition to the forms of identification specifically provided for by KRS 117.227, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.

Section 2. The method of identification used shall be recorded on the precinct voter roster by use of the following codes:
(1) Personal acquaintance - "PA"
(2) Motor vehicle operator's license - "DL"
(3) Social Security card - "SS"
(4) Credit card - "CC"
(5) Identification card with picture and signature, United States government-issued identification card and Kentucky state-government issued identification card with picture (other identification) - "OI"

Section 3. The election officer confirming the identity shall enter his initials on the precinct voter roster in lieu of a signature.

ALISON LUNDERGAN GRIMES, Secretary of State
Chair of State Board of Elections
APPROVED BY AGENCY: May 16, 2017
FILED WITH LRC: May 30, 2017 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2017, at 11:00 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 July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: 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 defines the forms of identification that are acceptable in confirming the identity of voters on election day.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a procedure for documenting the confirmation of identity on precinct voter rosters.
(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the State Board of Elections to fulfill its duties under KRS 117.227, this administrative regulation is necessary to establish the procedure for documenting the confirmation of identity on precinct voter rosters.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish a procedure for documenting the confirmation of identity on precinct voter rosters.
(2) If 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 of confirming ones identity on election day.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to bring the administrative regulation into conformity with the authorizing statute, KRS 117.227.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 117.227.
(d) How the amendment will assist in the effective administration of the statues: This amendment is necessary to bring the administrative regulation into conformity with the authorizing statute, KRS 117.227.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect county board of elections.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List 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): Individuals identified in question (3) will accrue no benefits.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There is no cost to implement this 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 county board of elections.
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 117.227.
3. Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or 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:

STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:040. Procedures for absentee voting in county clerk's office.

RELATES TO: KRS 117.085, 117.086(2), 117.235, 117.255

STATUTORY AUTHORITY: KRS 117.086(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.086(5) requires the State Board of Elections to establish administrative regulations to provide for casting ballots in accordance with KRS 117.086(2). KRS 117.086(2) requires certain absentee voters to vote at the main office of the county clerk or other place designated by the county board of elections, and approved by the State Board of Elections, prior to the day of election. This administrative regulation provides procedures for establishing a voting place while absentee voting is being conducted.

Section 1. Establish a place for absentee voting. (1) Not less than twelve (12) working days prior to any general, special, or regular election, the county clerk shall establish a special area to be used solely for the purpose of allowing those voters who qualify under the provisions of KRS 117.085(1) to secretly cast absentee ballots, pursuant to KRS 117.086.

(2) The designated area shall be sufficiently sized and located to allow ballots to be cast secretly. The clerk may utilize a special booth for casting absentee ballots.

(3) If the county clerk's office does not have sufficient physical space to designate an area away from the normal activities of the office, the booth or area may be located outside the physical limitations of the county clerk's office, if the area is capable of direct supervision by the county clerk or his or her staff while the area is utilized for the purpose of casting absentee ballots.

(4) The county clerk shall ensure that while a person is casting an absentee ballot, the area shall remain clear of any other person, except a person permitted to assist the voter pursuant to KRS 117.255. [~~Section 2. Restrictions on the conduct of the county clerk and his or her staff during absentee voting. (1) The area designated for absentee voting pursuant to Section 1 of this administrative regulation shall become a polling place within the meaning of KRS 117.235, and the provisions of KRS 117.235(3) prohibiting electioneering at the polling place shall apply.~~

~~(2) The county clerk and his or her staff shall not provide any voter with assistance in voting, pursuant to the provisions of KRS 117.255.~~]

ALISON LUNDERGAN GRIMES, Secretary of State,
Chair of the State Board of Elections

APPROVED BY AGENCY: May 16, 2017

FILED WITH LRC: May 30, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2017, at 10:00 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 July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 procedures for absentee voting in county clerk's offices.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for absentee voting in county clerk's offices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the State Board of Elections to fulfill its duties under KRS 117.086(5), this administrative regulation is necessary to establish the procedure for the county clerk and his or her staff while absentee voting is being conducted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for absentee voting in county clerk's offices.

(2) If 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 this administrative regulation into conformity with the Voting Rights Act and KRS 117.235.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to bring this administrative regulation into conformity with the Voting Rights Act and KRS 117.235.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 117.086(5).

(d) How the amendment will assist in the effective administration of the statues: This amendment brings this administrative regulation into conformity with the Voting Rights Act and KRS 117.235.

(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 vote in elections as well as the county clerk and his or her staff.

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

(a) List 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 benefits 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 county clerk and his or her employees.

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 117.086(5).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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:

KENTUCKY STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 6:020. Provisional voting.

RELATES TO: KRS 117.015(1), 117.275, 117.305, 42 U.S.C. 15482

STATUTORY AUTHORITY: KRS 117.015(1), 42 U.S.C. 15482, sec. 302(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties in the administration of the election laws. The Help America Vote Act of 2002, 42 U.S.C. 15482, Section 302(d) requires the state to comply with the provisions of that section concerning provisional voting in elections for federal offices. This administrative regulation establishes procedures for provisional voting.

Section 1. Definitions. (1) "Provisional ballot" means a ballot cast in an election for federal office by an individual who resides in a voting precinct but whose eligibility to vote is in question or is not determinable on election day.

(2) "Provisional ballot inner envelope" means the envelope with the words "provisional ballot" printed on the front.

(3) "Provisional ballot outer envelope" means the envelope with the following printed on the front:

(a) Precinct election officer checklist of circumstances for issuing a provisional ballot;

(b) Provisional ballot affirmation; and

(c) The county board of elections checklist for indicating whether the ballot was counted and if not counted the reason why.

Section 2. Applicability. This administrative regulation shall be applicable to special, primary, and general elections for the federal elective offices of President/Vice President, United States Senator, and United States House of Representatives.

Section 3. Precinct Election Officer Notice. (1) A precinct election officer who cannot confirm a potential voter's eligibility to vote on election day shall notify the individual of the option of appearing before the county board of elections to dispute eligibility or voting a provisional ballot in that precinct if the individual resides at a residence within the geographical boundaries of the precinct.

(2) If the individual chooses to cast a provisional ballot, then the individual shall not be eligible to vote in any other manner.

Section 4. Procedures and Circumstances for Casting a Provisional Ballot. (1) The individual shall sign a provisional ballot precinct signature roster, SBE 35, which contains the individual's[~~Social Security number,~~] name, address, signature, date of birth, political party affiliation, identification type, and precinct officer initials.

(2) The precinct election officer shall check the appropriate box next to the circumstance for issuing the provisional ballot.

(3) The circumstances for issuing the provisional ballot:

(a) Voter whose name does not appear on the precinct roster and whose registration status cannot be determined by the precinct officer;

(b) Voter whose name does not appear on the precinct roster and who has been verified as ineligible to vote;

(c) Voter who does not have identification;

(d) Voter who is voting as a result of a federal or state court order or any order under state law in effect ten (10) days prior to election day which extends polling hours; or

(e) Voter has been challenged by all four (4) precinct election officers.

(4) The precinct election officer shall give the individual the provisional ballot, a provisional ballot inner envelope, SBE 39, and the provisional ballot outer envelope, SBE 38.

(5) To cast a provisional ballot, an individual shall execute the written affirmation on the provisional ballot outer envelope before a precinct officer at the voting place declaring the individual is a registered voter in the county and resides within the geographical boundaries of the precinct. The written affirmation executed by the individual shall state:

(a) The individual's name;

(b) Current residential address;

(c) Political party affiliation;

(d) That the individual is a registered voter in the county and resides in the precinct;

(e) That the individual knows of no legal reason to prevent his or her vote from being cast and counted;

(f) That the individual has not voted and shall not vote in another precinct or by absentee ballot in this state during this election;

(g) That the individual understands that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefore; and

(h) That the individual further understands that if he or she executes the affirmation and is not a registered voter at the current address stated, the individual has committed a criminal act.

(6) The precinct election officer shall direct the individual to a private voting area in which the individual shall cast his or her provisional ballot.

(7)(a) An individual may spoil up to two (2) provisional ballots and shall not be issued more than a total of three (3) provisional ballots.

(b) Spoiled ballots shall be placed in the provisional ballot inner envelope, sealed by the individual, and returned to a precinct election officer who shall mark on the provisional ballot stub of the issued ballot and on the front of the envelope "spoiled ballot".

(8) The individual shall place the voted provisional ballot in the provisional ballot inner envelope and seal. The individual shall place the sealed provisional ballot inner envelope in the provisional ballot outer envelope and seal.

(9) The individual shall return the sealed provisional ballot outer envelope to the precinct election officer.

(10) The precinct election officer, upon receiving the sealed provisional ballot outer envelope from the individual, shall give the individual the provisional ballot information sheet, SBE 36, which explains the individual's right to contact their local county clerk to learn if the provisional ballot was counted, and if not counted, the reason why.

(11) A precinct election officer shall place sealed provisional ballot outer envelopes and sealed spoiled provisional ballot inner envelopes in a container and transmit to the county board of elections.

(12) The county board of elections shall determine the eligibility to vote of each individual casting a provisional ballot, in accordance with KRS Chapters 116 to 118 and 31 KAR Chapters 2 to 6.

(13) If the county board of elections determines the individual is eligible to vote in the precinct in the election, the vote shall be counted and the county board shall so indicate on the provisional ballot outer envelope.

(14) If the county board of elections determines the individual is ineligible to vote in the precinct in the election, the vote shall not be counted and the county board shall so indicate on the provisional ballot outer envelope.

Section 5. Provisional Ballot During Extension of Time to Close Polls. (1) An individual who votes in an election for federal office as a result of a federal or state court order or any other order extending the time established for closing the polls by a state law in effect ten (10) days before the date of that election may only vote in that election by casting a provisional ballot.

(2) A provisional ballot cast during an extension of the time for closing the polls required by orders described in this section shall be separated and held apart from other provisional ballots cast by those not affected by the order.

Section 6. Responsibilities. (1) The county board of elections shall count all eligible provisional ballots.

(2) The county board of elections shall begin counting provisional ballots no later than 9 a.m. prevailing time on the day following the election.

(3) The provisional ballot count shall be certified by the county board of elections on the Certification Official Count and Record of Election Totals prescribed by the State Board of Elections in 31 KAR 4:030, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. This form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the Friday following the election. For special elections this form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the day following the election.

(4) Upon completion of a recanvass of vote totals, the county board of elections shall report recanvassed vote totals on the Recanvass of Official Count and Record of Election Totals form, prescribed by the State Board of Election in 31 KAR 4:070, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. The recanvassed vote totals shall be certified and immediately reported to the Secretary of State's Office.

(5) County clerks shall cause provisional ballots to be printed. The provisional ballots shall be printed with a ballot stub that will be consecutively numbered with a place for voter name, precinct election officer initials, and marked by precinct officers if it was a spoiled ballot.

(6) County clerks shall post instructions in each precinct on how to cast a provisional ballot, in accordance with Section 4 of this administrative regulation.

(7)(a) For general and special elections, a minimum of twenty (20) provisional ballots and other applicable forms shall be sent to each precinct.

(b) For primary elections, a minimum of twenty (20) provisional ballots and other applicable forms shall be sent for each party to each precinct.

(8) After the county board of elections has completed its investigation of each provisional ballot and marked the face of the provisional ballot outer envelope appropriate to its findings, the county clerk shall photocopy the face of each outer envelope for future access to convey to the individual whether or not the ballot was counted, and if not counted, the reason why, and shall immediately enter the information in the Statewide Voter Registration Database.

(9) Provisional ballots and all envelopes from a general election shall be locked for thirty (30) days and retained for twenty-two (22) months. Provisional ballot and all envelopes from a primary or special election shall be locked for ten (10) days and retained for twenty-two (22) months.

(10) A provisional ballot accountability statement for provisional ballots, SBE 37, shall be sent to each precinct and returned to the county board of elections, which contains the county name, precinct name, number of ballots issued, ballot stub numbers, number of provisional ballots used, number of provisional ballots unused, number of provisional ballots spoiled and place for the signature of all four (4) precinct election officers.

(11) The chairman of the county board of elections shall file a completed "County Board of Elections Provisional Ballots Issued to Voters and Counted" form, SBE 54C, with the State Board of Elections within ten (10) days after any special, primary, or general election for the federal elective offices of President/Vice President, United States Senator, and United States House of Representatives.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Provisional Ballot Precinct Signature Roster - SBE 35", (6/17)[~~(2/04)~~];

(b) "Provisional Ballot Informational Sheet - SBE 36", (9/04);

(c) "Provisional Ballot Accountability Sheet - SBE 37", (12/05);

(d) "Provisional Ballot Outer Envelope - SBE 38", (6/17)[~~(2/04)~~];

(e) "Provisional Ballot Inner Envelope - SBE 39", (11/03); and

(f) "County Board of Elections Provisional Ballots Issued to Voters and Counted - SBE 54C" (2/04).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State
Chair of State Board of Elections
APPROVED BY AGENCY: May 16, 2017
FILED WITH LRC: June 14, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2017, at 10:00 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 July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 procedures for provisional voting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for provisional voting.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the State Board of Elections to fulfill its duties under KRS 117.015(1), this administrative regulation is necessary to establish the procedures for provisional voting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in establishing procedures for provisional voting.

(2) If 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 social security number from the Provisional Ballot Precinct Signature Roster and the Provisional Ballot Outer Envelope. These material are incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove the social security number from the Provisional Ballot Precinct Signature Roster and the Provisional Ballot Outer Envelope to protect individuals private information.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute. KRS 117.015(1)

(d) How the amendment will assist in the effective administration of the statues: This amendment is necessary to remove the social security number from the Provisional Ballot Precinct Signature Roster and the Provisional Ballot Outer Envelope to protect individuals private information.

(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 cast a provisional ballot on election day as well as the precinct election officers.

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

(a) List 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): Voters casting provisional ballots will benefit from this amendment because their private information will no longer be at risk of being stolen.

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

(a) Initially: There is a material cost of the State Board of Elections for new provisional ballot outer envelopes.

(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 precinct election officers which are trained by the county clerk.

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 117.015(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
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:030. Fees.

RELATES TO: KRS 316.125(2)(a), 316.130(2) (4), (5), 316.132, 316.140(2)

STATUTORY AUTHORITY: KRS 316.125(2)(a), 316.130(2), (4), and (5), 316.132, 316.140(2), 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(2)(a), 316.130(2), (4), and (5), 316.132, 316.140(2), and 316.210(1) require the board to set out in administrative regulations certain fees. This administrative regulation establishes these fees.

Section 1. The funeral establishment license fee shall be $150.

Section 2. The embalmer's license renewal feel shall be seventy-five (75) dollars.

Section 3. The funeral director's license renewal fee shall be seventy-five (75) dollars.

Section 4. The late fee for a funeral establishment license renewal shall be $150.

Section 5. The late fee for an embalmer's license renewal or a funeral director's license shall be seventy-five (75) dollars.

Section 6. The fee for an annual courtesy card shall be seventy-five (75) dollars.

Section 7. The fee for processing for approval continuing education program to be $150, not to exceed $600 for programs in a conference or convention setting.

Section 8. The processing fee for applications (apprenticeship registration, national exam score and out-of-state verifications, individual name changes, information change requests, and form revisions) shall be twenty-five (25) dollars.

Section 9. The registration fee for funeral director apprenticeship is established in KRS 316.125.

Section 10. The registration fee for embalmer apprenticeship is established in KRS 316.125.

Section 11. The fee for funeral director Level II registration shall be fifty (50) dollars.

Section 12. The fee for embalmer Level II registration shall be fifty (50) dollars.

Section 13. All fees shall be non-refundable.

KANETHA DORSEY, Executive Director

APPROVED BY AGENCY: June 13, 2017

FILED WITH LRC: June 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2017, at 11:00 a.m., EST at 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kanetha Dorsey, Executive Director, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, phone 502-426-4589 ext. 2301, fax 502-426-4117, email Kanetha.dorsey@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kanetha Dorsey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees promulgated in KRS 316.125(s)(a), 316.130(s), (4), and (5), 316.132, and 316.140(2) and authorized by KRS 316.210(1).

(b) The necessity of this administrative regulation: This administrative regulation authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations regarding fees. This administrative regulation outlines those fees

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 316.125(2)a, 316.130(2), (4), and (5), and 316.140(2) require the board to set out in administrative regulation certain fees. This administrative regulation establishes these fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation currently assists by laying out the fees for administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes fees for the processing of continuing education approvals and documentation.

(b) The necessity of the amendment to this administrative regulation: KRS 316.210(1) authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of the KRS Chapter 316, KRS

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes fees according to KRS 316.125(2), 316.130(2), (4), (5), 316.132 and 316.140(2) by authority given in KRS 316.210(1).

(d) How the amendment will assist in the effective administration of the statues: This amendment will assist in the effective administration of the statute by outlining fees as required in KRS 316.125(2), 316.130(2), (4), (5), 316.132, and 316.140(2) by authority given in KRS 316.210(1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect 30 continuing education sponsors and license holders who wish to change information or cause the Board office to request additional information from another state agency during a verification or registration request.

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

(a) List 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 sponsor or license holder will submit a non-refundable fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with this administrative fee will have a financial impact of $150 not to exceed $600 per training title and setting, if a training setting has more than 4 titles, the amount will cap at $600. Individuals who require documentation that accrues a fee such as an out of state verification will cost $25. Level II registration fees would have an impact of $50 to $100.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will receive a receipt for the service they are requesting.

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

(a) Initially: It will not cost the administrative body any additional revenue to implement this administrative regulation. Forms will need to be changed to include the new fee, however, all forms are created online during regular hours of operation. A postcard may be sent to all current sponsors to inform of the fee change which will cost no more than $15 including materials, printing, and postage

(b) On a continuing basis: There will be no additional continuing costs, the website and forms are maintained in office, online, during regular work hours by regular staff currently assigned to such tasks.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Salaried staff will implement and enforce this administrative regulation during regular work hours at their assigned work station.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation is regarding fees and does provide for the fees for continuing education and documentation for various services

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation directly establishes two new fees.

(9) TIERING: Is tiering applied? Tiering is applied in the case of continuing education in that if a sponsor has 4 or less training submissions in a convention or conference setting the fee is $150 per training. Four or more trainings in a convention or conference setting will cap at $600 for the same convention or conference setting.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State Government, Kentucky Board of Embalmers and Funeral Directors 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 316.210 (1), KRS 316.316.125(2)(a), 316.130(2), (4), and (5), 316.132, 316.140(2) authorize the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? In 2016, 353 continuing education programs were submitted to the Board for review; this would generate $52,950 in additional revenue. 53 requests were made to the Board to for services as described above will generate an additional $1,325. There were 48 Level II registration requests made in the first 5 months of 2017 at if this regulation were in effect it would have generated approximately $3,000 and $4,800.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? In subsequent years, this administrative regulation will continue to generate over $50,000 for continuing education programs each even year as each program is approved until the even year renewal period following the approval. In 2015, 156 continuing education programs were submitted; if 156 continuing education programs are submitted in subsequent odd years; this fee would generate $23,400. In 2016, 434 continuing education programs were submitted; in even years 434 separate programs would generate $65,100. The Level II registration requests would generate between $9,000 and $14,000 in subsequent years.

(c) How much will it cost to administer this program for the first year? This program will not have additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This program will not have additional costs in subsequent years.

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

Revenues (+/-): $60,000 to $120,000

Expenditures (+/-): Staff time during regular office hours; $15 in mailing and material

Other Explanation: The projected amounts do not take into account those continuing education programs that are included as part of a convention or conference setting which would cap at $600.

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:050. Apprenticeship and supervision requirements.

RELATES TO: KRS 316.030

STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS 316.010 to 316.990. KRS 316.030(3)(e) and (4)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director. KRS 316.030(8) requires an applicant to file sworn statements semiannually during the apprenticeship. This administrative regulation establishes the requirements for apprentices and their supervisors, the time for filing the sworn statements, and the additional information required in the sworn statements.

Section 1. Definitions. (1) "Direct Supervision" means that a Kentucky-licensed funeral director or a Kentucky-licensed embalmer, as appropriate, is:

(a) Physically present with the apprentice, and:

(b) Personally observing the guiding the activities of the apprentice.

(2) "Supervisor" means the supervisor of record.

(3) "Supervisor's designee" means a Kentucky-licensed funeral director or Kentucky-licensed embalmer, as appropriate, who has been approved by the supervisor of record to supervise an apprentice.

Section 2. Apprenticeship Registration. Prior to beginning an apprenticeship an applicant shall:

(1) File an Apprenticeship Registration Form with the board which includes the sworn statement required by KRS 316.030(6)(c);

(2) Pay the registration fee established in KRS 316.030(6)(b); and

(3) Appear before the board with the supervisor at the time and place identified by the board.

Section 3. Supervisor. (1) An apprenticeship shall be served under the board-approved supervisor identified on the Apprenticeship Registration Form as the supervisor of record.

(2) Apprenticeships for both embalming and for funeral directing may be served concurrently under:

(a) A single individual acting as the supervisor of record who holds both a funeral director's license and an embalmer's license and;

(b) Two (2) individual licensees acting as the supervisor of record who holds both a funeral director's license and an embalmer's license; or

(3) Licensed embalmers and licensed funeral directors who

seek approval from the board as a supervisor of record shall:

(a) Embalm or direct funeral at the establishment where the apprentice is registered or at another funeral establishment which is identified to the board;

(b) Appear before the board for approval with the apprentice; and

(c) Be responsible for ensuring that the apprentice complies with the KRS 316.010 or 316.990 and the administrative regulations of the board.

(4) The board may withdraw approval of a supervisor based upon evidence of the inability to supervise an apprentice properly or a violation of the statues and administrative regulations governing funeral directing and embalming.

(5) Apprentices may receive supervision by licensees other than the supervisor of record.

(a) Registered embalmer apprentices may be supervised by other licensed embalmers approved by the supervisor of record.

(b) Registered apprentice funeral directors may be supervised by other licensed funeral directors approved by the supervisor of record.

(c) Supervisors of record that approve other licensees to provide supervision for an apprentice shall remain responsible for the actions of the apprentice and for the quality of the delegated supervision.

Section 4. Supervision of Apprentices. (1) Supervision of embalmer apprentices.

(a) For the first twenty-five (25) cases with which an embalmer apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall be present with the apprentice and provide direct supervision of all apprentice's embalming activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform embalming services if the supervisor or the supervisor's designee is available for the consultation and supervision, in accordance with KRS 316.010(9) and 316.030(3)(e), for the duration of the apprenticeship.

(c) The supervisor shall pay the established fee and notify the board in writing that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to embalm without direct supervision. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(9) and 316.030(3)(e), for the duration of the apprentice.

(2) Supervision of funeral director apprentices.

(a) For the first twenty-five (25) cases with which a funeral director apprentice assists and throughout the first six (6) months of training, the supervisor or[~~of~~] the supervisor's designee shall provide director supervision during all of an apprentice's funeral directing activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform funeral directing services if the supervisor or the supervisor's designee is available for consultation and supervision, in accordance with KRS 316.010(9), with regard to the activities of the apprentice.

(c) The supervisor shall pay a fee and notify the board in writing that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to practice funeral directing without direct supervision. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(9) and 316.030(4)(d), for the duration of the apprenticeship.

(3) Removals.

(a) The supervisor or the supervisor's designee shall be present and provide direct supervision during the removal of bodies for the first six (6) months of the apprenticeship and the first twenty-five (25) removals assisted in by the apprentice.

(b) After an apprentice has served six (6) months of apprenticeship and assisted with twenty-five (25) removals, an apprentice may make removals without the direct supervision of the supervisor or the supervisor's designee if the supervisor has determined that the apprentice is competent to perform removals without direct supervision.

(c) The supervisor shall notify the board in writing that the apprentice has completed the required twenty-five (25) removals and that the supervisor's approval has been given for the apprentice to make removals without direct supervision before the apprentice can begin making these removals.

(4) The apprentice shall maintain a work schedule documenting the forty (40) hours per week that he has worked at the location of the apprenticeship. The work schedule shall identify:

(a) The daily work schedule of the apprentice, including beginning and ending times; and

(b) The days on which the apprentice does not work.

(5) Nothing in this administrative regulation shall limit the amount of time which an apprentice may work at the funeral establishment.

(6) The supervisor shall instruct an apprentice and ensure that an apprentice receives experience in all aspects of funeral directing or embalming, as applicable to the individual's apprenticeship.

(a) The instruction shall include:

1. The laws relating to the profession, including KRS 316.010 to 316.990 and the administrative regulations promulgated by the board; and

2. The theory and application of funeral directing or embalming.

(b) The training and work assignments for apprentice embalmers shall cover the following service items:

1. Initial call details;
2. Removals;
3. Embalming;
4. Restorative art treatment;
5. Posing body and features;
6. Bathing and cosmetizing of bodies;
7. Dressing and casketing of bodies;
8. Recordkeeping;
9. Purchasing of necessary supplies;
10. Preparation of autopsied bodies;
11. Care and maintenance of equipment and embalming room; and
12. Professional responsibility.

(c) The training and work assignments for apprentice funeral directors shall cover the following service items:

1. Initial call details;
2. Removals;
3. Counseling of families on the types of services and merchandise available;
4. Arrangements of funeral services and merchandise;
5. Preparing death certificates and documents;
6. Preparing applications for certain death benefits, such as Social Security, Veterans Administration, insurance companies and lodges;
7. Preparing newspaper notices;
8. Conducting visitations or memorial services;
9. Directing funerals and graveside services;
10. Follow-up service to the family after the funeral service has been completed;
11. Recordkeeping;
12. Purchasing of necessary supplies;
13. Caring for equipment and premises; and
14. Professional responsibility.

Section 5. Terminating and Reestablishing an Apprentice-ship. (1) The licensed funeral director or licensed embalmer who is the apprentice's supervisor of record shall:

(a) Notify the board in writing of the termination of the apprentice funeral director or embalmer within five (5) days of the termination of the apprentice funeral director or embalmer; and

(b) Identify the name of the apprentice and the date on which the apprenticeship was terminated.

(2) An apprentice funeral director or embalmer shall, within five (5) days of the termination of the person's apprenticeship with a funeral director or an embalmer:

(a) Notify the board in writing that the person is no longer working as an apprentice funeral director or embalmer; and

(b) Identify the date on which the apprenticeship ceased.

(3) An apprentice funeral director or embalmer whose apprenticeship is terminated at the establishment originally identified to the board shall, within thirty (30) days of being employed by an-other funeral director or embalmer:

(a) Notify the board in writing of the change in employment and apprenticeship;

(b) Identify the name, street address, and license number of the funeral director or embalmer under which the apprentice is continuing the apprenticeship; and

(c) Complete a new registration as set out in Section 1 of this administrative regulation which is signed by the licensed funeral director or embalmer who is to be the apprentice's new supervisor of record.

(4) An apprentice funeral director or embalmer who is unable to perform the duties of the apprenticeship for a period of two (2) weeks or more because of health related impairments shall immediately notify the board in writing of:

(a) The date on which the apprentice became unable to perform the duties; and

(b) The date on which the apprenticeship will be recommenced.

(5) An apprenticeship shall not end later than the administration of the second examination for which the apprentice is eligible.

Section 6. Sworn Statements. (1) An apprentice shall file the sworn statements required by KRS 316.030(8) on or before May 1 and November 1 of each year relating to the six (6) month period ending with the preceding middle of April or middle of October, respectively.

(2) The sworn statements by the apprentice serving an apprenticeship shall include the following information:

(a) The names and dates of funerals in which the apprentice for a funeral director's license assisted in managing during each six (6) month period;

(b) The names and dates of embalming cases in which the apprentice for an embalmer's license assisted during each six (6) month period; and

(c) The names of the service items set forth in Section 3(6) of this administrative regulation specifically identified for each case in which the apprentice assisted during each six (6) month period.

(3) With the initial sworn statement, an apprentice shall file a report written by the applicant summarizing the requirements of KRS 316.010 to 316.990 and the administrative regulations promulgated pursuant to KRS 316.010 to 316.990.

(4) With subsequent sworn statements, an apprentice shall file a report written by the applicant on an article or a book related to embalming or funeral directing read by the applicant during the six (6) month period.

(5)(a) The supervisor of record shall sign the sworn statements and certify that the apprentice has completed the cases and service items identified in the statement.

(b) If the apprentice has received supervision from licensed funeral directors or embalmers other than the supervisor identified on the application for apprenticeship, the supervisor of record shall still be responsible for:

1. The activities of the apprentice;

2. Signing the sworn statement; and

3. The certification of completion of cases and service items identified in the statement.

(6) Before the activities of the apprentice can count towards the requirements of KRS 316.030(3)(f) or (4)(e), the case shall include the following service items:

(a) For an embalming case, the apprentice shall have participated in the service items listed in Section 3(6)(b)3 through 7 of this administrative regulation; and

(b) For a funeral directing case, the apprentice shall have participated in the service items listed in Section 3(6)(c)3 through 9 of this administrative regulation.

Section 7. Incorporation by Reference. (1) "Apprenticeship Registration Form" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222[~~7025 W. Hwy 22, Suite 7, Crest-wood, Kentucky 40014~~], Monday through Friday, 8 a.m. to 4:30 p.m.

KANETHA DORSEY, Executive Director

APPROVED BY AGENCY: June 13, 2017

FILED WITH LRC: June 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2017, at 10:00 a.m., EST at 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kanetha Dorsey, Executive Director, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, phone 502-426-4589 ext. 2301, fax 502-426-4117, email Kanetha.dorsey@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kanetha Dorsey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for apprentices and their supervisors, the time for filing the sworn statements, and the additional information required in the sworn statements.

(b) The necessity of this administrative regulation: This administrative regulation establishes the requirements for apprentices and their supervisors, the time for filing the sworn statements, and the additional information required in the sworn statements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for apprentices and their supervisors, the time for filing the sworn statements, and the additional information required in the sworn statements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for apprentices and their supervisors, the time for filing the sworn statements, and the additional information required in the sworn statements.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment clarifies the process for Level II apprenticeship registration requests

(b) The necessity of the amendment to this administrative regulation: A fee is required for the Level II registration; this amendment includes wording to support the fee structure

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for apprentices and their supervisors, Level II program is available according to this regulation, the new wording clarifies the fee portion of the regulation

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies wording to support the fee structure.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This will affect funeral establishments that have apprentices wishing and able to apply for the Level II program. This applies to all 516 active establishments and all future establishments as they seek to hire and train apprentices.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will have to pay a fee to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost applicants at least $50 and no more than $100 to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to apply for the Level II program which allows apprentices to work independently as long as they have met the requirements for the program and their supervisor is available should the Level II apprentice require assistance.

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

(a) Initially: There will be no initial cost.

(b) On a continuing basis: There will be no cost on an ongoing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The required fee will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation amendment supports the fee for Level II apprentice registration.

(9) TIERING: Is tiering applied? Tiering is applied in this regulation. Apprenticeships can either be for funeral director only, embalmer only, or both funeral director and embalmer. The fees associated are per registration.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Embalmers and Funeral Directors 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 316.030 and 316.210(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. This administrative regulation contains wording that supports a fee for Level II registration which will increase the revenues for the Kentucky Board of Embalmers and Funeral Directors.

(a) How much 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 were roughly 100 apprentices that applied for the Level II apprenticeship program. If 50% of the apprenticeships are for dual licensure, the fee would generate $7,500 for the Kentucky Board of Embalmers and Funeral Directors, which is self-funded.

(b) How 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 will continue to generate roughly $7,500 in subsequent years.

(c) How much will it cost to administer this program for the first year? This will not have additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This will not have additional costs in subsequent years.

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

Revenues (+/-): $7,500

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Embalmers and Funeral Directors
(Amendment)

201 KAR 15:110. Funeral establishment criteria.

RELATES TO: KRS 316.010, 316.030, 316.125, 316.127, 16 C.F.R. 453 2(b)(2)-(5), 29 U.S.C. 651

STATUTORY AUTHORITY: KRS 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(1) requires a license from the board for operation of a funeral establishment. KRS 316.210(1) authorizes the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. This administrative regulation establishes the minimum requirements for the licensing and operation of a funeral establishment.

Section 1. Definitions (1) "Chapel" means an area where a family and the public may pay their respects to a deceased human being, or an area where funerals or memorial services can be held which is separate and distinct from the preparation room.

(2) "Preparation room" means an area with a minimum of 100 square feet, which is used exclusively to prepare dead human bodies for final disposition if arterial or cavity injection is a function of the establishment, and which is separate and distinct from the viewing area, chapel, or any other part of the establishment.

(3) "Viewing area" means an area in which a family and public may pay their respects to a deceased human being.

Section 2. General Requirements. (1) The interior and exterior of the establishment shall be kept free and clean of litter, dirt, debris, and clutter or other objects or conditions which present a potential or actual hazard to the health, safety, or welfare of the public and the funeral establishment's employees.

(2) A person shall not be permitted to be in a preparation room during the course of embalming a dead human body except employees of the establishment in which the human body is being embalmed, registered apprentices, members of the family of the deceased, or authorized representatives of the deceased, or any other individual allowed by law.

(3) An establishment shall maintain the following documents, if applicable:

(a) Board approved embalming reports which set out the name of each body embalmed, the date of death, the date and time that the embalming took place, the name and signature of the embalmer, and the embalmer's license number;

(b) Proper documentation of the authorization to embalm, and the embalming reports shall be maintained for a minimum of three (3) years; and

(c) Accurate and current copies of the casket price list, the outer burial container price list, the general price list, and the statement of funeral good and services selected as required by the Federal Trade Commission in 16 C.F.R., 453.2(b)(2) through (5), as maintained in the general practice of the establishment.

(4) A license for establishment shall not be granted for establishments located in any public office building, strip mall, public storage, mini-storage, mini-warehouse, multiunit storage complex, or similar facility used by the general public for the

storage of goods.

(5) The building in which an establishment is located shall be in conformity with the requirements of the applicable state and local statutes, administrative regulations, ordinances, and zoning provisions.

(6)(a) Each establishment shall display a sign which identifies the name of the establishment.

(b) The sign shall be in a location that is visible from an adjacent public road.

(7) An establishment shall have adequate rest room facilities for members of the public if there will be public funeral services or visitation or ceremonial services conducted in the establishment.

Section 3. Visitation and Ceremonial Funeral Service Establishment. (1) All new Visitation and Ceremonial Funeral Service Establishments that provide visitation and ceremonial funeral services shall have facilities which meet the following requirements:

(a) The establishment shall have a viewing area or chapel which shall be at least 400 square feet in size; and

(b) The establishment shall have the applicable equipment necessary for conducting and arranging funeral services, including:

1. Tables or desks and chairs for arrangement conferences;
2. Seating for the viewing room;
3. Casket bier;
4. Register book stand;
5. Officiant stand;
6. Flower display stands; and
7. Organ, piano, music-producing equipment, or any suitable combination of these items.

(2) Existing visitation and ceremonial funeral establishments that are subject to the "grandfather clause" of KRS 316.127 shall have until July 31, 2007 to meet the requirements in subsection (1) of this section.

Section 4. Embalming Service Establishment. (1) An establishment that provides embalming services shall have facilities and a preparation room which comply with the requirements of the Occupational Safety and Health Act, 29 U.S.C. 651 and shall also require:

(a) At least one (1) approved embalming table and all professional instruments necessary for embalming and the preparation of dead human bodies; and

(b) That a preparation room shall not be used as a storage area other than for supplies pertaining to the embalming and preparation of dead human bodies.

(2) Human remains shall not be prepared for disposition except by a licensed embalmer or a Level 2 apprentice, in accordance with the provision of KRS 316.030, in a preparation room which meets the requirements of this administrative regulation.

(3) All windows and doors shall be constructed or screened to prevent persons from looking into the preparation room.

(4) Each preparation room entrance shall be lockable and shall display a sign indicating private or restricted entry.

(5) Licensed embalmers may perform removals and transport dead bodies.

Section 5. Full Service Establishments. (1) In addition to the regulatory requirements set forth in Section 3 and 4 of this administrative regulation, a new full service funeral establishment shall meet the following additional requirements:

(a) The establishment shall have an area available to the public devoted to the display of funeral merchandise. Caskets or casket sections may be viewed by sample, computer, catalog, or other display that corresponds to the current general price list for the funeral establishment; and

(b) In addition to the viewing area or chapel, the establishment shall have a separate room or office for arranging funerals. This room may be used to satisfy the requirements of paragraph (a) of this subsection.

(2) Existing full service funeral establishments that are subject to the "grandfather clause" of KRS 316.127 shall have until July 31, 2007 to meet the requirements established in subsection (1) of this section.

Section 6. Inspections. (1) Each establishment shall be subject to inspection at the convenience of the board inspector.

(2) The inspector shall inspect the establishment to see if it has suitable and dignified quarters appropriate for the category of services for which it is licensed.

(3) An establishment that provides embalming services shall have completed and signed embalming reports available for inspection.

(4) The following forms shall be available for inspection, with a copy available for the inspector's records:

(a) A current general price list of charges for service to the public;

(b) A current price list of caskets as charged to the public; and

(c) A current price list of outer burial containers as charged to the public.

Section 7. Establishment Supervisor. (1) Each facility establishment shall have a Kentucky-licensed funeral director and a Kentucky-licensed embalmer or an individual licensee as required by KRS 316.125(b)(4) to manage and supervise the facility.

(2) The establishment shall notify the board of a change of the funeral director or the embalmer supervisor in the form of an affidavit signed by the licensed owner and the new supervisor within five (5) working days of the change.

(3) A supervisor who leave the employment of an establishment shall notify the board within five (5) working days.

Section 8. Transferability. (1) Establishment licenses shall not be transferable.

(2) If a sale, lease, relocation, or name change occurs:

(a) The existing establishment license may remain in force by mutual consent of the parties for a period of thirty (30) days or until the next regularly scheduled board meeting, whichever comes first.

(b) During the transition period, the establishment shall be operated under the name shown on the existing license until a new license is issued.

(c) An application for a new license shall be submitted for review at the next board meeting following the sale, lease, relocation, or name change.

(3)(a) Following the death of a Kentucky-licensed owner, funeral director, or embalmer, the establishment may operate for ninety (90) days while under temporary supervision by a licensed funeral director or embalmer. A licensee who is already identified as the supervisor for another establishment under KRS 316.125(4) may act as the temporary supervisor for the establishment under this section for the limited ninety (90) day period.

(b) The temporary supervisor shall be identified to the board in writing within fifteen (15) days of the death of the Kentucky-licensed owner, funeral director, or embalmer.

(c) A licensee may be the temporary supervisor for only one (1) establishment at a time.

Section 9. Opening of an Establishment. (1) An establishment shall not operate or be opened for business prior to the issuance of an establishment license by the board for that establishment.

(2) Violation of this section shall be grounds for denial of the application for the license by the board.

Section 10. Advertising and Signage. (1) An establishment shall use the exact name listed on the license for the establishment in all advertisements and signage.

(2) Descriptive terms shall be distinctly separated from the name of the establishment in all signage and advertisements unless registered as part of the official name.

(2) Any advertising, designation, or signage for the funeral establishment shall match the classification on the establishments license.

Section 11. Publication of Obituary. A licensed establishment which conducts a funeral service and agrees to draft and arrange

the publication of an obituary, shall list the name of the licensed funeral director who arranges and conducts the service as well as the name and address of the establishment that the funeral director is practicing through.

Section 12. Incorporation by Reference. (1) "Establishment Application", 2017["~~Application for Funeral Establishment", 2006~~] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222[~~8412 Westport Rd, Louisville Kentucky 40242-7052~~], Monday through Friday, 8 a.m. to 4:30 p.m.

KANETHA DORSEY, Executive Director

APPROVED BY AGENCY: June 13, 2017

FILED WITH LRC: June 13, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2017, at 12:00 EST at 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kanetha Dorsey, Executive Director, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, phone 502-426-4589 ext. 2301, fax 502-426-4117, email Kanetha.dorsey@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kanetha Dorsey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for funeral service establishments in the state of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation establishes the requirements for funeral establishments in the state of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for funeral establishments in the state of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for funeral establishments in the state of Kentucky.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments 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: New Establishments and those wishing to make changes to establishments will have to fill out a new form to provide for updated information now necessary for modernized business practices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No fees are changed

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): New Establishments and those wishing to make changes to establishments will have to fill out a new form to provide for updated information now necessary for modernized business practices.

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

(a) Initially: There will be no initial cost.

(b) On a continuing basis: There will be no cost on an ongoing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The required fee will be used for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? There are three establishment types available: full service, visitation & ceremonial, and embalming service establishments. Embalming Service establishments providing embalming services only remove and transport dead human bodies and embalms and prepares dead human bodies according to identified regulations. Visitation & Ceremonial establishments shall have a viewing area or chapel and appropriate equipment for visitation and ceremonies. Full Service establishments provide the same services as both the embalming service establishment and visitation and shall also have a display area for caskets or casket sections and a funeral arrangement area. All establishment types require the same fee.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Embalmers and Funeral Directors 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 316.030 and 316.210(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? No fees are changed

(b) How 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 fees are changed.

(c) How much will it cost to administer this program for the first year? This will not have additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This will not have additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Material Incorporated by Reference change only.

GENERAL GOVERNMENT CABINET
Board of Licensure for Occupational Therapy
(Amendment)

201 KAR 28:200. Continuing competence.

RELATES TO: KRS 210.366, 319A.070(3)(d), 319A.160
STATUTORY AUTHORITY: KRS 319A.070(3)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.070 (3) authorizes the board to promulgate administrative regulations and to establish the requirements for continuing competence. This administrative regulation[~~establishes~~] sets forth the requirements for licensees to demonstrate continuing competence.

Section 1. Definitions. (1) "CCU" means continuing competence unit.
(2) "Contact hour" means sixty (60) minutes engaged in a learning activity, excluding meal, breaks, and registration.
(3) "Continuance competence unit" means an assigned unit of measure for each continuing competence activity for which the values are given in Section 3 of this administrative regulation.
(4) "Continuing competence" means a dynamic, multidimensional process to develop and maintain the knowledge, skills, inter personal abilities, and critical and ethical reasoning necessary to perform occupational therapy professional responsibilities. Continuing competence activity for which the values are given in Section (5) of this administrative regulation.
(5) "Training program in suicide assessment, treatment, and management" means six (6) or more hours of continuing education pre-approved by the board that contains educational objectives set forth in[~~is defined by~~] KRS 210.366[~~(1)(b)~~].

Section 2. Continuing Competence Requirements. (1) A licensee applying for license renewal shall complete a minimum of twelve (12) CCUs of qualified activities for maintaining continuing competence during the preceding annual renewal period.
(2) A licensee who is issued a license for a period less than twelve (12) months shall prorate the number of CCUs to one (1) CCU for each month licensed.
(3) An applicant for reinstatement or licensure who was previously licensed by the board and whose license has been put on inactive status, revoked, or expired for three (3) years or less from the time the application is filed shall obtain twelve (12) CCUs of qualified activities for maintaining continuing competence for each year in which the license has been in the status prior to receiving the license.
(4) An applicant for licensure who was previously licensed by the board and whose license has lapsed for more than three (3) years shall obtain thirty-six (36) CCUs of qualified activities for maintaining continuing competence.
(5) At least once every six (6) years from date of initial license issue or from date of last completed suicide training program, each licensee shall complete a training program in suicide assessment, treatment, and management that is pre-approved by the board.[~~(c) A training program in suicide assessment, treatment, and management shall total six (6) hours of CCU and be approved by the board.~~]

Section 3. Qualified Activities for Maintaining Continuing Competence. The following activities qualify for the continuing competence requirements of this administrative regulation:
(1) Continuing education courses.
(a) A licensee may earn one (1) CCU for each contact hour in continuing education courses including workshops, seminars, conferences, electronic courses, or self-study courses.
(b) Documentation for this activity shall include a certificate of completion or similar documentation including:
1. Name of course, date, and the author or instructor;
2. Name of sponsoring organization and the location of the course; and
3. The number of contact hours attended.
(c) A training program in suicide assessment, treatment, and management shall meet the requirements established in Section 2(5) of this administrative regulation[~~total six (6) hours of CCU and be approved by the board~~].
(2) Employer provided in-service training.
(a) A licensee may earn one (1) CCU for each contact hour of in-service training provided to the licensee by the licensee's employer.
(b) No more than six (6) CCUs of employer-provided training may be counted towards the total number of required CCUs. If an employer hosts continuing education courses open to practitioners outside of the organization, these courses shall fall under subsection (1) of this section.
(c) Training that deals with issues completely unrelated to the practice of occupational therapy that are required for employment compliance standards shall not be counted toward the continuing competence requirements.
(d) Documentation for this activity shall include a certificate of completion or similar documentation including:
1. Name of course, date, and the instructor;
2. Name of providing organization and the location of the course; and
3. The number of contact hours attended.
(e) In-service training is structured training that is offered to an employee and that is intended to maintain or enhance the employee's job performance or to meet requirements that are imposed on the employer by a credentialing body.
(3) Academic coursework.
(a) Participation in on-site or distance learning academic courses from a university, college, or vocational technical adult education course related to the practice of occupational therapy shall be counted towards the requirements of this administrative regulation.
(b) A licensee may earn six (6) CCUs per credit hour.
(c) Documentation for this activity shall include:
1. An official transcript indicating successful completion of the course and the date on which the course was taken; and
2. A description of the course from the school catalogue or course syllabus.
(4) Independent study.
(a) Independent study may include[~~includes~~] reading books, journal articles, reviewing videos, and activities of a similar nature.
(b) A licensee may earn one (1) CCU for one (1) contact hour spent in an independent study activity.
(c) Documentation for this activity shall include:
1. Title, author, and publisher of the material;
2. The time spent on the material;
3. The date of completion; and
4. A statement that describes how the activity relates to a licensee's current or anticipated roles and responsibilities.
(d) No more than six (6) CCUs from this category shall be counted toward the total.
(5) Mentorship.
(a) Credit may be earned by each participant in a formalized mentorship agreement defined by a signed contract between the mentor and mentee that outlines specific goals and objectives and designates the plan of activities for the participants.
(b) A licensee may earn one (1) CCU for five (5) contact hours spent in activities directly related to achievement of goals and objectives under a mentorship agreement.
(c) Documentation for this activity shall include:
1. The name of mentor and mentee;
2. A copy of a signed agreement;
3. The dates, hours spent and focus of mentorship activities; and
4. A statement outlining the outcomes of mentorship agreement.
(6) Fieldwork supervision.
(a) Credit may be earned by participation as the primary clinical fieldwork educator for an OT or OTA fieldwork student.
(b) A licensee may earn one (1) CCU per forty (40) hours of supervision for each fieldwork student supervised.
(c) Documentation shall include:
1. A written verification from the school to the fieldwork

educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form.

2. Evaluation scores and comments that are deleted or blocked out.

(7) Professional writing.

(a) Credit may be earned by the publication of a book, chapter, or article.

(b) A licensee may earn:

1. Twelve (12) CCUs as an author of a book;

2. Six (6) CCUs as an editor of a book;

3. Six (6) CCUs as author of a chapter;

4. Four (4) CCUs as author of a peer reviewed article;

5. Two (2) CCUs as author of a nonpeer reviewed article;

(c) Documentation for this activity shall consist of full reference for publication including, title, author, editor, and date of publication; or copy of acceptance letter if not yet published.

(8) Professional presentations and instruction.

(a) Credit may be earned by the presentation of academic guest lectures, state or national workshops or conferences, and employer-provided in-service training for OT/Ls or OTA/Ls.

(b) A licensee may earn two (2) CCUs for each hour of credit that is awarded for an activity.

(c) Documentation for this activity shall include a copy of official program, schedule, or syllabus including presentation title, date, hours of presentation, and type of audience or verification of that signed by the sponsor.

(9) Research.

(a) Credit may be earned for the development of or participation in extensive scholarly research activities or extensive outcome studies.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent working on a research project.

(c) Documentation for this activity shall include verification from the primary investigator indicating the name of research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project.

(10) Grants.

(a) Credit may be earned for the development of a grant proposal.

(b) A licensee may earn one (1) CCU for one (1) contact hour spent working on a grant proposal.

(c) Documentation for this activity shall include name of grant proposal, name of grant source, purpose and objectives of the project, and verification from the grant author regarding licensee's role in the development of the grant if not the author.

(11) Professional meetings and activities.

(a) Participation in board or committee work with agencies or organizations in professionally related areas to promote and enhance the practice of occupational therapy may be counted toward the requirements of this administrative regulation.

(b) A licensee may earn one (1) CCU for five (5) contact hours on a committee or board.

(c) Documentation for this activity shall include:

1. The name of the committee or board, name of the agency or organization, purpose of service, and description of licensee's role; and

2. The participation shall be validated by an officer or representative of the organization or committee.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

(12) Specialty certifications.

(a) The board shall recognize completion of activities that result in an advanced competence credential or specialty certification earned or recertified during the current renewal period.

(b) A licensee may earn up to twelve (12) CCUs for each advanced competence recognition or specialty certification credential earned or recertified during a renewal period.

(c) Documentation for this activity shall include a certificate of completion that identifies satisfactory completion of requirements for obtaining advanced competence recognition or specialty certification.

(13) Continuing competence plan.

(a) A licensee may earn two (2) CCUs for completion of activities related to the development and implementation of a continuing competence plan for professional development.

(b) Documentation for this activity shall include a signed document by the licensee attesting to the fact that he or she has used a formal assessment process which included the establishment of professional development goals and objectives and a portfolio approach to organize and document continuing competence activities related to the licensee's plan.

(14) Volunteer services.

(a) Credit may be earned by participation in volunteer services performed for organizations, populations, or individuals if the services maintain or enhance the licensee's competence in professional skills in the practice of occupational therapy.

(b) A licensee may earn one (1) CCU for each five (5) contact hours.

(c) Documentation for this activity shall include verification letter from organizations and report of outcomes of services provided.

(d) No more than six (6) CCUs from this category shall be counted toward the total.

Section 4. Approval of Courses for Continuing Education Credit under Section 3(1) of this administrative regulation. (1) A continuing education course shall be current in subject matter and relevant to the practice of occupational therapy.

(2) A continuing education course under Section 3(1) of this administrative regulation shall qualify for credit under this administrative regulation if it is approved by one of the following methods:

(a) The board shall approve a course or provider of a course that is administered or approved by:

1. A recognized national, state, or local occupational therapy association;

2. An accredited health care organization or facility; or

3. An accredited college or university.

(b) A continuing education course provider who does not come within the provisions of paragraph (a) of this subsection shall submit the following information to the board using the Application for Continuing Education Program Approval (Course Providers), at least ninety (90) days prior to the presentation of the course:

1. A thorough course description;

2. A statement of the projected learning outcomes;

3. A statement of the target audience;

4. The content focus of the course;

5. A detailed agenda for the activity;

6. A statement of the number of contact hours requested;

7. A listing of the presenters and their qualifications; and

8. A sample of the certificate of completion awarded to successful attendees.

(c) A licensee who does not come within the provisions of paragraph (a) or (b) of this subsection shall submit the following information to the board using the Application for Continuing Education Program Approval (Course Providers):

1. A thorough course description;

2. A statement of the achieved learning outcomes;

3. The content focus of the course;

4. A detailed agenda for the activity;

5. A statement of the number of contact hours requested;

6. A listing of the presenters and their qualifications; and

7. A sample of the certificate of completion awarded to successful attendees.

Section 5. Waiver of Requirements. Under extenuating circumstances, the board may waive all or part of the continuing competence activity requirements of this administrative regulation if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the board of an illness, injury, family hardship, active military service, or other similar extenuating circumstance which precluded the individual's completion of the requirements on a case-by-case basis.

Section 6. Documentation and Reporting Procedures. (1) A licensee shall maintain the required proof of completion for each

continuing competence activity as specified in this administrative regulation.

(2) The required documentation shall be retained by the licensee for a minimum of one (1) year following the last day of the license renewal period for which the continuing competence activities were earned.

(3) A licensee shall not send his or her continuing competence activity documentation to the board unless audited under Section 7 of this administrative regulation or otherwise requested by the board.

Section 7. Audit of Continuing Competence Activities. (1) The board shall perform a random audit of up to ten (10) percent of all licensees who shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period.

(2) A licensee who is audited shall respond to the audit within sixty (60) days of the date of the request.

(3) A licensee who fails to comply with the continuing competence activity requirements of this administrative regulation may be subject to disciplinary action that may include suspension or revocation of license.

Section 8. Other Provisions. (1) A licensee may not carry over continuing competence activity CCUs from one (1) licensure period to the next.

(2) A licensee may not receive credit for completing the same continuing competence activity more than once.

Section 9. Incorporation by Reference. (1) "Application for Continuing Education Program Approval (Course Providers)", September 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

RHONDA EDWARDS, COTA/L, Board Chair

APPROVED BY AGENCY: June 13, 2017

FILED WITH LRC: June 15, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2017 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Megan Woodson, Board Administrator, Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-782-8807, fax 502-696-3853, email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Megan Woodson; and Rhonda Edwards, phone 270-202-1701, email Rhonda.Edwards@ky.gov.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensees to demonstrate continuing competence.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth procedures for compliance with KRS 319A.160 and 210.366.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.160(2) for the board to set a required number of continuing education units for license renewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the procedures and guidelines for continuing competence units. Additionally, it sets forth the requirements for suicide training programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the regulation by clarifying continuing competence units provided through employer in-services and it outlines the procedures for suicide prevention training requisites based upon new statue requirements of KRS 210.336.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include the new suicide prevention training programs and to clarify continuing competence units obtained through employer in-services.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute KRS 319A.160(2) and 210.366 by defining procedures for obtaining suicide training education and outlining the procedures for obtaining continuing competence units.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by clarifying the process of obtaining continuing competence units and the requirements related to suicide prevention training programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all licensees regulated by KRS 319A.

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

(a) List 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 change requires licensees to obtain continuing education pertaining to suicide prevention training every six years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): the cost of 6 hours of CE every six years which annualizes out to no more than $20 per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. All practitioners will obtain evidence based training on the best methods for preventing suicide which can assist licensees in more effective interventions for clients.

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

(a) Initially: No additional costs are necessary to implement the changes made by this amendment.

(b) On a continuing basis: No additional costs are necessary to implement the changes made by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A and set forth in 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: No increase in fees or funding will be necessary to implement this amended administrative regulation.

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

(9) TIERING: Is tiering applied? No tiering is applied for all licensees will be held to the same standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Occupational Therapy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.070 (3)(a)KRS 319A.070(3)(d), 319A.160;

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board of Registration for Professional Geologists
(Amendment)

201 KAR 31:010. Fees.

RELATES TO: KRS 322A.050, 322A.060, 322A.070

STATUTORY AUTHORITY: KRS 322A.030(5), 322A.050, 322A.060(1), 322A.070(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322A.050 requires the board to establish the application and examination fees. KRS 322A.060 requires the board to establish renewal fees. KRS 322A.070(3) requires the board to establish the replacement fee. This administrative regulation establishes[~~sets forth~~] the fees charged by the board to apply for registration or certification, sit for the examination, and renew and reinstate a registration.

Section 1. Application Fee. The application fee for registration as a professional geologist or certification as a geologist-in-training shall be non-refundable pursuant to KRS 322A.050 and shall be paid with the filing of the application. (1) The application fee for registration as a professional geologist or certification as a geologist-in-training for each application filed from January 1 to September 30 of each odd numbered year shall be fifty (50) dollars.

(2) The application fee for registration as a professional geologist or certification as a geologist-in-training for each application filed from October 1 of each odd numbered year to December 31 of each even numbered year shall be $100.

Section 2. Examination Fees. The[~~following~~] fees established in subsections (1) and (2) of this section shall be paid with the filing of the registration or certification application in connection with the licensure examinations required by the board.[:] (1) The fee for the Fundamentals of Geology (FG) portion of the examination shall be the prevailing fee charged by the National Association of State Boards of Geology for that test plus a twenty-five (25) dollar processing fee[~~$175~~] for each initial and subsequent administration.

(2) The fee for the Practice of Geology (PG) portion of the examination shall be the prevailing fee charged by the National Association of State Boards of Geology for that test plus a twenty-five (25) dollar processing fee[~~$225~~] for each initial and subsequent administration.

Section 3. Biennial Renewal Fees and Penalties. The[~~following~~] fees established in subsections (1) through (3) of this section shall be paid in connection with licensure and certification renewals and late renewal penalties.[:] (1) The biennial renewal fee for registration as a professional geologist or certification as a geologist-in-training shall be $100.[;]

(2) The late biennial renewal fee as a professional geologist or certification as a geologist-in-training, including penalty, for late renewal during the ninety (90) day grace period shall be $150.[~~; and~~]

(3) The reinstatement fee for registration as a professional geologist or certification as a geologist-in-training renewal after the end of the ninety (90) day grace period and before the registration or certification is revoked pursuant to KRS 322A.060(3) shall be $200.

Section 4. Duplicate Registration or Certification Fees. The fee for a duplicate of the original registration or certification certificate shall be ten (10) dollars.

LARRY RHODES, Chair
SHAN DUTTA, Counsel

APPROVED BY AGENCY: June 6, 2017

FILED WITH LRC: June 6, 2017 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2017, at 1:30 p.m., in the office of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify the agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of day on July 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Tammy K. Sharp, Board Administrator for the Kentucky Board of Licensure for Professional Geologists, P.O. Box 1360, Frankfort, Kentucky 40602, fax 502-696-5230, email tammyk.sharp@ky.gov, phone 502-782-8808.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Tammy K. Sharp

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation amends the examination fee structure to align with the price of the Fundamentals of Geology and Practice of Geology examinations.

(b) The necessity of this administrative regulation: This regulation is necessary to allow the board to charge the test-taker the same amount it pays for the exam, plus twenty-five dollars for processing, as the exam has increased in price since this regulation was enacted.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as it relates to the authorizing statute requiring that the board ensure an applicant has received a passing score on an examination required by the board.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation will assist by allowing the board to charge the test taker the amount it costs the board to purchase the Fundamentals of Geology and Practice of Geology examinations.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the set dollar amount for each examination to reflect the amount charged by the test maker.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow the board to charge the test taker the amount it costs the board to purchase the exams, plus a processing fee.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 322A.040(1)(c) requires an applicant for registration to obtain a passing score on an examination required by the board. This amendment helps the board further this requirement.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides the board with financial stability and ensures the amount charged by the board to a test taker accurately reflects the amount charged by the test maker.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Registration for Professional Geologist had approximately fifty-five (55) applicants sit for exams last year.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each applicant will now be required to pay the prevailing amount charged by the test maker at the time of examination plus twenty-five dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board will be able to charge the exact amount charged by the test maker when purchasing for administration, plus twenty-five dollars.

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

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation, but this amendment allows the board to receive twenty-five dollars in addition to the amount required to purchase the exam.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a twenty-five dollar fee on top of the amount required to purchase the relevant exam.

(9) TIERING: Is tiering applied? Tiering was not applied as this amendment applies to all applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Registration for Professional Geologists.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 322A.030(5), KRS 322A.050.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

201 KAR 35:080. Voluntary inactive <u>and retired</u> status.

RELATES TO: KRS 309.0813(5) and (12)

STATUTORY AUTHORITY: KRS 309.0813(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 to 309.089. This administrative regulation allows credential holders to place their credential in voluntary inactive status for a period of time if they do not intend to actively practice alcohol and drug counseling or alcohol and drug peer support services in the Commonwealth of Kentucky. KRS 309.0813(5) requires the board to promulgate a process to register with the board as a registered alcohol and drug peer support specialist, certified alcohol and drug counselor, licensed clinical alcohol and drug counselor associate, or licensed clinical alcohol and drug counselor.

Section 1. Conditions for Application for Voluntary Inactive Status. (1) Voluntary inactive status shall be for the credential holder who is currently not working as a peer support specialist or an alcohol and drug counselor, yet plans to return to providing peer support services or alcohol and drug counseling.

(2) The Kentucky Board of Alcohol and Drug Counselors shall grant inactive status if one (1) or more of the following conditions apply:

(a) Medical problems;

(b) Maternity or paternity;

(c) Education;

(d) Military service; or

(e) Family or personal issues.

Section 2. Instructions for Application for Voluntary Inactive Status. (1) A credential holder desiring inactive status shall send a letter of request to the office of the Kentucky Board of Alcohol and Drug Counselors and include the following information:

(a) Current home address and telephone number;

(b) Reason for request;

(c) Final date of employment in the alcohol and drug field;

(d) Anticipated date of return to employment in the alcohol and drug field; and

(e) Nonrefundable enrollment fee as established in 201 KAR 35:020, Section 7.

(2) The request for voluntary inactive status shall be placed on

the agenda of the next regularly-scheduled meeting of the Kentucky Board of Alcohol and Drug Counselors for consideration.

(3) The applicant shall be notified of the board's decision no later than two (2) weeks after the board's meeting.

Section 3. Terms and Responsibilities. (1) While on voluntary inactive status, an individual shall continue to receive bulletins, newsletters, and other communications from the Kentucky Board of Alcohol and Drug Counselors.

(2) A counselor on voluntary inactive status shall not practice or use the initials of a counselor such as,[~~(e.g.~~] CADC, LCADCA, or LCADC[~~)~~].

(3) A peer support specialist on voluntary inactive status shall not practice or use the initials of a registered peer support specialist such as,[~~(e.g.~~] RPSS[~~)~~].

(4) Individuals on voluntary inactive status shall not be eligible for reciprocity.

(5) Individuals on voluntary inactive status shall comply with the Kentucky Code of Ethics as established in 201 KAR 35:030.

(6) The voluntarily inactive individual shall notify the Kentucky Board of Alcohol and Drug Counselors prior to returning to work in the alcohol and drug field and pay the reactivation fee established in 201 KAR 35:020, Section 7.

(7) Failure to notify the board prior to returning to employment shall constitute a violation of the Kentucky Board of Alcohol and Drug Counselors Code of Ethics in 201 KAR 35:030, and shall result in referral to the board for investigation, in accordance with the procedures outlined in 201 KAR Chapter 35.

Section 4. Reactivation. (1) Individuals requesting reactivation of their registration, certification, or licensure status shall send a letter of request to the office of the Kentucky Board of Alcohol and Drug Counselors and shall include the following:

(a) Current home address;

(b) Current e-mail address;

(c) Description of change of circumstances allowing active participation in the field;

(d) Address of employing agency, if applicable;

(e) Submission of proof of attendance of continuing education as required by 201 KAR 35:040; and

(f) Nonrefundable reactivation fee as established in 201 KAR 35:020, Section 8(3).

(2)(a) A request for reactivation shall be considered at the next regularly scheduled meeting of the Kentucky Board of Alcohol and Drug Counselors.

(b) The applicant shall be notified within two (2) weeks of the board's decision.

Section 5. Except for an individual issued a temporary registration or certification, or a license as a clinical alcohol and drug counselor associate, retired status may be granted to a credential holder upon written request to the board.

(1) A credential holder may be granted retired status if that individual:

(a) Is at least sixty-five (65) years old, or suffers a medical disability or illness that renders the credential holder unable to practice alcohol and drug counseling; and

(b) Has retired from practice of alcohol and drug counseling in all jurisdictions and is not conducting an active practice in any jurisdiction.

(2) A credential holder who has been granted retired status shall not be required to meet the continuing education requirements under 201 KAR 35:030.

(3) The credential holder shall be relieved of the obligation to pay the renewal fee under 201 KAR 35:020.

(4) A retired credential holder shall use the designation "-R" at the end of the acronym for the appropriate credential such as, RPSS-R, CADC-R, or LCADC-R.

(5) A credential holder who retires and later seeks reinstatement shall be required to meet applicable current initial registration, certification, or licensure requirements.

GEOFFREY WILSON, Board Chairperson

APPROVED BY AGENCY: June 14, 2017

FILED WITH LRC: June 14, 2017 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 28, 2017, at 10:00 a.m. at Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on July 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kelly Wells, Board Administrator, Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8814, fax (502) 696-5898, email Kelly.Walls@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kelly Walls

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the procedure for a credential holder who voluntarily places oneself on inactive status.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish procedure for the board to be aware of the credential holders who voluntarily places oneself on inactive status.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in board having knowledge of credential holders who are not currently practicing.

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

(a) How the amendment will change this existing administrative regulation: The amendment creates a retired status for credential holders who are at least sixty-five years of age or has a medical issue that requires them to retire.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because the credential holder wants to maintain the right to represent themselves as being licensed even though not practice alcohol and drug counseling.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the establishment of fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by providing credential holders who an alternative to being on inactive status.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 467 Licensed Clinical Alcohol and Drug Counselors, three (3) Licensed Clinical Alcohol and Drug Counselor Associates, 816 Certified Alcohol and Drug Counselors, 386 Temporary Certified Alcohol and Drug Counselors, fifty-six (56) Temporary Registered Alcohol and Drug Peer Support Specialists, and one (1) Registered Alcohol and Drug Peer Support Specialist.

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

the implementation of this administrative regulation, if new, or by

the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A credential holder must notify the board prior to returning to the practice of alcohol and drug counseling or peer support.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential holders have the liberty to place oneself on inactive status and return to work when desired with approval of the board.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Alcohol and Drug Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 309.0813(1), (3).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Licensed Professional Counselors
(Amendment)

201 KAR 36:065. Licensed professional clinical counselor supervisor.

RELATES TO: KRS 335.500(4), 335.505(4), 335.525(1)(e)

STATUTORY AUTHORITY: KRS 335.515(1), (3), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.505(4) allows a student intern or trainee in professional counseling to use the title of "professional counselor intern" or "student in training" if the activities are performed under the supervision or direction of an approved supervisor and the activities are a part of a supervised program of study. KRS 335.525(1)(e) provides that an applicant for a professional clinical counselor license shall have acquired 4,000 hours of experience in the practice of counseling under approved supervision. KRS 335.515(3) requires the board to promulgate administrative regulations to implement KRS 335.500 to 335.599, relating to licensed professional counselors. This administrative regulation establishes the requirements relating to who may provide qualifying supervision.

Section 1. Supervisor Qualifications. (1) To be a supervisor of a licensed professional clinical counselor or licensed professional counselor associate, an applicant shall <u>submit a LPCC-S Application and</u>:

(a) Be licensed by the board as a licensed professional clinical counselor;

(b) Not have:

1. An unresolved citation filed against the applicant by the board that licenses or certifies that profession;

2. A suspended or probated license or certificate; or

3. An order from the board under which the applicant is licensed or certified prohibiting the applicant from providing supervision;

(c) Have been in the practice of his or her profession for at least two (2) years following licensure as a professional clinical counselor or its licensure equivalent issued by another state's regulatory professional counseling board; and

(d) Have taught or completed[~~a three (3) hour graduate level course in counseling supervision or~~] a fifteen (15) hour board-approved supervisor training course required by subsection (3) of this section.

(2) Any supervisor who is a clinical counseling supervisor as a part of a board-approved supervisory agreement or a supervisor of a graduate-level counseling student who is providing services in a mental health setting with five (5) years of experience shall be deemed to satisfy the requirement of subsection (1)(d) of this section.

(3) The board-approved supervisor training course shall:

(a) Cover:

1. Assessment, evaluation, and remediation, which includes initial, formative, and summative assessment of supervisee knowledge, skills, and self-awareness; components of evaluation, e.g. evaluation criteria and expectations, supervisory procedures, methods for monitoring (both direct and indirect observation), supervisee performance, formal and informal feedback mechanisms, and evaluation processes (both summative and formative), and processes and procedures for remediation of supervisee skills, knowledge, and personal effectiveness and self-awareness;

2. Counselor development, which includes models of supervision, learning models, stages of development and transitions in supervisee-supervisor development, knowledge and skills related to supervision intervention options, awareness of individual differences and learning styles of supervisor and supervisee, awareness and acknowledgement of cultural differences and multicultural competencies needed by supervisors, recognition of relational dynamics in the supervisory relationship, and awareness of the developmental process of the supervisory relationship itself;

3. Management and administration, which includes organizational processes and procedures for recordkeeping, reporting, monitoring of supervisee's cases, collaboration, research and evaluation; agency or institutional policies and procedures for handling emergencies, case assignment and case management, roles and responsibilities of supervisors and supervisees, and expectations of supervisory process within the institution or agency; institutional processes for managing multiple roles of supervisors, and summative and formative evaluation processes; and

4. Professional responsibilities, which includes ethical and legal issues in supervision including dual relationships, competence, due process in evaluation, informed consent, types of supervisor liability, privileged communication, and consultation; regulatory issues including Kentucky laws governing the practice of counseling and counseling supervision, professional standards and credentialing processes in counseling, reimbursement eligibility and procedures, and related institutional or agency procedures; and

(b) Be conducted by an instructor who is a licensed professional clinical counselor and who has demonstrated proficiency in the curriculum established in paragraph (a) of this subsection.

(4) Licensed professional clinical counselors engaged in training supervision shall be called a "licensed professional clinical counselor supervisor" and may use the acronym "LPCC-S".

Section 2. A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than twelve (12) persons obtaining experience for licensure at the same time.

Section 3. Incorporation by Reference. (1) "LPCC-S Application", May 2017, is incorporated by reference.

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

MARTIN C. WESLEY, Chairperson

APPROVED BY AGENCY: June 14, 2017

FILED WITH LRC: June 14, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 28, 2017, at 11:00 a.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five business days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the end of the day on July 31, 2017. Send written notification of intent to attend the public hearing or submit written comments on the proposed administrative regulation to:

CONTACT PERSON: Kayla Mann, Board Administrator, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 782-8803, fax (502) 696-5836, email kayla.mann@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kayla Mann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be a board-approved supervisor.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements to be a board-approved supervisor.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's delegated authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the requirements to be a board-approved supervisor.

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

(a) How the amendment will change this existing administrative regulation: The amendment deletes the provision that an applicant for an S-designation qualifies if the applicant has taught or completed a three (3) hour graduate level course in counseling supervision.

(b) The necessity of the amendment to this administrative regulation: Following promulgation of this regulation, the board found that several graduate level courses touched on supervision but did not fully prepare or training an applicant for supervision. The competency of supervisors are becoming an increasing issue for the board.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the board's delegated authority.

(d) How the amendment will assist in the effective administration of the statutes: The board won't have to delay the processing of an application to undertake whether a graduate level course qualified under this provision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 1534 licensed professional clinical counselors, 911 licensed professional clinical counselor associates, and currently 450 supervisors.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require supervisors or supervisees to take any action to be incompliance.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit is that a supervisor is properly trained and may designate a license with a LPCC-S to clearly designate that the individual is a board-approved supervisor.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 335.515(1), (3), and (5).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:152. Asian Carp and Scaled Rough Fish Harvest Program.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the department's Asian Carp and Scaled Rough Fish Harvest Program.

Section 1. Definitions. (1) "Asian carp" means:

(a) Bighead carp;

(b) Black carp;

(c) Grass carp; or

(d) Silver carp.

(2) "By-catch" means any fish that is not an Asian carp or scaled rough fish.

(3) "Program participant" means a commercial fisherman who is:

(a) Enrolled in the Asian carp and scaled rough fish harvest program; and

(b) Fishing in restricted water.

(4) "Restricted water" means those areas, pursuant to 301 KAR 1:140, 1:150, and 1:155, where:

(a) Commercial fishing is prohibited; or

(b) Commercial fishing with gill or trammel nets is prohibited.

(5) "Scaled rough fish" means any scaled fish that is not an Asian carp or sport fish pursuant to 301 KAR 1:060.

(6) "Whip net set" means a gill or trammel net that is set to encircle and harvest Asian carp and scaled rough fish.

Section 2. Qualifications. A commercial fisherman shall:

(1) Contact the department and request to be included in the program; and

(2) Possess a valid Kentucky commercial fishing license.

Section 3. Program Participant Requirements. A program participant shall:

(1) Call the department at 800-858-1549 prior to the requested fishing date and provide the information established in paragraphs (a) through (e) of this subsection:

(a) The participant's name;

(b) The fish buyer's name and phone number;

(c) Date requested;

(d) The location in the restricted water to be fished; and

(e) The name or location of the boat ramp that will be used;

(2) Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty-five (35) percent scaled rough fish over a one (1) month period, <u>except that a commercial fisherman whose license fee has been waived pursuant to Section 4 of this administrative regulation shall only harvest Asian carp and not retain any by-catch</u>;

(3) Only fish:

(a) On dates approved by the department; and

(b) At a location approved by the department;

(4) Immediately notify the department if the participant changes the:

(a) Fishing location in the restricted water body; or

(b) Boat ramp being used;

(5) Only use a whip net set:

(a) With a minimum bar mesh size of three and one-quarter (3.25) inches;

(b) That is always tended by a program participant when set less than three (3) feet below the surface of the water;

(c) That is not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and

(d) That is not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;

(6) Complete and submit to the department a Daily Harvest and Release Summary Card immediately after each day's fishing;

(7) Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 of this administrative regulation;

(8) Immediately release all by-catch;

(9) Report all harvest on a Monthly Report of Commercial Fish Harvest form, pursuant to the requirements of 301 KAR 1:155; and

(10) Be suspended from the program:

(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in subsection (2) of this section are not met; and

(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

Section 4. <u>Commercial Fishing License Fee Waiver. The commercial fishing license fees as established in 301 KAR 3:022 shall be waived for a commercial fisherman who only harvests Asian carp in restricted waters.</u>

<u>Section 5.</u> Department Requirements. (1) The department shall:

(a) Maintain a list of program participants and their contact information, which shall be:

1. Provided to known fish buyers; and

2. Updated at least weekly; and

(b) Review all restricted water fishing requests as established in Section 3 of this administrative regulation.

(2) The department shall approve a qualified fishing request by assigning:

(a) A fishing location and boat ramp to a program participant, except that no more than two (2) program participants shall be assigned to the same one-half (1/2) mile section of water; and

(b) The time period when fishing may occur, not to exceed a

three (3) consecutive day period.

(3) The department shall not approve a fishing request for reasons established in paragraphs (a) through (c) of this subsection:

(a) Higher than normal by-catch is likely to occur at that location and time;

(b) Two (2) program participants have already been approved for the same one-half (1/2) mile section of water at the same time; or

(c) A requested date falls on:

1. Memorial Day;

2. Labor Day;

3. July 4; or

4. A Saturday or prior to sunset on a Sunday from April 1 through September 30.

Section 6[~~5~~]. Program disqualification. (1) A program participant whose commercial fishing license becomes revoked or suspended pursuant to 301 KAR 1:155 shall be disqualified from participating in the Asian Carp and Scaled Rough Fish Harvest Program while that license is revoked or suspended.

(2) Any participant who is disqualified from participation in the program may appeal the decision in accordance with KRS Chapter 13B.

Section 7[~~6~~]. Incorporation by Reference. (1) "Daily Harvest and Release Summary Card", 2011 Edition, is incorporated by reference.

(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, Monday through Friday, 8 a.m. to 4:30 p.m.

GREGORY K. JOHNSON, Commissioner
REGINA STIVERS

For DON PARKINSON, Secretary

APPROVED BY AGENCY: May 24, 2017

FILED WITH LRC: May 26, 2017 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24 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 July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the Asian Carp and Scaled Rough Fish Harvest Program, which allows commercial harvest of Asian carp and scaled rough fish in waters currently restricted to commercial fishing.

(b) The necessity of this administrative regulation: The regulation is necessary to provide an important mechanism for the removal of invasive and exotic Asian carp from waters critical to sport fishing and recreational boating.

(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 set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the purpose of the statute by establishing a process for nuisance fish removal from waters of the Commonwealth.

(2) If 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 waives the commercial fishing license fees for those fishermen who intend to harvest Asian carp only.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide an increased incentive to resident and nonresident commercial fishermen to harvest Asian carp before the spawning season for the two-year old age class of these fishes. It is critical that an increased number of commercial fishermen assist the department in controlling these invasive exotic species in order to immediately protect Kentucky's aquatic environments.

(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: This regulation will affect potential commercial fishermen who are willing to exclusively target their efforts toward the capture and control of Asian carp. Additionally, this regulation may positively affect all anglers and recreational boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Resident and nonresident commercial fishermen who wish to have their license fees waived will have to target their efforts at removing only Asian carp. They will not be able to keep other rough fish.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishermen who wish to participate will benefit by receiving a free commercial fishing license.

(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 to the department to implement this administrative regulation.

(b) On a continuing basis: There now will be no continual cost to the Department.

(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: No increase in fees is needed to fund this program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were established for this program.

(9) TIERING: Is tiering applied? Yes. Tiering is applied to this regulation because commercial fishermen who wish to only catch Asian carp will have their license fees waived provided they do not

keep other rough fish.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Fisheries Division and Law Enforcement Division 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 set seasons, establish bag or creel limits, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 directly generate revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will not directly generate revenue for state or local government, but local economies could be positively impacted in the future through removal of Asian carp species.

(c) How much will it cost to administer this program for the first year? There will be a minimal cost to the department to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a minimal cost to the department to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 2:049. Small game and furbearer hunting and trapping on public areas.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.370, 150.399, 150.990, 150.995

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

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

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

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

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

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

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

(6) "Wildlife Management Area" or "WMA" means a tract of land:

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

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

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

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

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

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

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

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

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

(4) There shall be a free youth trapping week for seven (7) consecutive days beginning on the Saturday after Christmas, in which a youth may trap without a trapping license.

(5) A body-gripping trap used as a dry land set shall have a maximum inside jaw spread of five and one-quarter (5_1/4) inches measured:

(a) In the center of the trap; and

(b) In the unset position.

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

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

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

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

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

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

(2) Beaver Creek WMA, including private inholdings.

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

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

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

(3) Cane Creek WMA, including private inholdings.

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

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

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

(4) Cedar Creek Lake WMA.

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

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

(5) Clay WMA.

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

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

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

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

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

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

(e) Quota fox hunting field trials.

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

2. Each event shall be limited to 250 participants.

3. The area shall be closed to nonparticipants.

4. A participant shall:

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

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

(6) Curtis Gates Lloyd WMA.

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

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

(7) Dix River WMA.

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

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

(8) Fleming WMA.

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

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

(9) Green River Lake WMA.

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

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

(c) Pheasant.

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

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

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

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

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

(12) Lake Cumberland WMA.

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

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

(13) Mill Creek WMA.

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

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

(14) Miller-Welch Central Kentucky WMA.

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

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

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

2. On a Monday, Wednesday, or Friday during the remainder of the year, except:

a. If a person is hunting squirrels during an open season; or

b. If a person is participating in an authorized field trial.

(15) Mullins WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(16) Nolin Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(17) Otter Creek Outdoor Recreation Area.

(a) Except as authorized by the department, a person shall not enter the area during a deer quota hunt without a valid quota hunt confirmation number.

(b) Northern bobwhite season shall be closed.

(c) Rabbit hunting season shall be from December 1 through December 31.

(d) Trapping season shall be from January 1 through the last day in February.

(e) A person who traps on the area shall:

1. First obtain prior authorization from the area manager; and

2. Only trap in department designated areas.

(f) Except during deer quota hunts, a person shall not use the following to take furbearers:

1. A rifle;

2. Ball ammunition; or

3. Slug ammunition.

(g) A person shall not use a rimfire gun to take small game, except during a deer quota hunt.

(18) Paul Van Booven WMA. The area shall be closed to vehicle access from one (1) hour after sunset until one (1) hour before sunrise.

(19) Peabody WMA.

(a) Northern bobwhite hunting on the Sinclair Unit shall:

1. Have shooting hours between 7:30 a.m. and 3:00 p.m.; and

2. Be closed on Sunday.

(b) A northern bobwhite hunter on the Sinclair Unit shall:

1. Check in and check out at the Peabody WMA office; and

2. Visibly display a hunting log on the dashboard of the hunter's vehicle.

(20) Pennyrile Forest WMA.

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

(b) The daily limit shall be two (2) ruffed grouse.

(21) Pioneer Weapons WMA.

(a) A person shall not hunt with a breech-loading firearm.

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

(22) Redbird WMA. A person shall hunt coyotes during daylight hours only.

(23) Robinson Forest WMA.

(a) Hunting shall not be permitted on the Main Block.

(b) The remainder of the WMA shall be open under statewide requirements.

(24) Taylorsville Lake WMA. Northern bobwhite and rabbit seasons shall be closed after December 31.

(25) Tradewater WMA.

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

(b) The daily limit shall be two (2) ruffed grouse.

(26) West Kentucky WMA.

(a) A person shall check in daily at a designated check station prior to using an "A" tract.

(b) Northern bobwhite and rabbit seasons shall be closed after December 31 on Tracts 2, 3, 6, and 7.

(c) Northern bobwhite and rabbit seasons shall be open on

Tracts 1, 4, 5, and "A" beginning one-half (1/2) hour before sunrise until 1:00 p.m. local time from January 1 through January 10, except if harvest limits are reached prior to January 10.

1. A hunter shall report harvest numbers and total hours hunted to the area supervisor on a daily basis.

2. If a tract is closed prior to January 10, a sign indicating closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(d) A person shall not:

1. Use a rifle, ball, or slug ammunition;

2. Operate a vehicle on Tract 6 from February 1 through April 16; or

3. Allow a dog to be unleashed from April 1 until the third Saturday in August, except while squirrel hunting.

(27) Yellowbank WMA.

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

(b) Pheasants may be taken beginning on the Tuesday following the pheasant quota hunt through December 31.

(c) A person shall:

1. Possess a valid hunting license to take pheasant, unless exempt pursuant to KRS 150.170; and

2. Not take more than three (3) pheasants of either sex.

Section 5. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt on:

(a) Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November;

(b) Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December; and

(c) Yellowbank Wildlife Management Area for three (3) consecutive days beginning on the first[~~second~~] Friday in December.

(2) There shall be a one (1) day clean-up hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular WMA.

(3) Hunt hours for each day shall be from 9:00 a.m. to 4:00 p.m.:

(a) Eastern time for the Green River Wildlife Management Area and Clay Wildlife Management Area hunts; and

(b) Central time for the Yellowbank Wildlife Management Area hunt.

(4) During a quota hunt or clean-up hunt, a person shall wear hunter orange clothing as established in 301 KAR 2:172.

(5) The daily bag limit per hunter shall be two (2) pheasants of either sex, except there shall be a daily bag limit of three (3) pheasants of either sex during the one (1) day clean-up hunt.

(6) Pheasant quota hunt procedures.

(a) A person selected for a pheasant quota hunt may hunt on the one (1) day clean-up hunt for that area.

(b) A person applying for a pheasant quota hunt shall not apply:

1. More than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

2. As a group of more than five (5) people.

(c) A person who is drawn to hunt shall pay the pheasant quota hunt permit fee established in 301 KAR 3:022 prior to the hunt.

Section 6. Northern Bobwhite and Upland Bird Quota Hunts. (1) There shall be one (1) day northern bobwhite quota hunts on one (1) tract of Peabody WMA on the:

(a) Fourth Saturday in November, which shall only be a youth-mentor hunt;

(b) Tuesday following the fourth Saturday in November;

(c) Tuesday following the third Saturday in December;

(d) First Saturday in January;

(e) Second Saturday in January; and

(f) Tuesday following the third Saturday in January.

(2) There shall be one (1) day upland bird quota hunts on Clay WMA on the:

(a) Wednesday following the first Saturday in November;

(b) Third Sunday in November;

(c) Third Saturday in December; and

(d) Fourth Tuesday in December.

(3) A person participating in a quota hunt shall:

(a) Only hunt from one-half (1/2) hour before sunrise to 2:00 p.m.;

(b) Wear hunter orange clothing pursuant to 301 KAR 2:172; and

(c) Not take more than four (4) northern bobwhite on a daily basis.

(4) A person who participates in an upland bird quota hunt:

(a) Shall not take more than four (4) ruffed grouse daily; and

(b) May take woodcock. Woodcock shall only be taken pursuant to the requirements established in 301 KAR 2:225.

(5) A person applying for a northern bobwhite or upland bird quota hunt shall not apply:

(a) More than one (1) time for each hunt and shall not be drawn for more than one (1) hunt; and

(b) As a group of more than three (3) people.

(6) A person selected for a quota hunt shall only hunt the species identified on the permit.

Section 7. General Quota Hunt Requirements. (1) A person applying for a pheasant, northern bobwhite, or upland bird quota hunt shall:

(a) Call the toll-free number listed in the current Fall Hunting and Trapping Guide or apply online at fw.ky.gov[~~from a touch tone phone~~] between September 1 and September 30;

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

(c) Indicate a choice of days to hunt; and

(d) Pay a three (3) dollar application fee for each applicant prior to the drawing by:

1. Check;

2. Money order;

3. Visa; or

4. MasterCard.

(2) A person, prior to participating in a quota hunt, shall be required to show a:

(a) Department-issued quota hunt permit;

(b) Valid Kentucky hunting license or proof of exemption; and

(c) Hunter education card, if required pursuant to 301 KAR 2:185.

(3) A person or group participating in a northern bobwhite or upland bird quota hunt shall submit a hunting log within seven (7) days after the hunt.

(4) A youth-mentor quota hunt party shall have a minimum of one (1) youth as a member of the party.

(5) A person shall comply with all quota hunt requirements or be ineligible to apply for any other quota hunt during the following year, except for an elk quota hunt.

(6) A person who is ineligible to apply for a quota hunt pursuant to subsection (5) of this section shall maintain all preference points that were accrued in other quota hunts.

(7) A youth shall only apply as part of a party that has at least one (1) adult.

(8)[~~(7)~~] The department shall extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(9)[~~(8)~~] A quota hunt applicant who is not selected and who applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

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

(11)[~~(10)~~] A person shall forfeit all accumulated points if, in a given year, the person does not apply for the hunt in which points were earned, except as established in subsection (6) of this section.

Section 8. Dog Training Areas on Wildlife Management Areas. (1) A group or club may request that a dedicated dog training area be authorized by the department on a specific WMA.

(2) The department shall authorize a dog training area if:

(a) The department approves a suitable location for the dog training area; and

(b) A signed memorandum of understanding is entered into

with the club or group.

(3) The conditions established in this subsection shall apply for each dog training area on a WMA.

(a) All northern bobwhite quail to be used in training shall be banded with aluminum leg bands and individually placed in the dog training area.

(b) Dog training areas shall remain open to all other legal WMA uses.

(c) A person shall comply with all dog training area requirements pursuant to 301 KAR 2:041, unless otherwise stated in the memorandum of understanding.

(d) Unleashed dogs shall be allowed within the boundaries of the dog training area year-round, except for:

1. May 15 through August 15;

2. The youth statewide turkey season; and

3. The statewide turkey season.

(e) Released northern bobwhite quail with aluminum leg bands, chukars, pheasants, or pigeons may be harvested on legal dog training days.

(f) Immediately prior to dog training, a person shall:

1. Walk and examine the entire dog training area to ensure that no wild northern bobwhite quail are present; and

2. Then place released birds in the training area.

Section 9. General Requirements on Federally Owned Areas. (1) Season dates, bag limits, and other requirements of 301 KAR 2:251[,] and 2:050 shall apply except as otherwise established in this administrative regulation.

(2) Hunter orange requirements established in Section 3 of this administrative regulation shall apply to a person hunting or trapping on federal areas referenced in this section.

(3) A person shall:

(a) Obtain permission from the landowner before hunting;

(b) Not hunt except on assigned dates and in assigned areas; and

(c) Comply with all requirements established by the agency controlling the area.

Section 10. Exceptions on Specific Federally Owned Areas. (1) If hunting is not prohibited by other area priorities, Fort Campbell, Fort Knox, Land Between the Lakes National Recreation Area, Bluegrass Army Depot, and Reelfoot National Wildlife Refuge may allow hunting if in compliance with 301 KAR 2:122 and 2:251 for:

(a) Squirrels, from June 1 through June 14;

(b) Northern bobwhite and rabbit, no earlier than November 1 nor later than the last day of February;

(c) Furbearers, no earlier than October 1 nor later than the last day of February;

(d) Frogs, year round; or

(e) Crows, for a maximum of 124 days between September 1 and the last day of February.

(2) A person shall hunt coyotes during daylight hours only on lands managed by:

(a) Daniel Boone National Forest;

(b) George Washington and Jefferson National Forests;

(c) Land Between the Lakes National Recreation Area;

(d) Clarks River National Wildlife Refuge; and

(e) Reelfoot National Wildlife Refuge.

(3) Fort Knox shall not allow more than thirty (30) days of ruffed grouse hunting between October 1 and the last day of February.

(4) On Land Between the Lakes National Recreation Area, a person hunting the species listed in this administrative regulation shall not use:

(a) Crossbows;

(b) Shotgun slugs or shot larger than BB; or

(c) Center-fire rifles or center-fire handguns, except during designated groundhog or coyote hunts.

(5) Big South Fork National River and Recreation Area.

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

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

(c) A person hunting coyotes shall comply with any federal requirements established by the National Park Service.

Section 11. Incorporation by Reference. (1) "KDFWR Public Area Trapping Registration Form", 2016 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: June 12, 2017

FILED WITH LRC: June 14, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2017 at 8 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 July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes exceptions to statewide hunting and trapping regulations for small game and furbearers on public land and other federally owned areas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage small game and furbearer populations, and to provide reasonable hunting and trapping opportunity on public lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department to promulgate administrative regulations establishing open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.175 (7) and (9) authorize the department to issues licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of lands it has acquired for public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining exceptions to the statewide seasons, bag limits, and methods used to hunt and trap small game and furbearers on public lands in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow a person to maintain accrued preference points for other quota hunts should they not comply with the small game quota hunt rules. It also changes the Yellowbank WMA pheasant quota hunt dates from the second weekend in December to the first weekend.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the severity of the penalty from not complying with the small game quota hunt regulatory requirements. The Yellowbank WMA pheasant quota hunt date change is necessary to minimize conflicts among WMA user groups.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All those who participate in small game quota hunts are potentially affected by the preference point change, and only Yellowbank WMA users are affected by the hunt date change.

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

(a) List 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 quota hunt preference point change only affects those individuals that violate a small game quota hunt rule. Those individuals will not forfeit their preference points that were accrued in other quota hunts. Those that participate in the Yellowbank pheasant quota hunt will now be required to hunt during the following weekend.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters who do not comply with small game quota hunt requirements will now be able to keep preference points that were obtained in other quota hunts. The change of the Yellowbank WMA quota hunt will minimize conflict among WMA users.

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

(a) Initially: There will be no administrative cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the department 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 any other fees or to increase funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. Tiering was not applied as all small game quota hunt participants must comply with the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The 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. 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410, 150.620.

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

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

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

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

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

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation:

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

301 KAR 6:005. Boat registration fees.

RELATES TO: KRS 235.040, 235.050, 235.070, 235.080

STATUTORY AUTHORITY: KRS 235.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.080 requires[~~authorizes~~] the department to establish boat registration fees. This administrative regulation establishes the registration fees for the various classes of motorboats.

Section 1. The annual registration fee[~~fees shall be~~] for motorboats shall be as established in subsections (1) through (6) of this section for the boat registration year that ends on April 30, 2018. The registration fee for a motorboat:

(1) With an electric trolling motor as the sole source of propulsion shall be five (5) dollars;

(2) That is under sixteen (16) feet in length shall be fifteen (15) dollars;

(3) That is at least sixteen (16) feet in length and no more than twenty-six (26) feet in length shall be nineteen (19) dollars;

(4) That is at least twenty-six (26) feet in length and no more than forty (40) feet in length shall be twenty-five (25) dollars;

(5) That is over forty (40) feet in length shall be twenty-nine (29) dollars; and

(6) That is powered by an inboard motor shall be thirty (30) dollars.

Section 2. The annual registration fee for motorboats shall be as established in subsections (1) through (6) of this section for the boat registration year that begins on May 1, 2018. The registration fee for a motorboat:

(1) With an electric trolling motor as the sole source of propulsion shall be ten (10) dollars;

(2) That is under sixteen (16) feet in length shall be twenty-one (21) dollars;

(3) That is at least sixteen (16) feet in length and no more than twenty-six (26) feet shall be forty (40) dollars;

(4) That is at least twenty-six (26) feet in length and no more than forty (40) feet in length shall be fifty (50) dollars;

(5) That is greater than forty (40) feet in length shall be sixty-

five (65) dollars; and

(6) That is powered by an inboard motor shall be forty-three (43) dollars.[~~motors as the sole source of propulsion - five (5) dollars;~~

~~(2) With outboard motors:~~

~~(a) Class A - ten (10) dollars; for the registration period that begins May 1, 2001, fifteen (15) dollars;~~

~~(b) Class 1 - fourteen (14) dollars; for the registration period that begins May 1, 2001, nineteen (19) dollars;~~

~~(c) Class 2 - twenty (20) dollars; for the registration period that begins May 1, 2001, twenty-five (25) dollars;~~

~~(d) Class 3 - twenty-four (24) dollars; for the registration period that begins May 1, 2001, twenty-nine (29) dollars; and~~

~~(3) Any class, with inboard or inboard-outboard motors - twenty-four (24) dollars; for the registration period that begins May 1, 2001, thirty (30) dollars.~~]

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: June 12, 2017

FILED WITH LRC: June 14, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 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 July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes annual registration fees for the various classes of motorboats.

(b) The necessity of this administrative regulation: This administration is necessary to establish a reasonable fee structure for the annual registration of motorboats on Kentucky waterways. These fees are necessary to help administer the proper enforcement of boater safety regulations, which facilitate a safer environment on Kentucky lakes and waterways.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 235.080 authorizes the department to promulgate administrative regulations to establish annual registration fees for motorboats.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by creating a fee structure for the annual registration of Kentucky motorboats.

(2) If 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 increase the fee structure for the registration of motorboats in Kentucky for the boating registration year beginning on May 1, 2018.

(b) The necessity of the amendment to this administrative regulation: Kentucky's boat registration fees are substantially less than surrounding states, as the department has not increased boat registration fees for the past 16 years. The department's costs have continued to rise in relation to law enforcement and boating safety compliance and with maintaining the department's 165 boat ramps, many of which are aging and in disrepair. This increase is also necessary to provide the department with additional funds to help control the invasive Asian carp species, which threaten the long-term health and sustainability of our sportfish and rough fish populations that provide a significant positive economic impact to the state's economy. Asian carp also pose a safety hazard as they have a propensity to jump and sometimes injure people in moving boats. The proposed boat registration fee increases will still result in a fee structure system that will be lower than surrounding states.

(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 were approximately 170,000 registered boats in Kentucky for the 2016-2017 boating registration year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Boat owners will be required to pay an increased registration fee for the boating registration year that begins on May 1, 2018.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost increases will vary among the different types and lengths of motor boats. Fees for boats under 16 feet will increase by $6; for boats 16 feet to 26, feet the increase will be $21; for boats 26 feet to 40 feet, the increase will be $25; for boats greater than 40 feet, the increase will be $36. Fees for inboard boats will increase by $13, while the increase for boats with a trolling motor only will increase by $5.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Boaters will benefit from improved ramp maintenance and development, continued enforcement and compliance with boater safety requirements, and improved control of Asian carp populations, which not only positively impacts anglers, but will also provide for a safer boating environment by reducing the safety hazard of leaping Asian carp species.

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

(a) Initially: There will not be an initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be not be an 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 is necessary for the department to increase boating registration fees in order to properly fund the programs noted in (2)(b) above, and to provide a reasonable fee structure that is in line with surrounding states.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes. New boat registration fees have been established that represent an increase from the previous fees.

(9) TIERING: Is tiering applied? Yes. Tiering is applied, as there are different registration costs for boats depending on the length and type of boat as noted in (4)(b) above.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Division of 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 235.080 authorizes the department to set annual boat registration fees.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amendment will approximately generate an additional $2.5 million for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will approximately generate an additional $2.5 million for subsequent years.

(c) How much will it cost to administer this program for the first year? Though it will not cost the department additional money to administer the boating registration program, the increased revenue will be used for law enforcement and boating safety compliance on the water, increased maintenance and development of boat ramps, and will provide an additional funding mechanism to help control invasive Asian carp populations.

(d) How much will it cost to administer this program for subsequent years? See (3)(c) above.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing.

RELATES TO: KRS 45A.340, 216B.015, 216B.020(2)(a), 216B.040, 216B.062(1), 216B.095(1), 216B.990

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1., [~~and~~] (b), 216B.085, 216B.086, 216B.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1. and (b) require the Cabinet for Health and Family Services to administer Kentucky's certificate of need program, to promulgate administrative regulations as necessary for the program, and to conduct public hearings in respect to certificate of need applications and revocations of certificates of need. KRS 216B.085, 216B.086, and 216B.090 establish requirements for certificate of need, revocation, and reconsideration hearings. This administrative regulation establishes the requirements for filing, hearing, and show cause hearings necessary for the orderly administration of the certificate of need program.

Section 1. Definitions. (1) "Affected person" is defined by KRS 216B.015(3).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3)[~~(2)~~] "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(4)[~~(3)~~] "Days" means calendar days, unless otherwise specified.

(5)[~~(4)~~] "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6)[~~(5)~~] "Nonsubstantive review" is defined by KRS 216B.015(18).

(7)[~~(6)~~] "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.

(8)[~~(7)~~] "Office or clinic" means the physical location at which health care services are provided.

(9)[~~(8)~~] "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.

(10) "Party to the proceedings" is defined by KRS 216B.015(20).

(11) "Person" is defined by KRS 216B.015(22).

(12)[~~(9) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.~~

~~(10)~~] "Proposed findings" means the submission of a proposed final order by the applicant or an affected party for review and consideration by the hearing officer.

(13)[~~(11)~~] "Proposed service area" means the geographic area the applicant proposes to serve.

(14)[~~(12)~~] "Public notice" means notice given through the cabinet's Certificate of Need Newsletter.

(15)[~~(13)~~] "Secretary" is defined by KRS 216B.015(26).

(16)[~~(14)~~] "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Filing. (1) The filing of documents required by this administrative regulation shall be made with the Office of Health Policy, CHR Building, 4 WE, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. Eastern time on the due date.

(2) Filing of a document, other than a certificate of need application or a proposed hearing report, may be made by facsimile transmission or email if:

(a) The document is received by the cabinet by facsimile transmission or email on or before 4:30 p.m. Eastern time on the date due; and

(b) The original document is filed with the cabinet on or before 4:30 p.m. Eastern time on the next business day after the due date.

(3) The Office of Health Policy shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision, or order shall not be included.

(5)(a) Except as provided in paragraph (b) of this subsection, the last day of the period so computed shall be included.

(b) If the last day[~~, unless it~~] is a Saturday,[~~a~~] Sunday, or legal state holiday,[~~in which event~~] the period shall run until 4:30 p.m. Eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 3. Hearing. (1)(a) A hearing on a certificate of need application or revocation of a certificate of need shall be held by a hearing officer from the Cabinet for Health and Family Services, Division of Administrative Hearings.

(b) A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined by[~~in~~] KRS 45A.340.

(c) A party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner that shall promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to the applicant and each affected person who requested the hearing not less than ten (10) days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

(4) A public hearing shall be canceled if each affected person who requested the hearing withdraws the request by giving written notification to the Office of Health Policy that the hearing is no longer required. The consent of each affected person who has not requested a hearing shall not be required in order for a hearing to be canceled.

(5) A dispositive motion made by a party to the proceedings shall be filed with the cabinet[~~hearing officer~~] at least three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Record the conference; or

2. If requested by a party to the proceedings, allow a court reporter[~~stenographer~~] to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties to the proceedings[~~or persons who will participate~~];

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of a nonsubstantive review hearing and at least seven (7) days prior to the scheduled date of any other certificate of need hearing, each affected person[~~all persons~~] wishing to participate as a party to the proceeding shall file with the cabinet an original and one (1) copy of the following for each affected application and serve copies on all other known parties to the proceeding:

(a) OHP - Form 3, Notice of Appearance, incorporated by reference in 900 KAR 6:055;

(b) OHP - Form 4, Witness List, incorporated by reference in 900 KAR 6:055; and

(c) OHP - Form 5, Exhibit List, incorporated by reference in 900 KAR 6:055 and attached exhibits.

(8)(a) If a hearing is requested on an application that[~~which~~] has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new OHP - Form 3, Notice of Appearance; and

2. Either:

a. Incorporate previously-filed witness lists (OHP - Form 4) and exhibit lists (OHP - Form 5); or

b. File an amended OHP - Form 4 and OHP - Form 5.

(b) A new party to the hearings shall file an original OHP - Form 3, OHP - Form 4, and OHP - Form 5.

(c) Forms shall be filed in accordance with subsection (7) of this section.

(9)(a) If a party to the proceedings requests a court reporter to be present during the hearing, the party shall:

1. Arrange for and bear the cost for a court reporter to transcribe the hearing; and

2. File an original copy of the transcript with the cabinet.

(b) If all parties agree, the hearing may be recorded in lieu of a written transcript, at the discretion of the hearing officer.

(10) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. Each party appearing at the hearing shall enter an appearance by stating the party's name and address.

(11)[~~(10)~~] Each party shall have the opportunity to:

(a) Present its case;

(b) Make an opening statement;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make a closing statement; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, other matters relevant to the issues.

(12)[~~(11)~~] A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(13)[~~(12)~~] The hearing officer may:

(a) Allow testimony or other evidence on an issue not previously identified in the preliminary order that may arise during the course of the hearing, including a[~~an additional~~] petition for intervention that may be filed;

(b) Act to exclude irrelevant, immaterial, or unduly repetitious evidence; and

(c) Question any party or witness.

(14)[~~(13)~~] The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed at the discretion of the hearing officer.

(15)[~~(14)~~] The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(16)[~~(15)~~] A witness shall be examined under oath or affirmation.

(17)[~~(16)~~] A witness may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(18)[~~(17)~~] The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (OHP - Form 5).

(19)[~~(18)~~] A document shall not be incorporated into the record by reference without the permission of the hearing officer. Each referenced document shall be precisely identified.

(20)[~~(19)~~] The hearing officer may take official notice of facts that are not in dispute or of generally-recognized technical or scientific facts within the agency's special knowledge.

(21)[~~(20)~~] The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open. The conclusion of the hearing shall occur when the additional information is timely filed or at the end of the designated time period, whichever occurs first.

(22)[~~(21) In a hearing on an application for a certificate of need,~~] The hearing officer may[~~shall~~], upon the agreement of the applicant, extend[~~continue a hearing beyond~~] the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(23)[~~(22)~~] If all parties agree to waive the established decision date, the hearing officer shall render a decision within sixty (60) days of the filing of proposed findings.

(24)[~~(23)~~] The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 4. Show Cause Hearing. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6 or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation that[~~which~~] demonstrates[~~that there is~~] probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) The cabinet shall conduct a show cause hearing if a complaint investigation or licensure inspection by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services reveals a possible violation of KRS Chapter 216B.

(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions that are a part of a certificate of need approval and license at the request of any affected person.

(6) The show cause hearing regarding the terms and conditions shall determine if[~~whether~~] a person is operating a health facility or health service in violation of any terms or conditions that are a part of that certificate of need approval and license.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 3 of this administrative regulation.

(8) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity:

(a) Has not established or is not operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9) If it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her recommended[~~proposed~~] findings of fact, conclusions of law, and recommended[~~proposed~~] decision on whether the clinic or office meets the physician exemption criteria set forth in 900 KAR 6:130, Certificate of Need criteria for physician exemption.

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

(a) The allegations against the person;

(b) Any facts determined to exist that support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

(13) At least seven (7) days prior to a show cause hearing required or requested pursuant to KRS Chapter 216B, all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) OHP - Form 3, Notice of Appearance;

(b) OHP - Form 4, Witness List; and

(c) OHP - Form 5, Exhibit List and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a recommended[~~proposed~~] decision to the secretary.

(15) Each party shall have fifteen (15) days from the date the recommended decision is mailed by the cabinet to file exceptions to the recommended decision with the secretary.

(16) Within thirty (30) days of the receipt of the findings of fact and recommended[~~proposed~~] decision from the hearing officer, the secretary shall issue a final decision on the matter.

(17)[~~(16)~~] A copy of the final decision shall be mailed to each party[~~the person~~] or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(18)[~~(17)~~] If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(19)[~~(18)~~] If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) of this section, the cabinet shall take the action required by this subsection.

(a) If the person had not previously been found to be in violation of the terms and conditions that[~~which~~] were made a part of the person's certificate of need approval and license, the person shall be given a period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions that were a part of the person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

(20)[~~(19)~~] The deadlines established with respect to hearings shall be modified if agreed to by all parties and the hearing officer.

PAUL A. COOMES, Executive Director
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 9, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2017, at 9:00 a.m. in Suites A & 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 July 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 July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573 email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Molly Lewis, Deputy General Counsel, Office of Legal Services, email molly.lewis@ky.gov, phone 502-564-7905, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for Certificate of Need (CON) filings, hearings, and show cause hearings for the certificate of need program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.040(2)(a)1 and (b), 216B.085, 216B.086, and 216B.090.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements for CON filings, hearings, and show cause hearings for the certificate of need program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for CON filings, hearings, and show cause hearings for the certificate of need program.

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

(a) How the amendment will change this existing administrative regulation: The administrative regulation has been revised to allow hearing officers more flexibility in conducting the hearings. CON formal review applications will be batched quarterly starting in July 2017 and it is our desire to avoid, if possible, overlap of batching cycles for applications proposing similar types of services. With agreement of the applicant, the hearing officer may extend the review deadlines established by KRS 216B.062(1) and 216B.095(1). Language was added to clarify the responsibilities of the party requesting that a court reporter be present at the hearing. The administrative regulation was also revised to allow exceptions to be filed to the hearing officer's recommended decision.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the orderly conduct of CON and show cause hearings.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by providing the requirements necessary for CON filings, CON hearings and show cause hearings.

(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 instructions related to CON filings, hearings and show cause hearings for the orderly administration of the certificate of need program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected parties requesting hearings. Annually, approximately 115 certificate of need applications are filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certificate of need applicants and affected parties requesting hearings shall be required to meet the requirements of 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 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): Entities are benefitted as information related to CON filings, hearings and show cause hearings is clarified.

(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.

(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: No new funding will be needed to implement the provision of the amended 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 health care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)1 and (b), 216B.085, 216B.086, and 216B.090

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 Inspector General
Division of Audits and Investigations
(Amendment)

902 KAR 55:015. Schedules of controlled substances [~~Schedule I substances~~].

RELATES TO: KRS 217.005 -217.215, 218A.010, 218A.020, 218A.040, 218A.060, 218A.080, 218A.100, 218A.120[~~218A.010-218A.050~~], 21 C.F.R. 1308.11, 1308.12, 1308.13, 1308.14, 1308.15, 1308.35, 1308.49, 21 U.S.C. 301 – 399f, 801-971

STATUTORY AUTHORITY: KRS[~~194A.050,~~] 218A.020(1), (3) [~~218A.250~~]

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 the health of the individual citizens of the commonwealth, to operate programs and fulfill the cabinet's responsibilities, or to implement federal law. KRS 218A.250 requires the cabinet to promulgate administrative regulations to carry out the provisions of KRS Chapter 218A.~~] KRS 218A.020(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations in order to add,[~~substances to or~~] delete, or reschedule substances enumerated in KRS Chapter 218A. KRS 218A.020(3) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to control substances at the state level in the same numerical schedule corresponding to the federal schedule or control a substance in a more restrictive schedule than the federal schedule. This administrative regulation designates[~~establishes~~] Schedule I, II, III, IV, and V drugs. This administrative regulation differs from the federal regulation because it designates pentazocine, barbital, methylphenobarbital, and phenobarbital as a Schedule III controlled substance. The federal regulation designates these substances as a Schedule IV controlled substance. The Cabinet for Health and Family Services recognizes that pentazocine and derivatives of barbituric acid or its salts have significant abuse potential, and inclusion on Kentucky's Schedule III list will help reduce the risk to public health. This administrative regulation further differs from the federal regulation because it designates nalbuphine as a Schedule IV controlled substance and gabapentin as a Schedule V controlled substance. The Cabinet for Health and Family Services recognizes that nalbuphine and gabapentin have significant abuse potential, and inclusion on Kentucky's controlled substances schedules will help reduce the risk to public health[~~, 21 C.F.R. 1308.11, because it designates substances that are substantially similar to synthetic cannabinoids as Schedule I controlled substances~~].

Section 1. Schedule I Controlled Substances. (1) Each substance that is scheduled or designated as a Schedule I controlled substance under 21 C.F.R. 1308.11, including a substance temporarily scheduled or designated under 21 C.F.R. 1308.11(h) or 1308.49, shall be scheduled or designated at the state level as a Schedule I controlled substance.

(2) The following shall be exempt from control as a Schedule I substance:

(a) Cannabis plant material, and products made therefrom, that contain tetrahydrocannabinols pursuant to the exemption established in 21 C.F.R. 1308.35; and

(b) Any substance or product exempt from the definition of marijuana pursuant to KRS 218A.010(25)(a) – (f).

Section 2. Schedule II Controlled Substances. Each substance that is scheduled or designated as a Schedule II controlled substance under 21 C.F.R. 1308.12 shall be scheduled or designated at the state level as a Schedule II controlled substance.

Section 3. Schedule III Controlled Substances. (1) Except as provided by subsection (2) of this section, each substance that is scheduled or designated as a Schedule III controlled substance under 21 C.F.R. 1308.13 shall be scheduled or designated at the state level as a Schedule III controlled substance.

(2) The Cabinet for Health and Family Services designates the following as Schedule III controlled substances:

(a) Pentazocine;

(b) Barbital;

(c) Methylphenobarbital; and

(d) Phenobarbital.

(3) This section shall not apply to any material, compound, mixture, or preparation containing any quantity of an anabolic steroid substance, or any isomer, ester, salt, or derivative thereof that is:

(a) Expressly intended for administration through implant to livestock or other nonhuman species; and

(b) Approved by the United States Food and Drug Administration for use as described in this subsection.

Section 4. Schedule IV Controlled Substances. (1) Except as provided by subsection (2) of this section and Section 3(2) of this administrative regulation, each substance that is scheduled or designated as a Schedule IV controlled substance under 21 C.F.R. 1308.14 shall be scheduled or designated at the state level as a Schedule IV controlled substance.

(2) The Cabinet for Health and Family Services designates the following as a Schedule IV controlled substance: nalbuphine.

Section 5. Schedule V Controlled Substances. (1) Except as provided by subsection (2) of this section, each substance that is scheduled or designated as a Schedule V controlled substance under 21 C.F.R. 1308.15 shall be scheduled or designated at the state level as a Schedule V controlled substance.

(2) The Cabinet for Health and Family Services designates the following as a Schedule V controlled substance: gabapentin.

Section 6. Dispensing Without Prescription. A controlled substance listed in Schedule V, which is not a prescription drug under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 to 399f, may be dispensed by a pharmacist without a prescription to a purchaser at retail, if:

(1) The medicinal preparation contains, in addition to the controlled substances, some drug or drugs conferring upon it medicinal qualities other than those possessed by the controlled substances alone;

(2) Not more than 240cc (eight (8) ounces) or more than forty-eight (48) dosage units of any controlled substance containing opium is dispensed at retail to the same purchaser in any given forty-eight (48) hour period;

(3) The labeling and packaging is in accordance with the current requirements of KRS 217.005 to 217.215, 21 U.S.C. 301 to 399f, and the United States Pharmacopeia;

(4) The preparation is dispensed or sold in good faith as a medicine and not for the purpose of evading the provisions of KRS Chapter 218A;

(5) The preparation is not displayed in areas open to the public;

(6) The dispensing is made only by a pharmacist and not by a nonpharmacist employee even if under the supervision of a pharmacist. After the pharmacist has fulfilled his or her professional and legal responsibilities as set forth in this section, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist;

(7) The purchaser is at least eighteen (18) years of age;

(8) The pharmacist requires every purchaser of a controlled substance under this section not known to the pharmacist to furnish suitable identification, including proof of age if appropriate; and

(9) The dispensing of exempt controlled substances under this administrative regulation is recorded in a bound book that shall be maintained in accordance with the recordkeeping requirements of KRS 218A.200 and contain the:

(a) Name and address of the purchaser;

(b) Name and quantity of controlled substance purchased;

(c) Date of each purchase; and

(d) Name or initials of the pharmacist who dispensed the substance to the purchaser.[~~Opiates. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opiates, including their isomers, optical isomers, esters, ethers, salts, salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:~~

~~(1) Alphacetylmethadol (except Levo-alphacetylmethadol LAAM);~~

~~(2) Acetyl-alpha-methylfentanyl, N-1-(1-methyl-2-phenethyl)-4-piperidinyl -N-phenylacetamide;~~

~~(3) Alpha-methylfentanyl, N-1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);~~

~~(4) Alpha-methylthiofentanyl, N-1-methyl-2-(2-thienyl) ethyl-4-piperidinyl-N- phenylpropanamide;~~
~~(5) Benzylfentanyl, N-1-benzyl-4-piperidyl-N-phenylpro-panamide;~~
~~(6) Beta-hydroxyfentanyl, N-1-(2-hydroxy-2-phenethyl)-4-piperidinyl-N-phenypropanamide;~~
~~(7) Beta-hydroxy-3-methylfentanyl, N-1-(2-hydroxy-2phenethyl)-3-methyl-4-piperidinyl-N-phenylpropanamide;~~
~~(8) Difenoxin;~~
~~(9) 3-Methylfentanyl, N-3-methyl-1-(2-phenylethyl)-4-piperidyl-N-phenylpropanamide;~~
~~(10) 3-methylthiofentanyl N-3-methyl-1-(2-thienyl) ethyl-4-piperidinyl-N-phenylpropanamide;~~
~~(11) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);~~
~~(12) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide;~~
~~(13) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);~~
~~(14) Thenylfentanyl, N-1-(2-thienyl) methyl-4-piperidyl-N-phenyl-propanamide;~~
~~(15) Thiofentanyl N-phenyl-N-1-(2-thienyl)ethyl-4-piperidinylpropan-amide;~~
~~(16) Tilidine; and~~
~~(17) U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methly-benzamide).~~
~~Section 2. Opium Derivatives. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opium derivatives, their salts, optical isomers, isomers and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, optical isomers, and salts of isomers is possible within the specific chemical designation:~~
~~(1) Drotebanol; and~~
~~(2) Etorphine (except hydrochloride salt).~~
~~Section 3. Hallucinogenic Substances. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers if the existence of these salts: isomers, including the optical position and geometric isomers; and salts of isomers is possible within the specific chemical designation:~~
~~(1) alpha-ethyltryptamine (alpha-ethyl-1H-indole-3-ethanamine,3-(2-aminobutyl)indole);~~
~~(2) 4-bromo-2, 5-dimethoxy-amphetamine (4-bromo-2,5-DMA,4-bromo-2,5-dimethoxy-alpha-methylphenethylamine);~~
~~(3) 2, 5-dimethoxyamphetamine (2,5-DMA);~~
~~(4) 2, 5-dimethoxy-4-ethylamphetamine (DOET);~~
~~(5) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcy-clohexylamine, cyclohexamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, PCE);~~
~~(6) 3, 4-methylenedioxymethamphetamine (MDMA);~~
~~(7) 4-methoxyamphetamine (PMA, 4-methoxy-alphamethylphen-ethylamine, paramethoxyamphetamine);~~
~~(8) 3, 4-methylenedioxy-N-ethylamphetamine (N-ethyl-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);~~
~~(9) N-hydroxy-3, 4-methylenedioxyamphetamine (N-hydroxy-alpha-methyl-3, 4(methylenedioxy)phenethylamine, N-hydroxy MDA);~~
~~(10) Parahexyl (Synhexyl, 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo b,d pyran);~~
~~(11) Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);~~
~~(12) Thiophene analog of phencyclidine (1-(1-(2-thienyl)cyclo-hexyl)piperidine, TCP, TPCP);~~
~~(13) 1-1-(2-thienyl) cyclohexylpyrrolidine (TCPy);~~
~~(14) 2-(2,5-dimethoxyphenyl)-N-{(2-methoxypheny)methyl}ethanamine (2,5H-NBOMe);~~
~~(15) 2-(4-iodo-2,5-dimethoxyphenyl)-N-{(2-methoxyphenyl)methyl}ethanamine (2,5I-NBOMe);~~
~~(16) 2-(4-bromo-2,5-dimethoxyphenyl)-N-{(2-methoxyphenyl)methyl}ethanamine (2,5B-NBOMe); and~~
~~(17) 2-(4-chloro-2,5-dimethoxyphenyl)-N-{(2-methoxyphenyl)methyl}ethanamine (2,5C-NBOMe).~~

~~Section 4. Depressants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:~~
~~(1) Mecloqualone; and~~
~~(2) Methaqualone.~~
~~Section 5. Stimulants. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:~~
~~(1) Aminorex (aminoxaphen, 2-amino-5-phenyl-2-oxazoline, 4,5-dihydro-5-phenyl-2-oxazolamine);~~
~~(2) Cathinone (2-amino-1-phenyl-1-propanone, alpha-aminopro-piophenone, 2-aminopropiophenone, and norephedrone);~~
~~(3) (±) cis-4-methylaminorex ((±) cis-4,5-dihydro-4methyl-5-phenyl-2-oxazolamine);~~
~~(4) N,N-dimethylamphetamine (N,N-alpha-trimethyl-benzeneetha-namine, N,N,alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers;~~
~~(5) N-ethylamphetamine;~~
~~(6) Fenethylline;~~
~~(7) Methcathinone (2-(methylamino)-propiophenone, alpha (methylamino)-propiophenone, alpha (methylamino)-propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophe-none, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463 and UR1431), its salts, optical isomers and salts of optical isomers;~~
~~(8) Paramethoxymethamphetamine (PMMA); and~~
~~(9) Paramethoxyamphetamine (PMA).~~
~~Section 6. Synthetic Cannabinoids. The Cabinet for Health and Family Services hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any substance, compound, mixture, or preparation which contains any quantity of any synthetic cannabinoid and is not an FDA approved drug, including the following:~~
~~(1) (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144);~~
~~(2) (1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (XLR-11);~~
~~(3) 1-(5-fluoropentyl)-1H-indazol-3-yl(naphthalen-1-yl)methanone (THJ-2201);~~
~~(4) 1-naphthalenyl(1-pentyl-1H-indazol-3-yl)-methanone (THJ-018);~~
~~(5) (1-(5-fluoropentyl)-1H-benzoimidazol-2-yl)(naphthalen-1-yl)methanone (AM2201-benzimidazole analog, FUBIMINA);~~
~~(6) Indole-3-carboxylate esters: Any compound containing a 1H-indole-3-carboxylate ester structure with the ester oxygen bearing a napthyl, quinolinyl, isoquinolinyl, or adamantyl group and substitution at the one (1) position of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, N-methyl-2-piperidinylmethyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent and whether or not further substituted on the naphthyl, quinolinyl, isoquinolinyl, adamantyl, or benzyl groups to any extent. Examples of this structural class include PB-22 and 5F-PB-22; and~~
~~(7) Indazole-3-carboxamides: Any compound containing a 1H-indazole-3-carboxamide structure with substitution at the nitrogen of the carboxamide by a naphthyl, quinolinyl, isoquinolinyl, adamantyl, or 1-amino-1-oxoalkan-2-yl group and substitution at the one (1) position of the indazole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, N-methyl-2-piperidinylmethyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indazole ring to any extent and whether or not futher substituted on the naphthyl, quinolinyl, isoquinolinyl, adamantyl, 1-amino-oxoalkan-2-yl, or benzyl groups to any extent. Examples of this structural class include AB-FUBINACA and AB-~~

~~CHMINACA.~~

~~Section 7. Control of Substances Scheduled under Federal Law. If a substance not identified in Section 1 through Section 6 of this administrative regulation is temporarily scheduled or designated as a Schedule I controlled substance under the federal Controlled Substances Act, 21 U.S.C. 801-971, or 21 C.F.R. 1308.11, the substance shall be considered to be controlled at the state level as a Schedule I controlled substance.~~]

ROBERT S. SILVERTHORN, JR., Inspector General
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 9, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2017, at 9:00 a.m. in Suites A & 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 July 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 July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, Internal Policy Analyst, Office of Inspector General, email stephanie.brammer@ky.gov, phone 502-564-2888, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation designates Kentucky's schedules of controlled substances.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 218A.020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.020(3), which authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to control substances at the state level in the same numerical schedule corresponding to the federal schedule or control a substance in a more restrictive schedule than the federal schedule.

(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 designating Kentucky's schedules of controlled substances.

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

(a) How the amendment will change this existing administrative regulation: This amendment aligns Kentucky's schedules of controlled substances with the federal schedules of controlled substances except for the following: This administrative regulation differs from the federal regulation because Kentucky designates pentazocine, barbital, methylphenobarbital, and phenobarbital as a Schedule III controlled substance. The federal regulation designates these substances as a Schedule IV controlled substance. This administrative regulation also differs from the federal regulation because Kentucky designates nalbuphine as a Schedule IV controlled substance and gabapentin as a Schedule V controlled substance. These substances are not scheduled at the federal level.

(b) The necessity of the amendment to this administrative regulation: Consistent with the passage of HB 158 during the 2017 legislative session, this amendment is necessary to align Kentucky's schedules of controlled substances with the federal schedules.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 218A.020 by controlling substances at the state level in the same numerical schedule corresponding to the federal schedule unless Kentucky controls a substance in a more restrictive schedule than the federal schedule as noted above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by aligning Kentucky's schedules of controlled substances with the federal schedules.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects Kentucky's pharmacists and prescribing practitioners who rely on state and federal regulations for information regarding scheduled drugs as well as state and local law enforcement agencies and the Department of Corrections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is needed to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Law enforcement and medical providers have traditionally been required to review three sources (federal regulation, state law, and state administrative regulation) to determine how a drug is scheduled. However, these laws are often in conflict. Although the federal and state schedules do not match for some drugs because Kentucky has up-scheduled a controlled substance, the reason the schedules do not line up is the difficulty in keeping Kentucky's administrative regulations and state laws up-to-date with the federal schedules. To resolve this concern, the recent passage of HB 158 amended KRS 218A.020(3) to clarify that any drug controlled at the federal level shall also be controlled at the state level in the same numerical schedule unless the state elects to up-schedule a drug due to its abuse potential. In addition to amending KRS 218A.020, HB 158 also repealed KRS 218A.030, 218A.050, 218A.070, 218A.090, 218A.110, and 218A.130, thereby deleting the state schedules from statute and instead relying on the authority of Kentucky's administrative regulations to align with the federal regulations in an effort to streamline the controlled substance schedules.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:(a) Initially: No costs are necessary to implement this amendment.(b) On a continuing basis: No costs are necessary to implement this amendment.

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

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

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

The amendment to this administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects Kentucky's pharmacists and prescribing practitioners who rely on state and federal regulations for information regarding scheduled drugs as well as state and local law enforcement agencies and the Department of Corrections.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.020, 21 C.F.R. 1308.11, 1308.12, 1308.13, 1308.14, 1308.15, 1308.35, 1308.49

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 1308.11, 1308.12, 1308.13, 1308.14, 1308.15, 1308.35, 1308.49

2. State compliance standards. KRS 218A.020

3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 1308.11 lists controlled substances that have been classified by the DEA as Schedule I drugs. 21 C.F.R. 1308.12 lists controlled substances that have been classified by the DEA as Schedule II drugs. 21 C.F.R. 1308.13 lists controlled substances that have been classified by the DEA as Schedule III drugs. 21 C.F.R. 1308.14 lists controlled substances that have been classified by the DEA as Schedule IV drugs. 21 C.F.R. 1308.15 lists controlled substances that have been classified by the DEA as Schedule IV drugs. 21 C.F.R. 1308.35 exempts certain cannabis plant material, and products made therefrom, that contain tetrahydrocannabinols from scheduling. 21 C.F.R. 1308.49 allows the DEA to place a substance into Schedule I on a temporary basis if such action is necessary to avoid an imminent hazard to the public safety.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation differs from the federal regulation because it designates pentazocine, barbital, methylphenobarbital, and phenobarbital as a Schedule III controlled substance in Kentucky. The federal regulation designates these substances as a Schedule IV controlled substance. NOTE: Designating pentazocine, barbital, methylphenobarbital, and phenobarbital as a Schedule III controlled substance is not a new change to Kentucky's schedules of controlled substances. This administrative regulation also differs from the federal regulation because it designates nalbuphine as a Schedule IV controlled substance and gabapentin as a Schedule V controlled substance. However, the federal regulation does not designate nalbuphine or gabapentin as a controlled substance. NOTE: Designating nalbuphine and gabapentin as a Schedule IV and Schedule V controlled substance respectively is not a new change made by this amendment to Kentucky's schedules of controlled substances.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Cabinet for Health and Family Services recognizes that pentazocine and derivatives of barbituric acid or its salts have significant abuse potential, and inclusion as a Schedule III controlled substance in Kentucky will help reduce the risk to public health. The Cabinet for Health and Family Services also recognizes that nalbuphine and gabapentin have significant abuse potential and inclusion in Kentucky's controlled substance schedules will help reduce the risk to public health.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Amendment)

902 KAR 55:040. Excluded nonnarcotic substances[~~over-the-counter products~~].

RELATES TO: KRS 218A.020-218A.130, 21 C.F.R. 1308.22, 21 U.S.C. 301, 801-971

STATUTORY AUTHORITY: KRS[~~194.050, 211.090,~~] 218A.020(4), 218A.250[~~, 218A.250, EO 96-862~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services.~~] KRS 218A.020(4) requires the Cabinet for Health and Family Services to exclude any nonnarcotic substance from a schedule if the substance[~~products that~~] may be lawfully sold over the counter [{]without prescription under[~~) from~~] the provisions of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301), the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, or KRS Chapter 218A. KRS 218A.250 requires the Cabinet for Health and Family Services to promulgate administrative regulations to carry out the provisions of KRS Chapter 218A.[~~The purpose of~~] This administrative regulation excludes certain nonnarcotic substances from scheduling pursuant to KRS 218A.020(4)[~~is to exclude certain over-the-counterproducts from the provisions of KRS Chapter 218A~~].

Section 1. Excluded Substances[~~Over-the-counter Products~~]. The Cabinet for Health and Family Services shall exclude from all state schedules established in accordance with KRS 218A.020(1), (3) and 902 KAR 55:015 any nonnarcotic substance that may be lawfully sold over-the-counter without a prescription if the substance has been excluded from all federal schedules pursuant to 21 U.S.C. 811(g)(1) and as listed in 21 C.F.R. 1308.22.[~~excludes the following products from the provisions of KRS Chapter 218A:~~

~~(1) Asthma-Ese®, tablet, NDC code 00349-2018: phenobarbital 8.10 mg.;~~

~~(2) Azma-Aids®, tablet, NDC code 00367-3153: phenobarbital 8 mg;~~

~~(3) Bronkolixir®, elixir, NDC code 00057-1004: phenobarbital 0.8 mg/ml;~~

~~(4) Bronkotabs®, tablet, NDC code 00057-1005: phenobarbital 8 mg.;~~

~~(5) Choate's Leg Freeze®, liquid: chloral hydrate 246.67 mg/ml.;~~

~~(6) Guiaphed® Elixir, elixir, NDC code 00182-1377: phenobarbital 4 mg/ml;~~

~~(7) Primatene (P-tablets)®, tablet, NDC code 0573-2940: phenobarbital 8 mg.;~~

~~(8) Tedral®, tablet, NDC code 00071-1230: phenobarbital 8 mg.;~~

~~(9) Tedral Elixir®, elixir, NDC code 00071-0242: phenobarbital 40 mg./ml.;~~

~~(10) Tedral S.A.®, tablet, NDC code 00071-1231: phenobarbital 8 mg.;~~

~~(11) Tedral Suspension®, suspension, NDC code 00071-0237: phenobarbital 80 mg./ml.;~~

~~(12) Tedrigen®, tablet, NDC code 00182-0134: phenobarbital 8 mg.;~~

~~(13) Theophed®, tablet, NDC code 00719-1945: phenobarbital 8 mg; and~~

~~(14) Vicks Inhaler®, inhaler, NDC code 23900-0010: l-Desoxyephedrine 113 mg.~~]

ROBERT S. SILVERTHORN, JR., Inspector General
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 9, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2017, at 9:00 a.m. in Suites A & 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 July 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 July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, Internal Policy Analyst, Office of Inspector General, email stephanie.brammer@ky.gov., phone 502-564-2888, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation excludes certain nonnarcotic substances from all controlled substance schedules established in accordance with KRS 218A.020(1), (3) and 902 KAR 55:015.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 218A.020(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.020(4), which authorizes the Cabinet for Health and Family Services to exclude any nonnarcotic substance from a schedule if the substance may be lawfully sold over-the-counter without prescription under the provisions of the Federal Food, Drug and Cosmetic Act, or the Federal Comprehensive Drug Abuse Prevention and Control Act of 17 1970, or KRS Chapter 218A.

(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 Kentucky's excluded nonnarcotic substances.

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

(a) How the amendment will change this existing administrative regulation: This amendment replaces the obsolete list of excluded nonnarcotic substances in Kentucky with language that aligns 902 KAR 55:040 with the federal regulation, 21 C.F.R. 1308.22, Excluded Nonnarcotic Substances.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure consistency between state and federal regulations which exclude from scheduling certain nonnarcotic substances which may, under state and federal law, be sold over-the-counter without a prescription.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring consistency between state and federal regulations related to excluded nonnarcotic substances.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by ensuring consistency between this administrative regulation and 21 C.F.R. 1308.22, Excluded Nonnarcotic Substances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding excluded over-the-counter products.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment, Kentucky's pharmacists will use the DEA's most current excluded substances list to ensure compliance with both this administrative regulation and the federal regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By making Kentucky's excluded nonnarcotic substances consistent with the DEA's excluded nonnarcotic substances, this amendment reduces confusion for pharmacists who rely on state and federal regulations for such information.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement this amendment.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

regulation affects Kentucky's pharmacists who rely on state and federal regulations for information regarding excluded nonnarcotic substances.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.020, 21 C.F.R. 1308.22, 21 U.S.C. 811(g)(1

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 1308.22, 21 U.S.C. 811(g)(1)

2. State compliance standards. KRS 218A.020(4)

3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 1308.22 excludes from scheduling certain nonnarcotic substances which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301), be sold over-the-counter without a prescription. 21 U.S.C. 811(g)(1) requires the DEA, by regulation, to exclude any nonnarcotic drug which contains a controlled substance from scheduling if such drug may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), be lawfully sold over the counter without a prescription.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Amendment)

902 KAR 55:095. Prescription for Schedule II controlled substance – authorization of oral prescriptions for immediate administration, facsimile transmission, or partial filling.

RELATES TO: KRS 216.510(1), 216B.042, 218A.070, 218A.180, 218A.200, 21 C.F.R. 290.10, 1306.05, 1306.11-1306.14

STATUTORY AUTHORITY: KRS 194.050, 218A.180(1), 218A.250[, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY:[Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 218A.250 directs the Cabinet for Health and Family Services to promulgate administrative regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances.[The purpose of] This administrative regulation permits[is to permit] the transmission of prescriptions for Schedule II controlled substances between the prescriber and dispenser via oral authorization for immediate administration or by facsimile[, on a limited basis, in order] to facilitate the delivery of medications to certain patients whose need for medication shall be initiated or changed[needs change] quickly[and whose prescription should be communicated rapidly]. This administrative regulation also permits the partial filling of prescriptions for Schedule II controlled substances if requested by the patient or prescribing practitioner to[certain] patients whose medication needs may be long term but who wish to store limited quantities or in situations where the pharmacy is unable to supply the full quantity prescribed.

Section 1. Definitions. (1) "Hospice" means a hospice program licensed pursuant to KRS 216B.042[by the Cabinet for Health Services].

(2) "Immediate administration" means an emergency situation in which the prescribing practitioner determines the following criteria exists for the purposes of authorizing an oral prescription for a Schedule II controlled substance:

(a) Immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user;

(b) No appropriate alternative treatment is available, including administration of a drug that is not a Schedule II controlled substance; and

(c) It is not reasonably possible for the prescribing practitioner to provide a written prescription to be presented to the person dispensing the substance prior to the dispensing.

(3) "Long-term care facility" or "LTCF" is defined by KRS 216.535 and, pursuant to KRS 218A.180(1), shall not include a family care home or personal care home[means a nursing home, skilled nursing facility, nursing facility as defined in Pub.L. 100-203, intermediate care facility, or intermediate care facility for the mentally retarded].

Section 2. Oral Prescription Only for Immediate Administration. (1) A pharmacist may dispense a Schedule II controlled substance upon receiving oral authorization from a prescribing practitioner under the following conditions:

(a) Pursuant to KRS 218A.180(1), the prescription shall be needed for immediate administration to a patient enrolled in a hospice program or a resident of a long-term care facility;

(b) The quantity prescribed and dispensed shall be limited to the amount adequate to treat the patient or resident during the period in which immediate administration is necessary; and

(c) The prescribing practitioner personally communicates the oral prescription.

(2) Except for the signature of the prescribing practitioner, the prescription shall:

(a) Be immediately reduced to writing by the pharmacist in accordance with KRS 218A.180(6); and

(b) Contain all information required by KRS 218A.180(5) and 21 C.F.R. 1306.05.

(3) If the prescribing practitioner is not known to the pharmacist, the pharmacist shall make a reasonable effort to determine that the oral authorization came from a registered practitioner, which may include:

(a) A callback to the prescribing practitioner using the practitioner's phone number as listed in the telephone directory; or

(b) Other good faith efforts to ensure the practitioner's identity.

(4) Within seven (7) days after authorizing an oral prescription for immediate administration, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist and demonstrate compliance with the requirements established in this subsection.

(a) In addition to conforming to the requirements of KRS 218A.180(5) and 21 C.F.R. 1306.05, the prescription shall:

1. Have written on its face "Authorization for Emergency Dispensing" and the date of the oral order; and

2. Be delivered to the pharmacist:

a. In person;

b. By mail; or

c. Electronically pursuant to paragraph (d) of this subsection.

(b) If delivered by mail, the prescription shall be postmarked within seven (7) days of the date of the oral prescription for immediate administration.

(c) Upon receipt, the dispensing pharmacist shall attach the paper prescription to the oral prescription for immediate administration that was earlier reduced to writing.

(d) For electronic prescriptions, the pharmacist shall annotate the record of the prescription with the:

1. Original authorization; and

2. Date of the oral order.

(e) If the prescribing practitioner fails to deliver a written prescription to the pharmacist in accordance with this subsection, the pharmacist shall notify the nearest Drug Enforcement Administration (DEA) office.

(f) Failure of the pharmacist to comply with paragraph (e) of this subsection shall void the authority conferred by this subsection to dispense without a written prescription of a prescribing practitioner.

(5) A central fill pharmacy shall not be authorized under subsection (4) of this section to prepare prescriptions for a Schedule II controlled substance upon receiving an oral authorization from a retail pharmacist or a prescribing practitioner.

(6) Dispensing a Schedule II controlled substance beyond the period necessary for immediate administration shall be pursuant to a written prescription signed by the prescribing practitioner.

Section 3. Transmission by Facsimile of a Prescription for a Schedule II Controlled Substance. (1) A prescription prepared in accordance with KRS 218A.180, 21 C.F.R. 1306.05,[~~and~~] 902 KAR 55:080, and 902 KAR 55:105, Section 2, for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(2) A prescription prepared in accordance with KRS 218A.180, 21 C.F.R. 1306.05,[~~and~~] 902 KAR 55:080, and 902 KAR 55:105, Section 2, for a Schedule II controlled substance for a resident of a long-term care facility may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(3)(a) A prescription prepared in accordance with KRS 218A.180, 21 C.F.R. 1306.05,[~~and~~] 902 KAR 55:080, and 902 KAR 55:105, Section 2, for a Schedule II controlled substance for a hospice patient may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(b) The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient.

(4)[~~(a)~~] The facsimile prescription shall:

(a) Serve as the original written prescription for the purposes of subsections (1) to (3) of this section and as allowed[~~, required~~] by KRS 218A.180(1) for the dispensing of a Schedule II controlled substance; and

(b) Be maintained in the same manner as an original prescription.[~~(b) Within seven (7) calendar days after transmitting a facsimile prescription for a Schedule II controlled substance, the prescribing practitioner shall deliver the original written prescription to the dispensing pharmacy.~~

~~(c) A practitioner who fails to deliver the original written prescription within the period specified in paragraph (b) of this subsection shall be deemed to have violated KRS 218A.1404(3).~~]

Section 4[~~3~~]. Partial Filling of a Prescription for a Schedule II Controlled Substance. (1) Except as provided in subsections[~~subsection~~] (2) and (3) of this section, a pharmacist may partially fill a prescription for a controlled substance listed in Schedule II if the pharmacist:

(a) Is unable to dispense the full quantity called for in a written prescription or oral prescription for immediate administration as authorized by Section 2 of this administrative regulation [~~prescribed~~];

(b) Makes a notation of the quantity dispensed:

1. On the face of the written prescription;

2. In the written record of the oral prescription for immediate administration; or

3. In the electronic prescription record; and

(c) Dispenses the remaining portion of the prescription within seventy-two (72) hours of the first partial filling. If the remaining portion is not or cannot be filled within the seventy-two (72) hour period, the pharmacist shall notify the prescribing practitioner. No further quantity shall be dispensed without a new written prescription.

(2) A[~~written~~] prescription for a Schedule II controlled substance written for a patient in a long-term care facility or for a patient with a documented terminal illness may be dispensed in partial quantities, including [~~but not limited to~~] individual dosage units, if:

(a) The pharmacist records on the[~~face of the~~] prescription whether the patient is "terminally ill" or an "LTCF patient";

(b) The pharmacist records on the back of the written prescription or on another appropriate record, uniformly maintained and readily retrievable, the following data:

1. The date of the partial dispensing;

2. The quantity dispensed;

3. The remaining quantity authorized to be dispensed; and

4. The identification of the dispensing pharmacist;

(c) The pharmacist contacts the practitioner prior to dispensing the partial quantity if there is any question whether the patient is terminally ill because[~~, since~~] both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient;

(d) The total quantity dispensed in all partial dispensings does not exceed the quantity prescribed;[~~and~~]

(e) The partial dispensing occurs at the pharmacy where the original prescription is on file; and

(f) No dispensing occurs beyond sixty (60) days from date of issuance of the prescription.

(3) For a patient who is not terminally ill or a resident of a long-term care facility, a written prescription for a Schedule II controlled substance may be dispensed in partial quantities in accordance with the requirements established in this subsection.

(a) The partial dispensing shall be requested by the patient or the prescribing practitioner who issued the prescription.

(b) No dispensing occurs beyond thirty (30) days from the date of issuance of the prescription.

(c) The pharmacist shall comply with requirements established in subsection (2)(b), (d), and (e) of this section.

(4) The information required by this section pertaining to current Schedule II prescriptions may be maintained in a computerized system if the system has the capability to permit:

(a) Output (display or printout) of the:

1. Original prescription number;

2. Date of issue;

3. Identification of the prescribing practitioner;

4. Identification of the patient;

5. Address of the long-term care facility, hospital, or residence of the patient, if applicable;

6. Identification of medication authorized, including:

a. Dosage;

b. Form;

c. Strength; and

d. Quantity;

7. Listing of the partial fillings that have been dispensed under each prescription; and

8. Information required in 21 C.F.R. 1306.13(b);

(b) Immediate (real time) updating of the prescription record each time a partial filling of the prescription is conducted; and

(c) Retrieval of partially filled Schedule II prescription information that is the same as required by KRS 218A.180(7) for Schedule III and IV prescription refill information.

(5) If a record keeping system is being used that does not permit refills of Schedule II controlled substances, a new

prescription number for the partial dispensing shall be permitted.

(6) A prescription that is partially filled and does not comply with the requirements of[~~subsection (1) or (2) of~~] this section shall be deemed to have been filled in violation of KRS 218A.200(3), (4) and 21 C.F.R. 1306.13.

ROBERT S. SILVERTHORN, JR., Inspector General
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 9, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2017, at 9:00 a.m. in Suites A & 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 July 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. 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 this proposed administrative regulation until July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, Internal Policy Analyst, Office of Inspector General, email stephanie.brammer@ky.gov, phone 502-564-2888, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation permits the transmission of prescriptions for Schedule II controlled substances between the prescriber and dispenser via oral authorization for immediate administration, or by facsimile to facilitate the delivery of medications to certain patients whose need for medication shall be initiated or changed quickly. This administrative regulation also permits the partial filling of prescriptions for Schedule II controlled substances to patients whose medication needs may be long term but who wish to store limited quantities or in situations where the pharmacy is unable to supply the full quantity prescribed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish prescription requirements for Schedule II controlled substances.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing prescription requirements for Schedule II controlled substances.

(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 prescription requirements for Schedule II controlled substances.

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

(a) How the amendment will change this existing administrative regulation: In accordance with the passage of HB 333 during the 2017 legislative session, this amendment aligns 902 KAR 55:095 with the federal regulation, 21 C.F.R. 1306.11, by allowing pharmacists to dispense a Schedule II controlled substance upon receiving oral authorization for immediate administration only to hospice patients and long-term care facility residents. Additionally, this amendment removes the requirement for delivery of the original written prescription to the dispensing pharmacy within seven (7) days of transmitting a facsimile prescription for a Schedule II controlled substance. However, it is important to note that this amendment aligns with 21 C.F.R 1306.11 by requiring the prescribing practitioner to deliver in person, by mail, or electronically a written prescription to the dispensing pharmacist within seven (7) days after authorizing an oral prescription for a hospice patient or resident of a long-term care facility. This amendment also establishes requirements for partial filling of a Schedule II controlled substance prescription for a patient who is not terminally ill or a resident of a long-term care facility.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the revisions to KRS 218A.180 made by HB 333, Section 9, as well as align 902 KAR 55:095 with 21 C.F.R. 1306.11 – 1306.14.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by aligning 902 KAR 55:095 with KRS 218A.180 and 21 C.F.R. 1306.11 – 1306.14.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by aligning 902 KAR 55:095 with KRS 218A.180 and 21 C.F.R. 1306.11 – 1306.14.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects Kentucky's pharmacists who rely on state and federal regulations for information that establishes prescription requirements for Schedule II controlled substances.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Under this amendment, Kentucky's pharmacists will be authorized to dispense a Schedule II controlled substance upon receiving oral authorization for immediate administration only to hospice patients and long-term care facility residents. Pharmacists must otherwise comply with state and federal requirements for prescriptions of Schedule II controlled substances.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be incurred by affected entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By making 902 KAR 55:095 consistent with the DEA's requirements for prescriptions of Schedule II controlled substances, this amendment reduces confusion for Kentucky's pharmacists. Additionally, this amendment eliminates a more restrictive state requirement not included in federal regulation by removing the requirement for delivery of the original written prescription to the dispensing pharmacy within seven (7) days of transmitting a facsimile prescription for a Schedule II controlled substance.

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

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement this amendment.

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

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

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

The amendment to this administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the promulgating agency and Kentucky's pharmacists who rely on state and federal regulations for information establishing prescription requirements for Schedule II controlled substances.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.180, 21 C.F.R.
290.10, 21 C.F.R. 1306.05, 1306.11 – 1306.14

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

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

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

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 290.10, 21 C.F.R. 1306.05, 1306.11 – 1306.14

2. State compliance standards. KRS 218A.180

3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 290.10 defines the term "emergency situation". However, the term "immediate administration" is used in KRS 218A.180(1) in the same manner as the term "emergency situation" is used in the federal regulation. Therefore, "immediate administration" is defined in Section 1(2) of this administrative regulation to have the same meaning as the definition of "emergency situation" in 21 C.F.R. 290.10. 21 C.F.R. 1306.05 identifies the information required on all prescriptions for controlled substances. 21 C.F.R. 1306.11 – 1306.14 establish requirements for prescriptions of Schedule II controlled substances.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 3:066. Nonemergency medical transportation waiver services and payments.

RELATES TO: KRS[~~96 A.010,~~] 96A.095,[~~96A.170,~~] 205.520, 281.010[~~281.014(5)~~], 281.605(9), 281.635(5)[~~(9)~~], 281.872, 281.875, 42 C.F.R. 431.53, 440.170[~~440.710~~], 42 U.S.C. 1396n(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 205.520(3), 42 C.F.R. 431.53, 42 U.S.C. 1396a[~~194A.025, 194.030(2), 195.020, 281.014, 281.872, 281.875, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY:[~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] 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 to qualify for federal Medicaid funds[~~for the provision of medical assistance to Kentucky's indigent citizenry~~]. This administrative regulation establishes the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services[~~Health Care Financing Administration~~] to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

Section 1. Definitions. (1) "Capitated rate" means one (1) amount paid each month:

(a) For each Medicaid recipient covered under authority of the waiver; and

(b) That is:

1. Not[~~. The capitated rate shall not be~~] a statewide rate; and

2.[~~but shall be~~] Set individually for each human service transportation delivery region as established in 603 KAR 7:080.

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

(3) "Human service transportation" means provision of mass transportation and taxi services to transport an individual who is eligible to receive Medicaid transportation services.

(4) "Nonemergency medical transportation" means medical transportation not of an emergency nature, excluding ambulance stretcher services, provided to an eligible[~~a~~] Medicaid recipient by the Transportation Cabinet pursuant to an agreement between the Transportation Cabinet and the department.

(5) "Waiver authority" means the provisions contained in 42 U.S.C. 1396n(b).

Section 2. Interagency Agreement. Pursuant to waiver authority granted by the Centers for Medicare and Medicaid Services[~~Health Care Financing Administration, U.S. Department for Health and Human Services~~], the Department for Medicaid Services may enter into an agreement with the Transportation Cabinet for the provision of nonemergency medical transportation to a Medicaid recipient.

Section 3. Coverage. (1) The coverage provisions established in 603 KAR 7:080 shall comply with this administrative regulation.

(2) A Medicaid-eligible recipient may receive nonemergency medical transportation services if the recipient meets the following conditions:

(a) The recipient is traveling to or from a Medicaid-covered service[~~, exclusive of pharmaceutical services~~];

(b) The service is determined to be of medical necessity; and

(c) Free transportation, which is appropriate for the recipient's medical needs, is not available or use of an appropriate and operational household vehicle is not available.

Section 4. Reimbursement. (1) The Transportation Cabinet shall be reimbursed at a monthly capitated rate set by the department for each Medicaid recipient receiving services pursuant to this administrative regulation.

(2) The capitated rate shall not exceed the Medicaid Program's usual aggregate cost on a projected statewide basis of providing nonemergency medical transportation services to the covered group of recipients.

Section 5. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.[~~;~~]

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.[~~; or~~]

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 6. Implementation. The provisions of this administrative regulation shall be applicable for nonemergency transportation waiver services provided in accordance with KRS Chapter 45A and Section 2 of this administrative regulation[~~on or after April 12, 2000~~].

STEPHEN P. MILLER, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 14, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2017 at 9:00 a.m. in Suites A & 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 July 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 this proposed administrative regulation until July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, emailTricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-4321, ext. 2015, donna.little@ky.gov., or Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services, to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services, to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services, to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the exclusion for pharmaceutical services from the description of a Medicaid-covered service, which means that a Medicaid-eligible recipient may receive nonemergency medical transportation services if the recipient is traveling to or from a Medicaid-covered service (even if to a pharmacy); the service is determined to be of medical necessity; and free transportation, which is appropriate for the recipient's medical needs, is not available or use of an appropriate and operational household vehicle is not available. The amendment also corrects citations and makes other drafting and formatting changes to comply with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: 42 C.F.R. 431.53 requires transportation for beneficiaries to and from providers, without an exclusion for pharmacies. The Centers for Medicare and Medicaid Services has conditionally approved the Department for Medicaid Services' human service transportation delivery program waiver, contingent upon the removal of the previously-established exclusion for pharmacy services. This amendment is therefore necessary to prevent a loss of federal funds and meet the deadline for promulgation of the regulatory change established by CMS to bring Kentucky's administrative regulation into compliance with 42 C.F.R. 431.53.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by removing the exclusion for pharmaceutical services from the description of nonemergency medical transportation services. 42 C.F.R. 431.53 requires transportation for beneficiaries to and from providers, without an exclusion for pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by removing an exclusion that was not authorized by 42 C.F.R. 431.53 for nonemergency medical transportation services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all individuals who qualify for nonemergency medical transportation services as well as all providers of those transportation services. The number of individuals and providers affected cannot be determined.

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

(a) List 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 nonemergency medical transportation service providers will be required to transport each Medicaid-eligible recipient who meets the specified requirements to or from a Medicaid-covered service, including to a pharmacy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Removing the exclusion for pharmaceutical services will increase the nonemergency medical transportation annual costs by about $9 million.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The main benefit to the providers and the Department for Medicaid Services will be compliance with

42 C.F.R. 431.53. The main benefit to Medicaid-eligible recipients will be the ability to receive nonemergency medical transportation to and from a pharmacy service.

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

(a) Initially: Removing the exclusion for pharmaceutical services will cost about $9 million in increased nonemergency medical transportation costs annually.

(b) On a continuing basis: Removing the exclusion for pharmaceutical services will cost about $9 million in increased nonemergency medical transportation costs annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.520(3), 42 C.F.R. 431.53, 42 U.S.C. 1396a

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

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

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

(c) How much will it cost to administer this program for the first year? Removing the exclusion for pharmaceutical services will cost about $9 million in increased nonemergency medical transportation costs annually.

(d) How much will it cost to administer this program for subsequent years? Removing the exclusion for pharmaceutical services will cost about $9 million in increased nonemergency medical transportation costs 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. 431.53, 42 U.S.C. 1396a

2. State compliance standards. 42 C.F.R. 431.53 requires transportation for beneficiaries to and from providers, without an exclusion for pharmacies. The Centers for Medicare and Medicaid Services has conditionally approved the Department for Medicaid Services' human service transportation delivery program waiver, contingent upon the removal of the previously-established exclusion for pharmacy services. This amendment is therefore necessary to prevent a loss of federal funds and meet the deadline for promulgation of the regulatory change established by CMS to bring Kentucky's administrative regulation into compliance with 42 C.F.R. 431.53.

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 431.53 requires transportation for beneficiaries to and from providers, without an exclusion for pharmacies.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter or different responsibilities than the federal requirements. The amendment aligns this administrative regulation with the federal regulation, 42 C.F.R. 431.53.

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

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

921 KAR 3:025. Technical requirements.

RELATES TO: KRS 205.2005, 7 C.F.R.[~~Part~~] 273.4, 273.5, 273.7, 45 C.F.R. 261.2, 7 U.S.C. 2011, 2014, 2015(d)[~~, 8 U.S.C. 1101-1524, 1612(a), 19 U.S.C. 2296, 21 U.S.C. 862(a), 25 U.S.C. 450, 29 U.S.C. 2801 to 2945, 38 U.S.C. 101, 107, 1101, 1301, 1304, 1382, 5303A(d), 42 U.S.C. 681, 1382, Pub. L. 111-118~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R.[~~Parts~~] 271.4, 272, 273

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R.[~~Part~~] 271.4 requires the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. 7 C.F.R.[~~Parts~~] 272 and 273 set forth requirements for the cabinet to participate in the SNAP. In addition, 7 U.S.C. 2014 establishes that an otherwise-qualified alien who is blind or receiving a disability benefit, who has lived in the United States for at least five (5) years, or is under eighteen (18) years of age shall be eligible to participate in SNAP regardless of the date he entered the United States. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of SNAP.

Section 1. Definitions. (1) "Certification period" means a period of time during which a household shall be eligible to receive SNAP benefits.

(2) "Exempt" means excused by the department from participation in the Supplemental Nutrition Assistance Program Employment and Training Program (E&T).

(3) "Qualified alien" is defined by 7 C.F.R. 273.4[~~means an alien or refugee who is:~~

~~(a) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 to 1524;~~

~~(b) Granted asylum pursuant to 8 U.S.C. 1158;~~

~~(c) Admitted to the United States pursuant to 8 U.S.C. 1157;~~

~~(d) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;~~

~~(e) Having his deportation withheld pursuant to:~~

~~1. 8 U.S.C. 1253(h), as in effect prior to April 1, 1997; or~~

~~2. 8 U.S.C. 1231(b)(3);~~

~~(f) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7) as in effect prior to April 1, 1980;~~

~~(g) Granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;~~

~~(h) A victim that has been battered or subjected to extreme cruelty in the U.S. pursuant to 8 U.S.C. 1182;~~

~~(i) A victim of a severe form of trafficking in persons who has been certified to the same extent as an alien who is admitted to the U.S. as a refugee pursuant to 8 U.S.C. 1157; or~~

~~(j) An alien admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120~~].

(4)[~~(3)~~] "Student" means a person who is between the ages of eighteen (18) and forty-nine (49), physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with federal regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, the cabinet shall utilize national uniform requirements of technical eligibility for SNAP.

Section 3. Technical Eligibility Criteria. Technical eligibility requirements shall apply to all households and consist of:

(1) Residency. A household:

(a) Shall reside in the county in which the household receives[~~they receive~~] benefits; and

(b) May apply for benefits in any county as specified in 921 KAR 3:030, Section 3.

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, the applicant's and the authorized representative's identities shall be verified.

(3) Citizenship and alien status.

(a) An individual[~~The following individuals~~] shall satisfy the citizenship and alien status requirement if the individual is a:

1.[~~A~~] Citizen of the United States;

2.[~~A~~] U.S. noncitizen national; or

3. Qualified alien who is lawfully residing in Kentucky[~~An alien who is:~~

~~a. An American Indian born in Canada pursuant to 8 U.S.C. 1359; or~~

~~b. A member of an Indian tribe pursuant to 25 U.S.C. 450;~~

~~4.a. An alien lawfully residing in the United States who was a member of a Hmong or Highland Laotian tribe and rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era pursuant to 38 U.S.C. 101;~~

~~b. The spouse, or an unmarried dependent child, of an individual described in clause a of this subparagraph; or~~

~~c. The unmarried surviving spouse of such an individual who is deceased, as described in clause a of this subparagraph.~~

~~5. An alien who is lawfully residing in Kentucky and is:~~

~~a. A veteran, as defined pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with an honorable discharge and not on account of alienage, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d);~~

~~b. On active duty, other than active duty for training, in the Armed Forces of the United States;~~

~~c. The spouse or unmarried dependent child of an individual described in clauses a and b of this subparagraph;~~

~~d. The unmarried surviving spouse of an individual described in clauses a and b of this subparagraph who is deceased if the marriage fulfills the requirements of 38 U.S.C. 1304;~~

~~e. Under eighteen (18) years of age on October 1, 2003;~~

~~6. An alien lawfully residing in the United States on August 22, 1996, who is blind or has a disability pursuant to 42 U.S.C. 1382;~~

~~7. An alien lawfully residing in the United States on August 22, 1996, who was sixty-five (65) years of age or older;~~

~~8. An alien lawfully residing in the United States on October 1, 2003, who is under eighteen (18) years of age;~~

~~9. An alien admitted to the United States as an Afghan or Iraqi special immigrant on or after December 19, 2009, in accordance with Pub. L. 111-118, Section 8120; or~~

~~10. An alien lawfully residing in the United States who meets the alien and citizenship requirements as specified in subparagraph 5 of this paragraph.~~

~~(b) In accordance with 7 U.S.C. 2014, an otherwise-qualified alien who is blind or receiving a disability benefit, who has lived in the United States for at least five (5) years, or who is under eighteen (18) years of age, shall be eligible to participate in SNAP regardless of the date the otherwise-qualified alien entered the United States.~~

~~(c) Pursuant to 8 U.S.C. 1612(a)(2)(D)(ii), an alien who was participating in SNAP on August 22, 1996, shall not be determined ineligible based solely on the alien eligibility criteria of 8 U.S.C. 1612(a)(1)~~].

(b)[~~(d)~~] Except as provided in paragraph (c)[~~(e)~~] of this subsection, an individual whose status is questionable shall be ineligible to participate until verified.

(c)[~~(e)~~] An individual whose status is pending verification from a federal agency shall be eligible to participate for up to six (6) months from the date of the original request for verification.

(d)[~~(f)~~] A single household member shall attest in writing to the citizenship or alien status requirements as established in 921 KAR 3:030 for each household member.

(4) Household size. If information is obtained by the Department for Community Based Services (DCBS) that household size differs from the household's stated size, the size of household shall be verified through readily available documentary evidence or through a collateral contact.

(5) Students. A student shall be ineligible to participate unless the student is[~~they meet at least one (1) of the following criteria~~]:

(a) [~~Shall be~~]Engaged in paid employment for an average of twenty (20) hours per week or, if self-employed, shall be employed for an average of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours;

(b) Participating[~~Shall participate~~] in a state or federally financed work study program during the regular school year;

(c) [~~Shall be~~]Responsible for the care of a dependent household member under the age of six (6);

(d) [~~Shall be~~]Responsible for the care of a dependent household member who has reached the age of six (6), but is under age twelve (12) and for whom[~~where~~] the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) and (b) of this subsection;

(e) Receiving[~~Shall receive~~] benefits from the Kentucky Transitional Assistance Program (K-TAP);

(f) [~~Shall be~~]Assigned to or placed in an institution of higher learning through a program pursuant to:

1. 29 U.S.C. 2801;

2. 45 U.S.C. 261.2; or

3. 19 U.S.C. 2296;

(g) [~~Shall be~~]Enrolled in an institution of higher learning as a result of participation in a work incentive program pursuant to 42 U.S.C. 681; [~~or~~]

(h) Enrolled in an institution of higher learning as a result of participation in E&T in accordance with 921 KAR 3:042; or

(i)[~~is~~] A single parent with responsibility for the care of a dependent household member under age twelve (12).

(6) Social Security number (SSN).

(a) Households applying for or participating in SNAP shall comply with SSN requirements by providing the SSN of each household member or applying for one prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in an individual's disqualification from participation in SNAP until this requirement is met.

(7) Work registration. All household members shall be required to comply with the work registration requirements, unless exempt, as established in Section 4 of this administrative regulation[~~921 KAR 3:042~~].

(8) Work requirement.

(a) Except for individuals who[~~that~~] may be eligible for up to three (3) additional[~~countable~~] months in accordance with Section 4 of this administrative regulation[~~subsection (7) of this section~~], an individual shall not be eligible to participate in SNAP as a member of a household if the individual received SNAP for more than three (3) countable months during any three (3) year period, during which the individual did not:

1. Work eighty (80) hours or more per month;

2. Participate in and comply with the requirements of the E&T[~~Employment and Training Program~~] component pursuant to 7 U.S.C. 2015(d) for twenty (20) hours or more per week;

3. Participate in and comply with the requirements of a program pursuant to:

a. 29 U.S.C. 2801 to 2945; or

b. 19 U.S.C. 2296;

4. Participate in and comply with the requirements established in 921 KAR 3:042[~~of~~] the[~~following programs~~]:

a.[~~The~~] Work Experience Program component of SNAP Employment and Training Program; or

b. Vocational Education Skill Training Program; or

5. Receive SNAP benefits pursuant to paragraph (b), (c), or (d) of this subsection.

(b) Paragraph (a) of this subsection shall not apply to an individual if the individual is:

1. Under eighteen (18) or fifty (50) years of age or older;

2. Physically or mentally unfit for employment as determined by the cabinet;

3. A parent or other adult member of a household containing a dependent child under the age of eighteen (18);

4. Exempt from work registration as specified in Section 4(4) of this administrative regulation;[~~921 KAR 3:042, Section 2;~~] or

5. Pregnant.

(c) Paragraph (a) of this subsection shall not apply if, pursuant to an approved waiver by FNS, the county or area in which the individual resides:

1. Has an unemployment rate of over ten (10) percent; or

2. Does not have a sufficient number of jobs to provide employment.

(d) Subsequent eligibility.

1. An individual denied eligibility under paragraph (a) of this subsection shall regain eligibility to participate in SNAP if, during a thirty (30) day period, the individual meets the conditions of paragraph (a)1 through 4 of this subsection, or[~~who did not reapply for benefits because~~] the individual was not meeting the work requirements in accordance with paragraph (b) of this subsection.

2. An individual who regains eligibility pursuant to subparagraph 1 of this paragraph shall remain eligible as long as the individual meets the requirements of subparagraph 1 of this paragraph.

(e) Loss of employment or training.

1. An individual who regains eligibility under paragraph (d)1 of this subsection and who no longer meets the requirements of paragraph (a)1 through 4 of this subsection shall remain eligible for a consecutive three (3) month period, beginning on the date the individual first notifies the cabinet that the individual no longer meets the requirements of paragraph (a)1 through 4 of this subsection.

2. An individual shall not receive benefits under subparagraph 1 of this paragraph for more than a single three (3) month period in any three (3) year period.

(f) If the individual does not meet all other technical and financial eligibility criteria pursuant to 7 U.S.C. 2011, nothing in this section shall make an individual eligible for SNAP benefits.

(9) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

(10) Drug felons. An individual convicted under federal or state law of an offense classified as a felony by the law of the jurisdiction involved and that has an element of possession, use, or distribution of a controlled substance as defined in 21 U.S.C. 862(a), may remain eligible for SNAP benefits if the individual meets the requirements pursuant to KRS 205.2005.

Section 4. Work Registration. (1) Unless a household member is exempt from work requirements as specified in subsection (4) of this section, a household member shall register for work:

(a) At the time of initial application for SNAP; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by the:

(a) Member required to register; or

(b) Person making application for the household.

(3) Unless otherwise exempt, a household member excluded from the SNAP case shall register for work during periods of disqualification. An excluded person shall be an:

(a) Ineligible alien; or

(b) Individual disqualified for:

1. Refusing to provide or apply for a Social Security number; or

2. An intentional program violation.

(4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.

(5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance with 7 C.F.R. 273.7(b)(2).

(6) After registering for work, a nonexempt household member shall:

(a) Respond to a cabinet request for additional information regarding employment status or availability for work;

(b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment as specified in 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or

(c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program if assigned by the cabinet.

(7) A household member making a joint application for SSI and SNAP in accordance with 921 KAR 3:035 shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).

(8) The cabinet's E&T worker shall explain to the SNAP applicant the:

(a) Work requirements for each nonexempt household member;

(b) Rights and responsibilities of the work-registered household members; and

(c) Consequences of failing to comply.

Section 5. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:

(a) Work registrant has failed to comply with work registration requirements as specified in Section 4 of this administrative regulation; or

(b) Household member has, as described in Section 7 of this administrative regulation, voluntarily:

1. Quit a job; or

2. Reduced the household member's work effort.

(2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:

(a) Illness of the individual;

(b) Illness of another household member requiring the presence of the individual;

(c) A household emergency;

(d) Unavailability of transportation; or

(e) Lack of adequate care for a child who is six (6) to twelve (12) years of age for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

(a) A circumstance specified in subsection (2) of this section exists;

(b) The employment became unsuitable in accordance with 7 C.F.R. 273.7(h); or

(c) A circumstance specified in 7 C.F.R. 273.7(i)(3) exists.

Section 6. Disqualification. (1) A participant shall be disqualified from the receipt of SNAP benefits if the participant:

(a) Fails to comply with the work registration requirements; or

(b) Is determined to have voluntarily, without good cause, quit a job or reduced the work effort as established in Section 5 of this administrative regulation.

(2) An individual disqualified from participation in SNAP shall

be ineligible to receive SNAP benefits until the latter of the:

(a) Date the individual complies; or

(b) Lapse of the following time periods:

1. Two (2) months for the first violation;

2. Four (4) months for the second violation; or

3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:

(a) Becomes exempt from the work registration; or

(b)1. Serves the disqualification period specified in subsection (2)(b) of this section; and

2. Complies with the work registration requirements.

(4) A disqualified household member who joins a new household shall:

(a) Remain ineligible for the remainder of the disqualification period specified in subsection (2)(b) of this section;

(b) Have income and resources counted with the income and resources of the new household; and

(c) Not be included in the household size in the determination of the SNAP allotment.

Section 7. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for SNAP or any time after application, an individual shall not be eligible to participate in SNAP if the individual voluntarily, without good cause:

(a) Quits a job:

1. Of thirty (30) hours or more per week; and

2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or

(b) Reduces the individual's work effort to:

1. Less than thirty (30) hours per week; and

2. After the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.

(2) The cabinet shall impose a disqualification period established in Section 6(2)(b) of this administrative regulation on an individual meeting subsection (1)(a) or (1)(b) of this section.

Section 8. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Eligibility and participation may be reestablished by:

(a) Securing new employment with salary or hours comparable to the job quit;

(b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or

(c) Serving the minimum period of disqualification imposed pursuant to Section 6(2)(b) of this administrative regulation.

(2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in SNAP.

(3) If an individual becomes exempt from work registration, the disqualification period shall end, and the individual shall be eligible to apply to participate in SNAP.

Section 9. Hearing Process. If aggrieved by a cabinet action or inaction that affects participation, a SNAP participant may request a hearing in accordance with 921 KAR 3:070.

ADRIA JOHNSON, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 12, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2017, at 9:00 a.m. in Suites A & 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 July 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. 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 be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the technical requirements to receive Supplemental Nutrition Assistance Program (SNAP) benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the technical requirements for eligibility for SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of technical requirements for SNAP eligibility.

(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 technical requirements for SNAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates work registration and disqualification requirements to be applied to nonexempt SNAP household members. In addition, the amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will facilitate the establishment of a voluntary employment and training (E&T) program for all SNAP recipients in addition to those able-bodied adults without dependents (ABAWDs) in SNAP who must participate in an approved E&T activity or work as a condition of benefit receipt. Under a voluntary program, any SNAP recipient may choose to participate in and gain the benefits of an E&T activity. Individuals who volunteer to participate are motivated to find work and achieve self-sufficiency, and they are more open to discuss their past experiences, goals, and challenges and more ready and willing to accept help in achieving their goals. The expansion will help the state leverage additional resources and provide a larger array of E&T opportunities to promote a SNAP recipient's job prospects and, ultimately, reduce reliance upon SNAP.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conform to the authorizing statutes by prescribing work registration and disqualification requirements for SNAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this regulation will incorporate the technical work requirements for the SNAP program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of March 2017, there are 299,418 households receiving Supplemental Nutrition Assistance Program benefits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative

regulation will not require a new action on the part of affected entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to the administrative regulation will not create a new cost to SNAP recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Any SNAP recipient, not just those able-bodied adults without dependents who must participate in an E&T activity or work as a condition of benefit receipt, can benefit from the E&T program and, ultimately, improve their job prospects and perhaps even reduce their reliance upon SNAP. In the voluntary program unlike the present-day program, an able-bodied adult without dependents, who is disqualified and then demonstrates compliance, can regain eligibility without serving a disqualification period. The amendment to this administrative regulation will allow the state to leverage additional resources and expand the array of E&T activities available statewide to all SNAP recipients.

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

(a) Initially: The amendment to this administrative regulation does not create additional, ongoing costs to the administrating agency. Rather, the amendment may increase state and federal resources for and expand E&T activities statewide. The amendment also presents the possibility for reduced administrative burdens for the agency as a result of less staff time spent on determining E&T noncompliance, good cause, and issuing adverse notices to mandatory SNAP recipients.

(b) On a continuing basis. The amendment to this administrative regulation does not create additional costs to the administrating agency. Rather, the amendment may increase state and federal resources for and expand E&T activities statewide.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees, nor directly or indirectly increases any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4

2. State compliance standards. KRS 194.050(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 (1), 7 C.F.R. 271.4

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? SNAP does not directly generate any revenue. The cabinet may be able to qualify for additional federal reimbursement of SNAP E&T activities as a result of the programmatic changes supported through 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?
SNAP does not directly generate any revenue. The cabinet may be able to qualify for additional federal reimbursement of SNAP E&T activities as a result of the programmatic changes supported through this administrative regulation.

(c) How much will it cost to administer this program for the first year? This amendment will not create any new or additional ongoing costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require any new or additional costs in subsequent years.

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

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

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

921 KAR 3:042. Supplemental Nutrition Assistance Program Employment and Training Program.

RELATES TO: 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 273.7

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is required by 7 C.F.R. 273.7 to administer a Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes technical eligibility requirements used by the cabinet in the administration of the SNAP Employment and Training Program (E&T).

Section 1. Definitions. (1)[~~"Exempt" means excused by the agency from participation in the E&T.~~

~~(2)~~] "Vocational Educational Skills Training" or "VEST" means a program in which a participant receives training in order to meet a work requirement.

(2)[~~(3)~~] "Work Experience Program" or "WEP" means a program in which a participant receives work experience in order to meet a work requirement.

Section 2.[~~Work Registration. (1) Unless exempt from work~~

~~requirements as specified in subsection (4) of this section, a household member shall register for work:~~

~~(a) At the time of initial application for SNAP; and~~

~~(b) Every twelve (12) months following the initial application.~~

~~(2) Work registration shall be completed by the:~~

~~(a) Member required to register; or~~

~~(b) Person making application for the household.~~

~~(3) Unless otherwise exempt, a household member excluded from the SNAP case shall register for work during periods of disqualification. An excluded person may be an:~~

~~(a) Ineligible alien; or~~

~~(b) Individual disqualified for:~~

~~1. Refusing to provide or apply for a Social Security number; or~~

~~2. An intentional program violation.~~

~~(4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.~~

~~(5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance with 7 C.F.R. 273.7(b)(2).~~

~~(6) After registering for work, a nonexempt household member shall:~~

~~(a) Respond to a cabinet request for additional information regarding employment status or availability for work;~~

~~(b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment as specified in 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or~~

~~(c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program, if assigned by the cabinet.~~

~~(7) A household member making a joint application for SSI and SNAP in accordance with 921 KAR 3:035, shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).~~

~~(8) The E&T worker shall explain to the SNAP applicant the:~~

~~(a) Work requirements for each nonexempt household member;~~

~~(b) Rights and responsibilities of the work-registered household members; and~~

~~(c) Consequences of failing to comply.~~

~~Section 3.~~] E&T Participation. (1) An individual may volunteer to[~~subject to the work requirement of 921 KAR 3:025, Section 3(8) shall~~] participate in the E&T Program.

(2) An E&T participant shall:

(a) Complete an initial assessment interview;

(b) Be placed in an approved SNAP E&T component[~~:~~

~~1. VEST; or~~

~~2. WEP~~]; and

(c) Complete and return to the cabinet[~~a FSET-108, Job Search Contact Report, or~~] a FSET-145, Employment and Training Program Activity Report, in order to verify participation.

(3) Payment for transportation, up to twenty-five (25) dollars per month, shall be provided to an individual participating in the E&T program if the individual:

(a) Incurs or plans to incur a transportation expense in order to participate; and

(b) Completes and returns to the cabinet a FSET-108, Job Search Contact Report, or a FSET-145 stating the anticipated need.

(4) A transportation payment shall not be made if the participant is not in compliance with an E&T activity in accordance with this administrative regulation.

Section 3[4]. Components. (1) A county offering the E&T Program shall offer the following services and activities:

(a) The VEST Program consisting of:

1. Vocational school; or

2. On-the-job training; and

(b) The WEP Program consisting of:

1. Job search; and

2. Work placement.

(2) An individual participating in VEST shall:

(a) Attend training courses for at least twenty (20) hours per week; and

(b) Participate in the WEP component until a VEST placement is available.

(3) An individual participating in WEP shall:

(a) Complete an initial assessment and develop an employability plan;

(b) Participate in the initial thirty (30) days of job search;

(c) Complete and file with the cabinet the FSET-108;

(d) Provide written verification by the WEP provider of E&T Program activities to the cabinet; and

(e) Satisfy the work requirement, in accordance with 921 KAR 3:025, Section 3(8), by:

1. Accepting the offer of a work site placement; and

2. Working at the assigned work site placement for the minimum monthly number of hours required by subsection (4) or (5) of this section.

(4) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement of 921 KAR 3:025, Section 3(8), shall be determined by the participant's monthly SNAP allotment divided by the current federal minimum wage.

(5) If the SNAP household's active members include more than one (1) individual who wants to satisfy the work requirement of 921 KAR 3:025, Section 3(8), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by dividing the:

(a) SNAP allotment by the number of individuals who are subject to the work requirement; and

(b) Individual pro rata share of the SNAP allotment by the current federal minimum wage. [~~Section 5. Conciliation. (1) If a participant fails to comply with the E&T Program:~~

~~(a) The participant shall be issued a notice informing the recipient of the need for conciliation due to noncompliance; and~~

~~(b) A conciliation period shall be initiated.~~

~~(2) The conciliation period shall be used to:~~

~~(a) Determine the reason for the noncompliance; and~~

~~(b) Allow the participant the opportunity to resolve the problem in order to continue participation.~~

~~(3) Conciliation shall last for fifteen (15) days, during which time the E&T worker shall:~~

~~(a) Determine if the participant demonstrates good cause for noncompliance;~~

~~(b) Encourage the participant to resume an E&T Program activity; or~~

~~(c) Recommend disqualification for failure to comply with program requirements, if the worker determines that there was no good cause for the participant's failure to comply.~~

~~(4) If the participant resumes the E&T Program activity, a disqualification shall not be imposed.~~

~~(5) If conciliation is unsuccessful and the participant fails or refuses to demonstrate good cause, a disqualification shall be imposed.~~

~~Section 6. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:~~

~~(a) Work registrant has failed to comply with:~~

~~1. Work registration requirements as established in Section 2 of this administrative regulation; or~~

~~2. E&T requirements as established in Section 3 of this administrative regulation; or~~

~~(b) Household member has, as described in Section 8 of this administrative regulation, voluntarily:~~

~~1. Quit a job; or~~

~~2. Reduced his work effort.~~

~~(2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:~~

~~(a) Illness of the individual;~~

~~(b) Illness of another household member requiring the presence of the individual;~~

~~(c) A household emergency;~~

~~(d) Unavailability of transportation; and~~

~~(e) Lack of adequate care for a child of age six (6) to twelve (12) for whom the individual is responsible.~~

~~(3) Good cause for leaving employment shall be granted if:~~

~~(a) A circumstance specified in subsection (2) of this section~~

~~exists;~~

~~(b) The employment became unsuitable, in accordance with 7 C.F.R. 273.7(h); or~~

~~(c) A circumstance specified in 7 C.F.R. 273.7(i)(3) exists.~~

~~Section 7. Disqualification. (1) A mandatory participant shall be disqualified from the receipt of SNAP benefits if the participant:~~

~~(a) Fails to comply with the work registration or E&T program requirements; or~~

~~(b) Is determined to have voluntarily and without good cause quit a job or reduced the work effort, as established in Section 8 of this administrative regulation.~~

~~(2) An individual disqualified from participation in SNAP shall be ineligible to receive SNAP benefits until the latter of the:~~

~~(a) Date the individual complies; or~~

~~(b) Lapse of the following time periods:~~

~~1. Two (2) months for the first violation;~~

~~2. Four (4) months for the second violation; or~~

~~3. Six (6) months for the third or a subsequent violation.~~

~~(3) Ineligibility shall continue until the ineligible member:~~

~~(a) Becomes exempt from the work registration; or~~

~~(b)1. Serves the disqualification period specified in subsection (2) of this section; and~~

~~2. Complies with the requirements of:~~

~~a. Work registration; or~~

~~b. The Employment and Training Program.~~

~~(4) A disqualified household member who joins a new household shall:~~

~~(a) Remain ineligible for the remainder of the disqualification period specified in subsection (2) of this section;~~

~~(b) Have income and resources counted with the income and resources of the new household; and~~

~~(c) Not be included in the household size if determining the SNAP allotment.~~

~~Section 8. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for SNAP or any time after application, an individual shall not be eligible to participate in SNAP if the individual voluntarily and without good cause:~~

~~(a) Quits a job:~~

~~1. Of thirty (30) hours or more per week; and~~

~~2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or~~

~~(b) Reduces his work effort to less than thirty (30) hours per week, and after the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.~~

~~(2) A disqualification period established in Section 7 of this administrative regulation shall be imposed.~~

~~Section 9. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Eligibility and participation may be reestablished by:~~

~~(a) Securing new employment with salary or hours comparable to the job quit;~~

~~(b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or~~

~~(c) Serving the minimum period of disqualification imposed pursuant to Section 7(2)(b) of this administrative regulation.~~

~~(2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in SNAP.~~

~~(3) If an individual becomes exempt from work registration, the disqualification period shall end and the individual shall be eligible to apply to participate in SNAP.~~]

Section 4[~~10~~]. Hearing Process. If aggrieved by an action or inaction that affects participation, a SNAP participant may request a hearing in accordance with 921 KAR 3:070.

Section 5[~~11~~]. Reimbursement. An individual shall complete and file with the cabinet a written request to have a reimbursement check for employment or training replaced after loss or theft.

Section 6[~~12~~]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "FSET-108, Job Search Contact Report", 10/17[~~12/15~~]; and

(b) "FSET-145, Employment and Training Program Activity Report", 10/17[~~12/15~~].

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

ADRIA JOHNSON, Commissioner
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 12, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2017, at 9:00 a.m. in Suites A & 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 July 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. 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 be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email Tricia.Orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov, and Tricia Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program (E&T).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for SNAP E&T program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of SNAP E&T requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the requirements for SNAP E&T in accordance with 7 C.F.R. 273.7.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by making SNAP E&T voluntary and reorganizing work registration requirements and disqualifications into the administrative regulation governing the technical requirements for SNAP. In addition, the amendment updates material incorporated by reference and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will facilitate the establishment of a voluntary SNAP E&T program for all SNAP recipients, in addition to those able-bodied adults without dependents in SNAP who must participate in an approved E&T

activity or work as a condition of benefit receipt. Under a voluntary program, any SNAP recipient may choose to participate in and gain the benefits of an E&T activity. Individuals who volunteer to participate are motivated to find work and achieve self-sufficiency, and they are more open to discuss their past experiences, goals, and challenges and more ready and willing to accept help in achieving their goals. The expansion will help the state leverage additional resources and provide a larger array of E&T opportunities to promote a SNAP participant's job prospects and, ultimately, reduce reliance upon SNAP. The amendment is anticipated to change the perception of SNAP E&T from a punitive program aimed at helping participants meet a requirement to protect their eligibility to a program that helps participants help themselves become self-sufficient.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its modification of program requirements to facilitate voluntary participation in E&T by any SNAP participant.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its conformity with 7 C.F.R. 273.7.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of March 2017, there are 299,418 households receiving Supplemental Nutrition Assistance Program benefits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will not require a new action on the part of affected entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to the administrative regulation will not create a cost to SNAP recipients.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Any SNAP recipient, not just those able-bodied adults without dependents who must participate in an E&T activity or work as a condition of benefit receipt, can benefit from the E&T program and, ultimately, improve their job prospects and perhaps reduce their reliance upon SNAP. In the voluntary program, unlike the present-day program, an able-bodied adult without dependents, who is disqualified and then demonstrates compliance, can regain eligibility without serving a disqualification period. The amendment to this administrative regulation will allow the state to leverage additional resources and expand the array of E&T activities available statewide to all SNAP recipients.

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

(a) Initially: The amendment to this administrative regulation does not create additional, ongoing costs to the administrating agency. Rather, the amendment may increase state and federal resources for and expand E&T activities statewide. The amendment also presents the possibility for reduced administrative burdens for the agency as a result of less staff time spent on determining E&T noncompliance, good cause, and issuing adverse notices to SNAP recipients.

(b) On a continuing basis: The amendment to this administrative regulation does not create additional costs to the administrating agency. Rather, the amendment may increase state and federal resources for and expand E&T activities statewide.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have been appropriated in the enacted budget.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees, nor directly or indirectly increases any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)

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

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
SNAP does not directly generate any revenue. The cabinet may be able to qualify for additional federal reimbursement of SNAP E&T activities as a result of the programmatic changes supported through 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?
SNAP does not directly generate any revenue. The cabinet may be able to qualify for additional federal reimbursement of SNAP E&T activities as a result of the programmatic changes supported through this administrative regulation.

(c) How much will it cost to administer this program for the first year? This amendment will not create any new or additional ongoing costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require any new or additional ongoing costs in subsequent years.

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

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

NEW ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MILITARY AFFAIRS
Division of Administrative Services
(New Administrative Regulation)

106 KAR 2:040. Survivor benefits for death of a National Guard or Reserve Component member.

RELATES TO: KRS 61.315
STATUTORY AUTHORITY: KRS 61.315(7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315(7) requires the Department of Military Affairs to promulgate an administrative regulation to establish the criteria and procedures pertaining to benefits relating to a National Guard or Reserve Component member's death in the line of duty. This administrative regulation establishes the procedures applicable to a claimant who desires to request a hearing concerning a claimant's eligibility for benefits pertaining to a National Guard or Reserve Component member's death in the line of duty after July 1, 2002.

Section 1. Definitions. (1) "Act in the line of duty":
(a) Means, with respect to a member of the National Guard or Reserve component with a home of record in Kentucky:
1. Except as established in paragraph (b)6. of this subsection, an act or omission to act;
2. A work-related event involving the member; or
3. An external force upon the member while the member is engaged in an action or duty for which the member is obligated or authorized by rule, administrative regulation, condition of employment or service, or law to perform for the National Guard or Reserve component; and
(b) Does not mean:
1. A nonwork-related disease or condition or a routine work-related disease or condition common to the eligible member's occupation;
2. Intentional misconduct of the eligible member;
3. The eligible member's intention to bring about his or her own death;
4. The eligible member's willfulness or wanton disregard that brings about his or her own death;
5. The eligible member's voluntary intoxication if intoxication is a contributing factor in his or her own death; or
6. An action or omission of a beneficiary, which act or omission constitutes a substantial factor in the death of an eligible member.
(2) "Death in the line of duty" means the death of an eligible member due to his or her performance of an act in the line of duty that results in:
(a) Immediate death;
(b) A traumatic injury, wound, condition of the body, or disease resulting in death; or
(c) Medical intervention for a condition in paragraph (b) of this subsection that directly causes death.
(3) "Death as a direct result of an act":
(a)1. Means that the antecedent act, omission to act, or event inflicted upon the eligible member was the substantial factor in the member's death; and
2. Includes, if applicable, circumstances related to attending National Guard or Reserve Component-related meetings and events as a representative of the National Guard or Reserve Component, including travel to and from a local, state, or national meetings and events; and
(b) Does not mean participation in any sports or athletic event or contest, for the purpose of fund raising or any other purpose.
(4) "Claimant" means a spouse, child, or parent who files a claim for death benefits pursuant to KRS 61.315.
(5) "Spouse" means the lawfully wedded husband or wife of the deceased member living at the time of the member's death, and includes a spouse living apart for any reason from the member at the time of the member's death or a spouse involved in divorce proceedings if a final divorce decree has not been entered.
(6) "Child" means a natural, adopted, or posthumously born child or child born out of wedlock of the deceased member who, at the time of the member's death is living or later is born alive.
(7) "Parent" means a natural or adoptive parent of the member living at the time of the member's death.

Section 2. Eligibility. (1) Survivors. Except as established in subsection (2) of this section, benefits shall be paid to the surviving spouse, surviving child or children, or both, as established in KRS 61.315(2).
(2) An action or omission of a beneficiary, which act or omission constitutes a substantial factor in the death of an eligible member, shall preclude benefits to that beneficiary only.

Section 3. Proof of Relationship. In filing the claim for death benefits, the claimant or claimant's representative shall submit certification of relationship status by the member's National Guard or Reserve component Casualty Assistance Officer or National Guard or Reserve Component personnel directorate.

Section 4. Submission of Claim by Proper Party. (1) A death benefit claim shall be filed with the office of the Executive Director, Management and Administration, Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601.
(2) The claim shall be submitted and executed by the claimant or the claimant's legally designated representative, including the member's Casualty Assistance Officer or National Guard or Reserve Component personnel directorate, upon submission of written proof of that designation.

Section 5. Proof of Death as a Direct Result of an Act in the Line of Duty. The claimant shall provide proof of death of the eligible employee as a direct result of an act in the line of duty by providing:
(1) The appropriate U.S. Department of Defense military component DD Form 1300, Report of Casualty; or
(2) Another relevant document deemed necessary by the executive director.

Section 6. Certification of Payment of Benefits. Upon certification of survivorship rights to the State Death Benefit, the sum authorized by KRS 61.315(2) shall be paid in check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2) and the treasurer shall transmit the check to the department's administrator for payment to the eligible survivor or survivors.

Section 7. False and Fraudulent Statements. A person who knowingly or willfully makes any false or fraudulent statement or representation in any record or report to the department under KRS Chapter 61.315 or this administrative regulation shall cause the survivors to become ineligible for further funds, and those survivors may be responsible for the return to the state treasury of those funds that were received through these false or fraudulent statements or representations.

Section 8. Right of Review. If a death occurs after twelve (12) months and is believed to be related to the definitions established in Section 1(1), (2), or (3) of this administrative regulation, the department shall have the right of review to determine if the death constitutes death in the line of duty.

Section 9. Appeals. (1) If the executive director or the executive director's designated representative finds the claimant ineligible for a death benefit, the executive director shall notify the claimant in writing at claimant's last known address of the disposition and shall set forth findings of fact and conclusions of law supporting the decision, as well as claimant's right to a hearing and review by the Adjutant General of Kentucky.
(2) A decision of the department negatively affecting the eligibility of a survivor to be a recipient of the fund shall not be final until the survivor shall have been afforded an opportunity to be

heard on the matter.

Section 10. Incorporation by Reference. (1) "Report of Casualty", DD Form 1300, February 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Military Affairs, Division of Administrative Services, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. BULLARD, Director, Administrative Services

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 15, 2017 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 28, 2017, at 1 p.m., at 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168 at the Emergency Operations Center in Room 202. 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 July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone 502-607-1738, fax 502-607-1240, email steven.p.bullard.mil@mail.mil.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mr. Steven P. Bullard

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility criteria for National Guard and Reserve Component personnel under the Commonwealth of Kentucky's death gratuity program established under KRS 61.315.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law. An amendment to KRS 61.315 in the 2017 General Assembly was necessary because the General Assembly, upon adding the eligibility of the National Guard to this program in 2002, forgot to include a paragraph directing the Department of Military Affairs to promulgate admin regs to define eligibility. They did do so for all the other affected state agencies (Commission on Fire Protection Personnel Standards and Education, Justice and Public Safety Cabinet, Department of Corrections, Kentucky Board of Emergency Medical Services). The 2017 General Assembly corrected this oversight by requiring promulgation of this admin reg.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The intent of the General Assembly is that the deaths covered under KRS 61.315 be the result of an act performed in the line of duty. This administration regulation defines the line of duty eligibility criteria, ensuring it conforms to the intent of the General Assembly.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation codifies in detail eligibility requirements for National Guard and Reserve personnel. We used the previously promulgated admin regs of the other affected state agencies (Commission on Fire Protection Personnel Standards and Education, Justice and Public Safety Cabinet, Department of Corrections, Kentucky Board of Emergency Medical Services) as a basis for developing our admin reg, and ran it through review by the Governor's Office, Legislative Research Commission legal staff, military legal officers and our state legal officer for concurrence that it meets the expected standard.

(2) If 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: Kentucky resident military personnel on active (full or part time) service with the Kentucky National Guard and Reserve Component (Army Reserve, Air Force Reserve, Marine Corps Reserve, Navy Reserve). There are approximately 7,500 members of the Kentucky National Guard, 90 percent of whom are Kentucky residents, and approximately 7,000 Kentucky resident Reserve Component personnel.

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

(a) List 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 Kentucky State Death Gratuity program, as applicable to Kentucky resident military personnel on active service in the Kentucky National Guard and Reserve Component, is managed/maintained by the Kentucky Department of Military Affairs, Office of Management and Administration. The Executive Director of the Kentucky Department of Military Affairs is responsible for the identification of qualifying members who lose their life in the line of duty, contacting the military staff responsible for the welfare of deceased member's estate and family, obtaining the required documentation, processing the documentation, setting up required trust funds for under-age family members, coordinating the grant payment with the Kentucky Finance Cabinet and the Governor's Office, and arranging for delivering the grant payment. This has not proven to be a time consuming process. Line of duty death documentation is handled by the U.S. military. DMA staff identifies and coordinates with the assigned military casualty assistance staff officer(s) to obtain the required DD Form 1300 (Report of Casualty) and any other potential supporting documentation. Once obtained, legal review by the state attorney for the Department of Military Affairs is rapid (one hour), plus one hour of staff time for completing the letter and processing the payment request to the Finance Cabinet. Staff time is required for the coordination process and the delivery process, but generally not exceeding eight hours total. It takes approximately one hour for the fiscal staff of the Department of Military Affairs to set up the grant payment and trust funds, following existing template procedures. The Department of Military Affairs has processed benefit consideration for 19 Kentucky National Guard members and one U.S. Army Reserve member who have died in duty circumstances, the majority killed in action during the conflict in Southwest Asia and Iraq, since 2002, with the majority qualifying for the State Death Gratuity. We have identified over 30 other member deaths that were not related to active military service (line of duty) and do not qualify for the State Death Gratuity. The Executive Director usually initially determines eligibility through public (news media) notification of military-related deaths, which are immediately examined for potential eligibility and outreach to the associated military organization. If, for any reason, a military-related death does not receive news media attention, the associated military organization and/or designated representative of the deceased member is responsible for contacting the Executive Director with a request for consideration of eligibility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The primary cost of this requirement is staff time to comply with the documentation requirements, mainly coordination with affected military organizations, family members (generally

handled by the military component as part of their Department of Defense-mandated processes), the Governor's Office and the Finance Cabinet. From our experience, the State Death Gratuity portion of this process is approximately eight hours staff time or less. The line of duty documentation process is handled by the military component and is a prerequisite for eligibility. Once that determination is made and an deceased member is deemed to quality, the grant payment and trust fund process is standard and simple to follow. The Commonwealth of Kentucky is responsible for the $80,000 State Death Gratuity payment from the General Fund, coordinated through the Finance Cabinet and the Governor's Office. The Department of Military Affairs is responsible for annual maintenance of the trust funds for under-age dependents, but the process is simple and takes less than one hour of staff time each year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will accurately reflect statutory guidance, simplifying compliance.

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

(a) Initially: There is no additional cost for any entity. Processes (staff time and expertise) are already in place. State Death Gratuity benefits will be paid when associated deaths of military personnel occur.

(b) On a continuing basis: Annual staff time, anticipated to be less than 10 hours annually, combined. Most years there will be qualifying personnel, with the only cost being the one hour of maintenance required by the Department of Military Affairs to maintain the associated trust funds. With the drawdown of combat operations and minimal deployments to combat zones, there is far less likelihood of combat deaths. Fatal injuries or illnesses related to on-going military operations are thankfully rare (two qualifying incidents since 2002). The last combat death that qualified for the State Death Gratuity was in 2009.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees or fee increases are established.

(9) TIERING: Is tiering applied? Explain why tiering was or was not used. Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify or reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections or other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Military Affairs, which administers the State Death Gratuity program as applicable to Kentucky National Guard and Reserve Component personnel; the Kentucky Finance Cabinet, which processes qualifying grant payments from the General Fund; and the Governor's Office, which reviews/approves grant payments.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.315.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no cost for any entity until /unless there is a qualifying death of a military member "in the line of duty." When such a death occurs, approximately 10 hours of staff time/expertise is required to validate eligibility and coordinate approval of/issuance of the State Death Gratuity. There will be no impact on expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There is no cost for any entity beyond associated staff time (estimated 10 hours per event) when events occur. Qualifying events will require payment of an $80,000 State Death Gratuity to qualified surviving family members.

(d) How much will it cost to administer this program for subsequent years? There is no cost for any entity beyond associated staff time (estimated 10 hours per event) when events occur. Qualifying events will require payment of an $80,000 State Death Gratuity to qualified surviving family members.

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

Revenues (+/-):

Expenditures (+/-): $80,000 per qualifying death event.

Other Explanation: There is no fiscal impact until/unless a qualifying death occurs.

GENERAL GOVERNMENT CABINET
Board of Licensure for Occupational Therapy
(New Administrative Regulation)

201 KAR 28:235. Telehealth occupational therapy services.

RELATES TO: KRS 319A.080, 319A300

STATUTORY AUTHORITY: KRS 319A.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.300(2) requires the board to promulgate an administrative regulation to implement telehealth in occupational therapy, including to establish procedures to prevent abuse and fraud through the use of telehealth, prevent fee-splitting through the use of telehealth, and utilize telehealth in the provision of occupational therapy services and in the provision of continuing education. Additionally, KRS 319A.300(1) requires an occupational therapist utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation establishes the requirements for telehealth for occupational therapy services.

Section 1. Definitions. (1) "Telehealth is defined by KRS 319A.300(3)

(2) "Telehealth occupational therapy" means the practice of occupational therapy as defined by KRS 319A.010(2), between the occupational therapist and the patient that is provided using:

(a) An electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

Section 2. Client Requirements. A credential holder using telehealth to deliver occupational therapy services shall, upon initial contact with the client:

(1) Make reasonable attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically;

(3) Provide to the client alternative means of contacting the credential holder other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of telehealth provided by the credential holder;

(5) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications and;

(6) Inform the client in writing about:

(a) The limitations of using technology in the provision of telehealth occupational therapy services;

(b) Potential risks to confidentiality of information due to technology in the provision of telehealth occupational therapy services;

(c) Potential risks of disruption in the use of telehealth occupational therapy services;

(d) When and how the credential holder will respond to routine electronic messages;

(e) In what circumstances the credential holder will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the credential holder;

(g) How communications can be directed to a specific credential holder and;

(h) How the credential holder stores electronic communications from the client.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall:

(1) Limit the practice of telehealth occupational therapy to the area of competence in which proficiency has been gained through education, training, and experience;

(2) Maintain current competency in the practice of telehealth occupational therapy through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(3) Document the client's presenting problem, purpose, or diagnosis;

(4) Follow the record-keeping requirements of 201 KAR 28:140; and

(5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall comply with:

(1) State law where the credential holder is credentialed and be licensed to practice occupational therapy where the client is domiciled or adhere to standards set forth in 201 KAR 28:030; and

(2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.

Section 5. Representation of Services and Code of Conduct. (1) A credential holder using telehealth to deliver occupational therapy services or who practices telehealth occupational therapy shall:

(a) Not by or on behalf of the credential holder engage in false, misleading, or deceptive advertising of telehealth occupational therapy;

(b) Comply with 201 KAR 28:140; and

(c) Not allow fee-splitting through the use of telehealth occupational therapy services.

(2) Occupational therapy continuing competence educational processes established in 201 KAR 28:200, Section (3)(1), (2), (3), (5), (8), and (11), may occur through telehealth services.

RHONDA TAPP EDWARDS, COTA/L, Board Chair

APPROVED BY AGENCY: June 13, 2017

FILED WITH LRC: June 15, 2017 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2017 at 9:00 a.m. (EST) at 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kelly Walls, Board Administrator, Kentucky Board of Licensure for Occupational Therapy, PO Box 1360, Frankfort, Kentucky 40602, phone 502-782-8807**,** fax 502-696-3853 email Megan.Woodson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Megan Woodson, 502/782-8807, Megan.Woodson@ky.gov.; Rhonda Tapp Edwards, 270-202-1701, Rhonda.Edwars@ky.gov.; and Kelly Walls

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for licensees who use telehealth in delivering health care to patients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirements under KRS 319A.300 (2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 319A.300 (2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements the requirements of KRS 319A. 300.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all licensees regulated by KRS Chapter 319A.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each licensee will have to adhere to the requirements of KRS 319A.300 that prohibits fee splitting and each licensee shall have to meet the requirements for clients, obtain competency in the use of telehealth, assure confidentiality, follow record keeping requirements of 201 KAR 28:140, and follow federal law requiring access for persons with disabilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs will vary and the licensee is not required to offer telehealth services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. All licensees will have the option of offering telehealth services to their patients.

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

(a) Initially: No additional costs are necessary to implement the changes made by this regulation.

(b) On a continuing basis: No additional costs are necessary to

implement the changes made by this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees for persons licensed under KRS 319A.

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

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

(9) TIERING: Is tiering applied? No tiering is applied because all licensees will be held to the same standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Licensure for Occupational Therapy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 319A.300 (2).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:195. Repeal of 301 KAR 1:192.

RELATES TO: KRS 150.620

STATUTORY AUTHORITY: KRS 150.025(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(g) authorizes the department to promulgate administrative regulations that apply to a limited area or to the entire state. 301 KAR 1:192 is being repealed because the requirements have been incorporated into 301 KAR 1:201.

Section 1. 301 KAR 1:192, Closing Lake Chumley, is hereby repealed.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: June 12, 2017

FILED WITH LRC: June 14, 2017 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 24, 2017 at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the daily closing times for the public use of Lake Chumley and the department-owned property surrounding the lake.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish closing control times on Lake Chumley in order to prevent vandalism.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(g) authorizes the department to promulgate administrative regulations that apply to a limited area or to the entire state.

(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 restricting hourly public use of Lake Chumley and the surrounding land.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: It is unknown how many people use Lake Chumley and the surrounding land.

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

(a) List 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): N/A

(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 to the department initially.

(b) On a continuing basis: There will be no 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? N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1)(g) authorizes the department to promulgate administrative regulations that apply to a limited area or to the entire state.

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

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

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

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Board of Education
Department of Education
(Repealer)

704 KAR 7:051. Repeal of 704 KAR 7:050.

RELATES TO: KRS 158.148, 158.150

STATUTORY AUTHORITY: KRS 156.070, 158.148

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board of Education to promulgate administrative regulations necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction; and KRS 158.148 requires the Kentucky Department of Education to develop guidelines containing broad principles to guide local school districts in developing their own student discipline codes. This administrative regulation repeals 704 KAR 7:050, Student discipline guidelines, because the statute no longer requires the review of district codes of conduct, thereby leaving only the incorporation by reference the document "Student Discipline Guidelines, April 2003" which is an optional resource for districts per KRS 158.148.

Section 1. 704 KAR 7:050, Student discipline guidelines, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, Ph.D., Commissioner
WILLIAM L. TWYMAN, Chairperson

APPROVED BY AGENCY: June 14, 2017

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 31, 2017, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals administrative regulation 704 KAR 7:050, which incorporated by reference "Student Discipline Guidelines, April 2003." KRS 158.148(2)(a) requires that the student discipline guidelines be reviewed and potentially updated as needed at least every two years. Housing this optional resource document in regulation is inefficient to the review process required.

(b) The necessity of this administrative regulation: This regulation will repeal 704 KAR 7:050 and the incorporation by reference of "Student Discipline Guidelines, April 2003," which is no longer a document that is required to be followed by local school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.060 and KRS 156.070.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation removes inclusion of "Student Discipline Guidelines, April 2003" as a document incorporated by reference since the statute only requires optional discipline guidelines from KDE.

(2) If 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 statute:. N/A

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

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: Those affected by this repeal are: all local school districts, as they are the intended audience of the student discipline guidelines, although their processes will not be impacted; the named associations and organizations in KRS 158.148 as they should be collaborated with in the development of the student discipline guidelines; the KDE as it is tasked with the development, revision, and distribution of the student discipline guidelines.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Repeal of this regulation removes confusion over a topic that is now discretionary (state discipline guidelines)

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts. N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There will be no change to local district operations or fiscal impact as the student discipline guidelines are optional for districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.060 and KRS 156.070.

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

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

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

(c) How much will it cost to administer this program for the first year? The program is being repealed and there will be no cost associated with the repeal.

(d) How much will it cost to administer this program for subsequent years? The program is being repealed and there will be no cost associated with the repeal.

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

Revenues (+/-): N/A

Expenditures (+/-):N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Securities
(Repealer)

808 KAR 10:081. Repeal of 808 KAR 10:080, 808 KAR 10:300, and 808 KAR 10:310.

RELATES TO: KRS 292.370, 292.390(1)(f), KRS 292.395, KRS 292.400(11), KRS 292.410(1)(q), KRS 292.330(4)(b), 15 U.S.C. 78o(i)(3), 17 C.F.R. 230.701.

STATUTORY AUTHORITY: KRS 292.400(11), KRS 292.410(1)(q), KRS 292.500(3).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to repeal any administrative regulation necessary to carry out the provisions and intent of KRS Chapter 292. This administrative regulation repeals 808 KAR 10:080, 808 KAR 10:300, and 808 KAR 10:310, which are outdated and no longer necessary for regulatory supervision of the securities industry.

Section 1. The following administrative regulations are repealed:

(1) 808 KAR 10:080, Guidelines for issuers;

(2) 808 KAR 10:300, Registration exemptions - pension plans; and

(3) 808 KAR 10:310, Broker-dealer agent de minimis rules.

CHARLES A. VICE, Commissioner
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: June 9, 2017

FILED WITH LRC: June 12, 2017 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2017, at 1:00 p.m. Eastern Time at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the calendar day, 11:59 p.m., July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Tiffany Ge, General Counsel, or Deborah Crocker, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Tiffany Ge or Deborah Crocker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 808 KAR 10:080, 808 KAR 10:300, and 808 KAR 10:310.

(b) The necessity of this administrative regulation: This regulation is necessary because 808 KAR 10:080, 808 KAR 10:300, and 808 KAR 10:310 are outdated and no longer necessary for the regulatory supervision of the securities industry. 808 KAR 10:080 is unnecessary because there has not been a

request for a promotional company registration in over 10 years. 808 KAR 10:300 was rendered obsolete by passage of an amendment to KRS 292.400(11). 808 KAR 10:310 adopts the federal de minimis rules for broker-dealer agents; however, the federal law automatically preempts any state rules on this topic. Therefore, 808 KAR 10:310 is unnecessary and redundant.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.500(3) provides that the commissioner may repeal any administrative regulation to carry out the provisions and intent of KRS Chapter 292. Due to the availability of other registration options for promotional companies and the lack of registration requests from these entities; the amendment of KRS 292.400(11); and the automatic preemption of federal law regarding de minimus rules for broker-dealer agents, these regulations are no longer necessary for the regulatory supervision of the industry.

(d) How this administrative regulation currently assists or will assist in the effective administrative of the statutes: This regulation will repeal regulations that are outdated and no longer necessary for the regulatory supervision of the industry.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administrative of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 16, 2017, there are currently 125,320 registered broker-dealer agents in Kentucky who will benefit from the repeal of 808 KAR 10:310, which will clarify and simplify regulatory requirements. In addition, the repeal of 808 KAR 10:080 and 808 KAR 10:300 will clarify the statutory and federal exemptions that are already in place for securities professionals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation will not require compliance from any regulated entity.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Since this regulation will not require compliance by the regulated entity, no benefits will accrue as a result of compliance.

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

(a) Initially: No cost anticipated.

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied because this regulation will apply to similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Financial Institutions will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is KRS 292.500(3), KRS 292.400(11), and KRS 292.410(1)(q).

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

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

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

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

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

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

Revenues (+/-): None.

Expenditures (+/-): No cost.

Other Explanation: None.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Repealer)

902 KAR 55:041. Repeal of 902 KAR 55:020, 902 KAR 55:025, 902 KAR 55:030, and 902 KAR 55:035.

RELATES TO: KRS 217.005 – 217.215, 218A.020 – 218A.130, 21 C.F.R. 1308.12, 1308.13, 1308.14, 1308.15, 21 U.S.C. 301 – 399f, 801 – 971

STATUTORY AUTHORITY: KRS 218A.020(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.020(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations in order to add, delete, or reschedule substances enumerated in KRS Chapter 218A. KRS 218A.020(3) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to control substances at the state level in the same numerical schedule corresponding to the federal schedule or control a substance in a more restrictive schedule than the federal schedule. In accordance with KRS 13A.310(3)(a), this administrative regulation repeals 902 KAR 55:020, 902 KAR 55:025, 902 KAR 55:030, and 902 KAR 55:035 because the drug classifications for Schedule I, II, III, IV, and V controlled substances are established in the amendment of 902 KAR 55:015, filed concurrently with this administrative regulation.

Section 1. The following administrative regulations are hereby repealed:

(1) 902 KAR 55:020, Schedule II substances;

(2) 902 KAR 55:025, Schedule III substances;

(3) 902 KAR 55:030, Schedule IV substances; and

(4) 902 KAR 55:035, Schedule V substances.

ROBERT S. SILVERTHORN, JR., Inspector General
VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: June 7, 2017

FILED WITH LRC: June 9, 2017 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 21, 2017, at 9:00 a.m. in Suites A & 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 July 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. You may submit written comments regarding this proposed administrative regulation until July 31, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Administrative Specialist, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, Internal Policy Analyst, Office of Inspector General, 502-564-2888, email stephanie.brammer@ky.gov., 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 902 KAR 55:020, 902 KAR 55:025, 902 KAR 55:030, and 902 KAR 55:035.

(b) The necessity of this administrative regulation: This administrative regulation repeals 902 KAR 55:020, 902 KAR 55:025, 902 KAR 55:030, and 902 KAR 55:035 because the subject matter of each administrative regulation is covered in the amendment of 902 KAR 55:015, filed concurrently with this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes because the subject matter of each administrative regulation being repealed is covered in the amendment of 902 KAR 55:015.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is part of the cabinet's effort under Governor Bevin's Red Tape Reduction initiative to repeal obsolete and unnecessary regulations 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 not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 902 KAR 55:020, 902 KAR 55:025, 902 KAR 55:030, and 902 KAR 55:035 does not have any significant impact on Kentucky's pharmacies, prescribing practitioners, state and local law enforcement, or the Department of Corrections because the drug classifications for Schedule I, II, III, IV, and V controlled substances are established in the amendment of 902 KAR 55:015, filed concurrently with this administrative regulation.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is part of the cabinet's effort under Governor Bevin's Red Tape Reduction initiative to repeal obsolete and unnecessary regulations in accordance with KRS 13A.310(3)(a).

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

(a) Initially: This administrative regulation imposes no costs on the administrative body.

(b) On a continuing basis: This administrative regulation imposes no costs on the administrative body.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals 902 KAR 55:020, 902 KAR 55:025, 902 KAR 55:030, and 902 KAR 55:035.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 902 KAR 55:020, 902 KAR 55:025, 902 KAR 55:030, and 902 KAR 55:035 does not have any significant impact on Kentucky's pharmacies, prescribing practitioners, state and local law enforcement, or the Department of Corrections because the drug classifications for Schedule I, II, III, IV, and V controlled substances are established in the amendment of 902 KAR 55:015, filed concurrently with 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 218A.020(1), (3)

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation imposes no costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation imposes no costs

on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 21 C.F.R. 1308.12, 1308.13, 1308.14, 1308.15

2. State compliance standards. KRS 218A.020

3. Minimum or uniform standards contained in the federal mandate. 21 C.F.R. 1308.12 lists controlled substances that have been classified by the DEA as Schedule II drugs. 21 C.F.R. 1308.13 lists controlled substances that have been classified by the DEA as Schedule III drugs. 21 C.F.R. 1308.14 lists controlled substances that have been classified by the DEA as Schedule IV drugs. 21 C.F.R. 1308.15 lists controlled substances that have been classified by the DEA as Schedule IV drugs.

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. Not applicable.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 13, 2017

Call to Order and Roll Call
The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 13, 2017, at 1 p.m. in Room 149 of the Capitol Annex. Representative Upchurch, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the May 2017 meeting were approved.

Present were:
Members: Senators Perry Clark, Alice Forgy Kerr, and Ernie Harris; and Representatives 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: John Ghaelian, Kevin Winstead, Office of the Attorney General; Steve Hart, Board of Pharmacy; Scott Majors, Board of Physical Therapy; Brian Judy, Board of Examiners of Psychology; Mary Badami, Board of Marriage and Family Therapists; Lee Alcott, John Marcus Jones, Board of Art Therapists; Derek Drury, Board of Interpreters for the Deaf and Hard of Hearing, Nicole Sergent Biddle, Board of Prosthetic and Orthotics; Amy Adkins, Elizabeth Morgan, Board of Medical Imaging and Radiation Therapy; Steve Beam, John Hast, Karen Waldrop, David Wicker, Department of Fish and Wildlife Resources; Lesly Davis, John Horne, Energy and Environment Cabinet; Ann DAngelo, Transportation Cabinet; Duane Curry, Tim House, Steve Milby, David Startsman, Department of Housing, Buildings and Construction; Stephanie Hold, Robert Silverthorn Jr., Office Inspector General; Sherry Culp, Long Term Care Ombudsman Program; Phyllis Sosa, Department for Aging and Independent Living; Virginia Moore, Commission on Deaf and Hard of Hearing.

The Administrative Regulation Review Subcommittee met on Tuesday, June 13, 2017, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

OFFICE OF THE ATTORNEY GENERAL: Office of Consumer Protection: Division of Consumer Protection
40 KAR 2:145. Funeral planning declaration form. John Ghaelian, assistant attorney general, and Kevin Winstead, assistant attorney general, represented the division.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

40 KAR 2:150. Cremation forms and inspections.
In response to a question by Senator Clark, Mr. Winstead stated that this administrative regulation was amended in 2016 to establish that a majority of family may authorize cremation, rather than requiring a unanimous family decision. These amendments did not impact that authorization requirement.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board
201 KAR 2:074. Pharmacy services in hospitals or other organized health care facilities. Steve Hart, executive director, represented the board.
A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy: Board
201 KAR 22:070. Requirements for foreign-educated physical therapists. Scott Majors, executive director, represented the board.
In response to questions by Co-Chair Harris, Mr. Majors stated that this administrative regulation was being revised to correspond with the updating of standards by the Federation of State Boards of Physical Therapy, which owned the licensing examination. The federation analyzed the standards and determined that, while there was no need to revise the overall scoring system, an adjustment was needed to conform with the requirements of clinical and communication competence for foreign-educated applicants.
In response to a question by Senator Clark, Mr. Majors stated that Kentucky was striving to recruit and retain physical therapists in the midst of an aging population. Over the last twelve (12) years, Kentucky had an approximately three and nine-tenths (3.9) percent growth rate in the number of licensees. Over the last two (2) years, that rate had increased to four (4) percent. The western Kentucky physical therapy program, which had been fully functioning for approximately one (1) year, was further enhancing that growth, and Governor Bevin had signed HB 227 from the 2017 regular legislative session. HB 227, the Physical Therapy Licensure Compact, was expected to further boost growth by attracting out-of-state practitioners. Senator Clark recommended that young people consider physical therapy as a profession. Physical therapists were needed, and it was a rewarding occupation.
A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Examiners of Psychology: Board
201 KAR 26:125. Health service provider designation. Brian Judy, assistant attorney general, represented the board.
Co-Chair Harris commended the board for establishing safeguards to protect vulnerable clients from unscrupulous practitioners. In response to questions by Co-Chair Harris, Mr. Judy stated that, historically, this administrative regulation essentially required for licensure a Ph.D. with at least 1,800 pre and post-doctoral hours. A health service provider designation required an additional 1,800 hours beyond the 3,600 hours for initial licensure. There had been confusion regarding if that 1,800 hours required for a health service provider designation was in addition to or separate from pre and post-doctoral hour requirements; therefore, this administrative regulation was being amended to clarify the matter. The actual hour requirements themselves were not changing.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 1(2) to establish that a temporarily licensed psychologist or a licensed psychologist may provide concurrent supervision to graduate students while under supervision of a psychologist with a health service provider designation. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:130. Grievance procedure.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend Section 1 to delete two (2) definitions; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 6, and 7 to

comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:140. Procedures for disciplinary hearings.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 and 6 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:145. Code of conduct.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 4, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to establish: (a) a one (1) year period of temporary licensure; (b) applicant requirements during the period of temporary licensure; and (c) minimum examination scores for temporary licensure applicants. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:160. Fee schedule.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; (2) to amend Sections 1 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Sections 1, 5, and 6 to clarify that all fees included in the administrative regulation shall be non-refundable. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:165. Inactive status.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:171. Requirements for supervision.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3 through 10, and 12 through 16 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:175. Continuing education.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 5, 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:180. Requirements for granting licensure as a psychologist by reciprocity.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, and 6 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend Section 1 to clarify procedures for determining equivalent supervised experience; (3) to amend Sections 2 and 3 to specify passing examination scores; and (4) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:190. Requirements for supervised professional experience.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 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.

201 KAR 26:200. Education requirements for licensure as a psychologist.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3 to update the list of accrediting agencies. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:210. Educational requirements for licensure as a licensed psychological associate.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3 to update the list of accrediting agencies. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:215. Nonresident status.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 8, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:225. Renewal and reinstatement.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:250. Employment of a psychological associate.

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.

201 KAR 26:280. Licensed psychological associate: application procedures and temporary license.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to establish: (a) a one (1) year period of temporary licensure; (b) applicant requirements during the period of temporary licensure; and (c) minimum examination scores for temporary licensure applicants; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 26:290. Licensed psychological practitioner: application procedures.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board for Licensing for Marriage and Family Therapists: Board

201 KAR 32:050. Code of ethics. Mary Badami, chair, and Nicole Biddle, assistant attorney general, represented the board.

In response to a question by Representative Petrie, Ms. Badami stated that "family system" meant the client's family members, including spouses.

In response to a question by Co-Chair Harris, Ms. Badami stated that, historically, this administrative regulation had prohibited sexual relationships with current or former clients based on national association standards. The national association revised the prohibition to two (2) years from treatment; however, the national association recently reverted to a complete prohibition. This administrative regulation was being amended commensurately because a client, even two (2) years out from treatment, may need to return to treatment. Additionally, a client – practitioner relationship was an unequal relationship from a power standpoint.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 32:060. Continuing education requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 4, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 7 to clarify requirements for waivers for undue hardship; and (3) to delete Section 8 incorporating the outdated Application for Continuing Education Program Sponsor Approval because the newer Continuing Education Program Provider Approval Application to be used is incorporated in 201 KAR 32:030. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Professional Art Therapists: Board

201 KAR 34:020. Fees. Lee Alcott, board member, and John Marcus Jones, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; (2) to amend Section 7 to clarify that the board examination shall apply to a license holder renewing an active license; and (3) to amend Sections 1 and 6 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 34:030. Continuing education requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to: (a) cross reference the examination fee established in 201 KAR 34:020; and (b) clarify that the board examination continuing education credit shall only be granted to an active license holder renewing an active board issued license and to a board approved supervisor; (2) to amend Section 9 for clarity to include military service under the situations in which a person shall reapply for the waiver or extension if service continues beyond the period of the waiver or extension; and (3) to amend Sections 1, 3, 5, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 34:050. Complaint procedure.

In response to a question by Senator Clark, Mr. Jones stated that the requirement to bring an action in Franklin Circuit Court for injunctive relief, rather than in a court of geographical jurisdiction, was for consistency with similar board administrative regulations.

In response to questions by Co-Chair Harris, Mr. Jones stated that this board did not experience many complaints. The impetus behind using Franklin Circuit Court was due to the board's small size and minimal funding. The board utilized the Attorney General's staff for administrative needs, which would be more easily facilitated by using Franklin Circuit Court. Additionally, it would be less expensive for the board and for licensees to use Franklin Circuit Court, rather than to send staff of the Attorney General across the state. Ms. Alcott stated that the board had 196 licensees.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Occupations and Professions: Board of Interpreters for the Deaf and Hard of Hearing: Board

201 KAR 39:001. Definitions for 201 KAR Chapter 39. Derek Drury, chair, and John Marcus Jones, assistant attorney general, represented the board. Virginia Moore, executive director, Kentucky Commonwealth on the Deaf and Hard of Hearing, appeared in opposition to 201 KAR 39:030.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

In response to questions by Co-Chair Harris, Mr. Drury stated that the qualifying score for the Education Interpreter Performance Assessment (EIPA) had been raised from three and five-tenths (3.5) to four (4). Kentucky licensees with less than a score of four (4), who were licensed prior to July 1, 2013, were grandfathered. Mr. Drury did not have knowledge of any applicants after July 1, 2013 who did not achieve at least a score of four (4). A temporary license was valid for five (5) years.

Ms. Moore stated that the qualifying score for the EIPA was raised from three and five –tenths (3.5) to four (4). Kentucky licensees with less than a score of four (4), who were licensed prior to July 1, 2013, were grandfathered. Eleven (11) other states still recognized the EIPA qualifying score as three and five-tenths (3.5). If applicants from those states entered Kentucky to apply for licensure, they would have to do so under a temporary license and work toward a qualifying score of four (4) for nontemporary licensure. The situation created inequality and an unfair advantage for Kentucky licensees.

In response to a question by Co-Chair Harris, Ms. Moore stated that Kentucky Commonwealth on the Deaf and Hard of Hearing requested that this administrative regulation be amended to recognize three and five-tenths (3.5) as a qualifying score for out-of-state applicants prior to 2013. Additionally, this administrative regulation should require proof of validation from "a nationally recognized interpreter organization," rather than establishing a list of specific nationally recognized interpreter organizations. Ms. Moore requested

that the board defer consideration of this administrative regulation to the July meeting of the Subcommittee in order to continue to develop amendments.

In response to a question by Co-Chair Upchurch, Mr. Drury stated that the board considered the request of the Kentucky Commonwealth on the Deaf and Hard of Hearing and did not agree to amend this administrative regulation in response to the request. The chair did not have authorization to defer consideration of this administrative regulation to the July meeting of the Subcommittee without a vote of the full board.

Co-Chair Upchurch stated that the agency did not agree to defer; therefore, this administrative regulation would continue through the process. Stakeholders would have an opportunity to address continued concerns with the subject matter committee to which this administrative regulation would be referred.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 39:050. Renewal of licenses, extension of temporary licenses and reinstatement.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct a statutory citation; (2) to amend Section 3 to clarify what shall be submitted with a request for reinstatement of a temporary license; and (3) to amend Section 5 to revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 39:070. Application and qualifications for temporary licensure.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Orthotics, Prosthetics and Pedorthics: Board

201 KAR 44:090. Requirements for licensure as an orthotist, prosthetist, orthotist prosthetist, pedorthist, or orthotic fitter on or after January 1, 2013. Nicole Biddle, assistant attorney general, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Medical Imaging and Radiation Therapy: Board

201 KAR 46:035. Practice standards, scopes of practice, and ethical standards. Amy Adkins, chair; Brian Judy, assistant attorney general; and Elizabeth Morgan, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 46:040. Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 8 through 14 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add a new Section 8 to clarify the requirements for a person who applies for reinstatement following a revocation. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 46:060. Continuing education requirements.

201 KAR 46:070. Violations and enforcement.

A motion was made and seconded to approve the following amendments: to amend Section 3 to: (1) comply with the drafting requirements of KRS Chapter 13A; and (2) add the specific suspension period for performing services without a valid license. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 46:090. Complaint process and administrative hearings.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 7 to cross reference 201 KAR 46:040 to clarify the requirements for a person who applies for reinstatement following a revocation. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 2:221. Waterfowl seasons and limits. John Hast, bear program coordinator; Karen Waldrop, deputy commissioner; and David Wicker, general counsel, represented the department.

In response to a question by Senator Clark, Ms. Waldrop stated that administrative regulations were amended approximately three (3) years ago, in accordance with KRS 150.175, to allow a hunter to carry a firearm during nonfirearm seasons if hunting was not conducted with the firearm.

301 KAR 2:300. Black bear seasons and requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 4 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hunting and Fishing

301 KAR 3:022. License, tag, and permit fees.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

ENERGY AND ENVIRONMENT CABINET: Office of the Secretary: Administration

400 KAR 1:001. Definitions for 400 KAR Chapter 1. Lesly Davis, executive director, and John Horne, general counsel, represented the office.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 1:031. Repeal of 400 KAR 1:030.

400 KAR 1:090. Administrative hearings practice provisions.

In response to questions by Representative Petrie, Mr. Horne stated that the cabinet's administrative hearing administrative regulations were spread out over five (5) chapters and were somewhat inconsistent. This package consolidated requirements and provided consistency. Stakeholders were not opposed to these changes. The impetus for these changes came from the cabinet, and it was unknown if other agencies were considering a similar structure. Representative Petrie endorsed the electronic filing provided for in this package.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a citation; and (2) to amend Sections 3 through 8, 10 through 12, 16, 17, 20, 21, 23, and 24 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

400 KAR 1:100. General administrative hearing practice provisions relating to matters brought under KRS Chapters 146, 149, 151, 223, and 224.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to adjust a deadline to reflect the projected effective date of this administrative regulation; and (2) to amend Sections 3 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to cross reference most definitions; (2) to amend Sections 2 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3) to amend Section 3 to clarify provisions regarding pleadings. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to cross reference most definitions; (2) to amend Section 2 to adjust a deadline to reflect the projected effective date of this administrative regulation; (3) to amend Section 5 to clarify provisions regarding pleadings; and (4) to amend Sections 3 through 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 7:093. Repeal of 405 KAR 7:091.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carriers: Motor Carriers

601 KAR 1:113. Transportation Network Company. Ann D'Angelo, assistant general counsel, represented the division.

In response to a question by Senator Clark, Ms. D'Angelo stated that this administrative regulation regulated transportation network companies.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph to delete incorrect and repealed statutory citations. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Kentucky Building Code

815 KAR 7:120. Kentucky Building Code. Duane Curry, building director; Steve Milby, commissioner; and David Startsman, general counsel, represented the division.

In response to questions by Co-Chair Harris, Mr. Milby stated that the current building code required a vent on dishwashers; however, newer models did not have vents and worked differently. The division was researching this issue and planned to update requirements accordingly, hopefully before the end of 2017.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to delete a statutory citation; and (2) to amend Section 3 to comply with the drafting 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 Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:053. Repeal of 902 KAR 20:054. Stephanie Hold, director in the Office of the Inspector General, and Robert Silverthorne, inspector general, represented the division.

Kentucky Board of Family Health Care Providers

902 KAR 22:011. Repeal of 902 KAR 22:010 and 902 KAR 22:030.

Controlled Substances

902 KAR 55:076. Repeal of 902 KAR 55:075 and 902 KAR 55:100.

Inspector General

906 KAR 1:081. Repeal of 906 KAR 1:080.

906 KAR 1:091. Repeal of 906 KAR 1:090.

Department for Aging and Independent Living: Division of Operations and Support: Aging Services

910 KAR 1:210. Kentucky Long-Term Care Ombudsman Program. Sherry Culp, long-term care ombudsman, and Phyllis Sosa, staff assistant, represented the division.

Other Business: Co-Chair Upchurch recognized and welcomed Leadership Lake Cumberland to the Subcommittee meeting.

The following administrative regulations were deferred or removed from the June 13, 2017, Subcommittee agenda:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Teaching Certificates

16 KAR 2:020. Occupation-based career and technical education certification.

Educator Preparation

16 KAR 5:020. Standards for admission to educator preparation.

Advanced Certification and Rank

16 KAR 8:040. Ranking of occupation-based career and technical education teachers.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:010. Definitions for 401 KAR Chapter 8.

401 KAR 8:011. Repeal of 401 KAR 8:070, 401 KAR 8:101, 401 KAR 8:550, and 401 KAR 8:600.

401 KAR 8:020. Public and semipublic water systems; submetering; general provisions.

401 KAR 8:040. Laboratory certification.

401 KAR 8:075. Consumer confidence reports and public notification.

401 KAR 8:100. Design, construction, and approval of facilities and approval timetable for 401 KAR Chapter 8.

401 KAR 8:250. Inorganic and organic chemical sampling, analytical techniques, maximum contaminant levels, radionuclides, and secondary standards.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department for Libraries and Archives: Division of Library Services: Libraries

725 KAR 2:070. Certification renewal of public librarians.

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.

Employment Services

787 KAR 2:040 & E. Local workforce development area governance.

PUBLIC PROTECTION CABINET: Department of Insurance: Health and Life Division: Health Insurance Contracts

806 KAR 17:575. Pharmacy benefit managers.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Policy and Operations: Medicaid Services

907 KAR 1:041E. Repeal of 907 KAR 1:018 and 907 KAR 1:019.

Payment and Services

907 KAR 3:206E. Repeal of 907 KAR 3:205.

Outpatient Pharmacy Program

907 KAR 23:001 & E. Definitions for 907 KAR Chapter 23.

Outpatient Pharmacy Program

907 KAR 23:010 & E. Outpatient pharmacy program.

907 KAR 23:020 & E. Reimbursement for outpatient drugs.

The Subcommittee adjourned at 2 p.m. until July 11, 2017, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE AND FAMILY SERVICES
Meeting of June 21, 2017

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare and Family Services for its meeting of June 21, 2017, having been referred to the Committee on June 7, 2017, pursuant to KRS 13A.290(6):

201 KAR 20:056
201 KAR 20:057
900 KAR 10:041
902 KAR 2:060
902 KAR 21:030

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

902 KAR 2:060

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 21, 2017 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **A - 2**

The Locator Index lists all administrative regulations published in VOLUME 44 of the *Administrative Register of Kentucky* from July 2017 through June 2018. 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 43 are those administrative regulations that were originally published in VOLUME 43 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2017 Kentucky Administrative Regulations Service* was published.

KRS Index **A - 6**

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 44 of the *Administrative Register of Kentucky*.

Technical Amendment Index **A - 7**

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the 2017 *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 **A - 8**

The Subject Index is a general index of administrative regulations published in VOLUME 44 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

Regulation Number	43 Ky.R. Page No.	Effective Date

VOLUME 43

The administrative regulations listed under VOLUME 43 are those administrative regulations that were originally published in Volume 43 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2017 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
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(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.)

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SYMBOL KEY:

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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.)

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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 *2017 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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