



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, January 12, 2018.

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

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ADMINISTRATIVE REGULATION REVIEW 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
921 KAR 2:015E

This emergency administrative regulation is necessary to increase the standards of need for all levels of care in the State Supplementation Program for persons who are aged, blind, or have a disability due to the federal and state agreement to pass through the Supplemental Security Income 2018 cost of living adjustment. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department of Community Based Services of the Supplemental Security Income cost of living adjustment in October 2017. An ordinary administrative regulation would not allow the agency sufficient time to have an administrative regulation in place in order to revise the payment standards effective January 1, 2018.

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 Community Based Services
Division of Family Support
(Emergency Amendment)

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

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

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

EFFECTIVE: December 28, 2017

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) A mandatory payment shall discontinue if:

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

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

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

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

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

(a) 907 KAR 20:001;

(b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 11;

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

(d) 907 KAR 20:025; or ~~and~~

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

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

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

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

- (a) Requires a full-time living arrangement;
- (b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and
- (c) 1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

- 2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);
- 3. Receives caretaker services and is at least eighteen (18) years of age; or

- 4.a. Resides in a private residence;
- b. Is at least eighteen (18) years of age; and
- c. Has SMI.

(2) A full-time living arrangement shall include:

- (a) Residence in a personal care home that:
- 1. Meets the requirements and provides services established in 902 KAR 20:036; and
- 2. Is licensed under KRS 216B.010 to 216B.131;

- (b) Residence in a family care home that:
- 1. Meets the requirements and provides services established in 902 KAR 20:041; and
- 2. Is licensed under KRS 216B.010 to 216B.131;

(c) A situation in which a caretaker is required to be hired to provide care other than room and board; or

- (d) A private residence, which shall:
- 1. Be permanent housing with:
- a. Tenancy rights; and
- b. Preference given to single occupancy; and
- 2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

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

- 1. Discharge to a:
- a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or

- b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

- 2. Death of the state supplementation recipient; and

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

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

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

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

- 1. Discharge to a:
- a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;

- b. Another personal care or family care home; or

- c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

- 2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

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

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

Treasurer.

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

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

- (a) Remain safely and adequately:
- 1. At home;
- 2. In another family setting; or
- 3. In a room and board situation; and

- (b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

- (a) A live-in attendant; or
- (b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

- (a) Often the service is provided;
- (b) The service prevents institutionalization; and
- (c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

- (a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

- 1. The spouse;
- 2. Parent of an adult or minor child who has a disability; or
- 3. Adult child of a parent who is aged, blind, or has a disability.

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

(a) Not include a primary diagnosis of Alzheimer's disease or dementia;

(b) Be described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), fourth (4th) edition or edition currently in use;

(c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and

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

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

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

- (c) Payment is made for the services.

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

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

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

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

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:020, Section 2(4)(a);
- (c) 907 KAR 20:025; and
- (d) 907 KAR 20:040, Section 1.

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

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

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

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

- (a) 907 KAR 20:001;
 - (b) 907 KAR 20:020, Section 2(4)(a);
 - (c) 907 KAR 20:025; and
 - (d) 907 KAR 20:040, Section 1.
- (2) The optional supplementation payment shall be determined by:

(a) Adding:

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

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

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

(3) Income of an ineligible spouse shall be:

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

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

1. The applicant or recipient; and

2. Each minor dependent child.

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

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

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

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

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

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

(a) For a resident of a personal care home on or after January 1, 2018, \$1,270~~[January 1, 2017, \$1,255];~~

(b) For a resident of a family care home on or after January 1, 2018, \$922~~[January 1, 2017, \$907];~~

(c) For individuals who receive caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after January 1, 2018, \$812~~[January 1, 2017, \$797];~~

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after January 1, 2018, \$1,186~~[January 1, 2017, \$1,164]; or~~

3. An eligible couple, both aged, blind or have a disability and both requiring care on or after January 1, 2018, \$1,240~~[January 1, 2017, \$1,218]; or~~

(d) For an individual who resides in a private residence and has SMI on or after January 1, 2018, \$1,270~~[January 1, 2017, \$1,255].~~

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

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

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

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

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

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

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

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

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

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

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

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

1. Notification of the temporary admission; and

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

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

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

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

(1) Citizen of the United States; or

(2) Qualified alien.

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

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

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

(b) Shall not be eligible for a payment for a Type A Citation that is not abated; and

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

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

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

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

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

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

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

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication

technician training in effect prior to July 1990, as a result of this minimum requirement;

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

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

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

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

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

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

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

(b) Approval or denial of an application.

(4) A personal care home shall:

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

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

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

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

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

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

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

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

1. Mail;

2. Fax; or

3. Electronically.

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

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

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

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

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

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

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

(a) Importance of proper medication administration;

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

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

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

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

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

(3) Initial training shall:

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

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

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

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

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

1. Has successfully completed certified medication technician training; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Observe and interview residents and staff; and

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

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

2. The personal care home:

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

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

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

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

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

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

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

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

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

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

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

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

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 28, 2017

FILED WITH LRC: December 28, 2017 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, Phone (502) 564-3703, Email Elizabeth.Caywood@ky.gov; and Laura Begin

(1) Provide a brief summary of:

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

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the eligibility requirements and standards of need for the State Supplemental Program for persons who are aged, blind, or have a disability.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will increase the standards of need for the State Supplemental Program to reflect the cost of living adjustment (COLA) to be implemented in calendar year 2018 by the Social Security Administration for Supplemental Security Income (SSI) recipients.

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

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes by complying with an agreement between Kentucky and the Social Security Administration to pass along the cost of living adjustment for Supplemental Security Income to State Supplemental Program through an increase in the program's standards of need for all recipients.

(d) How the amendment will assist in the effective

administration of the statutes: This amendment will assist in the effective administration of the statutes by passing along the 2018 two (2) percent COLA for the Supplemental Security Income benefit by modifying the standards of need for the State Supplementation Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October 2017, there were 2,409 individuals who received State Supplementation Program benefits. As of fall 2017, there are 28 personal care homes participating in the MI/ID Supplement Program.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question. (3): Regulated entities will benefit from a two (2) percent COLA adjustment to the standards of need, thereby increasing net resources by fifteen (15) or twenty-two (22) dollars. Benefit amounts in the State Supplementation Program are the difference between the applicable standard of need and countable income.

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

(a) Initially: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through mandate, which would jeopardize the state's federal Medicaid funding.

(b) On a continuing basis: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the 2018 SSI cost of living adjustment. Not complying with the federal pass-through mandate would jeopardize the state's federal Medicaid funding.

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

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

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

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

additional or different responsibilities or requirements, than those required by federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department of 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 194.050 (1), 205.245, 20 C.F.R. Part 416, 42 U.S.C.1328e-g,

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

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

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

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1382 e-g, 20 C.F.R. Part 416

2. State compliance standards. KRS 194.050 (1), 205.245

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

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, January 8, 2018)

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, 42 U.S.C. 1751, et seq.

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 promulgate administrative regulations 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":

(a) Means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution; and

(b) Does not mean 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, Richard B. Russell National School Lunch Act, 42 U.S.C. 1751, et. seq., 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 established 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[term]; 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[term].

(b) For an eligible high school student taking an AP, IB, or CAI course during the academic year[term], 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[term] 2015-2016, for an eligible high school student taking a dual credit course during the academic year[term], the course grade assigned by the college shall[must] be used by the high school in calculating the KEES grade point average, and shall be included in the KEES calculation[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[term] 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 established 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 established 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 established 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 2018-2019[2042-2043] academic year[term], each cooperative education course taken during an academic year shall satisfy KEES curriculum requirements if provided the course has been approved by the Office of Career and Technical Education as a work-based learning experience in a career pathway pursuant to 705 KAR 4:123 and 705 KAR 4:041. For all other cooperative education coursework, only one (1)[cooperative education] course per academic year[term] 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) Engineering if enrollment in the engineering program has been continuous (14.0101, 14.201, 14.0301, 14.401, 14.501, 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. Postsecondary Grade Point Average Calculation and Reporting. (1) Each participating institution shall report to the Authority the cumulative grade point average for each KEES recipient enrolled in that institution no later than June 30 after the completion of the award period.

(2) The cumulative grade point average shall be reported to the hundredths decimal place. Any cumulative grade point average which contains a number of five (5) or greater in the thousandths place shall be rounded up to the nearest hundredth. Any cumulative grade point average which contains a number less than five (5) in the thousandths place shall be rounded down to the nearest hundredth.

(3) If [in the event] a KEES recipient had an incomplete grade when [grade(s) at the time] the cumulative grade point average was initially reported to the Authority and subsequently receives a final grade, the participating institution shall [must] recalculate the recipient's cumulative grade point average as of the end of the appropriate award period and report the updated cumulative grade point average to the Authority.

Section 7[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[term]:

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

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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[term], 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 ERW+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	940	18	720	13
1590	35	1370	29	1150	23	930	17	710	12
1580	35	1360	29	1140	23	920	17	700	12
1570	35	1350	29	1130	23	910	17	690	12

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1560	35	1340	28	1120	22	900	17	680	12
1550	34	1330	28	1110	22	890	16	670	12
1540	34	1320	28	1100	22	880	16	660	12
1530	34	1310	28	1090	21	870	16	650	12
1520	34	1300	27	1080	21	860	16	640	12
1510	33	1290	27	1070	21	850	15	630	12
1500	33	1280	27	1060	21	840	15	620	11
1490	32	1270	26	1050	20	830	15	610	11
1480	32	1260	26	1040	20	820	15	600	11
1470	32	1250	26	1030	20	810	15	590	11
1460	32	1240	26	1020	20	800	14	580	11
1450	32	1230	25	1010	19	790	14	570	11
1440	31	1220	25	1000	19	780	14	560	11
1430	31	1210	25	990	19	770	14		
1420	31	1200	25	980	19	760	14		
1410	30	1190	24	970	18	750	13		
1400	30	1180	24	960	18	740	13		
1390	30	1170	24	950	18	730	13		

Section 8[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 any Kentucky or out-of-state public or nonpublic high school 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 five (5) years after 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 9[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 10[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 11[40]. 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 established by 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 12[44]. 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.

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CHARLES VINSON, Chair

APPROVED BY AGENCY: October 26, 2017

FILED WITH LRC: November 7, 2017 at 10 a.m.

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PERSONNEL BOARD
(As Amended at ARRS, January 8, 2018)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.005, 18A.0751(1)(e), (4)(e), 18A.111
STATUTORY AUTHORITY: KRS 18A.005, 18A.075(1), 18A.0751(1)(e), (4)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(e) requires the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.0751(4)(e) authorizes the Personnel Board to promulgate administrative regulations to establish an initial probationary period in excess of six (6) months for specific job classifications. This administrative regulation establishes the requirements relating to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or final month, depending upon the length of initial probationary period, except as established/provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

Title Code	Job Classification	Length of Initial Probationary Period
20000538	Golf Course Superintendent I	9 months
20000539	Golf Course Superintendent II	9 months
20000558	Parks Golf Professional	9 months
20000677	State Park Ranger I	9 months
20000562	Resort Park Manager I	12 months
20000563	Resort Park Manager II	12 months
20000564	Resort Park Manager III	12 months
20000568	Parks Program Services Supervisor	9 months
20000569	Parks Camping/Boat Dock Manager	9 months
20000570	Park Business Manager I	12 months
20000571	Park Business Manager II	12 months
20000572	Park Manager I/Historic Site Manager	12 months
20000573	Park Manager II	12 months
20000574	Park Manager III	12 months
20000609	Conservation Officer Recruit	12 months
20000616	Veterans Benefits Field Rep I	9 months
20000618	Veterans Benefits Regional Administrator	9 months
20000672	Facilities Security Sergeant	12 months
20000673	Facilities Security Lieutenant	12 months
20000676	State Park Ranger Recruit	12 months
20000680	Facilities Security Officer II	12 months
20000683	Mounted Patrol Officer Recruit	12 months
20000687	Police Telecommunicator I	12 months
20000688	Police Telecommunicator II	12 months
20000689	Police Telecommunications Shift Supervisor	12 months
20000690	Police Telecommunications Supervisor	12 months
20000692	CVE Inspector I	12 months
20000694	CJIS (Criminal Justice Information System) Compliance Specialist I	12 months
20000695	CJIS Compliance Specialist II	12 months
20000696	CJIS Compliance Specialist III	12 months
20000697	CJIS Compliance Supervisor	12 months
20000698	Transportation Operations Center Specialist I	12 months

20000703	Polygraph Examiner II	12 months
20000704	Polygraph Examiner I	12 months
20000713	Driver's Test Administrator	12 months
20000716	Fish and Wildlife Telecommunicator I	12 months
20000813	Boiler Inspector I	12 months
20000820	Fire Protection Systems Inspector	12 months
20000870	Financial Institutions Examiner I	12 months
20000871	Financial Institutions Examiner II	12 months
20000872	Financial Institutions Examiner III	12 months
20000873	Financial Institutions Examiner IV	12 months
20000874	Financial Institutions Examiner Specialist	12 months
20000888	Insurance Fraud Investigator I	12 months
20000889	Insurance Fraud Investigator II	12 months
20000890	Insurance Fraud Investigator Supervisor	12 months
20000938	Forensic Firearms and Toolmark Examiner I	12 months
20000940	Forensic Chemist I	12 months
20000941	Forensic Chemist II	12 months
20000943	Forensic Biologist I	12 months
20000944	Forensic Biologist II	12 months
20000963	Therapy Program Assistant	9 months
20000974	Houseparent I	12 months
20000972	Houseparent II	12 months
20000974	Audiologist I	12 months
20001001	Patient Aide I	9 months
20001037	Medical Investigator I	12 months
20001038	Medical Investigator II	12 months
20001075	Student Development Associate	12 months
20001076	Student Development Assistant	12 months
20001104	KSB/KSD (Kentucky School for the Blind/Kentucky School for the Deaf) Administrator I	12 months
20001105	KSB/KSD Administrator III	12 months
20001106	KSB/KSD Administrator IV	12 months
20001107	KSB/KSD Administrator V	12 months
20001108	KSB/KSD Administrator VI	12 months
20001122	Disability Adjudicator I	12 months
20001125	Social Service Worker I	9 months
20001135	Juvenile Facility Superintendent I	12 months
20001136	Juvenile Facility Superintendent III	12 months
20001137	Facilities Regional Administrator	12 months
20001138	Youth Services Program Supervisor	12 months
20001139	Juvenile Facility Superintendent II	12 months
20001142	Human Rights Specialist	12 months
20001157	Administrative Hearing Officer I	12 months
20001159	Human Rights Enforcement Branch Manager	12 months
20001162	Human Rights Research/Information Compliance Supervisor	12 months
20001163	Human Rights Housing Compliance Supervisor	12 months
20001164	Human Rights Employment/Public Accommodations Compliance Supervisor	12 months
20001165	Human Rights Compliance Enforcement Officer II	12 months
20001166	Probation and Parole Officer I	12 months
20001171	Youth Worker I	12 months
20001174	Youth Worker Supervisor	12 months
20001175	Juvenile Services District Supervisor	12 months
20001480	Forestry Equipment Supervisor	12 months
20001481	Nursery Foreman	12 months
20001482	Nursery Superintendent	12 months

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[20001483]	Forester	12 months]
[20001484]	Forester Chief	12 months]
[20001485]	Forester Regional	12 months]
[20001486]	Rural Fire Suppression Technical Advisor	12 months]
[20001487]	Forestry Program Specialist	12 months]
[20001488]	Forestry Program Manager	12 months]
[20001489]	Forestry Program Supervisor	12 months]
[20001492]	Forest Ranger Technician I	12 months]
[20001493]	Forest Ranger Technician II	12 months]
[20001494]	Forest Ranger Technician III	12 months]
[20001495]	Forest Ranger Technician Regional	12 months]
20001788	Revenue Field Auditor I	12 months
20001807	Revenue Auditor I	12 months
20001841	Criminal Intelligence Analyst I	12 months
20001842	Criminal Intelligence Analyst II	12 months
20001882	Public Advocate Investigator I	12 months
20001895	Environmental Administrative Hearing Officer	12 months
20001899	Mitigation Specialist I	12 months
20001904	Investigator I	12 months
21002025	Highway Technician Assistant I	12 months
21002026	Highway Technician Assistant II	12 months
21002027	Highway Technician I	12 months
21002028	Highway Technician II	12 months
21002029	Highway Technician III	12 months
21002030	Highway Technician IV	12 months
21002031	Highway Technician Superintendent I	12 months
21002032	Highway Technician Superintendent II	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. ~~If an~~***When the*** employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. A written notification shall be sent to the employee to advise the employee of the effective date of reversion. A copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) ***Except as established in KRS 18A.111***, the promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the appropriate month following promotion~~;~~ ***as established in***~~*required by*~~ KRS 18A.005(27)~~;~~ ***except as provided in KRS 18A.111***.

(4) The promotional probationary period shall be the same length as the initial probationary period for each job classification.

Section 3. Probationary Period Upon Reinstatement. (1) An employee who is reinstated to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status. This shall include an employee ordered reinstated pursuant to KRS 18A.111(3), unless the board rules otherwise.

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an

employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

STAFFORD EASTERLING, General Counsel

APPROVED BY AGENCY: November 15, 2017

FILED WITH LRC: November 15, 2017 at 10 a.m.

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FINANCE AND ADMINISTRATION CABINET Department of Revenue (As Amended at ARRS, January 8, 2018)

103 KAR 16:240. Nexus standard for corporations and pass-through entities[general partnerships].

RELATES TO: KRS 141.010, 141.040, 141.206.

STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.040(1) requires non-exempt corporations doing business in Kentucky to pay corporation income tax and file the required tax forms for that tax. KRS 141.206 requires pass-through entities[general partnerships] doing business in Kentucky to file tax forms to compute the distribution of income to the partners, members or shareholders[general partners]. KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky's tax laws. KRS 141.018 requires the Department of Revenue to promulgate administrative regulations necessary to implement 2005 Ky. Acts ch. 168. KRS 141.010(25) defines "doing business in this state". This administrative regulation establishes what constitutes nexus in Kentucky under a doing business standard and provides examples.

Section 1. Definitions. (1) "Business situs" means in relation to intangible personal property:

(a) The corporation's or pass-through entity's[general partnership's] commercial domicile;

(b) The place where the intangible personal property is utilized by the corporation or pass-through entity[general partnership]; or

(c) The state where the intangible personal property is located if possession and control of the intangible personal property is localized in connection with a trade or business so that substantial use or value attaches to the property.

(2) "Commercial domicile" means the principal place from which the trade or business of the corporation or pass-through entity[general partnership] is managed.

(3) "Corporation" is defined by KRS 141.010(24).

(4) "Doing business in this state" is defined by KRS 141.010(25).

(5) "Foreign corporation" means a corporation incorporated or formed under the authority of another state or country.

(6) "Foreign pass-through entity[general partnership]" means a pass-through entity[general partnerships] organized under the laws of another state or country.

(7) "Pass-through entity[General partnerships]" is defined by KRS 141.010(26)[141.206(1)(a)].

(8) "Owning or leasing property in this state" means owning or leasing real or tangible personal property in Kentucky, including:

(a) Maintaining an office or other place of business in Kentucky;

(b) Maintaining in Kentucky an inventory of merchandise or material for sale, distribution or manufacture, or consigned goods, regardless of whether kept on the taxpayer's premises, in a public or rented warehouse, or otherwise; or

(c) Owning computer software used in the business of a third party within Kentucky.

(9) "Qualified real estate investment trust subsidiary" is defined by Section 856(i)(2) of the Internal Revenue Code, 26 U.S.C.

856(i)(2).

(10) "Qualified subchapter S subsidiary" is defined by Section 1361(b)(3)(B) of the Internal Revenue Code, 26 U.S.C. 1361(b)(3)(B).

(11) "Related corporation" means a corporation in which another corporation or pass-through entity[~~general partnership~~] maintains an ownership interest of fifty (50) percent or more during any portion of the taxable year.

(12) "Single member limited liability company" means a limited liability company with one (1) member.

Section 2. In General; Rules of Construction. (1) For purposes of the corporation income tax imposed by KRS 141.040(1) and the filing requirement imposed on pass-through entities[~~general partnerships~~] by KRS 141.206(2), the term "doing business in this state" or "doing business" shall be used in a comprehensive sense concerning the operation of any profit-seeking enterprise or activity in Kentucky.

(2) In determining if a corporation or pass-through entity[~~general partnership~~] is doing business in Kentucky, it shall be immaterial whether the activities actually result in a profit or loss.

(3) Whether a corporation or pass-through entity[~~general partnership~~] is doing business in Kentucky shall be determined by the facts in each case.

(4) Whether the activities of a foreign corporation or pass-through entity[~~general partnership~~] fall within the scope of "solicitation" within the meaning of Pub.L. 86-272, codified as 15 U.S.C. 381 to 384, shall be a factual determination. The examples in Sections 3 and 4 of this administrative regulation shall be used as guidelines. In applying the guidelines to the particular circumstances and activities of a foreign corporation or pass-through entity[~~general partnership~~], the Department of Revenue shall employ the following rules of construction:

(a) The effect of the activities listed in Sections 3 and 4 of this administrative regulation shall be cumulative. In determining whether a taxpayer is doing business in Kentucky, all of these activities shall be considered as a whole.

(b) If the Department of Revenue determines that a taxpayer is doing business in Kentucky, the taxpayer shall carry the burden of substantiating any claim that these activities in Kentucky do not constitute doing business under either Pub.L. 86-272, codified as 15 U.S.C. 381 to 384, or the United States Constitution.

(c) Documentary evidence shall be given substantial weight in establishing the nature and extent of the taxpayer's activities. Affidavits or other evidence not contemporaneous with the events in question shall be given little weight.

(d) The term "solicitation" shall include only actual requests for purchases and activities that are entirely ancillary to requests for purchases. An activity shall be considered entirely ancillary to the requesting of purchases if it serves no independent business purpose apart from its connection to the soliciting of orders.

(e) Activities conducted by a foreign corporation or pass-through entity[~~general partnership~~] with respect to a particular order shall not constitute "solicitation" if the activity occurs after the order has been placed.

Section 3. Exception for Solicitation Activities Protected by Pub.L. 86-272, codified as 15 U.S.C. 381 to 384. (1) General; preemption of state law. This administrative regulation adopts a narrow interpretation of the immunity afforded by Pub.L. 86-272, codified as 15 U.S.C. 381 to 384, which precludes the imposition of Kentucky income tax upon a foreign corporation, or the filing requirement imposed on foreign pass-through entity[~~general partnerships~~], if the corporation's or pass-through entity's[~~general partnership's~~] sole activity in Kentucky is the corporation's or pass-through entity's[~~general partnership's~~] representatives soliciting orders for the sale of tangible personal property in the name of the corporation or pass-through entity[~~general partnership~~] or in the name of a prospective customer if the orders are:

(a) Sent outside of Kentucky for approval or rejection; and

(b) Filled by shipment or delivery from a point outside of Kentucky.

(2) Scope of Pub.L. 86-272, codified as 15 U.S.C. 381 to 384.

(a) If a corporation or pass-through entity[~~general partnership~~] engages both in protected solicitation activities and in any other activity that is not a protected solicitation activity, it shall not claim the immunity granted by Pub.L. 86-272, codified as 15 U.S.C. 381 to 384.

(b) Solicitation of orders shall not be protected by Pub.L. 86-272, codified as 15 U.S.C. 381 to 384, if the solicitation is for the:

1. Sale or provision of services; or

2. Sale, lease, rental, license, or other disposition of real property or intangibles.

(3) Activities normally considered to be solicitation. The activities listed in this subsection shall serve as examples of activities that ordinarily fall within the scope of "solicitation" under Pub.L. 86-272, codified as 15 U.S.C. 381 to 384:

(a) Soliciting orders through advertising;

(b) Carrying samples and promotional materials only for display or distribution without charge or other consideration;

(c) Soliciting orders by an in-state resident employee or representative of the company, if that person does not maintain or use any office or other place of business in the state other than an "in-home" office as described in subsection (4) of this section;

(d) Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

(e) Checking customer inventories for reorder without a charge therefore, but not for other purposes such as quality control;

(f) Recruiting, training or evaluating sales personnel, including occasionally using homes, hotels, or similar places for meetings with sales personnel;

(g) Conducting solicitation activities from an employee's in-home work space, if the use of the space is not paid for by the company;

(h) Performing missionary sales activities, including the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if the solicitation activities are otherwise immune;

(i) Coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

(j) Maintaining a sample or display area for an aggregate of fourteen (14) calendar days or less at any one (1) location within Kentucky during the tax year, if no other activities inconsistent with solicitation take place;

(k) Mediating direct customer complaints if the purposes are solely to ingratiate sales personnel with the customer and facilitate requests for orders;

(l) Passing orders, inquiries, and complaints on to the home office;

(m) Providing automobiles to sales personnel for use solely in solicitation activities; and

(n) Owning, leasing, using, or maintaining personal property for use in the employee or representative's "in-home" office or automobile that is solely limited to the conducting of solicitation activities. The use of personal property, such as a cellular telephone, facsimile machine, duplicating equipment, personal computer, or computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to solicitation or permitted by this section shall not, by itself, remove the protection.

(4) Activities that are not solicitation. The activities listed in this subsection shall serve as examples of activities in this state that fall outside the scope of "solicitation" and are not protected by Pub.L. 86-272, codified as 15 U.S.C. 381 to 384 unless the activity is de minimis within the meaning of Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447 (1992):

(a) Making repairs or providing maintenance or service to the property sold or to be sold;

(b) Installing or supervising installation at or after shipment or delivery;

(c) Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

(d) Investigating credit;

- (e) Repossessing property;
- (f) Conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;
- (g) Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints if the sole purpose of the mediation is to ingratiate the sales personnel with the customer;
- (h) Approving or accepting orders;
- (i) Securing deposits on sales;
- (j) Picking up or replacing damaged or returned property, including stale or unsaleable property;
- (k) Maintaining a sample or display area for an aggregate of fifteen (15) days or more at any one location within Kentucky during the tax year;
- (l) Providing technical assistance or service, including engineering assistance or design service, if one (1) of the purposes of it is other than the facilitation of the solicitation of orders;
- (m) Hiring, training, or supervising personnel for activities other than solicitation[activities];
- (n) Using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;
- (o) Carrying samples for sale, exchange, or distribution in any manner for consideration or other value;
- (p) Providing shipping information and coordinating deliveries;
- (q) Supervising the operations of a franchisee or similar party;
- (r) Monitoring, inspecting, or approving work performed by an independent contractor under a warranty or similar contractual arrangement;
- (s) Consigning stock of goods or other tangible personal property for sale to any person, including an independent contractor;
- (t) Fulfilling sales orders by shipment or delivery from a point within Kentucky;
- (u) Owning, leasing, maintaining, or otherwise using as part of the business operations in Kentucky any of the following facilities or property:
 - 1. Repair shop;
 - 2. Parts department;
 - 3. Warehouse;
 - 4. Meeting place for directors, officers, or employees;
 - 5. Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation; or
 - 6. Telephone answering service that is publicly attributed to the company or to an employee or agent of the company in their representative status;
- (v) Maintaining, by any employee or other representative, an office or place of business of any kind other than an in-home office. For the purpose of this subsection it shall not be relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office. An office shall be considered in-home if it is located within the residence of the employee or representative, and:
 - 1. Is not publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity. Factors considered in determining if an office is publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity shall include:
 - a. A telephone listing or other public listing within the state for the company, or for an employee or representative of the company in that capacity, or other indications through advertising or business literature that the company or its employee or representative can be contacted at a specific address within the state;
 - b. The normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone and fax numbers, and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative; or
 - c. The maintenance of any office or other place of business in this state that does not strictly qualify as an "in-home" office as

described in this paragraph shall, by itself, cause the loss of protection under this subsection;

2. The use of the office is limited to:

- a. Soliciting and receiving orders from customers;
- b.[for] Transmitting orders outside the state for acceptance or rejection by the company; or
- c.[for] Other activities that are protected under Pub.L. 86-272, codified as 15 U.S.C.A. 381 to 384 or under this administrative regulation;
- (w) Entering into franchising or licensing agreements, selling or otherwise disposing of franchises and licenses, or selling or otherwise transferring tangible personal property pursuant to the franchise or license by the franchisor or licensor to its franchisee or licensee within the state; or
- (x) Conducting any other activity which is not entirely ancillary to the solicitation of orders, even if the activity helps to increase purchases.

Section 4. "Doing Business". An analysis to determine if a corporation or pass-through entity[~~general partnership~~]'s activities fall within the provisions of KRS 141.010(25) shall include the factors established in this section. (1) The activities listed in this subsection shall serve as examples of "doing business" under KRS 141.010(25)(f):

- (a) Performing services in Kentucky, whether directly by the corporation or pass-through entity[~~general partnership~~] or indirectly by directing activity performed by a third party;
 - (b) Accepting orders in Kentucky;
 - (c) Operating a professional sports team which engages in professional sports activities in Kentucky;
 - (d) Owning an interest in mineral rights in Kentucky, including interests in coal, oil, or natural gas;
 - (e) Leasing motion picture films to movie theaters and television stations in Kentucky;
 - (f) Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;
 - (g) Being a member, partner, or shareholder in a pass-through entity[~~general partnership~~] doing business in Kentucky; or
 - (h) Receiving income from intangible personal property if the intangible personal property has acquired a Kentucky business situs.
- (2) The activities listed in this subsection shall serve as examples of "doing business" under KRS 141.010(25)(g):
- (a) Performing or soliciting orders for services in Kentucky, including those services performed in Kentucky by a third party on behalf of a corporation or pass-through entity[~~general partnership~~];
 - (b) Selling or soliciting orders for real property;
 - (c) Selling or soliciting orders for intangible personal property;
 - (d) Selling tangible personal property; or
 - (e) Delivering merchandise inventory on consignment to its Kentucky distributors or dealers.

(3) A corporation or pass-through entity[~~general partnership~~] may be considered doing business under KRS 141.010(25)(d) without having employees in Kentucky. If activities are performed in Kentucky by a third party on behalf of the corporation or pass-through entity[~~general partnership~~], the corporation or pass-through entity[~~general partnership~~] shall be considered doing business in Kentucky.

(4)(a) General.

1. The activities in this paragraph shall not, in themselves, subject a corporation to Kentucky corporation income tax or a pass-through entity[~~general partnership~~] to a Kentucky filing requirement.

2. These exempted activities shall not relieve a corporation from Kentucky corporation income tax if the corporation is otherwise subject to Kentucky corporation income tax and shall not relieve a pass-through entity[~~general partnership~~] from a Kentucky income tax filing requirement if the pass-through entity[~~general partnership~~] is otherwise required to file a Kentucky return.

3. Mere ownership of a corporation that is doing business in Kentucky shall not subject the owner to the requirements. However, based on additional facts and circumstances, sufficient

contacts with Kentucky may exist to establish that the corporation or pass-through entity[general partnership] is doing business in Kentucky. The activities listed in this subparagraph shall serve as examples of facts and circumstances that establish that the corporation or pass-through entity[general partnership] is doing business in Kentucky:

- a. Being the parent corporation of a qualified real estate investment trust subsidiary that is doing business in Kentucky;
 - b. Being the parent corporation of a qualified subchapter s subsidiary that is doing business in Kentucky;
 - c. Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;
 - d. Being a related corporation doing business in Kentucky which is performing activities as the corporation's or pass-through entity's[general partnership's] agent in Kentucky;
 - e. Receiving income from a contract between a corporation or pass-through entity[general partnership] and a related corporation doing business in Kentucky if the income is derived from the related corporation's activities in Kentucky;
 - f. Being a corporation that is essentially a shell corporation, or other facts indicate that an independent corporate existence is essentially disregarded; or
 - g. Entering into franchising or licensing agreements and receiving income from franchising or licensing agreements that have acquired a Kentucky business situs.
- (b) Employee or independent agent activity. A foreign corporation or pass-through entity[general partnership] that is not otherwise doing business in Kentucky may be considered to not be doing business in Kentucky, even if its employees or independent agents are performing certain de minimis activities in Kentucky. The following items shall serve as examples of de minimis activities:
1. A foreign corporation or pass-through entity[general partnership] sending various employees, e.g., legal staff and witnesses, to assist its independent legal counsel in defending a lawsuit in Kentucky. The law firm providing counsel shall be taxable in Kentucky;
 2. A foreign corporation or pass-through entity[general partnership] sending its employees to Kentucky to purchase raw materials and inventory;
 3. A foreign corporation or pass-through entity[general partnership] giving its highest performing sales person an expense paid vacation to Lake Barkley, Kentucky; or
 4. A foreign corporation or pass-through entity[general partnership] sending its business records to Kentucky for use by its independent auditors.

Section 5. This administrative regulation shall apply to taxable years beginning on or after January 1, 2005.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 6, 2017

FILED WITH LRC: October 12, 2017 at 4 p.m.

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**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at IJC on Health and Welfare and Family
Services, December 13, 2017)**

201 KAR 2:380. Board authorized protocols.

RELATES TO: KRS 315.010(25)(24), 315.191(1)(a), (f)

STATUTORY AUTHORITY: KRS 315.010(25)(24),

315.191(1)(a), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.010(25)(24) defines a prescription drug order, which includes orders issued through protocols authorized by the board. KRS

315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters pertaining to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate administrative regulations that are necessary to control the dispensing of prescription drug orders. This administrative regulation establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of noncontrolled medications or other professional services.

Section 1. Definition. [(4)] "Prescriber" means any individual authorized to prescribe a legend drug.

Section 2. Procedures. [(4)] **A pharmacist**[Pharmacists] may initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services under the following conditions:

(1)[(a)] A prescriber-approved protocol that meets the minimum requirements in Section 3 of this administrative regulation[as set forth by the board] is in place, and is dated and signed by the prescriber and pharmacist[pharmacists] authorized to initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services;

(2) The protocol directs the care, based on current clinical guidelines, for conditions listed in Section 5 of this administrative regulation;

(3) The protocol has been approved by the board, who provides notice to the prescriber's licensure board within ten (10) business days of approval by the board;

(4)[(b)] The protocol has been approved by the board; and[(c)] The pharmacist documents the dispensing event in the pharmacy management system, including:

(a)[1.] Documentation as required by 201 KAR 2:170 for the dispensing of prescription medication; and

(b)[2.] Documentation that the individual receiving the medication or other professional service was provided with education pursuant to Section 4 of this administrative regulation; and

(5) A pharmacist shall request the individual's primary care provider's information, provided one exists, and shall provide notification to the primary care provider within two (2) business days.[(2)]; and[(d)] Upon the request of an individual receiving care under a protocol, a pharmacist shall:

(a) Request the individual's primary care provider's information, if applicable;[(provided one exists,)]and

(b) [shall] Provide notification to the primary care provider within thirty (30) days of care.]

Section 3. Minimum Requirements of Protocol. [(4)] Protocols shall contain the following elements:

(1)[(a)] Criteria for identifying persons eligible to receive medication therapies or other professional services under the protocol, and referral to an appropriate prescriber if the patient is high-risk or treatment is contraindicated;

(2)[(b)] A list of the medications, including name, dose, route, frequency of administration, and refills authorized to be dispensed under the protocol;

(3)[(c)] Procedures for how the medications are to be initiated and monitored, including a care plan implemented in accordance with clinical guidelines;

(4)[(d)] Education to be provided to the person receiving the dispensed medications, including aftercare instructions, if appropriate;

(5)[(e)] Procedures for documenting in the pharmacy management system all medications dispensed, including notification of the prescriber[physician] signing the protocol, if requested;

(6)[(f)] Length of time protocol is in effect;

(7)[(g)] Date and signature of prescriber approving the protocol; and

(8)[(h)] Dates and signatures of pharmacists authorized to initiate dispensing of medications or other professional services under the protocol; and

(9) The date, and education or training of the pharmacist as referenced in Section 4 of this administrative regulation.

Section 4. Pharmacist Education and Training Required. A pharmacist who dispenses medication pursuant to a prescriber-approved protocol shall first receive education and training in the subject matter of the protocol from a provider accredited by the Accreditation Council for Pharmacy Education or by a comparable provider approved by the board. **Documentation of education shall be provided to the board upon request. Education shall be obtained prior to initiating care under the protocol.**

Section 5. Authorized Conditions. Board-authorized protocols may be established for the following conditions:

(1) Acute influenza infection pursuant to recommendations by the Centers for Disease Control and Prevention (CDC);

(2) Acute streptococcal pharyngitis infection;

(3) Acute, uncomplicated urinary tract infection;

(4) Acute mucocutaneous fungal infection;

(5) Allergic rhinitis;

(6) Anaphylaxis;

(7) HIV infection prevention through pre-exposure prophylaxis pursuant to recommendations by the CDC;

(8) Nutritional supplementation with vitamins and minerals;

(9) Opioid use disorder pursuant to recommendations by the American Society of Addiction Medicine;

(10) Tobacco use disorder;

(11) Travelers health pursuant to recommendations by the CDC;

(12) Tuberculosis prevention and control through skin testing, and referral as necessary, pursuant to recommendations by the CDC; and

(13) Self-care conditions appropriately treated with over-the-counter medications and products.

SCOTT GREENWELL, R.Ph., President

APPROVED BY AGENCY: September 6, 2017

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**GENERAL GOVERNMENT
Kentucky Board of Hairdressers and Cosmetologists
(As Amended at ARRS, January 8, 2018)**

201 KAR 12:100. Sanitation standards.

RELATES TO: KRS[317A.060:] 317A.130, 317B.020(3)

STATUTORY AUTHORITY: KRS 317A.060[317A.130], 317B.020(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020(3) authorize the Kentucky State Board of Hairdressers and Cosmetologists to regulate the practice of cosmetology, nail technology, and esthetics in Kentucky and establish[uniform] standards for the course and conduct of school owners, instructors, apprentice instructors, licensed cosmetologists, nail technicians, beauty salons, nail salons, cosmetology schools, and estheticians to protect the health and safety of the public[sanitation]. This administrative regulation establishes sanitation standards for all licensed facilities.

Section 1. General Sanitation. The entire licensed facility, including all equipment, employees, and implements contained in the facility, shall be continually maintained in a sanitary manner.

Section 2. Methods of Sanitizing. (1) All[Any] implements[to be] used on the public shall be sanitized. Each method of sanitation shall be bacteriologically effective.

(2) A commercially prepared sanitizing agent or disinfectant shall be used in accordance with the manufacturer's instructions. An approved sanitizing agent or disinfectant **shall be/is**:

(a) Environmental Protection Agency (EPA) registered bactericidal, virucidal and fungicidal disinfectant that is approved for use in hospital settings and used in accordance with the instruction label for dilution ratio and contact time; or,]

(b) ~~EPA~~[Environmental Protection Agency]registered Sodium Hypochlorite 5.25 percent or higher (household bleach) product used in accordance with the instructions for disinfection and dilution on the label. Bleach **shall[must]** be active (not expired) with a manufacture date of less than six (6) months prior to use.

Section 3. Chemical Safety. All chemicals used in a licensed facility shall be:

(1) Transported and stored in accordance with the manufacturer's label;

(2) Stored in original containers in locked cabinets **that are,** ~~They may~~ not[be stored] in public spaces or bathrooms;

(3)[May only be] Mixed and applied to individuals as specifically instructed by the manufacturer's label, including patch tests; and

(4)[Must be] Discarded according to the manufacturer's label and, ~~if/where~~ applicable, local, state, and federal rules.

Section 4[3]. Disinfection of Implements and Spills; Blood and Body Fluids. (1) Each implement and surface used in a licensed facility shall first be thoroughly cleaned prior to disinfection.

(a) Disinfectants shall be prepared fresh daily and each time the solution becomes diluted or soiled.

(b) Contact Time. To clean a surface, it shall be left wet or completely immersed for ten (10) minutes or longer as required by the manufacturer for disinfecting against HIV, HBV, and all other viruses, bacteria, and fungi.

(c) Any nonporous surface that comes in contact with blood or body fluids shall first be cleaned with warm soapy, detergent water, and then an appropriate disinfectant shall be used.

(2) All used implements shall first be cleaned of visible dirt, debris, or bodily fluids with warm soapy, detergent water and then disinfected by completely immersing in an appropriate disinfectant.

(a) All[nonporous] implements that come into contact with intact skin, blood, or bodily fluids shall be thoroughly cleaned before immersion in an appropriate disinfectant.[An appropriate disinfectant for objects that come into contact with intact skin shall be:

1. An Environmental Protection Agency registered, hospital grade bactericidal (especially pseudomonacidal), virucidal, and fungicidal that is mixed and used according to the manufacturer's directions; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.]

(b)[All nonporous implements which have come in contact with blood or body fluids shall be thoroughly cleaned before immersion in an appropriate disinfectant. An appropriate disinfectant shall include:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(e)] For personal protection against blood-borne pathogens, cleanup shall be done wearing protective gloves and gowns. Eye protection shall be used for large spills.

[(d) All implements that have come in contact with blood or body fluids shall be disinfected by complete immersion in an appropriate disinfectant.

(3) Any nonporous surface that comes in contact with blood or body fluids shall first be cleaned with warm soapy, detergent water, and then an appropriate disinfectant shall be used.

(a) An appropriate disinfectant for surfaces that have come in contact with blood or body fluids shall include:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(b) For personal protection against blood-borne pathogens, cleanup shall be done wearing protective gloves and gowns. Eye protection shall be used for large spills.

(4) Household bleach may be used as an effective disinfectant for all purposes in a salon or school, with the considerations listed in this subsection.

(a) Bleach solutions shall be mixed daily and used in a ten (10) to one (1) solution, nine (9) parts tap water and one (1) part bleach.

(b) Bleach shall be kept in a closed covered container and not exposed to sunlight.

(c) Bleach may produce eye irritation or mouth, esophageal, and gastric burns.

(d) Bleach is corrosive to metals.

(e) Bleach vapors might react with vapors from other chemicals, and therefore shall not be placed or stored near other chemicals used in salons (i.e. acrylic monomers, alcohol, other disinfecting products), or near a flame.

(f) Used or soiled bleach solution shall be discarded every day by pouring the solution down a sink basin or toilet bowl.

(3)(6) A [bottle] container other than the original manufacturer's container used for application of appropriate disinfectant shall be properly labeled as to contents, percentage solution, and date mixed.

(4)(6) Cleanup items from minor cuts or items containing blood or other bodily fluids shall be double bagged or placed in biohazard containers. A licensee shall consult with the local health department for directions about disposal of biohazard containers.

(5) Styptics to arrest bleeding shall be used only in liquid or powder form and shall be applied by clean gauze, cotton, or any other sanitary item.

(6) All Food and Drug Administration (FDA) designated "medical devices" shall only be disinfected by appropriate EPA- [Environmental Protection Agency] approved disinfectants in accordance with the manufacturer's instructions.

(7)(8) Environmental Protection Agency approved disinfectants are indicated by their registration number on the product label and the manufacturer's directions for use shall always be followed. All esthetics facilities shall/will employ a sharp's/Sharps disposal container as needed for disposal of hazardous materials.

Section 5[4]. Disinfection Procedures. (1) Shampoo Bowls. All shampoo bowls[, shampoo boards, cups,] or similar items shall be sanitized after each use.

(2) Towel warmers shall/must be disinfected daily using sanitizing wipes or a spray and left open to allow the warmer to dry completely.

(3) Towels used in a towel warmer both wet and dry shall/must be washed daily and replaced.

(4) Electrical equipment that provides circulating, whirlpool, or vacuum effects including a microdermabrasion or facial machine and a pedicure station shall/must be/:

(a) cleaned and disinfected after each use by removing all movable parts by:

(a)1. Filling, circulating, cleaning, and disinfecting with the use of hospital grade disinfectant; or

2. The ten (10) percent bleach solution that is circulated through the machine for the minimum time recommended by the manufacturer; and

(b)2. Rinsing and air drying, or wiping dry with a clean cloth or paper towel.

(5) A nail drill or body treatment equipment shall be:

(a) Cleaned and disinfected after each use by removing all movable parts; and

(b)1. Flushed, cleaned, and disinfected bi-weekly with the use of hospital grade disinfectant; or

2. The ten (10) percent bleach solution circulated through the machine for the minimum time recommended by the manufacturer.

(6) Heated electrical equipment, such as a thermal iron shall be sanitized by the heat source. Unheated parts of heated electrical equipment shall be cleaned and disinfected according to the manufacturer's recommendations.

(7) All other electrical equipment, including clippers and attachments, shall be cleaned and disinfected after each use by:

(a) Removing hair and all foreign matter from the equipment; and

(b) Completely saturating the clipper blade and attachment with an EPA-registered high-level disinfectant solution, spray, or foam used according to the manufacturer's instructions.

(8) All nonporous items to be used on multiple clients shall/must be cleaned and disinfected after use.

(9) Drill bits shall/must be soaked in acetone to remove product, scrubbed, and soaked in disinfectant for full contact time.

(10) All nonelectrical items required to be cleaned and disinfected after each use including, [but not limited to,] combs, brushes, shears, hair clips, hair rollers, pushers, nippers, and plastic or/ metal spatulas shall be cleaned and disinfected. All multi-use items shall/must be stored in clean, covered container marked "disinfected" or "ready to use".

(11) Wax pots shall/must be completely cleaned and disinfected when the wax is contaminated or debris is visible through the following steps:

(a) Wax shall/must be emptied and disposed of properly;

(b) Pots shall/Pot must be washed with detergent and rinsed;

(c) All pot surfaces shall/must be wiped or sprayed with EPA-registered disinfectant following manufacturer's guidelines for contact time;

(d) Pots shall be air dried or wiped dry with a clean paper towel;

(e) New wax shall/must always be used and pots shall/pot must remain covered at all times; and

(f) Paraffin wax shall/must be portioned out to prevent contamination between clients and disposed of immediately.

(12) Any item that may not/cannot be cleaned and disinfected is considered single use and shall/must be disposed of after each use. This includes, [but is not limited to,] nail files or/ emery boards made of any material except metal or glass, all cotton, buffing blocks, pumice stones, wooden cuticle pushers, slipper shoes, toe separators, wooden spatulas, neck strips, and paper coverings.

Section 6[5]. Proper Protection of Neck. (1) A shampoo apron, hair cloth, or similar article shall not be placed directly against the neck of the patron, and shall be kept from direct contact with the patron by means of a paper neck band or clean towel.

(2) A neck band of paper[or cloth] shall not be used more than once.

(3) A towel or cloth shall not be used more than once without proper laundering.

Section 7[6]. Use of Creams. (1) A cream or other semi-solid substance shall be removed from its container with a clean, sanitized spatula.

(2) A spatula made of a washable nonabsorbent material shall be sanitized before re-use[being used again].

Section 8.[Use of Styptics. Styptics to arrest bleeding shall be used only in liquid or powder form and shall be applied by clean gauze, cotton, or any other sanitary item.] Special Solution Containers. Single use product containers shall be used to prevent the contamination of unused solution. All leftover product shall be disposed of, not re-used.

Section 9. Use of Powder. Powder shall be dispensed from a shaker or similar receptacle and shall be applied with a disposable puff, or cotton pledget, or other disposable applicator.

Section 10. Walls and Floors. Walls, floors, and fixtures shall be kept sanitary and[kept] clean at all times.

Section 11. Trash Containers and Debris. (1) All trash containers shall/must have solid sides, a lid or cover, and a liner shall/must always be used. Lids shall/must close completely.

(2) All hair and debris shall/must be swept up immediately

following each client and placed in the closed trash container.

Section 12[44]. Proper Laundering Methods. (1) All cloth towels, robes, and similar items shall be laundered in a washing machine with laundry detergent and chlorine bleach used according to the manufacturer's directions for sanitation purposes.

(2) Laundry may be done through a commercial laundry service.

(3)[(2)] A closed, dustproof cabinet shall be provided for clean towels and linen, and a closed, side vented[dustproof] hamper or receptacle shall be provided for all soiled towels and linens.

Section 13[42]. Personal Hygiene. (1) Every person licensed or permitted by the board shall thoroughly cleanse his or her hands with soap and water or an alcohol-based hand sanitizer of at least seventy (70) percent alcohol[handrub] immediately before serving each patron.

(2) Hand sanitizer shall be made available for use by patrons at each nail station in the licensed facility[Each licensee shall wear a clean washable outer garment while serving a patron in a salon].

(3) A cosmetology[An] instrument or implement shall not be carried or stored in a pocket, belt, apron, or smock.

Section 14. Prohibited Items. The following sanitation methods and cosmetology practices shall be[are] prohibited:

(1) Methyl Methacrylate acid (MMA);

(2) Isobornyl Methacrylate (IBMA);

(3) Blades for cutting the skin;

(4) UV Sterilizers;

(5) Roll on wax;

(6) Waxing of nasal hair;

(7) Any product banned by the FDA; and

(8) Live fish, leeches, snails and other living creatures for use in any cosmetic service.

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: November 15, 2017

FILED WITH LRC: November 15, 2017 at noon

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GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, January 8, 2018)

201 KAR 20:400. Delegation of nursing tasks.

RELATES TO: KRS 311A.170, 314.011, 314.021(2), 314.091(1)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 314. KRS 314.091(1)(d) prohibits a person from negligently or willfully acting in a manner inconsistent with the practice of nursing. This administrative regulation establishes requirements that govern the delegation of a nursing task in a safe, effective manner so as to safeguard the health and welfare of the citizens of the Commonwealth.

Section 1. Definitions. (1) "Board" is defined by[is] KRS 314.011(1).

(2) "Client" means a patient, resident, or consumer of nursing care.

(3) "Competence" means performing an act in a safe, effective manner.

(4) "Delegatee" means a person to whom a task is delegated.

(5) "Delegation" is defined by[is] KRS 314.011(2).

(6) "Delegator" means the nurse delegating a task to another person.

(7) "Direct supervision" means the continuous, direct, onsite

supervision by a registered nurse:

(8)[(6)] "Nurse" is defined by[is] KRS 314.011(3).

(9) "Nurse Extern" means an employee in a healthcare facility who is also actively enrolled as a student in a board-approved prelicensure program of nursing.

(10) "Nursing assistance" is defined by[is] KRS 314.011(13).

(11)[(7)] "Nursing task" means an act included in the definition of registered nursing practice, advanced practice registered nursing, or licensed practical nursing practice pursuant to KRS 314.011(6), (8), or (10).

(12)[(8)] "Paramedic" is defined by[is] KRS 311A.010.

(13)[(9)] "Supervision" means the provision of guidance by a qualified nurse for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed according to established standards of practice.

(14)[(40)] "Unlicensed person" means an individual, other than a nurse, the client, or the client's family, legal guardian, or delegatee, who functions in an assistant or subordinate role to the nurse.

Section 2. Nurse's Responsibility in Delegation. (1) A registered nurse or a licensed practical nurse may delegate a task to an unlicensed person in accordance with this section and Sections 3, and 4, and 5 of this administrative regulation.

(2) A registered nurse may delegate a task to a paramedic employed in a hospital emergency department in accordance with KRS 311A.170 and Sections 3 and 4 of this administrative regulation.

(3) Prior to delegating a nursing task, the nurse shall determine the nursing care needs of the client. The nurse shall retain responsibility and accountability for the nursing care of the client, including nursing assessment, planning, evaluation, and assuring documentation.

(4) The nurse, prior to delegation to an unlicensed person, shall have either instructed the unlicensed person in the delegated task or determined that the unlicensed person is competent to perform the nursing task.

(5) A nursing task shall be delegated directly or indirectly. An indirect delegation shall not alter the responsibility of the nurse for appropriately assigning and supervising an unlicensed person.

(6) A nurse who delegates a nursing task in violation of this administrative regulation or participates in the utilization of an unlicensed person in violation of this administrative regulation shall be considered acting in a manner inconsistent with the practice of nursing.

Section 3. Criteria for Delegation. The delegation of a nursing task shall meet the following criteria:

(1) The delegated nursing task shall be a task that a reasonable and prudent nurse would find is within the scope of sound nursing judgment and practice to delegate;[-]

(2) The delegated nursing task shall be a task that, in the opinion of the delegating nurse, may[can] be competently and safely performed by the delegatee without compromising the client's welfare;[-]

(3) The nursing task shall not require the delegatee to exercise independent nursing judgment or intervention; and[-]

(4) The delegator shall be responsible for assuring that the delegated task is performed in a competent manner by the delegatee.

Section 4. Supervision. (1) The nurse shall provide supervision of a delegated nursing task.

(2) The degree of supervision required shall be determined by the delegator after an evaluation of appropriate factors involved including the following:

(a) The stability and acuity of the client's condition;

(b) The training and competency of the delegatee;

(c) The complexity of the nursing task being delegated; and

(d) The proximity and availability of the delegator to the delegatee when the nursing task is performed.

Section 5. Nurse Extern. (1) The nurse extern may perform nursing tasks as delegated under the direct supervision of a registered nurse in accordance with this section. Those tasks may include the administration of medication or other tasks that have been taught in the nurse extern's nursing education program. The nurse extern shall be individually educationally prepared and clinically competent to perform the task. At a minimum, this competency shall be verified by an official letter from the nursing program documenting that the nurse extern has successfully completed the task as a student in the program of nursing. The employer ***shall/should also*** independently verify and document the competency of the nurse extern to successfully perform the acts that the nurse extern will perform.

(2) A licensed practical nurse may participate with the registered nurse in providing supervision of a nurse extern enrolled in a practical nurse program of nursing.

(3) The nurse extern may provide nursing assistance that is routinely a part of any nursing assistant's job description.

(4) For a nurse extern enrolled in a practical nurse program of nursing, the administration of medications shall be limited by 201 KAR 20:490.

(5) A nurse extern shall not substitute for licensed nursing staff.

(6) A nurse extern shall not be required to independently assume the role, function, or responsibility of licensed personnel.

LEWIS PERKINS, President

APPROVED BY AGENCY: June 15, 2017

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

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**GENERAL GOVERNMENT CABINET
Board of Medical Imaging and Radiation Therapy
(As Amended at ARRS, January 8, 2018)**

201 KAR 46:010. Definitions for 201 KAR Chapter 46.

RELATES TO: KRS 311B.020

STATUTORY AUTHORITY: KRS 311B.010, 311B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.010 and 311B.050 require the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to regulate medical imaging, radiation therapy, and related occupations. This administrative regulation establishes definitions for terms used in 201 KAR Chapter 46.

Section 1. Definitions. (1) "Accredited educational program" means an educational program accredited by the Joint Review Committee on Education in Radiologic Technology (JRCERT) or the Joint Review Committee on Educational Programs in Nuclear Medicine Technology (JRCNMT).

(2) "Advanced imaging professional" means an individual who holds credentialing by the American Registry of Radiologic Technologists (AART) or by the Nuclear Medicine Technology Certification Board (NMTCB) as a registered radiologist assistant (R.R.A.) or nuclear medicine advanced associate (NMAA).

(3) "Alternate course of study" means an independent course of study that qualifies an individual to take an examination approved by the board.

(4) "Authorized user" is defined by KRS 311B.020(4).

(5) "Board" is defined by KRS 311B.020(5).

(6) "Clinical education" means the component of the educational program that provides for supervised, competency-based, clinical education and experience.

(7) "Computed tomography" or "CT" means the process of using specialized radiation producing equipment to create cross-sectional images of any part of the body.

(8) "Computed tomography technologist" or "CT technologist" means an individual who has obtained a post-primary certification in computerized tomography from the American Registry of

Radiologic Technologists (ARRT).

(9) "Continuing education" is defined by KRS 311B.020(7).

(10) "Continuing education unit" or "CEU" means fifty (50) contact minutes of participation in a continuing education experience completed by:

(a) Attendance at a professional meeting;

(b) Documenting completed, approved independent study; or

(c) Documenting completed academic courses applicable to health care, medical imaging, radiation therapy, or related courses.

(11) "Contrast procedure" means a diagnostic or therapeutic procedure performed while administering contrast media into the human body to visualize anatomy not otherwise demonstrated on an image receptor.

(12) "Course of study" means a curriculum in radiologic technology, nuclear medicine technology, the advanced imaging profession, limited x-ray machine operation, or radiation therapy approved by the board.

(13) "Didactic education" means the component of the educational program that provides formal instruction with specific objectives and methods for assessing the student's progress for entry-level competency.

(14) "Direct supervision" means supervised by, and in the physical presence of, a licensed practitioner of the healing arts[or a licensee].

(15) "Educational program" means a board-approved, accredited educational program or limited x-ray machine operator program.

(16) "Facility" means a hospital, outpatient department, clinic, radiology practice, mobile unit, or office of a physician or portion thereof, in which medical imaging or radiation therapy are performed.

~~(17) "Independent study course" means a form of education offered by the board in partnership with an employer to provide limited scope radiography, podiatry, or bone densitometry education to fulfill the requirements established in 201 KAR 46:081, Section 8.~~

~~(18) "Indirect supervision" means supervised by a licensed practitioner of the healing arts[or licensee] who is immediately available in the individual's place of employment[or sponsoring institution].~~

~~(19) "License" means the document issued to a licensee to work as an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, or a limited x-ray machine operator in Kentucky.~~

~~(20) "Licensed practitioner" or "licensed practitioner of the healing arts" is defined by KRS 311B.020(8).~~

~~(21) "Licensee" means an individual licensed to perform the duties 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.~~

~~(22) "Licensure" means the process by which a license is issued by the board pursuant to 201 KAR Chapter 46 and in accordance with KRS Chapter 311B.~~

~~(23) "Limited radiographic procedures" means the following procedures:~~

~~(a) Routine chest and thorax;~~

~~(b) Cranium;~~

~~(c) Extremity;~~

~~(d) Podiatric;~~

~~(e) Vertebral column radiography; and~~

~~(f) Bone densitometry procedures.~~

~~(24) "Limited x-ray machine operator" is defined by KRS 311B.020(9).~~

~~(25) "Medical imaging" means producing visual images of the human body utilizing various types of energy and technologies to determine the presence of disease and injury, and includes uses for diagnostic screening, treatment, and monitoring purposes.~~

~~(26) "Medical imaging technologist" is defined by KRS 311B.020(10).~~

~~(27) "National organization" is defined by KRS 311B.020 (11).~~ **(26) "Medical Imaging" means producing visual**

images of the human body utilizing various types of energy and technologies to determine the presence of disease and injury. Medical imaging is used for diagnostic, screening, treatment and monitoring purposes.]

(27) "Nuclear medicine advanced associate" means an individual certified by the Nuclear Medicine Technology Certification Board (NMTCB) as a nuclear medicine advanced associate (NMAA) who works under the supervision of a radiologist or nuclear medicine physician, in accordance with practice standards.

(28) "Nuclear medicine technologist" is defined by KRS 311B.020(12).

(29) "Nuclear medicine technology" means technology applied by a nuclear medicine technologist utilizing radioactive material and with the nuclear medicine technologist being under the supervision of an authorized user.

(30) "PET" means the positron emission tomography.

(31) "Positron emission tomography" means the utilization of positron-emitting radioactive material for medical imaging under the supervision of an authorized user.

(32) "Practice standards" means the standards established by board-approved professional organizations that define the practice expectations of individuals within the professions.

(33) "Primary discipline" means radiography, nuclear medicine, and radiation therapy.

(34) "Professional educational guidelines" means curriculum and educational standards established by national organizations and approved by the board.

(35) "Program director" means an individual designated by a sponsoring institution to assure that the educational programs for an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, and a limited x-ray machine operator are properly conducted.

(36) "Provisional nuclear medicine technology license" means a license issued by the board to an individual participating in the alternate nuclear medicine course of study approved by the board.

(37) "Provisional training license" means a license issued to a nuclear medicine technologist or a radiation therapist pursuing post-primary certification in computed tomography or a license issued to a radiographer or radiation therapist pursuing post-primary certification in PET.

(38) "Radiation safety officer" means an individual who has the training, knowledge, and responsibility to apply appropriate radiation safety practices.

(39) "Radiation therapist" is defined by KRS 311B.020(15).

(40) "Radiation therapy" means the therapeutic administration of ionizing radiation by a radiation therapist.

(41) "Radioactive materials" means a solid, liquid, or gas that emits ionizing radiation spontaneously.

(42) "Radiographer" is defined by KRS 311B.020(16).

(43) "Radiography" means the utilization and administration of ionizing radiation to produce medically relevant images for the diagnosis of injury or disease and includes/shall include a comprehensive scope of diagnostic-radiologic procedures.

(44) "Radiologist assistant" means an individual certified by the American Registry of Radiologic Technologists (ARRT) as a registered radiologist assistant (R.R.A.) who works under the supervision of a radiologist, in accordance with supervision guidelines jointly established by the American College of Radiology (ACR), the American Society of Radiologic Technologists (ASRT), and the ARRT.

(45) "Radionuclide" means a radioactive element or a radioactive isotope.

(46) "Radiopharmaceuticals" means radioactive drugs used for the diagnosis and treatment of disease.

(47) "Scope of practice" means the parameter of the specific practice.

(48) "Source of radiation" means a radioactive material, device, or equipment emitting or capable of producing ionizing radiation.

(49) "Sponsoring institution" means an institution recognized by the board to provide a post-secondary educational program in medical imaging, limited x-ray machine operation, radiation

therapy, or advanced imaging professions.

(50) "Student" means an individual enrolled in a board-recognized educational program.

(51) "Supervision of students" means supervised by a licensed practitioner of the healing arts or a licensee in the appropriate field of practice who directs the activity of students.

(52) "Temporary license" means a nonrenewable license issued by the board as established in 201 KAR Chapter 46 permitting an individual to practice for a specified period of time.

(53) "Therapeutic procedures" means medical treatments that may/can help diagnose, cure, or treat a patient's condition.

AMY ADKINS, Chair

APPROVED BY AGENCY: November 15, 2017

FILED WITH LRC: November 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, January 8, 2018)**

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, and ethical standards. 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, a licensee's scope of practice, or 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;
- (14) The American Registry of Radiologic Technologists' Code of Ethics;~~and~~
- (15) The Nuclear Medicine Technology Certification Board's Code of Ethics;~~and~~
- (16) The Practice Standards for Medical Imaging and Radiation Therapy, Glossary.**

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

- (a) "Radiography Practice Standards", revised June 25, 2017~~[26, 2016]~~;
 - (b) "Nuclear Medicine Technologist Scope of Practice and Performance Standards", June 2016;
 - (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 25, 2017~~[26, 2016]~~;
 - (f) "Bone Densitometry Practice Standards", revised June 25, 2017~~[26, 2016]~~;
 - (g) "Cardiac Interventional and Vascular Interventional Technology Practice Standards", revised June 25, 2017~~[26, 2016]~~;
 - (h) "Computed Tomography Practice Standards", revised June 25, 2017~~[26, 2016]~~;
 - (i) "Limited X-ray Machine Operator Practice Standards", revised June 25, 2017~~[26, 2016]~~;
 - (j) "Mammography Practice Standards", revised June 25, 2017~~[26, 2016]~~;
 - (k) "Radiologist Assistant Practice Standards", revised June 25, 2017~~[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);
 - (n) The American Registry of Radiologic Technologists' Code of Ethics, (November 15, 2017);
 - (o) The Nuclear Medicine Technology Certification Board's Code of Ethics, (November 15, 2017); and
 - (p) The Practice Standards for Medical Imaging and Radiation Therapy, Glossary, (June 25, 2017); and
- (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, <https://www.asrt.org/main/standards-regulations/practice-standards/practice-standards>~~[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 American Registry of Radiologic Technologists' Code of Ethics, 125 Northland Drive, Saint Paul, Minnesota 55120, https://www.arrt.org/docs/default-source/Governing-Documents/code-of-ethics.pdf?sfvrsn=10;
 - (d) The Nuclear Medicine Technology Certification Board, 3558 Habersham at Northlake, Building I, Tucker, Georgia 30084, https://www.nmtcb.org/policies/ethics.php; or
 - (e) The Board of Medical Imaging and Radiation Therapy, 125

~~Holmes Street, Suite 320[42 Fountain Place]~~, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

AMY ADKINS, Chair

APPROVED BY AGENCY: November 15, 2017

FILED WITH LRC: November 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, January 8, 2018)**

201 KAR 46:081. Limited X-Ray machine operator.

RELATES TO: KRS 311B.020, 311B.150, 311B.100(2), 311B.110, 311B.120, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050, 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 a limited x-ray machine operator ~~[LXMO]~~. This administrative regulation establishes the requirements for the licensure of a limited x-ray machine operator.

Section 1. Applicability. (1) This administrative regulation shall apply to individuals who perform limited diagnostic radiography while under the direct supervision ~~or~~ ~~[while training and]~~ indirect supervision ~~[thereafter]~~ of a licensed practitioner of the healing arts ~~[, a licensed limited x-ray machine operator, or a licensed radiographer]~~.

(2) Limited diagnostic radiography shall include routine chest and thorax, cranium, extremity, podiatric, vertebral column radiography, and bone densitometry procedures.

Section 2. Limited Licensee Employment Prohibition. An individual who holds a limited license shall not be employed as an operator of a source of radiation at a facility where contrast studies, fluoroscopy, mammography, computed tomography, magnetic resonance imaging, bedside radiography, nuclear medicine, positron emission tomography, or radiation therapy procedures are performed.

Section 3. ~~Pathway~~ [Pathways] to the Limited X-ray Machine Operator License. An applicant shall complete an approved postsecondary educational program that meets the American Society of Radiologic Technologists (ASRT) Limited X-Ray Machine Operator Curriculum requirements. ~~An individual~~ [Individuals] shall complete ~~this requirement by either:~~

- ~~(1) a formal education program for limited x-ray machine operators approved by the board;~~ ~~or~~
- ~~(2) An independent study program for limited x-ray machine operators approved by the board.]~~

Section 4. Application for Temporary Limited X-ray Machine Operator License. ~~[Issuance of a temporary limited license shall be dependent upon the educational pathway selected by the applicant.]~~ (1) An applicant who has completed a formal educational program shall submit:

- (a) A completed and signed application Form KBMIRT Form 5;
- (b) A nonrefundable, nontransferrable temporary limited x-ray machine operator application and license fee as mandated in 201 KAR 46:020, Section 5;
- (c) The satisfactory 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

(d) A copy of a government-issued photo ID.

~~(2)[An applicant selecting the independent study program pathway shall receive a temporary license upon completion of the required coursework. As part of the application process for the independent study pathway, an applicant shall submit:~~

~~(a) A completed and signed application KBMIRT Form 5;~~

~~(b) A completed and signed application KBMIRT Form 5A;~~

~~(c) A non-refundable, non-transferrable temporary limited x-ray machine operator application and license fee as mandated in 201 KAR 46:020, Section 5;~~

~~(d) The satisfactory 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;~~

~~(e) A copy of a government-issued photo ID;~~

~~(f) A copy of the Cabinet for Health and Family Services radiation-producing machine registration card of their employer;~~

~~(g) A copy of his or her high school diploma or equivalent; and~~

~~(h) A home study course fee for an independent study course as mandated by 201 KAR 46:020, Section 10.~~

~~(3)] The temporary limited x-ray machine operator license shall expire[:~~

~~(a) Two (2) years from the date of enrollment in the independent study program;~~

~~(b)] one (1) year from date of issuance for graduates of formal educational programs.~~

~~(3)[(4)] Upon completion of the limited x-ray machine operator training program, individuals shall:~~

~~(a) Apply for the limited scope radiography exam; and~~

~~(b) Submit the nonrefundable, nontransferrable limited x-ray machine operator examination fee as mandated in 201 KAR 46:020, Section 9.~~

~~(4)[(5)] If a temporary licensee has not successfully passed the American Registry of Radiologic Technologists (ARRT) administered limited scope radiography exam prior to the expiration date of the temporary license, the licensee shall cease to perform radiographic procedures. The licensee remains eligible to sit for the exam, however, the individual shall not perform radiographic procedures. Upon successful completion of the exam, the individual shall submit:~~

~~(a) A limited x-ray machine operator license application using KBMIRT Form 4; and~~

~~(b) An initial application and license fee as mandated in 201 KAR 46:020, Section 1.~~

~~(5)[(6)] If a temporary licensee has successfully passed the ARRT administered limited scope radiography exam prior to the expiration date of the temporary license[for the selected educational pathway], the licensee shall be issued a limited x-ray machine operator license which shall expire on the last day of the licensee's birth month.~~

Section 5. The issued license shall identify the licensee as a limited x-ray machine operator. The license shall also identify the category as general, bone densitometry, or podiatry.

Section 6.[Employer Responsibility for Students Enrolled in the Independent Study Program for Limited X-Ray Machine Operators. Pursuant to Section 8 of this administrative regulation, clinical education shall be obtained at the student's place of employment, an alternate facility, or a combination. The employer shall be responsible for providing or arranging for the required clinical education and for providing the direct or indirect supervision of the student by a licensed practitioner of the healing arts, a licensed limited x-ray machine operator, or a licensed radiographer as required by the student's level of competency. Clinical education shall begin only after the student has successfully completed the required coursework of the textbook and has received a temporary license issued by the board.

Section 7.] Curricular Standards for Formal Educational Program. This administrative regulation applies to institutions offering a postsecondary program for limited x-ray machine

operators. Programs shall:

(1) Meet the curricular standards established by the American Society of Radiologic Technologists (ASRT);

(2) Include a minimum of 240 classroom hours of didactic instruction and 360 clinical hours of education which shall include supervised practice and demonstration of clinical competency;

(3) Supply data requested for a complete evaluation of its administration, organization, faculty, physical facilities, student policies, and curriculum;

(4) Provide a structured curriculum with clearly written course descriptions, lesson plans, and objectives;

(5) Provide an adequate faculty, which shall be qualified through academic preparation or experience to teach the subjects assigned;

(6) Have a program director who is a licensed radiographer with a minimum of three (3) years of clinical or teaching experience or a combination of clinical and teaching experience;

(7) Provide a licensee-to-student ratio consistent with professional educational guidelines in the appropriate field of practice;

(8) Provide appropriate facilities, sufficient volume, and a variety of diagnostic exams to properly conduct the educational program;

(9) Prohibit students from applying radiation to human beings for diagnostic purposes until they have obtained practical experience and have had their performance evaluated as satisfactory by the program faculty;

(10) Provide direct or indirect supervision by a licensed practitioner of the healing arts or a licensee as required by the student's level of competency;

(11) Prohibit students from administering radiation to a human being unless under direct or indirect supervision as required by the student's level of competency;

(12) Maintain records of each student's attendance, grades, clinical competency, and subjects completed;

(13) Designate a radiation safety officer; and

(14) Permit site inspections by the board's representative.

Section 7.[8.][Curricular Standards for Independent Study Program. (1) The general limited x-ray machine operator independent study program shall:

(a) Be completed within twenty-four (24) months;

(b) Include the following subjects:

1. Human structure and function;

2. Medical terminology;

3. Radiation protection;

4. Radiation biology;

5. Medical ethics and law;

6. Equipment operation and maintenance;

7. Image production and evaluation;

8. Image processing;

9. Radiographic procedures;

10. Patient positioning; and

11. Patient care; and

(c) Include clinical education consisting of a minimum of fifty (50) radiographic procedures in each of the following areas:

1. Chest;

2. Extremities; and

3. Musculoskeletal.

(2) The limited podiatry x-ray machine operator independent study program shall:

(a) Be completed within twenty-four (24) months;

(b) Include the following subjects:

1. Human structure and function;

2. Medical terminology;

3. Radiation protection;

4. Radiation biology;

5. Medical ethics and law;

6. Equipment operation and maintenance;

7. Image production and evaluation;

8. Image processing;

9. Radiographic procedures;

10. Patient positioning; and

11. Patient care; and
 (c) Include clinical education consisting of a minimum of fifty
 (50) radiographic procedures of the feet and ankles.
 (3) ~~The limited bone densitometry x-ray machine operator~~
 independent course of study shall:
 (a) Be completed within twenty-four (24) months;
 (b) Include the following subjects:
 1. Human structure and function;
 2. Medical terminology;
 3. Radiation protection;
 4. Radiation biology;
 5. Medical ethics and law;
 6. Equipment operation and maintenance;
 7. Image production and evaluation;
 8. Image processing;
 9. Radiographic procedures;
 10. Patient positioning;
 11. Patient care; and
 12. Equipment Specific training; and
 (c) ~~Include clinical education consisting of a minimum of fifty~~
 (50) bone densitometry procedures.

Section 9.] Approved Radiographic Procedures for the Limited X-ray Machine Operator. An individual who holds a limited license is limited to performing the procedures authorized for his or her license as described in subsections (1), (2), and (3) of this section.
 (1) An individual holding a general limited x-ray machine operator license shall perform only the following:
 (a) Radiography of the thorax, lungs and ribs;
 (b) Radiography of the skull and facial structures;
 (c) Radiography of the upper and lower extremities, including the pectoral girdle and the hips and pelvis; and
 (d) Radiography of the cervical, thoracic, and lumbar spines.
 (2) An individual holding a limited podiatry x-ray machine operator license shall perform radiographic procedures on the foot and ankle only.
 (3) An individual holding a limited bone densitometry x-ray machine operator license shall perform bone densitometry radiographic procedures only.
 (4) A limited x-ray machine operator shall comply with the Limited X-ray Machine Operator Practice Standards as incorporated by reference in **201 KAR 46:035, Section 4**~~201 KAR 46:040, Section 15~~.

Section 8.[40.] Continuing Education Requirements. Licensees shall complete and document twelve (12) hours of continuing education biennially as required by 201 KAR 46:060. A minimum of six (6) hours shall be related to radiation safety or medical imaging.

Section 9.[44.] 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 complete KBMIRT Form 8, as incorporated by reference in 201 KAR 46:060, and provide the board with a copy of his or her certificates or records of completion.

(5) Failure to comply with an audit may result in nonrenewal, suspension or revocation of license.

Section 10.[42.] Renewal of License. A licensee shall renew annually prior to the expiration of his or her current license, which is the last day of the licensee's birth month, by:

- (1) Completing KBMIRT Form 6; and
- (2) Submitting the Renewal License Fee in accordance with 201 KAR 46:020, Section 2.

Section 11.[43.] 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 is eligible to be reinstated upon submission of KBMIRT Form 6, documentation of twelve (12) hours of continuing education, and the payment of reinstatement and renewal fees pursuant to 201 KAR 46:020, Sections 2 and 7.

(2) A licensee whose license has lapsed for more than twelve (12) months shall:

(a) [(4)] Successfully pass the ARRT limited scope radiography examination;

(b) [(2)] Submit a completed and signed application KBMIRT Form 4;

(c) [(3)] Submit a nonrefundable initial application and license fee as mandated in 201 KAR 46:020, Section 1;

(d) [(4)] Submit satisfactory 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

(e) [(5)] Submit a copy of a government-issued photo ID.

Section 12.[44.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KBMIRT Form 4, "Limited X-ray Machine Operator License Application", ~~November 2017~~April 2015;

(b) KBMIRT Form 5, "Limited X-ray Machine Operator Temporary License Application", ~~November 2017~~April 2015; and

(c) ~~KBMIRT Form 5A, "Limited X-ray Machine Operator Independent Study Course Application", April 2015; and~~

~~(d)~~ KBMIRT Form 6, "Limited X-ray Machine Operator Renewal Application", ~~November 2017~~March 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 125 Holmes Street, Suite 320~~42 Fountain Place~~, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

AMY ADKINS, Chair

APPROVED BY AGENCY: November 15, 2017

FILED WITH LRC: November 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, January 8, 2018)

201 KAR 46:095. Administrative subpoena.

RELATES TO: KRS 311B.050(7), 311B.160, 311B.170

STATUTORY AUTHORITY: KRS 311B.050(1), (2), KRS 311B.050(7)

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 KRS Chapter 311B~~the chapter~~. KRS 311B.050(7) requires~~authorizes~~ the board to investigate~~investigation~~ suspected and alleged violations of KRS Chapter 311B~~for 201 KAR Chapter 46~~. This administrative regulation establishes procedures for issuing an administrative subpoena, which is necessary to investigate and resolve suspected and alleged violations.

Section 1. The Board of Medical Imaging and Radiation Therapy may issue an administrative subpoena to investigate a complaint or suspected violation of KRS Chapter 311B or 201 KAR Chapter 46.

Section 2. Administrative Subpoenas. (1) The board shall issue a subpoena in accordance with KRS 311B.050(7)~~335.515(2)~~ to

require the production of books, electronic records, papers, documents, or other evidence at a specified time and place.

(2) If information requested by the board is encrypted, the respondent shall:

(a) Provide the information in a readable format; and

(b) Provide proof acceptable to the board that the requested information has been translated to a readable format without error or omission.

(3) A person or entity served with a subpoena in accordance with subsection (1) of this section shall not intentionally destroy, alter, or falsify documents requested by the board.

Section 3. Noncompliance. (1) If a person fails without good cause to produce requested documents in accordance with Section 2(1) of this administrative regulation, the board may apply to the circuit court of the county in which compliance is sought for an appropriate order to compel compliance with the provisions of the subpoena.

(2) If a person served with a subpoena issued pursuant to Section 2(1) of this administrative regulation believes that the subpoena seeks to compel the production of documents that are protected, privileged, or not properly the subject of an administrative subpoena, the individual may, prior to the date designated for the production of the documents, apply to the circuit court of the county in which compliance is sought for an appropriate protective order limiting the scope of the subpoena or quashing it entirely.

AMY ADKINS, Chair

APPROVED BY AGENCY: November 15, 2017

FILED WITH LRC: November 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, January 8, 2018)

301 KAR 5:010. License agent applications and agreements~~[selection criteria]~~.

RELATES TO: KRS 150.175~~[150.195]~~

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 requires~~[authorizes]~~ the department to provide for the control of the design, issuance, distribution, and other matters relating to licenses and permits issued by the department. This administrative regulation establishes the application procedures for becoming a department~~[POS]~~ license agent.

~~Section 1. [Application of Administrative Regulation. This administrative regulation applies to license agents other than those who sell licenses via the Internet and telephone per 301 KAR 5:050.~~

~~Section 2.] License Agent Applications and Agreements. (1) Before receiving authorization to serve as license agents, businesses or governmental agencies shall:~~

~~(a) Complete and submit a License Agent Application Form;~~

~~(b) Enter into a formal contract with the department by agreeing to the provisions of, and signing, the appropriate agent agreement; and~~

~~(c) Complete an Electronic Funds Transfer Request Form. [Pay a security deposit as required in the agent agreement; and~~

~~(d) Sign an electronic fund transfer authorization form] that/which authorizes the department to make electronic fund transfers from a bank account into which the agent shall deposit the proceeds from transactions.~~

~~(2)[1. Agents with multiple business locations wishing to consolidate payments shall make suitable arrangements with the department.~~

~~2.] State agencies serving as license agents shall remit payment through the state accounting system.~~

~~(3)[(2)] The department shall appoint as agents businesses that have:~~

~~(a) A valid federal identification number;[and]~~

~~(b) Except for out-of-state agents, a Kentucky sales tax number; and[-]~~

~~(c) For out-of-state agents, businesses that post a surety bond of \$5,000.~~

~~Section 2.[Out-of-state Agents. The department may grant license agent status to business locations outside Kentucky if the out-of-state agent:~~

~~(1) Was the agent of a county clerk; and~~

~~(2) Posts a surety bond as stipulated in the out-of-state agent agreement.~~

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

~~(a) License Agent Application Form, 1995;~~

~~(b) Electronic Fund Transfer Authorization Form, 1995;~~

~~(c) License Agent Contractual Agreement, 2018 edition[1995]; and~~

~~(d) Governmental License Agent Contractual Agreement, 2018 edition[1995; and~~

~~(e) Out-of-state Agent Agreement, 1995].~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [Division of Fiscal Control,] Department of Fish and Wildlife Resources, #1 Sportsman's Lane [Game Farm Road], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: November 15, 2017

FILED WITH LRC: November 15, 2017 at noon

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 4060, 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, January 8, 2018)

301 KAR 5:020. License agent requirements and responsibilities.

RELATES TO: KRS 150.175~~[150.195]~~, 150.990

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195~~(4)]~~ requires~~[authorizes]~~ the department to promulgate administrative regulations governing the issuance of licenses. This administrative regulation establishes the requirements for issuing licenses,~~[and]~~ electronically reporting license sale data and license revenue, ~~and[-] details the procedures for] suspending or revoking license agent status[-] and specifies the methods for appealing a suspension or revocation of agent status].~~

~~Section 1. Issuing Licenses. (1) A license agent shall[may] issue a license or permit to a person who completes the registration process with[provides] the agent and pays the appropriate license or permit fee as established in[pursuant to] 301 KAR 3:022[with:~~

~~(a) His date of birth; and~~

~~(b) An identification number, which shall be:~~

~~1. A driver's license number;~~

~~2. A state identification card number;~~

~~3. A Social Security number; or~~

~~4. If the purchaser is under age sixty-five (65) and buying a senior/disabled license, the number from an unexpired disability authorization card issued to the person to whom the license is~~

issued and proof of Kentucky residency; or

5. If the purchaser is age sixty-five (65) or over and buying a senior/disabled license, proof of age and Kentucky residency].

(2) A license agent shall not knowingly enter false information while processing a license. [(3) A license agent may issue a junior hunting license if the parent or guardian of the license recipient signs the license at the time of purchase.]

Section 2. Agent Commission and Depositing of Funds. (1) The license agent shall retain as a commission:

(a) Fifty (50) cents for each Peabody[or Addington Enterprises-Robinson Forest] permit issued pursuant to 301 KAR 4:100; and[or 301 KAR 4:200.]

(b) Fifty (50) cents each for other transactions.

(2) A license agent shall promptly deposit transaction fees, less the commissions established[described] in subsection (1) of this section, into the bank account established in[required by] 301 KAR 5:010.

(3) A license agent may elect to print, on any license or permit issued, a coupon or advertisement, pursuant to a department sponsorship established in KRS 45A.097, in lieu of retaining the applicable commissions established in subsection (1) of this section.

Section 3.[Uploading License Sale Information. (1) The department shall provide each license agent a schedule of dates when license sale information will be uploaded from his POS device.

(2) A license agent shall:

(a) Ensure his POS device is connected to a telephone line on the date of the scheduled upload;

(b) Leave the POS device connected to the telephone line until the upload has been completed;

(c) Retain the receipts printed with each transaction until notified by the department; and

(d) Telephone the department within twenty-four (24) hours if the amount of funds to be transferred, as reported by the POS device, does not agree with the license agent's records.

Section 4.[Electronic Transfer of Funds to the Department. (1) The department shall provide each license agent with a schedule of dates when[an] electronic fund transfers[transfer from his bank account] will be initiated.

(2)[At the close of banking hours] On the day of a[the] scheduled electronic fund transfer, a license agent shall have sufficient funds in the[his] account to cover the amount of the transfer.

(3) A license agent shall contact the department prior to the day of a scheduled electronic fund transfer if there are any discrepancies or concerns that need to be resolved.

Section 4[5]. Voiding Licenses. (1) A license agent may void a license if:

(a) The license does not print correctly; or

(b) After the license is printed, the purchaser:

1. Discovers that the issued license is incorrect[he was issued an incorrect license];

2. Will not pay for the license; or

3.[Otherwise] Refuses to accept the license.

(2) An agent shall:

(a) Ensure that a license established in subsection (1) of this section is voided in the system; and

(b) Destroy all paper copies of the voided license or permit[retain all voided licenses and return them to the department as stipulated in Section 6 of this administrative regulation].

Section 5.[6. Materials Retained and Returned to the Department. (1) A license agent shall retain:

(a) A voided license;

(b) Kentucky Migratory Bird Harvest Information Program Form as referenced in 301 KAR 5:040; and

(c) Ruined or unusable license stock.

(2) A license agent shall return the materials listed in this

section to the department on the working day after each scheduled or unscheduled upload of information.

(3) The department shall charge the license agent for a voided license not returned as stipulated in subsection (2) of this section, and shall not issue credit for a voided license returned later than (30) days after the upload in which the void was reported.

Section 7.[Suspensions and Revocation of Agent Status. (1) In addition to any penalties provided by KRS 150.990, and except as established in subsection (2) of this section, the department shall suspend for one (1) to five (5) years[year] a license agent who twice in a twelve (12) month period:

(a) Causes an electronic fund transfer failure; or

(b) Violates a provision of:

1.[The agent agreement;

2.] KRS 150.195; or

2.[3.] An administrative regulation adopted pursuant to KRS 150.195.

(2) The department shall permanently revoke the agent status of a license agent who:

(a) Commits[for the second time] an offense for which the license agent[he] has been previously suspended;

(b) Does not deposit the required funds in his agent bank account within twenty-four (24) hours of notification by the department of insufficient funds;

(c) Fails to notify the department prior to closing his agent bank account;

(d) Closes his business seasonally without notifying the licensing section supervisor in writing by surface mail, fax, or e-mail and settling his account; or

(e) Knowingly issues a license containing false information[; or

(f) Fails to notify the department within twenty-four (24) hours of discovering the loss or theft of a POS device or paper stock].

(3) Before issuing a final order suspending or revoking the status of an agent, the department shall:

(a) Notify the agent by registered mail that the agent's[his] status is under review; and

(b) Afford the agent the opportunity for an informal meeting with the commissioner or his designee to show cause why his agent status should not be suspended or revoked.

(4) A suspension or revocation shall become effective upon receipt of notification from the department.

(5) A suspended or revoked agent shall:

(a)[Surrender upon demand the POS devices and license stock in his possession to an authorized agent of the department;

(b)] Allow the department access to financial records dealing with license sales; and

(b)[(e)] Immediately pay all funds owed to the department.

Section 6[8]. Appeal of Suspension or Revocation of Agent Status. (1) A license agent who wishes to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.

(2) Upon receipt of the request for a hearing, the department shall conduct a suspension or revocation hearing pursuant to KRS Chapter 13B and KRS 150.195.

(3) The hearing officer's findings of fact, conclusions of law, and recommended order shall be considered by the department's commission at the commission meeting immediately following the deadline for the parties' exceptions pursuant to KRS Chapter 13B.

(4) The department's commission shall issue a final order pursuant to KRS Chapter 13B[:

(a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and

(b) Schedule a hearing to be held:

1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the scheduled commission meeting; or

2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.

(3) The hearing officer shall conduct the hearing and present

~~his recommendation at the commission meeting immediately following the hearing date.~~

~~(4) At the hearing, the license agent:~~

~~(a) May be represented by counsel; and~~

~~(b) May present evidence which he feels should be considered, including the calling of witnesses.~~

~~(5) The department may present evidence and call witnesses to support the suspension or revocation.~~

~~(6) The commission shall make its decision by majority vote.~~

~~(7) An agent may appeal a decision of the commission to Franklin Circuit Court pursuant to KRS 150.195.~~

~~(8) The department shall conduct suspension or revocation hearings according to the provisions of KRS Chapter 13B].~~

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: November 13, 2017

FILED WITH LRC: November 15, 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.

**JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, January 8, 2018)**

503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.

RELATES TO: KRS Chapter 13B, 15.330(1)(f), 15.330(1)(h), 15.380, 15.382, 15.384(1), 15.392, 15.394(1), 15.396(1), 15.3971, 15.400(1), 15.440, 15.540, 15.565, 15.580

STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.382, 15.440, 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council (KLEC) to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592. **KRS 15.440 authorizes the Council to promulgate administrative regulations for approval of basic training credit for out-of-state basic training and work experience.** This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification. **KRS 15.440 allows the Council to promulgate administrative regulations for approval of basic training credit for out-of-state basic training and work experience.**

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing. (1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q, and a copy of the proposed job task analysis. The agency shall supply:

(a) The name of the entity that completed the analysis;

(b) The date on which the analysis was completed;

(c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and

(d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

(a) Credentials and history of the entity conducting the analysis.

1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.

2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.

3. Number and quality of job task analyses completed.

(b) Methodological approach.

1. Reasonable, standardized format of the study and the report.

2. Relative reliability and validity of the study's sampling techniques and practice.

3. Other considerations that reflect sound practice of the scientific method.

4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.

(3) Initial review.

(a) Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that either:

1. The application has been received and is complete; or

2. The application is incomplete and the specific information which shall be supplemented in order to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned, and the agency shall resubmit an application for consideration of ~~its~~[their] job task analysis and associated agency testing.

(b) The KLEC office Recommendation. Within thirty (30) days of [their] receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests, and the specific reasons supporting a recommendation to reject.

(c) KLEC Review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward ~~its~~[their] recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.

(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:

1. The reasons for the finding; and

2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

Section 2. Agency Testing Procedures. (1) The KLEC office shall receive a completed KLEC Form Q or KLEC Form tele-Q from each agency participating in certification[as of December 1, 1998] prior to any applicant testing. If an agency initiates participation in certification[after December 1, 1998], KLEC Form Q or KLEC Form tele-Q shall be submitted to the KLEC office. The KLEC office shall be notified of any changes in the Form Q or KLEC Form tele-Q [process] within ten (10) days.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall mail a notification to the agency that ~~the form~~[either]:

(a)[The form] Has been received and is complete; or

(b)[The form] Is incomplete and the specific information which shall be supplemented in order to process the form. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.

(3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The KLEC office shall mail a notice to the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC, along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Peace Officer Professional

Standards Committee shall review the form and the recommendation of the KLEC office and forward ~~its[their]~~ recommendation to KLEC for final review. Within sixty (60) days of ~~its[their]~~ receipt of the form, KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected, and the specific reasons supporting the rejection.

(5)(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:

1. With the Secretary of the Justice and Public Safety Cabinet; and
 2. Within thirty (30) days of receipt of the notice of rejection.
- (b) The notice of appeal shall be submitted:
1. On KLEC Form S; and
 2. With a copy of the notice of rejection of agency testing attached.

(c) A copy of the notice of appeal shall be mailed to the KLEC office by certified mail.

(d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of appeal.

(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. Certification of peace officers, telecommunicators, and court security officers. (1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.

(3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunicators, who have completed the Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.

(4) Peace officers, telecommunicators, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.

(5) An agency may request certification for a peace officer that has completed a non-DOCJT law enforcement basic training by submitting KLEC Form B - Basic Training Previously Completed (non-DOCJT) to the KLEC Office.

Section 4. Suitability Minimum Requirements: The minimum requirements and procedures established for KLEC testing by this section shall be followed. (1) The background investigation as specified in KRS 15.382(12) and 15.3971(1)(k) shall consist of the following minimum requirements, ~~using[utilizing]~~ the KLEC Form H-1 Background Investigation and Form H-2 Personal History Statement:

- (a) Biographical history;
- (b) Family history;
- (c) Education;
- (d) Employment history;
- (e) Interview with the applicant's references;
- (f) Criminal history including domestic violence protective orders; and
- (g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the procedure established by this subsection.

(a) The agency shall submit one (1) completed FD 258 FBI Fingerprint Card to the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check.

(b) The KSP shall forward the results of state and FBI records check to the employing agency.

(c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are

received from the FBI.

(d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.

(3) Psychological screening as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d) shall consist of the minimum requirements established by this subsection.

(a) Screening shall measure a broad spectrum of abilities which are relevant to job related duties, including:

1. Cognitive abilities;
2. Personality characteristics; and
3. Related constructs, including:
 - a. Integrity;
 - b. Conscientiousness; and
 - c. Vocational preference;

(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014~~[Part IV -- Standards for Administrative Procedures, (1985 Edition), American Psychological Association]~~;

(c)1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer, telecommunicator, or court security officer;

2. The summary statement shall classify applicants as:
 - a. "Suitable";
 - b. "Not suitable"; or
 - c. Borderline; and

3. If an applicant is classified as borderline or not suitable, the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency; and

(d) Screening shall be administered in accordance with the "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014~~[Part IV -- Standards for Administrative Procedures, (1985 Edition), American Psychological Association]~~.

(4) Physical ability testing as specified in KRS 15.382(16) shall consist of the minimum requirements established by this subsection.

(a) Precertification status.

1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the events in the following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Fitness Testing Protocols:

- a. Bench press;
- b. Sit-ups;
- c. 300 meter run;
- d. Push-ups; and
- e. One and five-tenths (1.5) mile run.

2. An applicant shall pass the physical ability test for precertification status if he or she achieves a score of fifty (50) points or more, based upon the following scoring of the physical training events listed in subparagraph 1 of this paragraph:

- a. Bench press, based upon a percentage of the recruit's body weight:
 - (i) 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
 - (ii) 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
 - (iii) 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;
 - (iv) 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
 - (v) 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;
- b. Sit-ups:

- (i) 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;
- (ii) 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;
- (iii) 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and
- (iv) 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;
- c. 300 meter run:
 - (i) 9 points - Recruit shall complete in sixty-eight (68) seconds or less;
 - (ii) 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;
 - (iii) 10 points - Recruit shall complete in sixty-five (65) seconds; and
 - (iv) 11 points - Recruit shall complete in less than sixty-five (65) seconds;
- d. Push-ups:
 - (i) 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
 - (ii) 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
 - (iii) 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
 - (iv) 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
 - (v) 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and
- e. One and five-tenths (1.5) mile run:
 - (i) 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;
 - (ii) 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;
 - (iii) 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;
 - (iv) 10.5 points - Recruit shall complete in at least 1,004 seconds (16:44) or less; and
 - (v) 11 points - Recruit shall complete in less than 975 (16:15) seconds.
- 3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.
- 4. An applicant shall fail the physical ability test for precertification status if he or she does not achieve at least nine (9) points on each physical training event.
- 5. At the sole discretion of the hiring agency, an applicant that fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, subject to the conditions established by this subparagraph.
 - a. A retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required overall fifty (50) point minimum.
 - b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.
- 6. If an applicant obtains a point value for each event, but does not obtain an overall score of fifty (50), the examinee may attempt the test battery again, in its entirety. This shall be considered a second test administration and not be considered a retest.
- 7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.
- 8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status in its entirety.
 - (b) Certification status.
 - 1. To obtain certification status under KRS 15.386(2), the applicant shall successfully complete each of the following physical ability requirements within five (5) days of graduation from law enforcement basic training, which, except for the precertification test score requirements, shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing

Protocols:

- a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant's body weight;
- b. Sit-ups. Eighteen (18) sit-ups in one (1) minute;
- c. 300 meter run in sixty-five (65) seconds;
- d. Push-ups. Twenty-five (25) push-ups; and
- e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.
- 2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.
- 3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status: training graduation test:
 - a. The applicant shall not retest in the failed events earlier than forty-eight (48) hours after the date the test is originally administered;
 - b. All failed events shall be retested on the same date; and
 - c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status.
- (5) Medical screening as specified in KRS 15.382(10) shall consist of the minimum requirements established by this subsection.
 - (a) The applicant shall complete KLEC Form G-2, Medical History Statement, which along with KLEC Form G-3, Medical Screening Guidelines Implementation Manual, shall be provided to the physician or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.
 - (b) The agency shall provide the examining physician or physician's assistant with a copy of the KLEC Form T-1a, Physician's Medical Release Form.
 - (c) The physician or physician's assistant shall complete KLEC Form G-1, Medical Examination Report, and forward it to the employing agency.
- (6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(j), and 15.540(1)(f) shall consist of the minimum requirements established by this subsection.
 - (a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened using gas chromatography/mass spectrometry (G.C.M.S.) for the following drugs and thresholds for positive indications:
 - 1. THC (marijuana), 20 ng/mL, 5 GC/MS;
 - 2. Amphetamines, to include Methamphetamine and Methylenedioxymethamphetamine, 300 ng/mL, 100 GC/MS;
 - 3. Cocaine, 150 ng/mL, 50 GC/MS;
 - 4. Opiates, 300 ng/mL, 150 GC/MS;
 - 5. Barbiturates, 200 ng/mL, 100 GC/MS;
 - 6. Phencyclidine (PCP), 25 ng/mL, 25 GC/MS;
 - 7. Methadone, 300 ng/mL, 100 GC/MS;
 - 8. Oxycodone (Oxycontin), 100 ng/mL, 100 GC/MS;
 - 9. Benzodiazepines, 200 ng/mL, 100 GC/MS; and
 - 10. Propoxyphene, 300 ng/mL, 200 GC/MS;
 - (b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening through Urinalysis Chain of Custody.
- (7) For the polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e), the applicant shall complete KLEC Form I-1, Consent for Pre-employment Polygraph Examination, and KLEC Form I-2, Pre-employment Polygraph Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant, using[utilizing] the questions in the KLEC Form I-3, Pre-employment Polygraph Background/Criminal Questions.
- (8) The agency shall ensure that the applicant receives and has read KLEC Form L-1, Code of Ethics and KLEC Form L-2, Canon of Ethics.
 - (9) High school diploma.
 - (a) The high school graduate requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b) shall be met by:

1. Submission of a copy of a diploma or transcript from a public high school; or

2. Submission of a diploma or transcript from a private high school that:

a. Is certified by or recognized by the Kentucky Department of Education; or

b. Has complied with all provisions of Kentucky law relating to private or other non-public secondary schools as applicable, including days and hours of attendance and course curriculum. The applicant shall submit affidavit or documentary proof of compliance upon request of the KLEC.

(b) A document purporting to be a high school or college diploma and obtained through the internet or by mail order shall not satisfy the requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b).

Section 5. KLEC Administered Testing Procedures. (1) An applicant shall execute all releases required for KLEC testing, including:

(a) KLEC Form I-1 - Consent for Pre-employment Polygraph Examination;

(b) KLEC Form K-1 - Drug Screening through Urinalysis Applicant Consent Form;

(c) KLEC Form T-1 - Medical Release - Phase I Testing; and

(d) KLEC Form T-2 - Liability Waiver - Phase I Testing.

(2) Testing schedule.

(a) The KLEC office shall mail to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.

(b) Testing sites shall be statewide and accommodations shall be made where reasonable to ensure testing sites are accessible based upon need.

(c) Advance notice of the schedule shall be made public prior to the testing.

(d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.

(3) Registration for KLEC administered testing. The KLEC office shall receive KLEC Form A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification when the testing is administered.

(b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.

Section 6. Test Reporting by KLEC. (1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The information from the completed form shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(3) Length of test result validity.

(a) Physical ability for precertification status: results shall be considered current and valid one (1) year from the passing date of the test.

(b) Suitability screening: results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.

(c) Polygraph examination: results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening: results shall be considered current and valid only for the agency that requested or performed the test and

only during that employment process. An applicant that leaves and reenters the testing process for preselection screening shall submit to another drug screening.

(4) Updating test results. The employing agency shall update test results if necessary by submitting KLEC Form D to the KLEC office.

(5) Agency access to prior test results.

(a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing which is still current and valid.

(b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability, and polygraph results directly from the agency that initially requested testing of the applicant.

(c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. Test Reporting by Agency. (1) An agency that performs physical ability testing based upon the requirements in Section 4 of this administrative regulation shall report all test results by submitting a POPS Form PT-1, Physical Agility Test Session Report, to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.

(3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:

(a) Passes or fails the test; or

(b) Performs or completes every component of the physical ability test.

Section 8. KLEC Administered Testing Costs. (1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

(a) Sixty-five (65) dollars for each psychological screening;

(b) \$100 for each polygraph examination; and

(c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:

1. The actual approved budget of the governmental unit for the current and the preceding year;

2. The number of certification applicants for the current and preceding year;

3. The actual revenue receipts of the governmental unit for the current and the preceding year; and

4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that either:

1. The application has been received and is complete; or

2. The application is incomplete and the specific information which shall be supplemented in order to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of

the completed application, the KLEC office shall forward the application to KLEC, along with a recommendation to approve or reject the application for financial hardship, and the specific reasons supporting a recommendation to reject.

(d) KLEC review.

1. The KLEC Committee on Certification shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.

2. Within sixty (60) days of their receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected, and the specific reasons supporting the rejection.

(e) Appeal.

1. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.

2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.

3. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached.

4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail, to the following address, Kentucky Law Enforcement Council, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102.

5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOJJT.

Section 9. Employment Changes. (1) Pursuant to KRS 15.392 and 15.580 if a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the employment or appointment. Additionally, the agency shall submit KLEC Form D-1 for returning peace officers or court security officers.

(3) Information from completed KLEC Forms F shall be provided to DOJJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

Section 10. Out-of-state, military, and federal law enforcement and telecommunications basic training. (1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was equal to or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers when the course was completed by the applicant, as determined by the executive director of the KLEC;

(b) The basic training course or academy is a single, stand alone course;

(c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and

(d) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:

1. The twenty-four (24) hour legal update Penal Code course;

2. The sixteen (16) hour legal update constitutional procedure course;

3. On-line Federal Emergency Management Agency ICS 100, ICS 200, and IS 700 courses (or current equivalent). A Certificate of Completion or official transcript shall satisfy this requirement; and

4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:

- a. Basic officer skills;
- b. Orientation for new police chiefs; or
- c. Mandatory duties of the sheriff.

(2) An applicant to a Kentucky law enforcement agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was at least 300 hours, but less than the number of hours required for Kentucky peace officers;

(b) The peace officer has been employed in a full-time capacity as a peace officer for three (3) or more years with at least one (1) year in the state in which he completed his basic training course or academy;

(c) The basic training course or academy is a single, stand alone course;

(d) A basic training credit of fifty (50) hours for each year of his full-time, peace officer service together with the basic training course hours allows compliance with the total hours required by KRS 15.440, 503 KAR 1:110, or another[an] administrative regulation modifying the hours; and

(e) The peace officer completes the courses as required in subsection (1)(d) of this section with the number of hours of these courses added to the number of hours taken in the out-of-state basic training course in subsection (2)(a) of this section.

(3)[(2)] An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a) The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, as determined by the Executive Director of the KLEC; and

(b) The basic training course or academy was a single, stand-alone course.

(4)[(3)] An applicant to a Kentucky law enforcement agency who has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:

- (a) Federal Bureau of Investigation;
- (b) Bureau of Alcohol, Tobacco, and Firearms;
- (c) Drug Enforcement Administration; or
- (d) United States Secret Service.

(5)[(4)] The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

(6)[(5)] An agency may request certification for a peace officer that has completed an out-of-state law enforcement basic training by submitting for the applicant:

(a) His certificate of completion of basic training;

(b) His transcript of classes for basic training with individual class hours specified; and

(c) Letter from an employing agency signed by the chief or a direct supervisor of the applicant certifying that the applicant was employed in a full-time capacity as a peace officer for:

1. At least one (1) year; or

2. For three (3) or more years with at least one (1) year in the state in which he completed his basic training course or academy[KLEC Form B, Basic Training - Previously Completed (non-DOJTT), to the KLEC Office].

Section 11. Records. (1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the Records Retention Schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to ensure their security. In order to properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall:

(a) Keep all records relating to certification in a file separate from any personnel file maintained by the hiring authority; and

(b) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, Certification of Peace Officer Professional Standards Testing Procedures, KLEC Form Q-3 – Drug Screening Approval, KLEC Form Q-4 – Polygraph Approval, and KLEC Form Q-5 – Psychological Examination Approval, indicating that the following testing procedures have been completed:

1. Polygraph;
2. Suitability screening;
3. Drug screen; and
4. Medical examination or history statement.

(3) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(4) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

Section 12. Applicant Conduct and Behavior. (1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRS Chapter 13B, may be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.

(c) An applicant shall not participate in physical ability testing if:

1. The applicant has taken:

- a. A controlled substance as prescribed by a physician; or
- b. Any other medication, whether prescribed or not; and

2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) A copy of KLEC Form R shall be mailed to the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing, the supporting reasons and circumstances of the removal, and whether the agency may reschedule testing.

Section 13. Compliance. (1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT

Commissioner, in order to audit specific applicants and agencies to ensure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in Kentucky Law Enforcement Foundation Program Fund (KLEFPF). If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

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

(a) "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014[Part IV - Standards for Administrative Procedures", American Psychological Association, 1985];

(b) "KLEC Form A - Testing Registration - Attesting to Minimum Standards", June 2014;

(c) [~~"KLEC Form B - Basic Training Previously Completed (non-DOCJT)", January 19, 1999;~~

(d)] "KLEC Form C - Grandfather Information", July 2006;

(d)](e)] "KLEC Form D - All Standards Met", June 2014;

(e)](f)] "KLEC Form D-1 - All Standards Met - Inactive to Active Status", June 2014;

(f)](g)] "KLEC Form E - Request for Certification for Exempt Officers, March 1, 1999;

(g)](h)] "KLEC Form F - Status Update", June 2014;

(h)](i)] "KLEC Form G-1 - Medical Examination Report", June 2014;

(i)](j)] "KLEC Form G-2 - Medical History Statement", June 2014;

(j)](k)] "KLEC Form G-3 - Medical Screening Guidelines Implementation Manual", June 2014;

(k)](l)] "KLEC Form H-1 - Background Investigation", June 2001;

(l)](m)] "KLEC Form H-2 - Personal History Statement", January 19, 1999;

(m)](n)] "KLEC Form I-1 - Consent for Pre-employment Polygraph Examination", June 2014;

(n)](o)] "KLEC Form I-2 - Pre-employment Polygraph Questionnaire", June 2014;

(o)](p)] "KLEC Form I-3 - Pre-employment Polygraph Background/Criminal Questions", October 11, 2005;

(p)](q)] "KLEC Form J - JTA Submission", January 19, 1999;

(q)](r)] "KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form", July 2006;

(r)](s)] "KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form", July 2006;

(s)](t)] "KLEC Form L-1 - Code of Ethics", June 2014;

(t)](u)] "KLEC Form L-2 - Canon of Ethics", June 2014;

(u)](v)] "KLEC Form Q - Agency Submission Form", October 2006;

(v)](w)] "KLEC Form Q-3 - Drug Screening Approval", July 2006;

(w)](x)] "KLEC Form Q-4 - Polygraph Approval", July 2006;

(x)](y)] "KLEC Form Q-5 - Psychological Examination Approval", July 2006;

(y)](z)] "KLEC Form tele-Q - Agency Submission Form", June 2014;

(z)](aa)] "KLEC Form R - Removal from Testing", January 19, 1999;

(aa)](bb)] "KLEC POPS Form S - Notice of Appeal", January 19, 1999;

(bb)](cc)] "KLEC Form T-1 - Medical Release - Phase I

Testing", June 2014;
 (cc)(dd) "KLEC Form T-1a - Physician's Medical Release Form", June 2014;
 (dd)(ee) "KLEC Form T-2 - Liability Waiver - Phase I Testing", July 2001;
 (ee)(ff) "POPS Form PT-1 - Physical Agility Test Session Report", January 2003;
 (ff)(gg) "POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures", July 2004; [and]
 (gg)(hh) "KLEC Physical Fitness Testing Protocols", December 2009;[.] **and**
 (hh) "KLEC Education Form - Applicant Education Verification", July 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council Office Funderburk Building, Eastern Kentucky University, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH CAIN, Chair

APPROVED BY AGENCY: November 8, 2017

FILED WITH LRC: November 15, 2017 at 10 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Justice.RegContact@ky.gov, phone (502) 564-3279, fax (502) 564-6686.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(As Amended at ARRS, January 8, 2018)

505 KAR 1:170. Department of Juvenile Justice Policies and Procedures: Prison Rape Elimination Act of 2003 (PREA).

RELATES TO: KRS 15A.065, 15A.067, Chapters 600-645, **34 U.S.C. 30301-30309** [~~42 U. S. C. 15601-15609~~], 28 C.F. R. 115.311-115.393

STATUTORY AUTHORITY: KRS 15A.065, 15A.067, 15A.160, 15A.210, 200.115, 605.100, 605.150, 635.095, 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.100, 605.150, 635.095, 640.120, and 645.250 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policies and Procedures: [~~"]~~Prison Rape Elimination Act of 2003 (PREA)", **January 8, 2018**[~~December 15~~][~~September 24~~], **2017**[~~February 10, 2014~~], is incorporated by reference and includes the following:

- 900 Definitions (Amended 8/24/17[February 10, 2014]);
- 901 Zero Tolerance of Any Type of Sexual Misconduct (Amended 8/24/17[January 15, 2014]);
- 902 Personnel Procedures (Amended 1/8/18[~~8/24/17~~][January 15, 2014]);
- 903 Prohibited Conduct of Staff, Interns, Volunteers, and Contractors (Amended 8/24/17[January 15, 2014]);
- 904 Contracted Residential Entities (Amended 8/24/17[October 14, 2013]);
- 90 Juvenile Vulnerability Assessment Procedure (Amended 8/24/17[January 15, 2014]);
- 906 Reporting and Investigating PREA Violations (Amended 8/24/17 [February 10, 2014]);
- 907 Resident PREA Education (Amended 1/8/18[~~8/24/17~~][January 15, 2014]);
- 908 DJJ Response to a Report of a PREA Violation (Amended 1/8/18[~~8/24/17~~][January 15, 2014]);
- 909 Data Collection and Review (Amended

- 910 1/8/18[~~8/24/17~~][January 15, 2014]); Facility Security Management (Amended 8/24/17[February 10, 2014]);
- 911 DJJ Staff PREA Education and Training (Amended 8/24/17[October 14, 2013]); and
- 912 Sexual Orientation and Gender Identity (Amended 1/8/18[~~12/15/17~~][~~8/24/17~~][January 15, 2014]).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

CAREY D. COCKERELL, Commissioner

APPROVED BY AGENCY: December 14, 2017

FILED WITH LRC: December 15, 2017 at 11 a.m.

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic Operations
(As Amended at ARRS, January 8, 2018)

603 KAR 5:025. Fully controlled[~~Fully-controlled~~] access highways.

RELATES TO: KRS **186.010(5), 189.010(8)**[~~177.220, 177.230, 177.300, 189.190,~~ **189.231, 189.340, 433.750, 433.753**

STATUTORY AUTHORITY: KRS 174.080[~~175.450(7), 177.230, 177.410(6), 189.231~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.080 authorizes the Secretary of the Transportation Cabinet to promulgate administrative regulations to carry out the requirements of Chapters 175, 176, 177, and 178 relating to highways in the Commonwealth. This administrative regulation establishes requirements and limitations of public use for fully controlled access highways[~~promulgates prescriptions and prescriptions deemed necessary for the safe, orderly regulation of traffic for all Kentucky Toll Roads, Interstate Highways and other Fully Controlled Access Highways~~].

Section 1. Definitions. (1) "Farm equipment" is defined by 601 KAR 1:019["~~Farm implement~~" means machinery, equipment or vehicle used exclusively in a farm operation and which is not required by KRS Chapter 186 to be registered].

(2) "Fully controlled access highway" is defined by 601 KAR 1:019[~~means a highway which gives preference to through traffic and which shall have access only at selected public roads or streets, and which shall have no highway grade crossing or intersection~~].

(3) "Moped" is defined by KRS 186.010(5)[~~"Hitchhiking" means the solicitation of a ride in a motor vehicle~~].

(4) "Motor scooter" means a motor vehicle having a seat or saddle for the use of the driver and designed to travel on not more than three (3) wheels with a motor that is[~~which produces~~] five (5) horsepower or less.

(5) "Pedestrian" is defined by KRS 189.010(8)[~~"Toll road" means any turnpike project constructed under the provisions of KRS Chapter 175 or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet~~].

Section 2. Unidirectional Nature of Traffic Lanes and Ramps.

(1) On a fully controlled access highway with four (4) or more lanes[~~multilane (four (4) or more lanes) divided toll roads, interstate highways, and other fully controlled access highways~~], a vehicle shall not[~~no vehicle shall~~] be operated or moved[~~otherwise caused to move~~] in a direction that[~~which~~] is against the normal flow of traffic on a any] traffic lane, deceleration lane, acceleration

lane, ramp, shoulder, or other traveled way of the highway.

(2) On a two (2) lane, two (2) way fully controlled access highway[On two (2) lane, two (2) way undivided toll roads, interstate highways, and other fully controlled access highways], ~~a vehicle shall not~~~~[no vehicle shall]~~ be operated or moved[otherwise caused to move] in a direction ~~that~~[which] is against the normal flow of traffic on ~~a~~[any] traffic lane where passing is prohibited by signs or markings, or on ~~a~~[any] deceleration lane, acceleration lane, ramp, or shoulder[or other traveled way of such highway].

Section 3. Prohibition of U-turns[and Left Turns]. The making of a U-turn ~~on a fully controlled access highway~~[at any point on toll roads, interstate highways, and other fully controlled access highways] ~~shall be~~~~is~~ prohibited with the exception off. Excepted from this provision are] maintenance, emergency, and police vehicles.[The making of a left turn on these roads, except where permitted by official signs, is prohibited.

Section 4. Prohibition of Standing, Stopping, or Parking on Shoulders. No vehicle shall be parked, stopped, or allowed to stand on the shoulders of any toll road, interstate highway, or other fully controlled access highway, including ramps thereto, except that in the case of emergency, vehicles shall be permitted to stop on the shoulders to the right of the traveled way with all wheels and projecting parts of the vehicle, including the load, completely clear of the traveled way. Parking of any vehicle which is disabled on the shoulders of a toll road, interstate highway, or other fully controlled access highway, including ramps thereto, for more than six (6) hours continuously is prohibited and vehicles violating this provision may be towed away at the cost of the owner.

Section 5. Waste and Rubbish. Littering of the right-of-way of any toll road, interstate highway, or other fully controlled access highway with bottles, cans, paper, garbage, rubbish or other material of any kind or description is prohibited.

Section 6. Damaging of Shrubs or Plants. No unauthorized person shall cut, mutilate, or remove any trees, shrubs, or plants located within the right-of-way of any toll road, interstate highway, or other fully controlled access highway.]

Section 4. Limitations. The following shall be prohibited within the right-of-way of a fully controlled access highway[Section 7. Limitations on Use. Use of toll roads, interstate highways, and other fully controlled access highways by the following is prohibited at all times]:

- (1) Bicycles or motor scooters;
- (2) Vehicles drawn by animals;
- (3) Animals led, ridden, or driven on hoof;
- (4) Vehicles with improperly secured loads, or loaded with animals not properly confined;
- (5) Vehicles with metal treads ~~or~~[and vehicles with] caterpillar treads;
- (6) ~~Farm equipment that is~~[Farm implements which are] not being transported on a straight truck or truck trailer combination or a semitrailer;
- (7) Construction equipment other than motor trucks, except by special permit;[and]
- (8) ~~Mopeds~~[Moped as defined in KRS 186.010(5)]; and
- (9) ~~Pedestrians~~. [Section 8. Prohibition of Hitchhiking. No person shall solicit a ride in a vehicle while on any portion of the right-of-way of a toll road, interstate highway, or other fully controlled access highway.

Section 9. Passing and Following Vehicles; Traffic Lanes (Applicable only to two (2) lane, two (2) way undivided toll roads, interstate highways, and other fully controlled access highways).

(1) Vehicles overtaking other vehicles proceeding in the same direction shall pass to the left of them and shall not again drive to the right until reasonably clear of those vehicles. No vehicle shall be driven to the left side of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left

side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken.

(2) Drivers shall obey the instructions of all signs and markings placed to assign traffic lanes, to specify directions or to designate slow moving traffic lanes in all areas where climbing lanes have been added.

(3) The operator of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having regard for the speed of the vehicle and the traffic upon and the condition of the highway. The operator of any truck, bus, or heavy equipment unit shall not follow within 250 feet of another vehicle; this shall not prevent overtaking and passing, nor shall it apply to any lane designated for use of slow moving traffic.

Section 10. Prohibition of Vending on Shoulders and Right-of-way. No vehicle shall be parked, stopped, or allowed to stand on the shoulders or right-of-way of any toll road, interstate highway, or other fully controlled access highway, including ramps thereto for the purpose of displaying, selling or offering for sale any merchandise, wares, produce, services or other items. Nor shall any person be allowed to engage in the above activities on the above mentioned shoulders or right-of-ways.]

GREG THOMAS, Secretary

PATTY DUNAWAY, Department of Highways

D. ANN DANVELO, Office of Legal Services

APPROVED BY AGENCY: October 31, 2017

FILED WITH LRC: November 14, 2017 at 1 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 8, 2018)

701 KAR 8:010. Charter school student application, lottery, and enrollment.

RELATES TO: KRS 157.196, 157.200, 158.030, 158.050, 158.070, 158.100, 158.281, 159.010, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 160.346, 161.141, 387.010(2), 20 U.S.C. 1400 et seq., 1681, 29 U.S.C. 794, 42 U.S.C. 1981-2000h-6

STATUTORY AUTHORITY: KRS 160.1591

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1591(7) requires the Kentucky Board of Education to promulgate an administrative regulation to guide student application, lottery, and enrollment in public charter schools. This administrative regulation establishes~~sets forth~~ the requirements for charter school student application, lottery, and enrollment.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(3) "Applicant" is defined by~~in~~ KRS 160.1590(3).

(4) "At risk" means at risk of academic failure.

(5) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support or intervention;

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25) or more unexcused "student attendance days", as defined by/in KRS 158.070, in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

(k) An applicant's definition for this term in the applicant's/its authorizer approved charter application, pursuant to KRS 160.1594(2).

(6) "Authorizer" or "public charter school authorizer" is defined by/in KRS 160.1590(13).

(7) "Charter application" is defined by/in KRS 160.1590(4).

(8) "Charter contract" or "contract" is defined by/in KRS 160.1590(5).

(9) "Charter school" means a public charter school.

(10) "Charter school board of directors" is defined by/in KRS 160.1590(6).

(11) "Cocurricular programs" means school programs that/which have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(12) "Computerized randomization" means use of a computer software program for randomization.

(13) "Conversion public charter school" is defined by/in KRS 160.1590(7).

(14) "Days" means calendar days calculated pursuant to KRS 446.030.

(15) "Education service provider" is defined by/in KRS 160.1590(8).

(16) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(17) "Enrollment" means the process for the charter school to register a student for attendance at the charter school.

(18) "Enrollment preference" means the priority of the student application from students pursuant to/identified in KRS 160.1591(5).

(19) "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(20) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(21) "Human randomization" means randomization without the use of computer randomization.

(22) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(23) "Local school district" is defined by/in KRS 160.1590(10).

(24) "Lottery" means the transparent, open, equitable, and impartial process that is competently conducted with randomization in accordance with the targeted student population and service community as established/identified in KRS 160.1593(3) for the charter school to choose students for enrollment and attendance at the charter school if/when the student applications received by the charter school exceed the charter school's capacity.

(25) "Multiple" means a person who was born as a result of the same pregnancy as at least one (1) other sibling.

(26) "Notice" means written notice.

(27) "Notify" means provide written notice.

(28) "Parent" is defined by/in KRS 160.1590(11).

(29) "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter public schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(30) "Person with custody or charge" means any adult,

pursuant to KRS 159.010, who falls within the definition for "interested person or entity" as defined by/ef KRS 387.010(2) for interested person or entity and with whom the student resides.

(31) "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(32) "Public charter school" is defined by/in KRS 160.1590(12).

(33) "Randomization" means to leave to chance alone and eliminate bias and interference.

(34) "Secondary enrollment preference" means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded for that school year.

(35) "Start-up public charter school" is defined by/in KRS 160.1590(17).

(36) "Student" is defined by/in KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as established/provided in KRS 158.030 and 158.100.

(37) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

(38) "Students with special needs" or "Special needs students" means:

(a) An "exceptional children and youth student"/[students], as defined by/in KRS 157.200, who is/are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. [secs.] 1400 et seq. for an individual education plan, as established/described in KRS 157.196, or an individual education program, as defined by/described in KRS 158.281; or

(b) A student who is/[Students who are] eligible for services pursuant to/under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. [sec.] 794, to prevent substantial limitation of one (1) or more major life activities.

(39) "Traditionally underperforming" means at risk of academic failure.

(40) "Year" ,"academic year,[or "Academic year"] or "school year" means school year as established/defined in KRS 158.050.

Section 2. Student Application. (1) Any parent, person with custody or charge, adult student, or emancipated youth student who has the ability to enroll the student pursuant to Kentucky law may initiate a student application to a charter school for the student who is eligible for attendance at the charter school pursuant to/under KRS 158.030, 158.100, or 160.1591(5) or (6).

(2) Any adult student or emancipated youth student may initiate the student's own application to a charter school.

(3)(a) A student application for enrollment in a charter school shall list the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level for the student based on available information.

(b) Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level shall not invalidate the student's application unless the charter school determines that the parent, person with custody or charge, adult student, or emancipated youth student knowingly misrepresented the grade level most appropriate for the student on the student application.

(4) Consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors shall not be a condition for student application to the charter school.

(5) The charter school shall not limit the number of applications that it accepts from students based on ethnicity, national origin, religion, sex, income level, disabling condition, proficiency in the English language, or academic or athletic ability, in violation of the Civil Rights Act of 1964, 42 U.S.C. secs. 1981 to 2000h-6, as amended, Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, as amended, KRS 160.1591(5), or KRS 160.1592(19)/160.1593(19)].

(6) For a start-up charter school, the enrollment preference

described in KRS 160.1591(5)(d) ~~shall only be~~is only available to:

(a) A child of a Kentucky resident who is on the board of directors and resides within the charter school's enrollment boundaries; or

(b) A child of a Kentucky resident who will be a full-time employee of the charter school and resides within the charter school's enrollment boundaries.

(7) The charter school shall utilize a uniform application process for all student applications, including use of the Kentucky Charter School Student Application.

Section 3. Lottery. (1) A charter school board of directors shall create and publish policies and procedures on its Web site[website] for conducting the lottery that include~~[the following]~~:

(a) Identification and designation of duties for charter school board members, any education service provider, charter school staff, and volunteers prior to the lottery event;

(b) Segregation of duties to decrease the likelihood of errors, mitigate the risk of interference, and increase the public perception that the lottery is a randomized, transparent, open, equitable, and impartial process that is competently conducted;

(c) Provision for breaks during the lottery;

(d) Retention of records from the lottery for at least the length of the charter contract [two (2) years];

(e) Creation of minutes from the lottery; and

(f) Procedures for receipt, investigation, and handling of written complaints regarding the lottery with concurrent provision of all documents to the authorizer, the commissioner of education, and the Kentucky Board of Education. Procedures shall include:

1. Any remedies the charter school shall provide upon determination that student selection during the lottery was affected by an error committed by individuals acting on behalf of the charter school during the application or lottery processes;

2. Transparency in the charter school's remedying of~~[such]~~ an error; and

3. Actions to prevent reoccurrence of errors in the application and lottery processes in future years.

(2) A charter school shall conduct the lottery in compliance with the requirements of KRS 160.1591, 160.1592, 701 KAR Chapter 8, and its policies and procedures as established in subsection (1) of this section, which, that may include, as allowed by the authorizer:

(a) Selection of numbers assigned to individual students; and

(b) Human randomization or computerized randomization.

(3) The charter school shall offer[afford] primary enrollment preferences and secondary enrollment preferences only to students as established in:

[a][allowed—in] KRS 160.1591, 160.1592, and this administrative regulation;

[b][, as designated in] The charter application; and

[c][, and as allowed in] The charter contract.

(4) A charter school shall not conduct a lottery for enrollment if the number of student applications does not exceed the capacity of the charter school for that school year, as stated in the charter school's charter contract.

(5) If the number of student applications exceeds the capacity of the charter school for the school year, then pursuant to KRS 160.1591(5)(c), the charter school shall reserve space for enrollment of returning students and then conduct the lottery for the other student applications.

(6) If the number of student applications with enrollment preferences meeting the requirements of subsection (3) of this section exceeds the capacity of the charter school for the school year, the charter school shall include in the lottery for enrollment only those students with enrollment preferences.

(7) Selection in the lottery of a student who is a multiple shall also result in:

(a) The automatic selection of the student's multiple sibling or siblings who have submitted a student application to that charter school for attendance that school year, unless this would exceed the capacity of the charter school; or

(b) If the automatic selection of the student's multiple sibling or siblings would exceed the capacity of the charter school for that school year, the automatic placement of the student's multiple siblings at the top of the wait list.

(8) At least thirty (30) days prior to conducting a lottery, the charter school shall publish on its Web site[website], and provide[notice of the lottery to provide information on the lottery] to parents, persons with custody or charge, adult students, and emancipated youth students who have submitted student applications to the charter school, notice of the lottery and information on the lottery. The Web site publication and notice shall include:

(a) The date and location of the lottery and the information meeting to be held prior to the lottery pursuant to subsection (9) of this section;

(b) Information on the legal requirements and policies and procedures for[utilized in] holding the lottery;

(c) Information for filing a written complaint regarding the lottery monitor;

(d) Information for filing a written complaint regarding an error committed by individuals acting on behalf of the charter school during the application or lottery processes; and

(e) Identification of the charter school for the lottery.

(9) At least twenty (20) days prior to conducting a lottery, the charter school shall hold a meeting to provide the lottery information in subsection (8) of this section to parents, persons with custody or charge, adult students, and emancipated youth students.

(10) The authorizer may include in the charter contract a requirement for the charter school to conduct a practice lottery, in the presence of the lottery monitor, to:

[a] Reduce charter school community shareholder concerns;

[b][, to] Identify potential issues and perceptions with the selected lottery method;[,] and

[c][to] Build the charter school's capacity to conduct the lottery.

(11) The charter school shall not require the presence of the parent, person with custody or charge, adult student, or emancipated youth student at the lottery for inclusion in the lottery or for eligibility for enrollment.

(12) The charter school shall not require the consent of the parent, person with custody or charge, adult student, or emancipated youth student to serve on the charter school board of directors for inclusion in the lottery or for eligibility for enrollment.

(13) If a charter school determines capacity by grade level, then the charter school shall hold lotteries only in those grade levels for which[where] student applications exceeded the charter school's capacity and shall hold separate lotteries, which may occur on the same date, for each of those grade levels. A student shall be eligible for the lottery for the grade level listed on the student's application, unless the charter school and the parent, persons with custody or charge, adult student, or emancipated youth student agree otherwise.

(14) The lottery and the information meeting required in subsection (9) of this section shall each be held in accordance with the Open Meetings Act, KRS 61.800 et seq., at a time and location convenient to parents, persons with custody or charge, adult students, and emancipated youth students who have submitted a student application for enrollment in the charter school.

(15) The lottery shall be monitored by a competent, independent, impartial party, the lottery monitor, who shall be selected by the charter school, to ensure compliance with KRS 160.1591 and 160.1592 [as follows:]

(a) The charter school shall include the identity, qualifications, and affiliations of the lottery monitor in the information provided[they provide] to the public by the deadline established in[thirty (30) days prior to the lottery, pursuant to] subsection (8) of this section, and in the lottery information meeting held pursuant to subsection (9) of this section;[,]

(b) Complaints regarding the competence, independence, or impartiality of the lottery monitor shall be provided in writing to the commissioner of education, who shall conduct an investigation and render a decision within seven (7) days of receipt of the written

complaint~~;~~**and**

(c) If the lottery monitor is determined by the commissioner of education to lack competence, independence, or impartiality, the commissioner of education shall appoint an individual who does meet these requirements to serve as a monitor for the lottery selection process.

(16) In the lottery, the charter school shall select students for enrollment up to the capacity of the school for that school year, and then the charter school shall select students for inclusion on the wait list above the school capacity as established in paragraphs (a) through (g) of this subsection. A charter school shall follow:

(a)~~[The charter school shall]~~ Continue to select students for placement on the wait list until the charter school has exhausted the student applications for that school year;

(b)~~[The charter school shall]~~ Ensure that lottery drawing for the wait list shall be/is separate from the lottery for selection of students for enrollment and that each parent, person with custody or charge, adult student, and emancipated youth student, who submitted a student application to the charter school and is placed on a wait list, shall be/is notified in writing of the student's inclusion on the wait list and the student's position on the wait list after the conclusion of the wait list lottery process;

(c)~~[The charter school shall]~~ Place students on the wait list in the order the students[they] are drawn during that portion of the lottery process;

(d)~~[The charter school shall]~~ Maintain and continuously update accurate records of the order of the wait list;

(e)~~[The charter school shall]~~ Update the wait list as students are admitted;

(f)~~[The charter school shall]~~ Weekly publish on its Web site[website] updated information on each student's position on the wait list as well as the last date for enrollment for that year. The charter school shall weekly provide each parent, person with custody or charge, or student with notice of the student's updated position on the wait list as well as the last date for enrollment for that year; and

(g)~~[The charter school shall]~~ Place student applications received after the lottery on the wait list, in the order received, after the students placed on the wait list through the lottery process in this section.

Section 4. Student Enrollment. (1) A charter school shall include in its policies and procedures on student enrollment:

(a) The status of an enrollment preference and eligibility for enrollment and attendance for a student if the student ceases to reside within the charter school's enrollment boundaries[be a resident of the local school district] prior to or during the school year;

(b) The status of an enrollment preference for a sibling pursuant to[under] KRS 160.1591(5)(c) if the student who was enrolled the previous school year withdraws from the charter school;

(c) The status of an enrollment preference for a student pursuant to[under] KRS 160.1591(5)(d) if the resident ceases to be a member of the board of directors or ceases to be a full-time employee of the charter school prior to or during the school year;

(d) The status of an enrollment preference for a student pursuant to[under] KRS 160.1591(5)(e) if the student ceases to be eligible for free or reduced price meals prior to or during the school year; and

(e) The status of an enrollment preference for a student pursuant to[under] KRS 160.1591(5)(e) if the student's former school ceases to be a persistently low-achieving public school or a persistently low-achieving noncharter public school prior to the school year the student shall attend the charter school.

(2) A charter school shall accept student applications for enrollment and attendance from all local school district resident students who are eligible for enrollment based on KRS 158.030, 158.100, 160.1591(5) or (6).~~[as follows:]~~

(a) Only a student who resides within the charter school's enrollment boundaries[is a resident of the local school district] by the student's first day of student attendance shall

be/is eligible for enrollment and attendance at the charter school that school year.~~;~~**and**

(b) A student who attended the public charter school the previous year shall be automatically re-enrolled for attendance each school year unless:

1. The student has been awarded a high school diploma after meeting or exceeding the minimum requirements for high school graduation established[set] by the Kentucky Board of Education pursuant to 704 KAR 3:305;

2. The charter school has expelled the student pursuant to KRS 158.150;

3. A court has ordered placement of the student in another school or ~~a[another]~~ local school district outside the charter school's enrollment boundaries;

4. The student has voluntarily withdrawn from enrollment in the charter school; or

5. The student~~[is]~~ no longer resides within the charter school's enrollment boundaries[a resident of the local school district].

(3) In addition to the requirements of KRS 160.1592(14), a charter school shall not discourage, restrict, or prohibit enrollment of a student, including based on:

(a) Whether the emancipated youth student, adult student, parent, or person with custody or charge gives consent for the charter school unilaterally to unenroll or withdraw the student from the charter school without providing the due process protections established in KRS 158.150;

(b) The student's disability, academic performance, athletic ability, or the ability of the parent or person with custody or charge to volunteer at the charter school;

(c) The student's ability to meet academic minimum requirements;

(d) The student's English competence;

(e) The student's status as a student with special needs or special needs student;

(f) The student's status as a student at risk of academic failure, at risk, academically behind, or traditionally underperforming;

(g) The student's status as a homeless child or youth, under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11301 et seq.; or

(h) The student's eligibility for free or reduced price meals, under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.

(4) In addition to the requirements of KRS 160.1592(14), a charter school shall not:

(a) Require or request

1. An interview prior to enrollment;

2. Letters of recommendation;

3. Essays;

4. Resumes or information regarding a student's school or community activities;

5. Grades;

6. Test scores;

7. Attendance records;

8. Special needs student status or special needs student disability information, at risk student information, free or reduced price lunch student eligibility information, or other education record information, except to the extent allowed by the authorizer in the charter contract for the purpose of confirming and providing an enrollment preference to the student pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

9. Disciplinary history except~~[as allowed]~~ pursuant to KRS 158.155;

10~~[9]~~. Proof of a Social Security card or number, U.S. birth certificates, visa, or citizenship;

11~~[10]~~. Information on the legal residence or presence in the United States of the student, parent, or person with custody or charge; or

12~~[11]~~. Information regarding the cause of any student's residency with a person other than the parent;~~[or]~~

(b) Require a family to volunteer at the charter school or provide payment to the school, except:

1. As allowed in KRS 160.1592(14) for fees required on the same basis and to the same extent as other public schools; and

2. The charter school may encourage ~~parental~~ involvement by parents, persons with custody or charge, adult students, and emancipated youth students in the charter school ~~if/as long as~~ involvement is not required and there are no adverse consequences for the family or student who cannot be involved; or

(c) Require or request a parent, person with custody or charge, adult student, or emancipated youth student to consent to the charter school's withdrawal or unenrollment of the student from the charter school without providing the due process protections established in KRS 158.150.

(5) A charter school shall enroll a student in compliance with KRS 158.032 and KRS 159.010.

(6) By the first day of a student's attendance, a charter school shall verify the residence of the student within the local school district and use methods similar to those employed by a local school district to verify residence.

(7) A conversion public charter school shall accept for enrollment student applications with secondary enrollment preference after accepting student applications with primary enrollment preference, if the conversion public charter school's capacity has not been exceeded for that school year. After complying with the primary enrollment preference requirement in KRS 160.1591(5)(b), a conversion public charter school may utilize the enrollment preferences in KRS 160.1591(5) (c) through (e) ~~(c-e)~~ in enrolling additional local school district resident students pursuant to KRS 160.1591(5)(b).

(8) A charter school shall conduct enrollment as follows:

(a) A charter school shall establish and publish on its Web site/website an open enrollment period during which the charter school shall accept applications for enrollment of new students;

(b) A charter school shall establish and publish on its Web site/website a specific deadline for notification to parents, persons with custody or charge, adult students, or emancipated youth students of the charter school's acceptance of the student's application for enrollment;

(c) A charter school shall notify parents, persons with custody or charge, adult students, and emancipated youth students with accepted applications of their opportunity to enroll in the charter school and the deadlines and required documentation for enrollment;

(d) A charter school shall establish and publish on its Web site/website a specific deadline during the open enrollment period for parents, persons with custody or charge, adult students, or emancipated youth students with accepted applications to notify the school of their enrollment decision and to initiate enrollment of the student in the charter school. Failure of the parent, person with custody or charge, adult student, or emancipated youth student to accept the enrollment offer and enroll the student by the deadline established by the charter school during the open enrollment period may result in the forfeiture of an enrollment preference and result in enrollment of the student that school year only if capacity of the school has not been exceeded for that school year. Prior to forfeiture of the student's enrollment offer, a charter school shall attempt to enroll the student by again contacting the parent, person with custody or charge, adult student, or emancipated youth student through at least two (2) of the following methods, until the charter school is successful in contacting the parent, person with custody or charge, adult student, or emancipated youth student[successful]:

1. Phone;
2. Email;
3. Mailed correspondence; or
4. Home visit; and

(e) A charter school shall allow a parent, person with custody or charge, adult student, or an emancipated youth student to enroll the student for attendance at the charter school in the grade level the parent, person with custody or charge, adult student, or emancipated youth student understands to be the most appropriate grade level based on available information. Any future determination by the resident local school district or the charter school that the student should be placed in a different grade level

shall not invalidate the student's enrollment.

(9) A charter school shall only require the following documentation or information for student enrollment:

(a) Proof of the student's identity and age, as required pursuant to KRS 158.032;

(b) Immunization records, as required by KRS 158.035;

(c) Proof of residency in the local school district, as required by the resident local school district;

(d) Home language survey, as required by 703 KAR 5:070, as a first screening process to identify students who are English learners; and

(e) Proof of the student's current grade level.

(10) A charter school may request additional information with the consent of the authorizer only to process the student applications, conduct the lottery, or enroll the charter school students, but the refusal or failure to provide additional information shall not/cannot be a cause for denial of enrollment or for withdrawal of a student.

(11) A charter school shall accept ~~local school district resident~~ student applications from students who reside within the charter school's enrollment boundaries and enroll additional ~~local school district resident~~ students who reside within the charter school's enrollment boundaries for that school year after the end of the open enrollment period if the charter school has capacity to educate additional students at that grade level for that school year.

Section 5. Incorporation by Reference. (1) "Kentucky Charter School Student Application", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner
MARY GWEN WHEELER, Chair

APPROVED BY AGENCY: December 14, 2017

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

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 8, 2018)

701 KAR 8:020. Evaluation of charter school authorizers.

RELATES TO: KRS 158.070, 158.649, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1596

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1596 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance.

This administrative regulation establishes requirements for the competence, performance, and evaluation process for charter school authorizers.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Achievement gap" is defined by/in KRS 160.1590(2) and [means the same as in] KRS 158.649.

(3) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(4) "Applicant" is defined by/in KRS 160.1590(3).

(5) "Areas of exceptionality" means categories of disabilities of students with special needs.

(6) "At risk" means at risk of academic failure.

(7) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support or intervention;

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25) or more unexcused "student attendance days," as defined by/in KRS 158.070, in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

(k) An applicant's definition for this term in the applicant's/its authorizer approved charter application, pursuant to KRS 160.1594(2).

(8) "Authorizer" or "public charter school authorizer" is defined by/in KRS 160.1590(13).

(9) "Authorizer's board of directors" means:

(a) The board of education for the local school district for an "authorizer" defined by/described in KRS 160.1590(13)(a); and

(b) The boards of education that have collaborated to set up a regional public charter school for an "authorizer" defined by/described in KRS 160.1590(13)(b).

(10) "Bilingual students" means students who are fluent in English and a foreign language, which can/may include American Sign Language.

(11) "Charter" means charter contract.

(12) "Charter application" is defined by/in KRS 160.1590(4).

(13) "Charter contract" or "contract" is defined by/in KRS 160.1590(5).

(14) "Charter school" means a public charter school.

(15) "Charter school board of directors" is defined by/in KRS 160.1590(6).

(16) "Cocurricular programs" means school programs that/which have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(17) "Comprehensive learning experiences" or "Expanded learning opportunities" means daily, rigorous learning experiences that build on a student's talents, challenge the student's skills and understandings, and develop the student's ability to reason, problem solve, collaborate, and communicate to prepare the student for success in postsecondary.

(18) "Conversion public charter school" or "conversion charter school" is defined in KRS 160.1590(7).

(19) "Days" means calendar days calculated pursuant to KRS 446.030.

(20) "Education service provider" is defined by/in KRS 160.1590(8).

(21) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the

student's parents.

(22) "Enrollment preference" means the priority of the student application from students pursuant to/identified in KRS 160.1591(5).

(23) "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(24) "Fiscal year" is defined by/in KRS 160.450.

(25) "Foreign entity" is defined by/in KRS 14A.1-070(10).

(26) "Gifted" means a gifted and talented student as defined by/in KRS 157.200(1)(n).

(27) "Governing board of the authorizer" means the authorizer's board of directors.

(28) "Governing body of the authorizer" means the authorizer's board of directors.

(29) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(30) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(31) "Local school district" is defined by/in KRS 160.1590(10).

(32) "Parent" is defined by/in KRS 160.1590(11).

(33) "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(34) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition for "interested person or entity" as defined by/of KRS 387.010(2) for an interested person or entity and with whom the student resides.

(35) "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(36) "Public charter school" is defined by/in KRS 160.1590(12).

(37) "Regional achievement academy" is defined by/in KRS 160.1590(15).

(38) "Regional achievement zone" is defined by/in KRS 160.1590(16).

(39) "School level" or "Level" or "Educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(40) "Secondary enrollment preference" means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded.

(41) "Start-up public charter school" is defined by/in KRS 160.1590(17).

(42) "Student" is defined by/in KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(43) "Student attendance day" is defined by/in KRS 158.070(1)(e).

(44) "Students with special needs" or "Special needs students" means:

(a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an individual education plan, as described in KRS 157.196, or an individual education program, as described in KRS 158.281; or

(b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one (1) or more major life activities.

(45) "Substantial hardship" means a significant, unique, and demonstrable economic, technological, legal, or other impact on a local school district that impairs the district's/which impairs its ability to continue to successfully meet the requirements of educational programs or services for the district's/its students.

(46) "Superintendent" means the local school district employee tasked with the duties established/described in KRS 160.370.

(47) "Traditionally underperforming" means at risk of academic failure.

(48) "Unilateral imposition of conditions" means the authorizer has placed or attempted to place conditions or requirements that are not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(49) "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places or attempts to place:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(50) "Year", "~~academic year~~or "Academic year"", or "school year" means school year as established[defined] in KRS 158.050.

Section 2. Policies and Procedures. (1) Pursuant to KRS 160.1594, an authorizer shall create policies and procedures governing the authorizer's performance of its duties under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and include in its policies and procedures:

(a) The authorizer's strategic vision for chartering, including a clear statement of any preference for a charter application that demonstrates the intent, capacity, and capability to provide comprehensive learning experiences or expanded learning opportunities to students identified in KRS 160.1594(2) or KRS 160.1592(19);

(b) Identification of any charter application preferences of the authorizer pursuant to KRS 160.1594(2);

(c) Information on the authorizer's performance contracting requirements, including:

1. [including] Academic, financial, and operational measures, and the performance frameworks, that the authorizer has developed for public charter school oversight and evaluation and with which the authorizer shall evaluate the charter school's performance under the charter contract, in accordance with KRS 160.1594 and 701 KAR Chapter 8; and

2. [including] Requirements for executing a contract with a charter school board of directors that articulates:

a. The rights and responsibilities of each party regarding school autonomy;

b. Funding;

c. Administration and oversight;

d. Outcomes;

e. Measures for evaluating success or failure;

f. Performance consequences; and

g. Other material terms;

(d) The evidence the authorizer shall require, the evaluation the authorizer shall conduct using the performance framework, and other aspects of the authorizer's ongoing monitoring of the charter school including:

1. Ensuring a charter school's legally entitled autonomy;

2. Protecting [student] student's civil, disability, safety, and educational rights;

3. Informing intervention, revocation, and renewal decisions; and

4. Providing annual reports as required by KRS 160.1597(5);

(e) The requirements for reporting to the public;

(f) The authorizer's authority to intervene in charter schools, when and if necessary;

(g) Guidelines concerning the format and content essential for an applicant to demonstrate the capacities necessary to establish and operate a public charter school, pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(h) The timeline for submission, review, decision, and appeal for a charter application, and a request for renewal. An authorizer described in KRS 160.1590(13)(c) and (d) shall consult with the superintendent of the resident local school district if[when]

planning this timeline;

(i) A template of the assurances an authorizer shall require in a charter contract;

(j) The following evidence sufficiency requirements for the charter application:

1. The charter school board of directors' ability to meet the financial solvency and sustainability demands of their proposed budget;

2. Competent and timely charter school start-up and operation;

3. Foreseen and unforeseen closure; and

4. All debts and obligations during each fiscal year of the charter contract and during the entire contract term;

(k) The financial transparency requirements that shall[will] apply to a charter school, including specific provisions regarding publication on the authorizer's website and the charter school's Web site[website];

(l) The charter school closure protocol and requirements;

(m) A description of the authorizer's organizational capacity, including its commitment of human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(n) The authorizer's requirements for solicitation and evaluation of a charter application, including its implementation of a comprehensive application process that includes use of the Kentucky Charter School Application and Addendum, and rigorous criteria, and approval of only a charter application that demonstrates a strong capacity to establish and operate a charter school;

(o) The authorizer's charter renewal and revocation processes and rigorous criteria, including its design and implementation of a transparent and rigorous process that uses comprehensive academic, financial, and operational performance data to make merit-based renewal and revocation decisions; and

(p) The requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for an applicant, a board of directors, an education service provider, a charter school, and their employees.

Section 3. Standards of Authorizer Performance Generally. (1) Prior to authorizing a charter school, an authorizer as established[described] in KRS 160.1590(13)(c) and (d) shall file the Notice of Intent with the Kentucky Board of Education.

(2) An authorizer shall restrict the expenditure of funds received as a result of charter authorization and oversight to the purpose of fulfilling authorizing obligations pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(3) Pursuant to KRS 160.1596(5)(e), an authorizer shall include in its report and place in a publicly accessible location on its website information on the following:

(a) The oversight and any services provided by the authorizer to the public charter schools under the authority of the authorizer;

(b) The authorizing functions provided by the authorizer to the public charter schools under its jurisdiction, including the operating costs and expenses of the authorizer as detailed in annual audited financial statements that conform to generally accepted accounting principles;

(c) All use of charter authorizing revenue including expenditures, contracts, and revenues, in the format required by the commissioner of education; and

(d) The reports that an authorizer is required to make pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) The authorizer, or its designee for charter authorizing, shall participate in annual in-service training as follows:

(a) Each authorizer or member of the authorizer's board of directors or governing board of the authorizer shall complete:

1. Twelve (12) hours of annual training for an authorizer or member with zero to eight (8) years of experience as an authorizer and eight (8) hours for an authorizer or a member with more than eight (8) years of experience as an authorizer~~Nine (9) hours of annual training, with six (6) additional hours of training for new authorizers and new members~~; or

2. Competency-based annual in-service training;

(b)[The] In-service training toward the board of education member training requirements of KRS 160.180 may also count

toward this requirement, to the extent the requirements of both are met by the content of the training, and the training for this requirement shall include the following topics of authorizer responsibility and charter school formation and operation:

1. Financial governance and transparency;
2. Conflict of interest;
3. Charter application;
4. Charter school contracting;
5. Charter school monitoring;
6. Charter school renewal, nonrenewal, and revocation;
7. Charter school closure;~~[and]~~
8. Ethics;

9. Curriculum and instruction;

10. Educational services provided for special needs, at risk, English learner, gifted, and other special population students; and

11. Physical restraint and seclusion of students; and

(c) The training shall be approved by the commissioner of education.

(5) An authorizer shall submit to the department a written assurance of a charter school's compliance with the pre-operating requirements in this administrative regulation and in the charter contract before the opening of the charter school.

(6) An authorizer shall require the sharing of best practices between the charter school and the resident local school district.

Section 4. Standards of Authorizer Performance Concerning Charter Applications. (1) Pursuant to KRS 160.1591 and 160.1594(1)(e)2 and to the extent not prohibited by federal law, an authorizer shall not approve a charter application that is:

(a) From an applicant that is or includes:

1. A for-profit organization, or its designee;
2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A; or

(b) That has in the proposed board of directors:

1. A for-profit organization, or its designee;
2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A.

(2) An authorizer shall require a charter application to be submitted on the Kentucky Charter School Application and Addendum and may require additional information from the applicant.

(3) An authorizer shall publish a copy of a submitted charter application on its website within three (3) days of submission by the applicant to the authorizer.

(4) An authorizer shall provide a copy of a submitted charter application to the resident local school district superintendents and to any other authorizer of charter schools in that local school district within three (3) days of submission by the applicant to the authorizer.

(5) An authorizer established[described] in KRS 160.1590(13)(a) or (b) shall provide a copy of a submitted charter application for a regional achievement academy within a regional achievement zone to the superintendents of the other local school districts of the regional achievement zone within three (3) days of submission by the applicant to the authorizer.

(6) An authorizer shall allow a resident local school district superintendent to file a letter with supporting evidence objecting to the approval of the charter application on the basis of the substantial hardship that may result for the students of the resident local school district who do not attend the charter school. An authorizer shall publish a copy of the letter and supporting

evidence from the resident local school district superintendent on the authorizer's website within three (3) days of submission by the superintendent to the authorizer and the authorizer shall review this evidence prior to approving a charter application.

(7) An authorizer shall allow a resident local school district superintendent to file a letter of support for a charter application and shall publish a copy of the resident local school district superintendent letter on the authorizer's website within three (3) days of submission by the superintendent to the authorizer.

(8) An authorizer shall require a resident local school district superintendent to provide information and evidence regarding the academic performance of the students identified in the charter application as the targeted student body or community. An authorizer shall publish a copy of this information on the authorizer's website within three (3) days of submission by the superintendent to the authorizer, to the extent not prohibited by confidentiality laws.

(9) An authorizer shall comply with the following requirements in reviewing the charter application:

(a) Request and secure a certificate of existence from the Secretary of State, pursuant to KRS 14A.2-130, for any business entity or its designee included in the applicant or in the proposed charter school board of directors; and

(b) If the applicant or the board of directors includes a foreign entity, request and secure a certificate of authorization for the foreign entity from the Secretary of State, pursuant to KRS 14A.2-140.

(10) The department shall develop a charter application scoring rubric that an authorizer may utilize in reviewing a charter application.

(11) An authorizer shall require an applicant or proposed board of directors for a charter school to include in the charter application ~~[the following]~~:

(a) Performance information, financial information, and closure information for any charter school under the applicant or board of directors;

(b) Details and documentation of the outreach the applicant or proposed board of directors has had with the students or community that is the focus of the charter application; and

(c) Details of whether the charter application replicates or substantially replicates:

1. A charter application that the applicant, the proposed board of directors, or another entity previously withdrew from consideration and the reasons the charter application was withdrawn;

2. A charter application that was rejected by an authorizer and the reasons the charter application was rejected; or

3. A charter school that was previously closed and the reasons for the closure.

(12) An authorizer shall provide on the authorizer's website the names of all persons, and their roles, who are involved in the review of charter applications. Review of charter applications shall be conducted pursuant to the requirements of the Open Meetings Act, KRS 61.800 et seq.

(13) An authorizer shall not approve a charter application that does not meet the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(14) Within five (5) days of the authorizer's approval, the authorizer shall submit an approved charter application to the commissioner of education for review and approval in accordance with Section 5(11) of this administrative regulation [commensurate with subsection (11) of Section 5].

Section 5. Standards of Authorizer Performance Concerning Charter Contracts. (1) Prior to negotiating a charter contract with a board of directors, an authorizer shall verify the charter school board of directors' registration as a non-profit business entity with the Kentucky Secretary of State pursuant to KRS Chapter 14A.

(2) An authorizer shall negotiate and enter a charter contract with a charter school board of directors in compliance with KRS 160.1590(5) and (6); 160.1591(2); 160.1592(3), (7), (8), (9), (10), (11), and (20); 160.1593(3); 160.1594(1); 160.1596(1); 160.1597(1), (2), and (6); 160.1598(1), (5), (6), and (7).

(3) An authorizer shall include pre-opening requirements or conditions in the charter contract as follows:

(a) An authorizer shall establish mutually agreed upon pre-opening requirements or conditions to:

1. Monitor the start-up progress of a newly approved public charter school;

2. Ensure that the charter school is prepared to open timely and smoothly on the date agreed; ~~[-]~~ and

3. Ensure that the charter school meets all benchmarks related to facilities, health, safety, insurance, school personnel, enrollment, curriculum and instruction, operations and fiscal management, governance, and other legal requirements for the charter school opening; and

(b) Failure by the charter school to comply with the pre-opening requirements or conditions may result in the immediate revocation of the charter contract and:

1. May result in the delay in the opening of the charter school by up to one (1) year if the authorizer does not determine that the charter school is more likely than not to close during the school year; or

2. Shall result in the delay in the opening of the charter school by up to one (1) year if the authorizer does determine that the charter school is more likely than not to close during the school year.

(4) An authorizer shall include in the charter contract with the charter school board of directors provisions for charter school financial solvency and sustainability, including:

(a) A requirement that no member of the charter school board of directors, no education service provider, and no charter school employee shall knowingly recommend and no member of the charter school board of directors shall knowingly vote for an expenditure in excess of the charter school's income and revenue of any fiscal year, as shown by the budget adopted by the charter school board of directors and approved by the authorizer;

(b) A requirement that a member of the charter school board of directors, an education service provider, or a charter school employee who knowingly expends or authorizes the expenditure of charter school funds or who knowingly authorizes or executes any employment, purchase, or contract, in violation of this section, shall be jointly and severally liable in person and upon any official fidelity bond given to the authorizer to the extent of any payments on the void claim; and

(c) A requirement that, if at any time during any fiscal year of the charter school's existence, a member of the charter school board of directors, an education service provider, or a charter school employee knows or reasonably should know that the charter school has or will become unable to pay in full its projected expenses as they fall due, the charter school shall immediately so advise the department and the authorizer, and shall provide the department and the authorizer with all financial information relating to revenues and expenses of the charter school necessary for the department and the authorizer to determine the extent and cause of any potential operating deficit. If the member of the charter school board of directors, the education service provider, or the charter school employee fails to provide the notice to the department and the authorizer required by this subsection or fails to cooperate with the department and the authorizer in the production of financial information pursuant to this subsection:

1. The authorizer shall determine if/whether grounds exist to revoke the charter contract; and

2. The knowingly acting member of the charter school board of directors, the education service provider, or the charter school employee may be subject to the liability established~~[described]~~ in paragraph (4)(b) of this section.

(5) An authorizer shall include in the charter contract the specific, exclusive reasons and timelines for closure initiated by the charter school board of directors, and the closure protocol and policies and procedures applicable to closure of the charter school.

(6) An authorizer shall require in the charter contract the closure requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(7) An authorizer shall require in the charter contract that the charter school shall not prohibit a student from attending and shall not unenroll or withdraw a student unless the charter school has

complied with KRS 158.150.

(8) An authorizer shall require in the charter contract that the charter school board of directors maintain separate accountings of all funds received and disbursed by each charter school under the charter school board of directors.

(9) An authorizer shall require in the charter contract that any contract the charter school board of directors enters with an education service provider has to be approved by the authorizer prior to execution and that any contract the charter school board of directors enters with an education service provider shall comply with the following:

(a) Clearly establish the primacy of the charter contract over the contract between the charter board of directors and the education service provider;

(b) Clearly identify the charter school board of directors as the party ultimately responsible for the success or failure of the charter school, and clearly define the education service provider as a vendor of services;

(c) Prohibit the education service provider from selecting, approving, employing, compensating, or serving as members of the charter school board of directors;

(d) Require the charter school board of directors to directly select, retain, and compensate the charter school's legal counsel, finance staff, audit firm, and school leader;

(e) Provide for payments to the charter school to be made to an account controlled by the charter school board of directors, not the education service provider;

(f) Require all instructional materials, furnishings, and equipment purchased or developed with charter school funds be the property of the charter school, not the education service provider;

(g) Identify and describe the roles and responsibilities of the charter school board of directors and the education service provider, including all services to be provided under the contract between the charter school board of directors and the education service provider;

(h) Identify and describe the performance measures and consequences by which the charter school board of directors shall hold the education service provider accountable for performance, aligned with the performance measures in the charter contract;

(i) Identify and describe with specificity all compensation to be paid to the education service provider, including all fees, bonuses, and the conditions, consideration, and restrictions on such compensation;

(j) Identify and describe the terms of any facility agreement that may be part of the relationship between the charter school board of directors and the education service provider;

(k) Identify and describe financial reporting requirements and provisions for the charter school board of directors' financial oversight of the education service provider and the charter school;

(l) Identify and describe all other financial terms of the contract, including disclosure and documentation of all loans or investments by the education service provider to the charter school board of directors, and provision for the disposition of assets upon closure in accordance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(m) Include assurances that the charter school board of directors, at all times, shall maintain independent fiduciary oversight and authority over the charter school budget and ultimate responsibility for the charter school's performance;

(n) Include provisions for contract termination without penalties for the charter school and without costs beyond the pro-rated value of the services provided by the education service provider;

(o) Assure:

1. That the charter school board of directors shall be structurally independent from the education service provider and shall set and approve charter school policies;

2. That the terms of the contract between the charter school board of directors and the education service provider are reached through arm's-length negotiations in which the charter school board of directors is represented by legal counsel that does not also represent the education service provider; and

(p) Identify and describe the respective responsibilities of the charter school board of directors and the education service

provider in the event of school closure.

(10) An authorizer shall prohibit a charter school board of directors, in the charter contract, from delegating the charter school board of directors' responsibilities in subsection (9) of this section to the education service provider.

(11) ~~An authorizer shall not~~**[No authorizer shall]** enter a charter contract for start-up, conversion, or renewal of a charter school, or agree to any charter contract amendment, unless the charter contract or amendment is approved by the commissioner of education as follows:

(a) An authorizer shall provide the commissioner of education a copy of a proposed charter contract or proposed amendment;

(b) Within fifteen (15) days of receipt of the proposed charter contract or amendment from the authorizer, pursuant to KRS 160.1594(9), the commissioner of education shall provide to an authorizer and the charter school board of directors approval of the contract or:

1. The reasons for a denial and any suggestions for remedy of these reasons; and

2. Notice of the opportunity for resubmission of the remedied contract or amendment to the commissioner of education; and

(c) Any failure to meet the commissioner of education's requirements for approval shall render the charter contract or its amendment void.

Section 6. Standards of Authorizer Performance Concerning Charter School Monitoring. (1) An authorizer, that determines a charter school board of directors has governance over more than one (1) charter school and has failed to meet the requirements of KRS 160.1592, shall commence an investigation to determine if the charter school board of directors is in compliance with the charter contracts for every other charter school under the authorizer's jurisdiction.

(2) An authorizer shall monitor the performance of the charter contract by a charter school board of directors, and any educational service provider. If the authorizer believes there is an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, the authorizer shall commence an investigation.

(3) An authorizer that verifies an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the commissioner of education and may request assistance from the commissioner of education in addressing and remedying the issue.

(4) An authorizer that verifies an issue with any aspect of the performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the charter school of the issue and take necessary action, including unilateral imposition of conditions on the charter school, revocation, or nonrenewal of the charter contract, to resolve the issue and to provide notice of the issue and the resolution to the charter school's adult students, emancipated youth students, parents, persons with custody or charge, and the department.

(5) An authorizer shall at least monthly review the financial budget reports of the charter school and take the following action:

(a) If the budget projections indicate that the charter school's annual operating expenses may at any time during the school year cause the annual operating revenues to fall below two (2) percent of the total projected annual operating revenues included in the school's approved budget, the charter school shall provide specific notice of this to the authorizer and the authorizer shall:

1. Require the charter school to implement a cash management plan approved by the authorizer;

2. Commence a more in-depth review, and an audit if necessary, of the charter school's financial budget reports, expenditures, and revenues;

3. Request financial management assistance from the charter school from the department; and

4. Restrict the charter school's expenditures and require the authorizer's approval prior to expenditure of charter school funds

for the remainder of the school year; and

(b) If the charter school defaults on a financial obligation or if the authorizer otherwise suspects the charter school may close prior to the end of the school year or the charter contract term, the authorizer shall:

1. Consult with the commissioner of education;

2. Communicate with the charter school board of directors to determine the need for charter contract revocation;

3. Commence actions under (a) above;

4. Review the closure protocol;

5. Review the charter contract termination provisions;

6. Communicate with the charter school board of directors regarding the closure protocol and contract provisions for termination; and

7. Notify students and resident local school districts, as soon as necessary to ensure all students and resident local school districts are provided adequate time to prepare for the student transitions and to provide free and appropriate public education to any returning students.

(6) An authorizer shall revoke the charter contract and determine the timeline for closure if the authorizer determines the charter school:

(a) Is financially insolvent;

(b) Is financially unsustainable for the remainder of the school year or the charter contract term; or

(c) Has violated or threatened the health and safety of the students of the public charter school, pursuant to KRS 160.1598(7).

(7) The department shall develop a charter contract performance framework that an authorizer may utilize in developing a charter contract performance framework. In addition to the requirements of KRS 160.1596, the authorizer's charter contract performance framework shall include academic, financial, and organizational performance frameworks, and targets in the following areas:

(a) Student assessment and accountability;

(b) Student graduation rates;

(c) Student promotion rates;

(d) Student attendance rates;

(e) Student admission and enrollment in postsecondary institutions; and

(f) Other outcomes.

Section 7. Standards of Authorizer Performance Concerning Charter Approval, Revocation, Renewal, and Nonrenewal. (1) An authorizer shall not approve a charter application, contract with, or renew a contract with a charter school board of directors for a charter school that:

(a) Does not operate:

1. A breakfast program under the Child Nutrition Act of 1966, 42 U.S.C. 1773, as amended (CNA), and a lunch program under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq. (NSLA); or

2. A breakfast and lunch program with provision of meals at no cost to students who qualify for free meals under the CNA and NSLA and with the provision of meals at a reduced cost to students who qualify for reduced price meals under the CNA and NSLA; or

(b) Does not provide initial and continuing evidence and assurances of the charter school's financial solvency and financial sustainability, as demonstrated initially by the financial plan in the charter application, to cover the expenses of start-up or conversion, operation, and any foreseen or unforeseen closure of the charter school during the fiscal year or during the contract term.

(2) An authorizer shall require for approval of a charter application, for contracting with a charter board of directors, for performance of a charter contract, and for renewal of a charter contract, the following:

(a) Inclusion of at least two (2) local school district resident parents or persons with custody or charge of local school district resident students who will attend the charter school in a charter school board of directors;

(b) Exercise by a charter school board of directors of their authority in KRS 160.1592(3)(p)4 and 5 only as allowed for a local

board of education in KRS 160.540;

(c) Participation of all members of a charter school board of directors in annual training, approved by the commissioner of education, on topics of charter school governance and operation including financial governance and transparency; conflict of interest; curriculum and instruction; educational services provided for special needs, at risk, English learner, gifted, and other special population students; physical restraint and seclusion of students; and ethics. Fulfillment of this requirement shall occur through:

1. Twelve (12) hours of annual training for a new charter school board member or a member with zero to eight (8) years of experience as a charter school board member and eight (8) hours for a charter school board member with more than eight (8) years of experience as a charter school board member ~~Nine (9) hours of annual training, with six (6) additional hours of training for new charter school board members and members of newly approved charter schools during the first year after approval;~~ or

2. Competency-based annual training;

(d) Attendance by the authorizer, or its designee for authorizing, or at least one (1) member of the authorizer's board of directors at any due process hearing conducted pursuant to KRS 158.150 to suspend or expel a charter school student. A charter school board of directors, with the consent of the parent, person with custody or charge, adult student, or emancipated youth student, and as otherwise allowed by confidentiality laws, may invite the resident local district superintendent to attend the due process hearing and to provide information to the charter school board of directors as to the educational services the resident local school district would provide the student:

1. If the student is expelled from the charter school; and

2. If the charter school board of directors determines, on the record and supported by clear and convincing evidence that the charter school cannot provide or assure that educational services are provided to the student in an appropriate alternative program or setting because the expelled student posed a threat to the safety of other students or school staff and could not be placed into a state-funded agency program;

(e) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of the Individual with Disabilities Education Act dispute resolution procedures, 707 KAR 1:340, regarding a student attending a charter school or the services provided by a charter school;

(f) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of physical restraint or seclusion of charter school students;

(g) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of allegations received or substantiation of violation of any health, safety, civil rights, and disability rights of students, staff, or parents or persons with custody or charge;

(h) Pursuant to KRS 160.1592(14), adherence by the charter school board of directors, and any education service provider, to the requirements of KRS 160.330 and 702 KAR 3:220 for the waiver of fees for students eligible for free or reduced price lunch;

(i) Provision, to the authorizer and to the public by the charter school board of directors and any education service provider, updates on the charter school's performance of the charter contract, according to the charter contract and performance framework;

(j) Restriction on expenditure of charter school resources and funds for school purposes only;

(k) Prohibition on the expenditure of charter school resources and funds in excess of the fair market value of the product, service, or consideration received;

(l) Prohibition on the disposal of charter school resources for less than the fair market value of the resource disposed;

(m) Restriction on the addition or moving of any location of the charter school without the written consent of the authorizer and amendment of the charter contract; and

(n) Provision, to the authorizer by the charter school board of directors and any education service provider, of student enrollment and attendance records and data at least monthly during the school year.

(3) An authorizer shall revoke, effective at the end of the school year, a charter contract for any of the reasons in KRS 160.1598(6).

(4) An authorizer shall require continuous enrollment at a charter school of at least eighty (80) percent of the charter contract minimum student enrollment requirements and shall monitor and take action as follows if that minimum is not met:

(a) The charter school shall provide reports to the authorizer on student enrollment and attendance at least twice a month; and

(b) Failure of the charter school to maintain this continuous, minimum student enrollment shall result in an immediate review by the authorizer of:

1. The charter school's operations;

2. The charter school's financial solvency;

3. The charter school's financial sustainability through the end of the school year and the end of the charter contract term;

4. The potential for closure;

5. Violation of the charter contract; and

6. The need for imposition of unilateral conditions, amendment, nonrenewal, or revocation of the charter contract, or immediate revocation of the charter contract pursuant to KRS 160.1598(7).

(5) An authorizer shall not approve a charter application for a start-up public charter school or conversion charter school if the applicant or proposed member of the board of directors has been previously found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, and the authorizer shall ensure compliance with this requirement as follows:

(a) The authorizer shall consult with the Kentucky Board of Education's designated agency to ensure compliance with this requirement;

(b) The Kentucky Board of Education's designated agency may provide copies of its relevant written reports described in 702 KAR 7:065 Section 3(17) to the authorizer; and

(c) If the authorizer does determine a member of the applicant or the proposed board of directors has previously been found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, the authorizer may only approve a charter application, contract with, or renew a charter for a start-up public charter school or conversion charter school that does not sponsor interscholastic athletic activities, unless the charter school's sponsorship of interscholastic athletic activities is approved by the Kentucky Board of Education.

(6) An authorizer shall remove a member of a board of directors that has been convicted of a crime described in KRS 61.040 and remove any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure when the member or members threaten the health, safety, civil rights, or disability rights of the students or the community pursuant to KRS 160.1598(11).

(7) An authorizer shall revoke or nonrenew a charter school contract if the commissioner of education has determined a member of the board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Assessment Program or KRS 160.1592(3)(g), for a student assessment included in:

(a) The performance framework of the charter contract; or

(b) The state accountability system.

(8) For issues in a charter school's performance that do not require immediate action by the authorizer, as stated in KRS 160.1590 to 160.1599, and 701 KAR Chapter 8, or otherwise to protect the health, safety, civil rights, disability rights, and well-being of students and the community, an authorizer may utilize a progressive system of monitoring consequences including notices of deficiencies or conditions unilaterally imposed on the charter school prior to revocation or nonrenewal. An authorizer shall share

publicly a notice of deficiency or a condition unilaterally imposed on the charter school as well as the underlying charter school performance issue and shall provide a copy to the commissioner of education and to the Kentucky Board of Education.

(9) An authorizer shall comply with the following prior to approving a charter application for a charter school or renewing a charter school contract:

(a) Holding in the resident local school district a public hearing to allow for public comment on the charter application; and

(b) Allowing public comment to be submitted in writing prior to the hearing, or oral or written public comment at the hearing and allowing comment at the public hearing by a resident superintendent who has filed an objection to the charter application.

Section 8. Standards of Authorizer Performance Concerning Charter Closure. (1) An authorizer's charter school closure protocol shall include the following:

(a) Provision, to the authorizer by the charter school, of contact information and resident local school district information for all parents, persons with custody or charge, adult students, and emancipated youth students;

(b) Notification to all parents, persons with custody or charge, adult students, and emancipated youth students of *[the following]*:

1. The closure decision;
2. The closure process;
3. Information on student instruction and reassignment;
4. Information on courses, levels, and credits completed by the student;

5. Information on the process for obtaining a copy of the student's education records; and

6. Contact information for additional information;

(c) Notification to the resident local school districts and the department of *[the following]*:

1. The closure decision;
2. The closure date;
3. The closure process;
4. Availability and timeline for appeals and their intersection with the closure protocol;

5. A copy of the notification provided to charter school parents, persons with custody or charge, adult students, and emancipated youth students;

6. Information on student instruction and reassignment; and

7. Contact information for additional information;

(d) Budget review and revision to limit expenditures to only those in the approved budget required for fulfilling the obligations through closure;

(e) Communication of the budget information to parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and the Kentucky Board of Education;

(f) Meeting of the authorizer with the charter school board of directors and charter school employees to notify and coordinate *[the following]*:

1. The closure;
2. The closure process;
3. The closure timeline and dates;
4. Information on student instruction and reassignment;
5. Employment, payroll, and benefits information;
6. Transfer of federal and state funds and assets according to the federal and state requirements; and

7. Contact information for additional information;

(g) Additional and final notification to parents and resident local school districts, including *[the following]*:

1. Information on the existence and role of any appeal of the closure;

2. Identifying the last student attendance day;

3. Detailing end of the year activities and transition activities for students; and

4. Providing information and assistance for reassignment of students;

(h) Procedures and requirements for establishment of transition teams, development of closure plan, and assignment of

roles for closure;

(i) Procedures and requirement for scheduling closure meetings with the transition team, parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and employees;

(j) Procedures and requirements for a final report from the charter school board of directors to the authorizer and the department detailing completion of the closure plan;

(k) Maintenance of the charter school facilities;

(l) Identification and notification of all creditors and debtors of the board of directors and the Teachers' Retirement System and the County Employees Retirement System;

(m) Notification of federal, state, local, and private grantors;

(n) Termination of any contract with an education service provider;

(o) Accounting, inventory, and protection of assets;

(p) Notification of employee benefit providers;

(q) Notification of all contractors and termination of all contracts;

(r) Transfer of student and personnel records;

(s) Notification of the IRS;

(t) Issuance of final grades to students;

(u) Dissolution of the charter school;

(v) Maintenance of records; and

(w) Completion of an independent final audit within six (6) months of the closure of the charter school that may function as the annual audit, and that includes at least *[the following]*:

1. An accounting of all financial assets, including cash and accounts receivable and an inventory of property, equipment, and other items of material value;

2. An accounting of the liabilities, including accounts payable and any reduction in apportionments as a result of audit findings or other investigations, loans or grants, and unpaid staff compensation; and

3. An assessment of the disposition of any restricted funds received by or due to the charter school.

(2) An authorizer's charter school closure protocol shall include the following regarding distribution of assets upon closure:

(a) The assets of the charter school, if sufficient to satisfy all the outstanding debts of the charter school, shall be distributed in the following order:

1. To satisfy outstanding payroll obligations for employees of the public charter school;

2. To creditors of the charter school; and

3. To the resident local school districts, in direct proportion to the percentage of the charter school student body that will be returning to each resident local school district after closure;

(b) If the assets of the public charter school are insufficient to satisfy all debts of the charter school, the prioritization of the distribution of assets may be determined by a court of law; and

(c) A charter school board of directors shall distribute its assets within six (6) months of closure of the charter school, unless granted an extension by the authorizer or ordered otherwise by a court of law.

(3) The commissioner of education, upon request by the authorizer, may appoint an independent third party, paid from the charter school's funds, to manage the closure with assistance from the department. The commissioner of education may remove an appointed independent third party for cause and appoint a replacement.

(4) The department shall develop a charter closure protocol guide that an authorizer may utilize in developing the closure protocol.

Section 9. Investigation of an Authorizer. (1) The Kentucky Board of Education shall conduct a special review of an authorizer as follows:

(a) If there is persistently unsatisfactory performance of the portfolio of the public charter schools of the authorizer;

(b) If there is a pattern of well-founded complaints about the authorizer or its public charter schools; or

(c) If the Kentucky Board of Education finds other objective circumstances warranting investigation.

(2) The Kentucky Board of Education shall request investigation by the commissioner of education.

(3) In reviewing and evaluating the performance of an authorizer, the Kentucky Board of Education shall apply nationally recognized standards for quality in charter authorizing, in addition to the standards of performance included in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) If at any time the Kentucky Board of Education determines that an authorizer is not in compliance with an existing charter contract or the requirements for an authorizer, the Kentucky Board of Education shall either:

(a) Notify the authorizer in writing of any identified problem and the authorizer shall have a reasonable opportunity to respond and remedy the problem; or

(b) If deemed necessary, take action against the authorizer under Section 10.

Section 10. Consequences. (1) The Kentucky Board of Education may, in addition to its authority over authorizers and their action on a charter application, renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter school pursuant to KRS 160.1595(1), place an authorizer on probation and require the following during probation of an authorizer:

(a) Additional training for the authorizer;

(b) Meeting with the commissioner of education to provide status reports and solicit feedback on charter school performance during a charter contract;

(c) Written and in-person status reports to the Kentucky Board of Education on the authorizer's monitoring of charter schools and other authorizing activity;

(d) Approval by the commissioner of education on the authorizer's monitoring activities, imposition of unilateral conditions, and revocation decisions;

(e) Approval of the Kentucky Board of Education for any renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter contract; and

(f) Any other consequences the Kentucky Board of Education deems necessary to ensure compliance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) The Kentucky Board of Education shall establish/set the length and extent of the probation of the authorizer's authority and reporting requirements for the authorizer to report on the progress of the charter schools authorized by the authorizer.

(3) The Kentucky Board of Education shall state in its order probating the authority of the authorizer [the following]:

(a) The extent of the probation of the authorizer's authority;

(b) The length of the probation of the authorizer's authority;

(c) The grounds under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for the probation of the authorizer's authority; and

(d) The anticipated changes that would have to occur for the Kentucky Board of Education to consider ending the probation of the authorizer's authority under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) The Kentucky Board of Education may entertain a request by the authorizer for termination of the probation if the authorizer submits, at least forty-five (45) days prior to the Kentucky Board of Education's regular meeting, the following:

(a) The authorizer's request for ending the probation; and

(b) The authorizer's evidence of:

1. Its efforts to correct the grounds for the probation of its authorizing authority;

2. The changes required in the Kentucky Board of Education's order; and

3. Its plan to ensure future compliance with the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

Section 11. Statewide Evaluation of Public Charter School Authorizers. (1) Beginning with the conclusion of the 2018-2019 fiscal year, the department shall provide an annual report on the state's public charter school authorizers and their charter schools to the Governor, the Interim Joint Committee on Education, the

secretary of the Education and Workforce Development Cabinet, and the public that includes information from the annual reports submitted by every authorizer as well as any additional relevant data compiled by the department.

(2) The annual report shall include:

(a) For all public charter schools in the state, by individual charter school, and by authorizer, and disaggregated by level, school level, or educational level; race;[;] free and reduced price lunch eligibility status;[;] and status as a student with special needs:

1. The academic performance;

2. The number of students enrolled, withdrawn, suspended, and expelled;

3. Financial audit results;

4. Financial solvency and sustainability for the fiscal year and the contract term;[and]

5. Closure information; and

6. For charter schools with education service providers, information on the contracts and relationships between charter schools and education service providers and any financial risk, lack of accountability, and program performance risk resulting from the contracts and relationships between charter schools and education service providers;

(b) A comparison of the performance and growth of public charter school students with the performance and growth of comparable groups of students in noncharter public schools;

(c) A detailed update on the authorizing process;

(d) Recommendations for adjustments to public charter school governance and oversight; and

(e) The department's assessment of the successes, challenges, and areas for improvement in meeting the purposes of KRS 160.1591, including the department's recommendations as to any suggested changes in state law or policy necessary to strengthen the state's public charter schools.

Section 12. Incorporation by Reference. (1) "Kentucky Charter School Application and Addendum", February 2018, is incorporated by reference.

(2) "Notice of Intent", February 2018, is incorporated by reference. This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner

MARY GWEN WHEELER, Chair

APPROVED BY AGENCY: December 14, 2017

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

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 8, 2018)

701 KAR 8:030. Charter school appeal process.

RELATES TO: KRS Chapter 13B, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599

STATUTORY AUTHORITY: KRS 13B.170, 160.1598

NECESSITY, FUNCTION, AND CONFORMITY: KRS

160.1598 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to appeal a decision of an authorizer denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a charter contract. This administrative regulation establishes/provides the requirements for the appeal process.

Section 1. Definitions. (1) "Appellant" means the applicant or charter school board of directors filing the appeal of an authorizer's decision denying a charter application or a charter contract amendment request, unilaterally imposing conditions on the applicant or charter school, or revoking or nonrenewing a charter contract.

(2) "Applicant" is defined by/in KRS 160.1590(3).

(3) "Authorizer" or "public charter school authorizer" is defined by/in KRS 160.1590(13).

(4) "Charter" means charter contract.

(5) "Charter application" is defined by/in KRS 160.1590(4).

(6) "Charter contract" or "contract" is defined by/in KRS 160.1590(5).

(7) "Charter school" means a public charter school.

(8) "Charter school board of directors" is defined by/in KRS 160.1590(6).

(9) "Days" means calendar days calculated pursuant to KRS 446.030.

(10) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(11) "Local school district" is defined by/in KRS 160.1590(10).

(12) "Notice" means written notice.

(13) ["Notify" means provide written notice.

~~(14)]~~ "Public charter school" is defined by/in KRS 160.1590(12).

~~(14)](15)]~~ "Unilateral imposition of conditions" means the authorizer has placed or attempted to place conditions or requirements that are not required by KRS 160.1590 through/te 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

~~(15)](16)]~~ "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 through/te 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places or attempts to place:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

Section 2. Policies and Procedures. ~~(1)]~~ The authorizer shall create and publish on its website policies and procedures for its implementation of KRS 160.1595 and 160.1598 as established in subsections (1) through (5) of this section. The authorizer shall include in its policies and procedures:

(1)]follows:

~~(a) The authorizer shall include in its policies and procedures]~~ A rubric for its evaluation of a charter application and its rubric for evaluation of charter contract performance for renewal pursuant to KRS 160.1598;

(2)]:

~~(b) The authorizer shall publish on its website its policies and procedures, including any rubric for evaluation of charter contract performance for renewal under KRS 160.1598;~~

~~(c) The authorizer shall include in its policies and procedures]~~ The circumstances that shall result in automatic revocation or nonrenewal of a charter contract, only as allowed in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(3)](d) The authorizer shall include in its policies and procedures] The requirements and timeline for timely notification of the prospect of revocation or nonrenewal of the charter contract

and of the reasons for the[such] possible closure;

~~(4)](e) The authorizer shall include in its policies and procedures]~~ The reasonable deadline and requirements for a charter school's opportunity to respond to the authorizer's notice of the prospect of revocation or nonrenewal of the charter contract; and

~~(5)](f) The authorizer shall include in its policies and procedures]~~ The requirements for appeal of an authorizer decision denying a charter application or a charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school.

Section 3. Appeal. (1) The appellant shall submit its appeal of an authorizer's decision denying a charter application or a charter amendment request, nonrenewing or revoking a charter contract, or imposing unilateral conditions on an applicant or charter school to the commissioner of education, to receive the appeal on behalf of the Kentucky Board of Education, as established in paragraphs (a) through (d) of this subsection.~~follows:]~~

(a) The deadline for appeals to the Kentucky Board of Education under KRS 160.1595 shall be thirty (30) days, as evidenced by the face of the authorizer's notice to the charter school or applicant of the decision to deny a charter application or charter contract amendment request, to impose unilateral conditions on the applicant or the charter school, or to revoke or nonrenew the charter contract.~~;~~;

(b) The appeal shall include the name, phone number, mailing address, and email address of the contact for the appellant and any legal counsel.~~;~~;

(c) The appeal shall include a statement from the appellant whether there is a request for a hearing, and whether the hearing is requested to be held in the local school district in which the charter school lies or would lie.~~;~~; ~~and]~~

(d) The appeal shall be submitted on the Notice of Appeal and include any necessary additional documentation.

(2) The Kentucky Board of Education shall affirm the decision of the authorizer based on the appellant's failure to timely file the appeal, pursuant to KRS 160.1595(2) and subsection (1)(a)(1)(a) of this section, and may affirm the decision of the authorizer based on the failure of an appellant to meet any of the other deadlines of this administrative regulation or the hearing process.

(3) Within five (5) days of the commissioner's receipt of the appeal, the commissioner of education on behalf of the Kentucky Board of Education shall provide notice to the appellant and the authorizer acknowledging receipt of the appeal, and:

(a) If a hearing is requested in the appeal, the commissioner of education shall designate a hearing officer to set the prehearing schedule, to conduct a KRS Chapter 13B public hearing before the Kentucky Board of Education on the appeal, and to set the location of the public hearing; or

(b) If a hearing is not requested in the appeal or if the appellant waives its right at any time to a hearing by providing written notice of its waiver to the commissioner of education or to any previously appointed hearing officer, the hearing officer shall set the schedule for written pleadings under KRS 13B.090(2) to be submitted to the Kentucky Board of Education without a hearing.

(4) The written decision of the Kentucky Board of Education shall be issued no later than seven (7) days after the conclusion of the hearing or the meeting to decide upon the written pleadings, which shall be held within the time allowed in KRS 160.1595(3)(a).

Section 4. Emergency Action.~~(1)]~~ Emergency action taken by the authorizer pursuant to KRS 160.1598(7) shall be taken in accordance with KRS 13B.125.

Section 5. Automatic Revocation or Nonrenewal.~~(1)]~~ The Kentucky Board of Education shall affirm revocation or nonrenewal of a charter school for whom the commissioner of education has determined a member of the charter school board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080,

Administration Code for Kentucky's Educational Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in the performance framework of the charter contract or the state accountability system after:

(1)(a) The department's presentation of a preponderance of evidence at a KRS Chapter 13B hearing before the Kentucky Board of Education that a member of the charter school board of directors, or an education service provider at the direction of a member of the charter school board of directors, or an employee at the direction of a member of the charter school board of directors, has knowingly violated 703 KAR 5:080, Administration Code for Kentucky's Educational Assessment Program, or KRS 160.1592(3)(g) for a student assessment included in:

a.[4.] The performance framework of the charter contract; or

b.[2.] The state accountability system; or

(2)(b) The charter school board of directors waives its right to a KRS Chapter 13B hearing under this section.

Section 6. Incorporation by Reference. (1) "Notice of Appeal", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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STEPHEN L. PRUITT, PH.D., Commissioner

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(As Amended at ARRS, January 8, 2018)

701 KAR 8:040. Conversion charter school petition, conversion, and operation.

RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, 160.011, 161.141, 161.800

STATUTORY AUTHORITY: KRS 160.1599

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1599 requires the Kentucky Board of Education to promulgate an administrative regulation to govern the processes and procedures for the petition, the conversion, and the operation of a conversion public charter school. This administrative regulation establishes[provides] requirements for conversion public charter schools.

Section 1. Definitions. (1) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(2) "Applicant" is defined by[is] KRS 160.1590(3).

(3) "Charter application" is defined by[is] KRS 160.1590(4).

(4) "Charter contract" or "contract" is defined by[is] KRS 160.1590(5).

(5) "Charter school" means a public charter school.

(6) "Charter school board of directors" is defined by[is] KRS 160.1590(6).

(7) "Conversion public charter school" or "conversion charter school" is defined by[is] KRS 160.1590(7).

(8) "Days" means calendar days calculated pursuant to KRS 446.030.

(9) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(10) "Enrollment" means the process for the charter school to register a student for attendance at the charter school.

(11) "Grade" or "grade level" means a single elementary, middle, or high school grade of school.

(12) "Local board of education" means local school board as defined by[is] KRS 160.1590(9).

(13) "Local school district" is defined by[is] KRS 160.1590(10).

(14) "Lottery" means the transparent, open, equitable, and impartial process that is competently conducted with randomization in accordance with the targeted student population and service community as established[identified] in KRS 160.1593(3) for the charter school to choose students for enrollment and attendance at the charter school if[when] the student applications received by the charter school exceed the charter school's capacity.

(15) "Notice" means written notice.

(16) "Notify" means provide written notice.

(17) "Parent" is defined by[is] KRS 160.1590(11).

(18) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition for "interested person or entity" as defined by[of] KRS 387.010(2) for an interested person or entity and with whom the student resides.

(19) "Petitioner" means the persons or organizations initiating and circulating a petition to convert an existing public school to a charter school.

(20) "Public charter school" is defined by[is] KRS 160.1590(12).

(21) "School level", "level", or "educational" or "Level" or "Educational" level" means the configuration of grade levels that form elementary, middle, and high schools.

(22) "Student" is defined by[is] KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(23) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

(24) "Superintendent" means the local school district employee tasked with the duties established[described] in KRS 160.370.

(25) "Year", "academic year", or "school" or "Academic year" or "School" year" means school year as defined by[is] KRS 158.050.

Section 2. Conversion Petition and Charter Application. (1) The department shall annually publish on its website a list of noncharter public schools, by school level, level, or educational level, that are eligible for charter school conversion through the petition process pursuant to KRS 160.1599(2)(a).

(2) Prior to circulation of a petition to convert an existing public school to a charter school, a petitioner shall file a notice of intent with the resident board of education.

(3) If a charter application proposes that a newly converted charter school is to be established and prepared to enroll students for the next school year, both the charter application and the petition, determined to be valid pursuant to subsection (9) of this section, proposing the conversion of an existing public school to a charter school shall be submitted to the authorizer on or before October 30.

(4) A petitioner shall utilize the Public Charter School Conversion Petition and shall include the following information in a petition to convert an existing public school to a charter school:

(a) A written statement that the petition seeks to convert the existing public school to a charter school;

(b) A written statement of the reasons the petitioner believes the existing public school should be converted to a charter school, including descriptions of how the conversion public charter school shall accomplish the purposes of KRS 160.1591(2); and

(c) Information for filing a written complaint to the commissioner of education regarding the petition or the petitioner.

(5) For the signatures on the petition to count toward the requirements of KRS 160.1599(2)(a) or (b), a petitioner shall ensure inclusion of the following from each of the existing public school's resident parents, persons with custody or charge, adult students, or emancipated youth students signing the petition:

(a) Their printed names;

(b) Their mailing and street address, phone number, and email address, as available; and

(c) Their signature in ink or indelible pencil;

(6) The inclusion of signatures, from adult students, emancipated youth students, or parents or persons with custody or charge, on behalf of students who do not attend the existing public school as residents of the local school district and under the attendance zone boundary policies and procedures of the local board of education for the local school district, shall not count toward the requirements of KRS 160.1599(2)(a) or (b).

(7) Signatures from parents, persons with custody or charge, adult students, and emancipated youth students shall count toward the requirements of KRS 160.1599(2)(a) or (b) up to but not in excess of the number of students attending the existing public school for whom those individuals are parents or persons with custody or charge or the students themselves.

(8) The inclusion of an invalid signature on the petition shall not invalidate the entire petition, but shall instead result in the invalid signature being stricken and not counted.

(9) Within thirty (30) days of receipt of a petition for conversion of an existing public school, a local school district designee of the local board of education shall conduct and complete an examination of the signatures on the petition and any necessary investigation to make a determination of whether the petition contains enough signatures of qualified resident adult students, emancipated youth students, and parents and persons with custody or charge of students attending the existing public school to meet the requirements of KRS 160.1599(2)(a) or (b).

(10) Within three (3) days of making the determination in subsection (9) of this section, the local school district designee of each[the] local board of education that has authority over the existing public school shall provide notice as to whether the petition met the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b):

(a) On the local school district website; and

(b) To the following:

1. The petitioner;

2. The existing public school's principal;

3. Any school-based decision making council of the existing public school established under KRS 160.345; and

4. Each[The] local board of education with authority over the existing public school.

(11) For a petition under KRS 160.1599(2)(b), each[the] local board of education's majority vote to convert the existing public school to a charter school shall be conducted at its next regular meeting or an earlier special meeting.

(12) Any person who has reason to believe that the petition process was not conducted pursuant to the requirements of this administrative regulation or that the signatures on the petition were procured through fraud, intimidation, bribery, or harassment, may file a written complaint with the commissioner of education and the commissioner of education shall:

(a) Cause an investigation to determine the validity of the petition;

(b) Ensure the investigation is completed within thirty (30) days of receipt of the complaint; and

(c) Render a determination as to the validity of the petition.

(13) If the petition fails to meet the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b) or if the commissioner of education determines the petition to be invalid, the existing public school shall not be eligible for conversion to a charter school unless:

(a) Each[The] local board of education with authority over the existing public school acts pursuant to KRS 160.1599(2)(c); or

(b) Another petition is circulated and determined to be valid pursuant to KRS 160.1599(a) or (b) and this administrative regulation.

(14) After any vote by each[the] local board of education required pursuant to KRS 160.1599(2)(b) or (c), an applicant shall submit to the authorizer a charter application to convert an existing public school to a charter school during the same school year as:

(a) Each[The] local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b)1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each[the] local board of education with authority over the existing public school, if required by KRS 160.1599(2)(b).

(15) After any vote by each[the] local board of education required pursuant to KRS 160.1599(2)(b) or (c), the authorizer shall allow submission of a charter application to convert the existing public school to a charter school during the same school year as:

(a) Each[The] local board of education's vote to convert the existing public school to a charter school, pursuant to KRS 160.1599(2)(c); or

(b)1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each[the] local board of education with authority over the existing public school, if required by KRS 160.1599(2)(b).

(16) The authorizer shall commence the charter application review and approval process pursuant to KRS 160.1594 and 701 KAR Chapter 8 upon receipt of a charter application to convert an existing public school to a charter school within the same school year as either:

(a) Each[The] local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b)1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each[the] local board of education, if required by KRS 160.1599(2)(b).

(17) The authorizer shall review the petition and a submitted charter application and only approve the conversion of an existing public school if the charter application meets the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and if:

(a) The petition meets the requirements of KRS 160.1599 and this administrative regulation during the same school year as the filing of the charter application, and if the commissioner of education has not determined the petition to be invalid; or

(b) Each[The] local board of education with authority over the existing public school has voted within the same school year to convert an existing public school to a charter school.

(18) The department shall create a charter school conversion petition and application guidance document that petitioners, applicants, authorizers, and local boards of education may utilize.

Section 3. Conversion. (1) No conversion public charter school shall begin operation after the beginning of a school year.

(2) After each[the] local board of education's vote to convert an existing public school to a charter school or completion of the petition process requirements of KRS 160.1599(2)(a) or (b) and this administrative regulation, and after the authorizer's approval of a charter application to establish a conversion public charter school, each[the] superintendent of a district with authority over the existing public school shall:

(a) Notify resident students of the conversion of the existing public school and provide information for student application to the

conversion charter school during the time that information on other school programs in the local school district is provided;

(b) Create with the conversion charter school board of directors a plan for conversion of the existing public school that shall[which will] include, at a minimum, timelines, roles, responsibilities, and notification requirements for the following:

1. Coordination of student application, lottery, enrollment, and transfer to and from the conversion charter school; and

2. Transfer of management and operation of the conversion charter school in the same public school facility for the school years included in the conversion charter school's operation under the charter contract;

(c) Meet[Meeting] during the first year of the charter contract with the charter school board of directors to coordinate student application, lottery, enrollment, and transfer of students; and

(d) Meet[Meeting] throughout the charter contract with the charter school board of directors regarding the usage and maintenance of the facility by the charter school board of directors.

(3) Each[The] local board of education with authority over the existing public school and the conversion charter school board of directors shall execute a lease for the public school facility prior to the operation of a conversion public school.

(4) The department shall create a charter school conversion process guidance document that an authorizer, local board of education, and a charter school board of directors may utilize.

Section 4. Employees. (1) Local school district employees placed in the existing public school prior to conversion, who are not hired by the conversion charter school board of directors to work in the converted charter school, shall retain their employment rights with the local school district, pursuant to KRS Chapter 161 and under the provisions of any collective bargaining agreement with the local school district. Conversion of an existing public school of the local school district may result in the circumstances described in KRS 161.800 and 161.011 necessitating the local school district superintendent's review of the necessity for a reasonable reduction in the number of teachers and classified employees employed by the local school district under KRS 161.800 and 161.011.

(2) A teacher, with continuing status pursuant to KRS Chapter 161, who is employed by a Kentucky local school[the] district, who is hired by the conversion charter school board of directors to work in the converted charter school, and who is granted leave by the employing local board of education pursuant to KRS 160.1593(22), shall notify the local school district of the teacher's intent to work in the converted charter school or to return to employment with the local school district the next school year by April 15 of each year of the granted leave.

(3) The department shall create a charter school conversion employee transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 5. Students. (1) Each local school[The] district with authority over the existing public school shall provide, to the students and parents and persons with custody or charge of students who attend an existing public school that has been approved for conversion to a charter school, information and any plan the local school district shall[will] use to address the educational needs and placements of students who choose not to attend or who otherwise shall not be attending the conversion charter school.

(2) The department shall create a charter school conversion student transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 6. Operation and Reversion of a Conversion Charter School. (1) An authorizer may otherwise renew, non-renew, revoke, or take other action regarding a conversion public charter school as provided in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) If a closed conversion charter school is reverting back to its noncharter status, each[the] local board of education with authority over the existing public school shall solicit feedback

on the future of the school from parents, persons with custody or charge, adult students, and emancipated youth students of the school prior to the reversion.

Section 7. Incorporation by Reference. (1) "Public Charter School Conversion Petition", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner

MARY GWEN WHEELER, Chair

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Kentucky Department of Education

(As Amended at ARRS, January 8, 2018)

704 KAR 3:370. Kentucky Framework for Personnel Evaluation[Professional Growth and Effectiveness System].

RELATES TO: KRS 156.557, 156.800(7), 161.740

STATUTORY AUTHORITY: KRS 156.070, 156.557(2), (5)(c), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.557(2) and (5)(c), and (7) require the Kentucky Board of Education to promulgate administrative regulations to establish a statewide framework[professional growth and effectiveness system] for the purposes of supporting and improving the performance of all certified school personnel, and to develop written guidelines for local school districts to follow in implementing a [statewide] system of evaluation for certified school personnel, and to establish an appeals procedure for certified school personnel. This administrative regulation establishes a statewide framework[professional growth and effectiveness system] to support and improve the performance of all certified school personnel as well as an appeals procedure for certified school personnel.

Section 1. Definitions. (1) ["Artifact" means a product of a certified school personnel's work that demonstrates knowledge and skills.

(2) "Assistant principal" means a certified school personnel who devotes the majority of employed time in the role of assistant principal, for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3.

(2) [(3)] "Certified administrator" means a certified school personnel, other than principal or assistant principal, who devotes the majority of employed time in a position for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3.

(3) "Certified evaluation plan" means the procedures and forms for evaluation of certified school personnel below the level of superintendent developed by an evaluation committee and meeting all requirements of the Kentucky Framework for Personnel Evaluation.

(4) "Certified school personnel" means a certified school employee, below the level of superintendent, who devotes the majority of employed time in a position in a district for which certification is required by the Education Professional Standards Board pursuant to Title 16 KAR and includes certified administrators, assistant principals, principals, other professionals, and teachers.

(5) "Conference" means a meeting between the evaluator and the evaluatee for the purposes of providing feedback, analyzing the results of an observation or observations, reviewing other evidence to determine the evaluatee's accomplishments and areas for growth, and leading to the establishment or revision of a professional growth plan.

(6) "Evaluatee" means the certified school personnel who is being evaluated.

(7) "Evaluation committee" means a group, consisting of an equal number of teachers and administrators, who develop personnel evaluation procedures and forms for a local school district pursuant to ~~as described in~~ KRS 156.557(5)(c)(1).

(8)(7) "Evaluator" means the primary evaluator pursuant to ~~as described in~~ KRS 156.557(5)(c)2.

(9) "Evaluator certification" means successful completion of certified evaluation training to ensure that certified school personnel who serve as observers of evaluatees demonstrate proficiency in rating teachers and other professionals for the purposes of evaluation and feedback.

(10)(8) "Formative evaluation" is defined by KRS 156.557(1)(a). [(9) "Improvement plan" means a plan for improvement of up to twelve (12) months in duration for:

(a) Teachers and other professionals who are rated ineffective in professional practice and have a low overall student growth rating; and

(b) Principals who are rated ineffective in professional practice and have high, expected, or low overall student growth rating.]

(11)(40) "Job category" means a group or class of certified school personnel positions with closely related functions.

(12) "Kentucky Framework for Personnel Evaluation" means the statewide framework a school district uses to develop a local certified school personnel evaluation system. [(41) "Local contribution" means a rating based on the degree to which a teacher, other professional, principal, or assistant principal meets student growth goals and is used for the student growth measure.

(12) "Local formative growth measures" is defined by KRS 156.557(1)(b).]

(13) "Observation" means a data collection process conducted by a certified evaluator[observer], in person or through video, for the purpose of evaluation, including notes, professional judgments, and examination of the data collected[artifacts made] during one (1) or more classroom or worksite visits of any duration. [(44) "Observer calibration" means the process of ensuring that certified school personnel have maintained proficiency and accuracy in observing teachers and other professionals for the purposes of evaluation and providing feedback.

(15) "Observer certification" means a process of training and ensuring that certified school personnel who serve as observers of evaluatees have demonstrated proficiency in rating teachers and other professionals for the purposes of evaluation and feedback.]

(14)(16) "Other professionals" means certified school personnel, except for teachers, administrators, assistant principals, or principals for which certification is required by the Education Professional Standards Board pursuant to Title 16 KAR. [(47) "Overall student growth rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to the requirements of Section 7(9) and (10) of this administrative regulation and that is calculated for an assistant principal or principal evaluatee pursuant to the requirements of Section 10(8) of this administrative regulation.]

(15)(18) "Peer observation" means observation and documentation by [trained] certified school personnel below the level of principal or assistant principal and trained to perform such observations.

(16)(19) "Performance criteria" means the areas, skills, or outcomes on which certified school personnel are evaluated as

described in KRS 156.557(4).

(17) "Performance measure" means one (1) of four (4) measures defined in the Kentucky Framework for Personnel Evaluation. Measures include planning, environment, instruction, and professionalism.

(18)(20) "Performance rating" means the rating for each performance measure for [summative description of] a teacher, other professional, principal, or assistant principal as determined by the local district certified evaluation plan aligned to the Kentucky Framework for Personnel Evaluation. Ratings shall be ~~include~~ exemplary, accomplished, developing, and ineffective [evaluatee's performance, including the ratings listed in Section 7(8) of this administrative regulation].

(19) "Personnel Evaluation System" or "system" means an evaluation system to support and improve the performance of certified school personnel that meets the requirements of KRS 156.557 and that uses clear and timely formative feedback to guide professional growth.

(20)(24) "Principal" means a certified school personnel who devotes the majority of employed time in the role of principal, for which administrative certification is required by the Education Professional Standards Board pursuant to Title 16 KAR. [(22) "Professional growth and effectiveness system" or "system" means an evaluation system to support and improve the performance of certified school personnel that meets the requirements of KRS 156.557(1)(c), (2), and (3) and that uses clear and timely feedback to guide professional development.

(23) "Professional growth plan" means an individualized plan for a certified personnel that is focused on improving professional practice and leadership skills, aligned with performance standards and the specific goals and objectives of the school improvement plan or the district improvement plan, built using a variety of sources and types of data that reflect student needs and strengths, evaluatee data, and school and district data, produced in consultation with the evaluator as described in Section 9(1), (2), (3), and (4) and Section 12(1), (2), (3), and (4) of this administrative regulation, and includes:

(a) Goals for enrichment and development that are established by the evaluatee in consultation with the evaluator;

(b) Objectives or targets aligned to the goals;

(c) An action plan for achieving the objectives or targets and a plan for monitoring progress;

(d) A method for evaluating success; and

(e) The identification, prioritization, and coordination of presently available school and district resources to accomplish the goals.

(24) "Professional practice" means the demonstration, in the school environment, of the evaluatee's professional knowledge and skill.

(25) "Professional practice rating" means the rating that is calculated for a teacher or other professional evaluatee pursuant to Section 7(8) of this administrative regulation and that is calculated for a principal or assistant principal evaluatee pursuant to the requirements of Section 10(7) of this administrative regulation.

(26) "Self-reflection" means the annual process by which certified school personnel assess the effectiveness and adequacy of their knowledge and performance for the purpose of identifying areas for professional learning and growth.]

(21)(27) "Sources of evidence" or "source of evidence" means the district-approved evidence[district approved evidences] aligned to the performance measure and used by evaluators to inform performance measure ratings [multiple measures] listed in Section 8 [KRS 156.557(4) and in Sections 7 and 10] of this administrative regulation. [(28) "State contribution" means the student growth percentiles, as defined in 703 KAR 5:200, Section 1(11), for teachers and other professionals, and the next generation learners goal for principals and assistant principals.

(29) "Student growth" is defined by KRS 156.557(1)(c).

(30) "Student growth goal" means a goal focused on learning, that is specific, appropriate, realistic, and time-bound, that is developed collaboratively and agreed upon by the evaluatee and evaluator, and that uses local formative growth measures.

(31) "Student growth percentile" means each student's rate of change compared to other students with a similar test score history.

(32) "Student voice survey" means the student perception survey provided by the department that is administered annually to a minimum of one (1) district-designated group of students per teacher or other professional evaluatee if the evaluatee directly instructs students throughout the school year, and provides data on specific aspects of the instructional environment and professional practice of the teacher or other professional evaluatee.]

(22){(33)} "Summative evaluation" is defined by KRS 156.557(1)(d).

(23) "Summative rating" means the overall rating for certified school personnel below the level of superintendent as determined by the district certified evaluation plan aligned to the Kentucky Framework for Personnel Evaluation.

(24){(34)} "Teacher" means a certified school personnel who has been assigned the responsibility for student learning in a classroom, grade level, subject, or course and holds a teaching certificate pursuant to/under Title 16 KAR.{(35)} "Working conditions survey goal" means a school improvement goal set by a principal or assistant principal every two (2) years with the use of data from the department-approved working conditions survey.]

Section 2. District Evaluation Procedures and Forms. (1) An evaluation committee, [including teachers] as defined in this administrative regulation, shall develop the certified evaluation plan for the evaluation of certified school personnel below the level of superintendent. The evaluation committee shall submit the certified evaluation plan to the local board of education for review and approval.

(2) The local board of education shall review and approve the certified evaluation plan that meets the requirements of KRS 156.557 (5)(c) and this administrative regulation.

(a) The district certified evaluation plan may require the use of additional trained administrative personnel to observe and provide information to the evaluator.

(b) Peer observations may be used as a source of evidence to inform a summative rating only if requested by the teacher or other professional being evaluated[and would be used to inform summative ratings].

(c) The district certified evaluation plan shall establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation. The district certified evaluation plan shall require a conference between the evaluator and the evaluatee within five (5) working days following each observation.

(d) The district certified evaluation plan shall require the summative evaluation to include all applicable system data and/to be held at the end of the evaluation cycle pursuant to KRS 156.557 [and to include all applicable system data].

(e) The district certified evaluation plan shall require a summative evaluation to occur annually for each certified school personnel below the level of superintendent who has not attained continuing service status pursuant to KRS 161.740 or continuing status pursuant to KRS 156.800(7) and shall incorporate the formative data collected during the Kentucky Teacher Internship Program, pursuant to 16 KAR 7:010, in the summative evaluation of a teacher intern.

(f) The district certified evaluation plan shall require a summative evaluation at least once every three (3) years for a teacher, other professional, principal, or assistant principal who has attained continuing service status pursuant to KRS 161.740 or continuing status pursuant to KRS 156.800(7).

(g) The evaluation criteria and process used to evaluate certified school personnel shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year.

(h) The district certified evaluation plan shall require a summative evaluation of certified school personnel to be documented in writing and to be included in the evaluatee's official

personnel record.

(i) All evidence used to produce certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(j) The district certified evaluation plan shall provide an opportunity for the evaluatee to submit a written statement in response to the summative rating and require the response to be included in the official personnel record.[Implementation Timeline.

(1) Beginning with the 2015-2016 school year, all local districts shall fully implement the requirements of KRS 156.557 and this administrative regulation for all certified school personnel except certified school personnel of career and technical education in area technology centers.

(2) Beginning with the 2015-2016 school year, a local school district shall use the results from the system to inform personnel decisions for teachers, principals, and assistant principals.

(3) Beginning with the 2016-2017 school year:

(a) The Office of Career and Technical Education shall fully implement the requirements of KRS 156.557 and this administrative regulation for all certified school personnel of career and technical education in area technology centers.

(b) A local school district shall use the results from the system to inform personnel decisions for other professionals, certified administrators, and teachers in career and technical education in area technology centers.]

Section 3. District Personnel Evaluation Policies[Approval of Local Professional Growth and Effectiveness System Plan and Procedures]. (1) Each local school district shall establish a written policy for implementing the certified evaluation plan for all certified school personnel below the level of superintendent in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy and procedure for evaluation of the district superintendent.[submit to the department a professional growth and effectiveness system plan and procedures to establish the district's evaluation system for all certified school personnel.

(2) The department shall approve each local school district's plan and procedures that comply with the requirements established in KRS 156.557 and this administrative regulation.]

Section 4. Department Approval of District Personnel Evaluation Plan[Local Professional Growth and Effectiveness Policies]. The department shall review[and approve] each local school district's certified evaluation plan_[,]local board of education shall establish a written policy for implementing the system for all certified school personnel in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy for evaluation of the district superintendent_[,] and approve a certified evaluation plan that is consistent with the requirements of KRS 156.557{(6)} and this administrative regulation.

Section 5. Revisions to Previously Approved District Evaluation Plan[Local Evaluation Procedures and Forms]. (1) The local board of education shall review, as needed, the district's certified evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation[A local evaluation committee shall develop, and the local board of education shall review and approve, system procedures and forms for the evaluation of certified school personnel positions].

(2) If a source of evidence is added or removed from the certified evaluation plan or if a decision rule or calculation is changed in the summative rating formula, the revised certified evaluation plan shall be reviewed and approved by the local board of education. If the local board of education determines the changes do not meet the requirements of KRS 156.557, the certified evaluation plan shall be returned to the certified evaluation committee for revision.[The local board of education shall review and approve procedures and forms that meet the requirements of KRS 156.557(5)(c) and include the requirements established in this

subsection.

(a) The district may require the utilization of additional trained administrative personnel to observe and provide information to the evaluator.

(b) The district shall require a minimum of one (1) peer observation of a teacher or other professional evaluatee during the summative evaluation year and sharing the documentation with the teacher or other professional for formative evaluation purposes. Documentation of peer observations may be documented in the department approved technology platform. At the request of a teacher or other professional, peer observations may be used in the summative process.

(c) Beyond the minimum observation requirements set forth in KRS 156.557 and this administrative regulation, the district may establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation.

(d) The district shall require a teacher or other professional evaluator to conduct a minimum of three (3) observations of a teacher or other professional evaluatee during the summative evaluation cycle, except that the district may reduce the number of minimum observations of a teacher or other professional evaluatee during the summative evaluation cycle for teacher or other professional evaluatees who do not report for work sixty (60) or more consecutive school days. A district shall include a detailed plan for reduction of minimum observations of teachers or other professional evaluatees who do not report for work sixty (60) or more consecutive school days in the district's system plan and procedures submitted to the department for approval pursuant to Section 3 of this administrative regulation. At a minimum, one (1) full observation shall be conducted during the summative year. Observations may be documented in the department approved technology platform.

(e) The district shall require a principal evaluator to conduct a minimum of two (2) site visits each year.

(f) The district shall create a process for selection of peer observers.

(g) The district shall require a formative evaluation conference between the evaluator and the evaluatee within five (5) working days following each observation by the evaluator.

(h) The district shall require the summative evaluation conference to be held at the end of the summative evaluation cycle and to include all applicable system data.

(i) The district shall require summative evaluation, with multiple observations, to occur annually for each teacher or other professional who has not attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and may utilize the formative data collected during the beginning teacher internship period, pursuant to 16 KAR 7:010, in the summative evaluation of an intern teacher.

(j) The district shall require multiple observations of a certified school personnel who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7) and whose observation results are determined to be ineffective.

(k) The district shall require summative evaluation at least once every three (3) years for a teacher or other professional who has attained continuing service status under KRS 161.740 or continuing status under KRS 156.800(7).

(l) The district, upon the request of a teacher or other professional, may use peer observation data in the formative process.

(m) The district shall require summative evaluation annually for a certified administrator, assistant principal, or principal. The evaluation criteria and process used to evaluate a certified administrator, assistant principal, or principal shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year.

(n) The district shall require a summative evaluation of a certified school personnel to be documented in writing and to be included in the evaluatee's official personnel record.

(o) The district shall require documentation of a summative evaluation of a teacher, other professional, principal, and assistant

principal in the department approved technology platform.

(p) All evidence used to produce a certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(q) The district shall provide an opportunity for a written response by the evaluatee and require the response to be included in the official personnel record.]

Section 6. Training and Testing of Evaluators[and Observers].
(1) The district shall include evaluator certification[evaluation] and observation training in the district's certified evaluation[system] plan[and procedures] submitted to the department for approval pursuant to Section 3 of this administrative regulation.

(2) The district shall ensure an evaluator meets the requirements in[of] the district's evaluation[system] plan[and procedures] prior to conducting a formative or summative evaluation[evaluating a certified school personnel].

(3) An evaluator shall be trained, tested, and approved according to this administrative regulation and the district's certified evaluation plan[on a four (4) year cycle].

(4) Evaluator training shall include[Year one (1) of the district's evaluator training cycle shall include the following training requirements]:

(a) Initial certified evaluation training and testing provided by the Kentucky Department of Education or a provider approved by the department;

(b)[(a)] Training on KRS 156.557 and the requirements of this administrative regulation;

(c)[(b)] Training in[identifying effective teaching and management practices, in] effective observation and conferencing techniques,[in development of student growth goals,] in providing clear and timely feedback, in establishing and assisting with a professional growth plan, and in summative decision techniques;[(c) Training provided by the department for all certified administrator evaluators who have never evaluated certified school personnel. Other certified administrators who have not received training in the skill areas listed in paragraph (b) of this subsection may also be trained by the department;] and

(d) A minimum of six (6) hours annually of personnel evaluation system training[Training, for all other evaluators, by a provider who has been] approved by the[department as a trainer for the] Effective Instructional Leadership Act[Improvement Program] established in 704 KAR 3:325.[(5) Year one (1) of the district's evaluator training cycle shall include the testing requirements established in this subsection.

(a) An evaluator shall successfully complete testing of research-based and professionally accepted teaching and management practices and effective evaluation techniques.

(b) The testing shall be conducted by the department or an individual or agency approved by the department.

(c) The testing shall include certification as an observer through the department approved observer certification process for an evaluator who is evaluating teachers or other professionals.

(6) The department shall issue year one (1) approval as an evaluator upon the evaluator's successful completion of the required evaluation training and testing program and successful completion of observer certification.

(7) Years two (2) and three (3) of the district's evaluator training and testing cycle shall include a minimum of six (6) hours in each year and shall include:

(a) Observer calibration training, in the department approved technology platform, for all evaluators who observe teachers or other professionals for the purpose of evaluation;

(b) Update training on professional growth and effectiveness statutes and administrative regulations; and

(c) Training for evaluators on any changes to the Professional Growth and Effectiveness System and certified evaluation plan, policies, or procedures.

(8) Year four (4) of the district's evaluator training and testing cycle shall include refresher evaluator training and, if evaluating teachers or other professionals, recertification training and testing.

(9) The district shall require peer observers to complete the department approved peer observer training at least once every

three (3) years.

(10) The district shall designate a contact person responsible for monitoring evaluator training and for implementing the system.]

Section 7. Training of Peer Observers. (1) The district shall require peer observations be performed by individuals who are trained in peer observation techniques and responsibilities prior to the first peer observation.

(2) Peer observation training shall include training in effective observation and conferencing techniques and the roles and responsibilities of peer observers, evaluatees, and certified school personnel as well as roles and responsibilities.

Section 8. Performance Measure[Professional Practice Rating and Student Growth Rating for Teachers and Other Professionals].

(1) The district's certified evaluation plan[professional practice rating form] shall utilize the Kentucky Framework for Personnel Evaluation[The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professionals Evaluation Crosswalk,] pursuant to/in compliance with KRS 156.557 and the requirements of this administrative regulation and shall include the following performance measures:

- (a) Planning[and Preparation Domain];
- (b)[Classroom] Environment[Domain];
- (c) Instruction[Domain]; and
- (d) Professionalism[Professional Responsibilities Domain].

(2) The district's certified evaluation plan shall define criteria for each performance measure from the Kentucky Framework for Teaching, the Kentucky Framework for Teaching: Specialist Frameworks, and the Principal and Assistant Principal Performance Standards[professional practice rating evaluation form shall list, in each component, the performance criteria] that characterize effective practice and apply to the evaluatee. [(3) The district shall explain and discuss the professional practice rating domains, components, and performance criteria, and the evaluation process with an evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year. Amendments to local systems of teacher evaluation approved by the department after the end of the evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following school year.

(4) A professional practice rating evaluation form shall be specific to the evaluatee's job category.

(5) The evaluator shall utilize The Framework for Teaching Evaluation Instrument, 2011 Edition, in conjunction with the Teacher and Other Professional Evaluation Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for the evaluatee on each of the four (4) domains].

(3) [(6)] The evaluator shall use sources of evidence[from professional growth plans and self-reflection, observation, and student voice surveys,], in combination with professional judgment, to inform the teacher's or other professional's rating on each of the four (4) performance measures[domains] listed in subsection (1) of this section. [(7) The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the teacher's or other professional's professional practice rating.

(8) The evaluator shall utilize the decision rules in this subsection for determining the professional practice rating for a teacher or other professional.]

(a) The evaluator shall use the following ratings:

- 1. "Exemplary" shall be the rating for performance that consistently exceeds expectations for effective performance;
- 2. "Accomplished" shall be the rating for performance that consistently meets expectations for effective performance;
- 3. "Developing" shall be the rating for performance that inconsistently meets expectations for effective performance; and
- 4. "Ineffective" shall be the rating for performance that consistently fails to meet expectations for effective performance.

(b) At a minimum, the evaluator shall use the decision rules in this paragraph to determine a professional practice rating.

- 1. If a teacher or other professional is rated ineffective in the

classroom environment domain or in the instruction domain, the teacher's or other professional's professional practice rating shall be not be exemplary or accomplished.

2. If a teacher or other professional is rated ineffective in the classroom environment domain and in the instruction domain, the teacher's or other professional's professional practice rating shall be ineffective.

3. If a teacher or other professional is rated ineffective in any domain, the teacher's or other professional's professional practice rating shall be accomplished, developing, or ineffective.

4. If a teacher or other professional is rated developing in two (2) domains and accomplished in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.

5. If a teacher or other professional is rated developing in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be accomplished.

6. If a teacher or other professional is rated accomplished in two (2) domains and exemplary in two (2) domains, the teacher's or other professional's professional practice rating shall be exemplary.

(9) The district shall determine the teacher's or other professional's overall student growth rating as established in this subsection.

(a) The student growth measure shall consist of a state contribution, if available, and a local contribution.

(b) The Kentucky Board of Education shall determine the scale for low, expected, and high growth regarding the state contribution, and the department shall provide the scale to local school districts.

(c) Student growth goals shall be determined as established in this paragraph.

1. The teacher or other professional shall develop and implement a minimum of one (1) student growth goal each year.]

(b) [(2)] Because individual[individualized] education program[plan] (IEP) goals are student-specific, IEP goals may inform, but shall not be used as a single source of evidence for any performance measure[- student growth goals.

3. The district shall ensure that student growth goals and measures of student growth are rigorous and comparable across schools in the local school district.

(d) The local school district shall determine the scale for low, expected, and high student growth goal ratings. In determining the scale, local school districts shall consider the definition of typical yearly growth contained in 703 KAR 5:200, Section 1(12).

(10) The local school district shall develop a process for using professional judgment and the following sources of evidence to determine the overall student growth rating:

(a) Growth trends consisting of the three (3) most recent years of student growth percentile data, if available, for teachers; and

(b) Growth trends consisting of the three (3) most recent years of student growth goal data, if available, for all teachers and other professionals].

Section 9 [(8)]. Summative Rating of Teachers, Other Professionals, Principals, and Assistant Principals[Overall Performance Category of Teachers or Other Professionals].

(1) The overall performance category for teachers or other professionals, principals, and assistant principals shall be a district-determined[district-determined] rating by combining the four (4) performance measures provided in Section 8 [teacher's or other professional's professional practice rating and overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers or Other Professionals.

(2) The district shall determine the teacher's or other professional's overall performance category with the decision rules established in this subsection.

(a) A teacher's or other professional's overall performance rating shall be exemplary if:

- 1. The professional practice rating is exemplary and the overall student growth rating is high;
- 2. The professional practice rating is exemplary and the overall

student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) A teacher's or other professional's overall performance rating shall be accomplished if:

1. The professional practice rating is accomplished and the overall student growth rating is expected; or

2. The professional practice rating is developing and the overall student growth rating is high;

(c) A teacher's or other professional's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;

2. The professional practice rating is accomplished and the overall student growth rating is low;

3. The professional practice rating is developing and the overall student growth rating is expected;

4. The professional practice rating is developing and the overall student growth rating is low; or

5. The professional practice rating is ineffective and the overall student growth rating is high.

(d) A teacher's or other professional's overall performance category shall be ineffective if:

1. The professional practice rating is ineffective and the overall student growth rating is expected; or

2. The professional practice rating is ineffective and the overall student growth rating is low.]

Section 10[9]. Evaluation of Certified **School** Personnel Assigned to the District Level for Purposes of Evaluation. (1) The district's certified evaluation plan for certified **school** personnel assigned to the district level for purposes of evaluation shall:

(a) Utilize the performance criteria **established[outlined]** in KRS 156.557(4), **comply[in compliance]** with KRS 156.557 and the requirements of this administrative regulation; and

(b) List the performance criteria applicable to the evaluatee that characterizes professional effectiveness.

(2) The district certified evaluation plan for certified personnel assigned to the district level for purposes of evaluation shall be specific to the evaluatee's job category.[Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. A teacher or other professional shall be placed on an appropriate plan and summative evaluation cycle based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan and Cycle for Tenured Teachers or Other Professionals. (1) A teacher or other professional whose professional practice rating is exemplary or accomplished and who has an expected or high overall student growth rating shall have a professional growth plan that includes: goals set by the teacher or other professional, with evaluator input; activities that are evaluatee-directed and implemented with colleagues; a formative review annually; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(2) A teacher or other professional whose professional practice rating is accomplished or exemplary, with a low overall student growth rating, or developing, with a high overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; if there is a low student growth rating, one (1) goal shall focus on low student growth outcome; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(3) A teacher or other professional whose professional practice rating is developing, with an expected overall student growth rating, shall have a professional growth plan that includes: goals set by the teacher or other professional with evaluator input; one (1) goal that addresses professional practice or student growth; activities that are evaluatee-directed and implemented with colleagues; an annual formative review; and a summative evaluation that occurs at the end of year three (3) of the evaluation cycle.

(4) A teacher or other professional whose professional practice

rating is developing, with a low overall student growth rating, or whose professional practice rating is ineffective, with an expected or high overall student growth rating, shall have a professional growth plan that includes goals determined by the evaluator: goals shall focus on professional practice and student growth, include an annual formative review, and include a summative evaluation that occurs at the end of one (1) year.

(5) A teacher or other professional whose professional practice rating is ineffective, with a low overall student growth rating, shall have an improvement plan with goals determined by the evaluator: the goals shall focus on low performance areas and a summative evaluation shall occur at the end of the plan, whose duration is determined by the evaluator and may last up to one (1) year.

Section 10. Professional Practice Rating and Overall Student Growth Rating for Principals and Assistant Principals. (1) The district's professional practice rating form shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, and shall include the performance standards and descriptors established in this subsection.

(a) Instructional Leadership Performance Standard. This standard shall be met if the evaluatee fosters the success of all students by facilitating the development, communication, implementation, and evaluation of a shared vision of teaching and learning that leads to student academic growth and school improvement.

(b) School Climate Performance Standard. This standard shall be met if the evaluatee fosters the success of all students by developing, advocating, and sustaining an academically rigorous, positive, and safe school climate.

(c) Human Resources Management Performance Standard. This standard shall be met if the evaluatee fosters effective human resources management by assisting with selection and induction and by supporting, evaluating, and retaining quality instructional and support personnel.

(d) Organizational Management Performance Standard. This standard shall be met if the evaluatee fosters the success of all students by supporting, managing, and overseeing the school's organization, operation, and use of resources.

(e) Communication and Community Relations Performance Standard. This standard shall be met if the evaluatee fosters the success of all students by communicating and collaborating effectively with stakeholders.

(f) Professionalism Performance Standard. This standard shall be met if the evaluatee fosters the success of all students by demonstrating professional standards and ethics, engaging in continuous professional learning, and contributing to the profession.

(2) The district's professional practice rating evaluation form for assistant principals and principals shall list, in each standard, the performance criteria that characterize professional effectiveness and apply to the evaluatee.

(3) The district shall explain and discuss the professional practice rating standards, indicators, and performance criteria, and the evaluation process to assistant principal and principal evaluatees no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following school year.

(4) The district's professional practice rating evaluation form shall be specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre and post-evaluation conferences.

(5) The evaluator shall utilize the Principal and Assistant Principal Performance Standards and the Principal and Assistant Principal Performance Standards Crosswalk, in compliance with KRS 156.557 and the requirements of this administrative regulation, to determine ratings for an assistant principal or principal evaluatee on each of the performance standards.

(6) The evaluator shall use evidence from professional growth

plans and self-reflection, the department-approved survey of perception of superintendents, district personnel, and teachers on principal practice; and the department-approved working conditions survey goal. The evaluator shall also use evidence from site visits, for principals only. The evaluator may, if included in the district's approved evaluation plan, use additional district-determined sources of evidence to inform the evaluatee's rating on each of the six (6) standards listed in subsection (1) of this section.

(7) At a minimum, the evaluator shall use the decision rules in this subsection to determine a professional practice rating.

(a) If the evaluatee is rated exemplary in at least four (4) of the standards and no standard is rated developing or ineffective, the professional practice rating shall be exemplary.

(b) If the evaluatee is rated accomplished in at least four (4) standards and no standard is rated ineffective, the professional practice rating shall be accomplished.

(c) If the evaluatee is rated developing in at least five (5) standards, the professional practice rating shall be developing.

(d) If the evaluatee is rated ineffective in two (2) or more standards, the professional practice rating shall be ineffective.

(8) The overall student growth rating for principals and assistant principals shall be determined as established in this subsection.

(a) The student growth measure for principals and assistant principals shall consist of a state contribution and a local contribution.

(b) The state contribution for principals and assistant principals shall be based on the degree to which the evaluatee meets the next generation learners goal. A principal's next generation learners goal shall be the assistant principal's next generation learners goal as well. For schools that do not receive state assessment data, principals shall develop two (2) local student growth goals.

(c) The local contribution for the student growth measure for principals and assistant principals shall be a rating based on the degree to which the principal or assistant principal meets student growth goals. Assistant principals shall share the principal's student growth goals.

(d) All principals and assistant principals shall develop and implement a minimum of two (2) student growth goals each year, one (1) of which shall focus on school gap population data.

(e) One (1) goal shall be based on local student growth data.

(f) The district shall ensure that student growth goals are rigorous and comparable across schools in the local district.

(g) The scale for low, expected, and high student growth goal ratings shall be determined by the local school district. In determining the scale, local school districts shall consider the schools goals and measures of success in the comprehensive school improvement plan required in 703 KAR 5:225, Section 9.

(h) The district shall develop a process for using professional judgment and evidence from the following sources of evidence to determine the overall student growth rating:

1. Growth trends over the three (3) most recent years of next generation learners student growth data, calculated pursuant to 703 KAR 5:200; and

2. Growth trends over the three (3) most recent years of student growth goal data.

Section 11. Overall Performance Category of Principals and Assistant Principals. (1) The overall performance category for principals and assistant principals shall be determined by combining the principal or assistant principal's professional practice rating and overall student growth rating, as illustrated by the Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals.

(2) The district shall determine the overall performance category for principals and assistant principals with the decision rules established in this subsection.

(a) An evaluatee's overall performance category shall be exemplary if:

1. The professional practice rating is exemplary and the overall student growth rating is high;

2. The professional practice rating is exemplary and the overall student growth rating is expected; or

3. The professional practice rating is accomplished and the overall student growth rating is high.

(b) An evaluatee's overall performance category shall be accomplished if:

1. The professional practice rating is accomplished and the overall student growth rating is expected; or

2. The professional practice rating is developing and the overall student growth rating is high.

(c) An evaluatee's overall performance category shall be developing if:

1. The professional practice rating is exemplary and the overall student growth rating is low;

2. The professional practice rating is accomplished and the overall student growth rating is low;

3. The professional practice rating is developing and the overall student growth rating is expected; or

4. The professional practice rating is developing and the overall student growth rating is low.

(d) An evaluatee's overall performance category shall be ineffective if the professional practice rating is ineffective.

Section 12. Professional Growth Plan for Principals and Assistant Principals. The evaluator shall place an assistant principal or principal evaluatee on an appropriate professional growth plan based on the professional practice rating and the overall student growth rating, as illustrated by the Kentucky Professional Growth Plan for Assistant Principals and Principals.

(1) An evaluatee whose professional practice rating is exemplary, with an expected to high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(2) An evaluatee whose professional practice rating is accomplished, with an expected to high student overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(3) An evaluatee whose professional practice rating is developing, with a high overall student growth rating, shall have, at a minimum, a professional growth plan with goals set by the evaluatee with evaluator input and a summative evaluation that occurs at the end of each school year.

(4) An evaluatee whose professional practice rating is developing, with a low to expected overall student growth rating, shall have, at a minimum, a professional growth plan with goals determined by the evaluator and a summative evaluation at the end of each school year.

(5) An evaluatee whose professional practice rating is ineffective shall have, at a minimum, an improvement plan with the goals determined by the evaluator and a summative evaluation at the end of the plan, as determined by the evaluator, not to exceed one (1) year in duration.

Section 13. Evaluation of Certified Administrators Assigned to the District Level for Purposes of Evaluation. (1) The district's evaluation form for certified administrators assigned to the district level for purposes of evaluation shall:

(a) Utilize the performance criteria outlined in KRS 156.557(4), in compliance with KRS 156.557 and the requirements of this administrative regulation; and

(b) List the performance criteria that characterizes professional effectiveness and apply to the evaluatee.

(2) The district shall explain and discuss performance criteria and the evaluation process to an evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of the school year. Amendments to local systems of certified personnel evaluation approved by the department after the end of an evaluatee's first thirty (30) calendar days of the school year shall not apply to the evaluatee until the following year.

(3) The district evaluation form for certified administrators assigned to the district level for purposes of evaluation shall be

specific to the evaluatee's job category. The district, at its discretion, may utilize forms for pre- and post-evaluation conferences.

(4) The evaluator shall use evidence from professional growth plans and self-reflection, one (1) site visit, student growth, and professional judgment to determine the overall performance of certified administrators assigned to the district level for purposes of evaluation.

Section 14. District Evaluation Plan. (1) The local board of education shall review, as needed, the district's evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation.

(2) If a substantive change is made to the district's evaluation plan, the local board of education shall utilize the evaluation committee, described in KRS 156.557(5)(c)1, in formulating the revision. Examples of substantive change shall include changes in the evaluation cycle, observation frequency, forms, or appeal procedures.

(3) The local board of education shall review and approve revisions to the plan and submit the amended plan to the department for approval.

Section 15. Reporting. (1) Districts shall report to the department the percentage of principals, assistant principals, teachers, and other professionals in each professional practice rating category, student growth rating category and overall performance category listed in Sections 7, 8, 10, and 11 of this administrative regulation.

(2) The department shall publicly report, by district, the aggregate number of principals, assistant principals, teachers, including other professionals, in each overall performance category.

Section 16. Monitoring. A district implementing an alternative professional growth and effectiveness plan or system approved by the department pursuant to KRS 156.557(7) shall be monitored within three (3) years of the initial implementation of the alternative plan, and subsequently at the discretion of the department.]

Section 11[17]. District[Local] Evaluation Appeals Panel. The district shall provide the following in its system plan for an appeal to the district[local] evaluation appeals panel:

(1) A right to a hearing as to every appeal;

(2) An opportunity, five (5) days in advance of the hearing, for the evaluator and evaluatee to adequately review all documents that are to be presented to the district[local] evaluation appeals panel; and

(3) A right to have the evaluatee's chosen representative present at the hearing.

Section 12[18]. State Evaluation Appeals Panel. (1) A certified school personnel who believes that the local district is not properly implementing the district certified evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education.

(2) The appeal procedures shall be as established in this subsection.

(a) The Kentucky Board of Education shall appoint a committee of three (3) state board members to serve on the state evaluation appeals panel (SEAP). The SEAP's jurisdiction shall be limited to procedural matters already addressed by the local appeals panel related to the district's alleged failure to implement an evaluation plan as approved by the department. The SEAP shall not have jurisdiction of a complaint involving the professional judgment conclusion of an evaluation, and the SEAP's review shall be limited to the record of proceedings and documents therein, or lack thereof, at the local district level.

(b) No later than thirty (30) calendar days after the final action or decision at the local district level, a certified school personnel may submit a written request to the chief state school officer for a review before the SEAP. If a certified school personnel does not appeal within the time frame listed in this paragraph, the request

shall not be considered. A specific description of the complaint and grounds for appeal shall be submitted with the request.

(c) A brief, written statement or other document that a party wishes to submit for consideration by the SEAP shall be filed with the panel and served on the opposing party at least twenty (20) days prior to the scheduled review.

(d) A decision of the SEAP shall be rendered within fifteen (15) working days after the review.

(e) A determination of district noncompliance with the district[local] evaluation plan or absence of a district local evaluation plan shall render the evaluation void[, and the certified employee shall have the right to be reevaluated].

Section 13[49]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Framework for Teaching", February 2014["The Framework for Teaching Evaluation Instrument, 2011 Edition", May 2014];

(b) "Kentucky Framework for Teaching with Specialist Frameworks for Other Professionals", June 2015["Principal and Assistant Principal Performance Standards", May 2014]; and

(c) "Principal and Assistant Principal Performance Standards", May 2014["Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Teachers and Other Professionals", April 2015];

(d) "Kentucky Professional Growth and Effectiveness System Model for Summative Evaluation of Assistant Principals and Principals", May 2014;

(e) "Teacher and Other Professional Evaluation Crosswalk", April 2015;

(f) "Principal and Assistant Principal Performance Standards Crosswalk", May 2014;

(g) "Kentucky Professional Growth Plan and Cycle for Tenured Teachers and Other Professionals", April 2015; and

(h) "Kentucky Professional Growth Plan for Assistant Principals and Principals", July 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Teaching and Learning, 300 Sower Blvd, 5th Floor[Office of Next-Generation Learners, 18th Floor, Capital Plaza Tower, 500 Mero Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

STEPHEN L. PRUITT, PH.D., Commissioner

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: December 14, 2017

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

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**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, January 8, 2018)**

804 KAR 11:010. Equipment and supplies.

RELATES TO: KRS 244.500, 244.590

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

(2) NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board[Alcoholic Beverage Control Board] to promulgate administrative regulations regarding matters over which the board has jurisdiction[governing procedures relative to the supervision and control of the use, manufacture, sale,

advertising, and trafficking of alcoholic beverages]. KRS 244.590(1)(c) authorizes the malt beverage administrator[of the malt beverage unit] to prescribe by administrative regulation the types of equipment or other things of value a brewer or distributor may furnish to a malt beverage retailer. This administrative regulation establishes the items that a brewer or distributor may furnish to a retail licensee and other licensees.

Section 1. General Prohibition. A brewer or distributor shall not furnish equipment to a retail malt beverage licensee except as authorized by this administrative regulation.

Section 2. Draft Equipment. (1) A brewer or distributor may furnish to a retail licensee that sells[the following equipment to retail licensees that sell] draft malt beverages:

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

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

Section 3. Special Temporary Licensees. (1) A brewer or distributor may furnish vats, tubs, tanks, or portable dispensing units to special temporary licensees, picnics, bazaars, and carnivals, and other similar types of events.

(2) The equipment may bear advertising associated with a particular brand that is visible to the consumer.

Section 4. Leased Equipment. A brewer or distributor may lease equipment and supplies to retail licensees in accordance with commercially reasonable terms.

Section 5. Prior Administrative Regulation. A brewer or distributor shall not be in violation of KRS 244.590 if the brewer or distributor furnished a refrigerated cooler to a retailer between July 15, 2016 and January 1, 2018 if in conformity with the requirements of this administrative regulation that were[regulatory requirements] then in existence.[Section 2. (1) A brewer or distributor may provide refrigerated coolers to retailers by gift, lease, loan, or sale under the conditions established in this subsection.

(a) A brewer or distributor shall not provide more than one (1) refrigerated cooler to any one (1) retail licensed premises, except that this provision shall not apply to NQ-1 retail licensed premises.

(b) A brewer or distributor shall not provide the refrigerated cooler to the retailer under terms or conditions intended or designed to encourage or induce the retailer to sell or use the products of the providing brewer or distributor to the exclusion of other brewers' or distributors' products.

(c) A brewer or distributor shall not provide the refrigerated cooler to the retailer under terms or conditions intended or designed to:

1. Restrict the retailer's use of the refrigerated cooler to only the products of the providing brewer or distributor to the exclusion of other brewers' or distributors' products; or

2. Require the retailer to place the brewer's or distributor's products in certain locations in the cooler, or prohibit or direct the placement of other brewers' or distributors' products.

(d) A brewer shall not expressly or implicitly require any distributor of its products to provide, deliver, service, or maintain refrigerated coolers provided by the brewer or the distributor, or retaliate against a distributor who refuses to do so. This provision shall not prohibit a distributor's voluntary agreement to do so.

(e) A retailer shall not require or request a brewer or distributor to provide a refrigerated cooler to it as an express or implied condition for the retailer's sale, use, or placement of the brewer's or distributor's products at the retail licensed premises, or retaliate against a brewer or distributor who refuses to do so.

(f) Any refrigerated cooler provided by a brewer or distributor to a retailer shall not:

- 1. Exceed fifteen (15) cubic feet of interior storage space;
- 2. Have tapping or dispensing capabilities or otherwise be capable of use by the retailer in selling draft malt beverages;
- 3. Be constructed in any manner that limits the type of product that may be displayed in the cooler; and
- 4. Leave the retailer's licensed premises.

(g) Any refrigerated cooler provided by a brewer or distributor to a retailer shall have:

- 1. Adjustable temperature controls;
- 2. Adjustable shelving inside the cooler; and
- 3. Capability of storing differing product types and brands without the need to physically modify the unit.

(h) A substantial change shall not be made to a refrigerated cooler that obscures or removes the advertising associated with a particular brand of the providing brewer or distributor such that a reasonable customer cannot readily ascertain the identity of the provider.

(2) Subsection (1) of this section shall only apply to coolers provided on or after January 6, 2017.]

CHRISTINE TROUT, Commissioner,

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: October 12, 2017

FILED WITH LRC: October 12, 2017 at 3 p.m.

CONTACT PERSON: Heather Mercadante, Executive Advisor, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Heather.Mercadante@ky.gov.

PUBLIC PROTECTION CABINET

Department of Insurance

Commissioner's Office

(As Amended at ARRS, January 8, 2018)

806 KAR 18:030. Group health insurance coordination of benefits.

RELATES TO: KRS 304.17-042, 304.17A-250(9), 304.18-032, 304.18-085, 304.32-145, 304.38-185[, 304.43-085], **42 U.S.C. 1395**

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.18-085, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 ~~authorizes/provides that~~ the commissioner of the Department of Insurance[executive director] ~~to promulgate/may make~~ reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.32-250 ~~authorizes/provides that~~ the commissioner[Executive Director of Insurance] ~~to/may~~ promulgate reasonable administrative regulations[he deems] necessary for the proper administration of KRS 304.32. KRS 304.38-150 ~~authorizes/provides that~~ the commissioner[Executive Director of Insurance] ~~to/may~~ promulgate reasonable administrative regulations[which he deems] necessary for the proper administration of KRS 304.38. This administrative regulation establishes guidelines for coordination of benefits by group health insurance contracts.

Section 1. Definitions. (1) "Allowable expense" means a health care service or expense, including deductibles, coinsurance, and[or] copayments, that is covered in full or in part by any of the plans covering the person. [(2) "Benefit reserve" means the savings recorded by a plan for claims paid for a covered person as a secondary plan rather than as a primary plan.]

(2)[(3)] "Claim" means a request that benefits of a plan be

provided or paid, and the benefits claimed ~~are[may be]~~ in the form of:

- (a) Services including supplies;
- (b) Payment for all or a portion of the expenses incurred;
- (c) A combination of paragraphs (a) and (b) of this subsection;

or

(d) An indemnification. [(4) "Claim determination period" means a period of at least twelve (12) consecutive months, over which allowable expenses shall be compared with total benefits payable in the absence of coordination of benefits, to determine whether overinsurance exists and how much each plan will pay or provide.]

(3)[(5)] "Complying plan" means a plan with benefit determination requirements that comply with the requirements of this administrative regulation.

(4)[(6)] "Coordination of benefits" means a provision establishing an order in which plans pay their claims, and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(5)[(7)] "Custodial parent" means the parent awarded custody of a child by a court decree[,] or with whom the child resides more than one-half (1/2) of the calendar year.

(6)[(8)] ~~"Insurance contract" means a contract issued by an insurer as defined herein.~~

(7)[(9)] "Insurer" is defined by[*in*] KRS 304.17A-005(27).

(7)[(8)][(40)] "Noncomplying plan" means a plan ~~without[with~~ no] benefit determination requirements or whose benefit determination requirements do not comply with the requirements of this administrative regulation.

(8)[(9)][(44)] "Plan";

(a) Means:

1. A form of coverage with which coordination of benefits is allowed and "health benefit plans" as defined by KRS 304.17A-005(22); and

2. Sometimes includes Medicare benefits pursuant to 42 U.S.C. 1395, or other governmental benefits; and

(b) Does not mean:

1. The medical benefits coverage in a group, group-type, and individual motor vehicle "no-fault" and traditional automobile "fault" type contracts; or

2. School accident-type coverages that cover elementary, high school, or college students for accidents only, including athletic injuries, either on a twenty-four (24) hour basis or on a "to-and-from school" basis[means a form of coverage with which coordination of benefits is allowed and health benefit plans as defined in KRS 304.17A-005(22):

(a) ~~"Plan" shall not include the medical benefits coverage in a group, group-type, and individual motor vehicle "no-fault" and traditional automobile "fault" type contracts;~~

(b) ~~"Plan" may include Medicare benefits pursuant to 42 U.S.C. 1395, or other governmental benefits; and~~

(c) ~~"Plan" shall not include school accident-type coverages which cover elementary, high school, and college students for accidents only, including athletic injuries, either on a twenty-four (24) hour basis or on a "to-and-from school" basis.~~

(9)[(40)][(42)] "Primary plan" means a plan whose benefits for a person's health care coverage ~~are[shall be]~~ determined without taking the existence of any other plan into consideration if:

(a) The plan either has no order of benefit determination requirements, or its requirements differ from those permitted by this administrative regulation; or

(b) All plans that cover the person use the order of benefit determination requirements required by this administrative regulation, and under those requirements the plan determines its benefits first.

(10)[(11)][(43)] "Secondary plan" means a plan that is not a primary plan.

Section 2. Requirements for Coordination of Benefits. (1) If a person is covered by two (2) or more plans, the requirements for determining the order of benefit payments shall be as established in paragraphs (a) through (c) of this subsection.[are as follows:]

(a) The primary plan shall pay or provide its benefits as if the

secondary plan or plans did not exist.~~;~~

(b) A plan that does not contain a coordination of benefits provision~~[that is]~~ consistent with this administrative regulation shall be[is] always be primary, except that coverage obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may ~~state[provide—that]~~ the supplementary coverage shall be~~[considered]~~ secondary to the basic package of benefits provided by the contract holder.~~;~~ and]

(c) A plan may take the benefits of another plan into account only ~~if[when]~~ it is secondary to that other plan.

(2) Order of Benefit Determination. The~~[first of the]~~ following requirements shall be applied in the following priority, alphabetically to determine the order of plan payment[that describes which plan pays its benefits before another plan is the requirement to use]:

(a) Nondependent or dependent.

1. The plan that covers ~~a[the]~~ person other than as a dependent shall be[is] primary.

2. The~~[and the]~~ plan that covers ~~a[the]~~ person as a dependent shall be[is] secondary, unless the person is a Medicare beneficiary, in which case the order of benefits is determined in accordance with 42 U.S.C. 1395.

(b) Dependent child covered under more than one (1) plan. Unless a court decree determines otherwise, plans covering a dependent child,~~[A child,]~~ including a newborn subject to KRS 304.17-042 and 304.18-032, shall determine the order of benefits as established in subparagraphs 1. through 4. of this paragraph.[follows:]~~[covered under more than one (1) plan.]~~

1. The primary plan shall be[is] the plan of the parent whose birthday is earlier in the year if:

a. The parents are married;

b. The parents are not separated (whether or not they ever have been married); or

c. A court decree awards joint custody without establishing[specifying] that one (1) parent has the responsibility to provide health care coverage.

2. If both parents have the same birthday, the plan that has covered either of the parents longer shall be[is] primary.

3. If a court decree states that one (1) parent is responsible for the child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan shall be[is] primary. If the parent with~~[financial]~~ responsibility has no coverage for the child's health care services or expenses, but the responsible[that] parent's spouse does, the spouse's plan shall be[is] primary.

4. If the parents are divorced, separated, or not married[not married or are separated or divorced], and there is no court decree allocating responsibility for the child's health care services or expenses, the order of benefit determination among the plans of the parents and the parents' spouses (if any) shall be the plan of the[is]:

a. ~~[The plan of the]~~ Custodial parent;

b. ~~[The plan of the]~~ Spouse of the custodial parent;

c. ~~[The plan of the]~~ Noncustodial parent; and~~[then]~~

d. ~~[The plan of the]~~ Spouse of the noncustodial parent.

(c) Active or inactive employee. The plan that covers a person as an active employee,~~[who is]~~ neither laid off nor retired, or as an active[that] employee's dependent, shall be[is] primary. The plan covering the same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee shall be[is] the secondary plan.

(d) Continuation coverage. If a person has[whose] coverage~~[is]~~ provided pursuant to[under] a right of continuation pursuant to federal or state law and is also covered under another plan,~~[the plan covering the person as an employee, member, subscriber or retiree, or as that person's dependent, is primary and]~~ the continuation coverage shall be[is] secondary.

(e) Longer or shorter length of coverage. If the preceding requirements established in paragraphs (a) through (d) of this subsection, respectively, do not determine the order of benefits, the plan that covered the person for the longer period of time shall be[is] primary:

1. To determine the length of time a person has been covered

under a plan, two (2) plans shall be treated as one (1) if the covered person was eligible under the second within twenty-four (24) hours after the first ended;

2. Changes during a coverage period that do not constitute the start of a new plan include:

- a. A change in scope of a plan's benefits;
- b. A change in the entity that pays, provides, or administers the plan's benefits; or
- c. A change from one (1) type of plan to another; and[.]

3. The person's length of time covered under a plan shall be[is] measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group shall be used as the date from which to determine the length of time the person's coverage under the present plan has been in force.

(f) If none of the preceding requirements established in paragraphs (a) through (e) of this subsection, respectively, determines the primary plan, the allowable expenses shall be shared equally between the plans.

Section 3. Procedure to be Followed by Secondary Plan to Calculate Benefits and Pay Claim. (1) A secondary plan shall reduce its benefits so that the total benefits paid or provided by all plans[during a claim determination period] shall not be[are not] more than 100 percent of total allowable expenses. [(a) The secondary plan shall calculate its savings by subtracting the amount that it paid as a secondary plan from the amount it would have paid had it been primary and any savings shall be:

1. Recorded as a benefit reserve for the covered person; and
2. Used by the secondary plan to pay any allowable expenses, not otherwise paid, that are incurred by the covered person during the claim determination period.

(b) By the end of the claim determination period, the secondary plan shall:

1. Determine whether a benefit reserve has been recorded for the covered person;
2. Determine whether there are any unpaid allowable expenses for that claim determination period; and
3. Pay any unpaid allowable expenses for that claim determination period.

(c) The secondary plan shall use the covered person's recorded benefit reserve, if any, to pay up to 100 percent of total allowable expenses incurred during the claim determination period, at the end of which:

1. The benefit reserve shall return to zero; and
2. A new benefit reserve shall be created for each new claim determination period.

(2) The benefits of the secondary plan shall be reduced when the sum of the benefits payable under the secondary plan, in the absence of this coordination of benefits provision, and the benefits that would be payable under the other plans, in the absence of a coordination of benefits provision, whether or not a claim is made, exceeds the allowable expenses in a claim determination period, with a reduction of benefits as follows:

(a) The benefits of the secondary plan shall be reduced so that they and the benefits payable under the other plans do not total more than the allowable expenses; and

(b) Each benefit is reduced in proportion and charged against any applicable benefit limit of the plan.]

(2)[(3)] If a person is covered by more than one (1) secondary plan, the order of benefit determination requirements of this administrative regulation decide the order in which secondary plans benefits shall be[are] determined in relation to each other.[Each secondary plan shall take into consideration the benefits of the primary plan or plans and the benefits of any other plan which, under the requirements of this administrative regulation, has its benefits determined before those of that secondary plan.]

(3) The secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in absence of other health care coverage.

Section 4. Notice to Covered Persons. A plan shall, in its explanation of benefits provided to covered persons, include the

following language: "If you are covered by more than one (1) health benefit plan, you should file all your claims with each plan."

Section 5. Miscellaneous Provisions. (1) Provision of Services. A secondary plan that provides benefits in the form of services shall only[may] recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan.

(2) Non-Complying Plan Coordination.

(a) A plan with order of benefit determination requirements that comply with this administrative regulation may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination requirements that do not comply with those contained in this administrative regulation if the[on the following basis]:

1.[(a)][If the] Complying plan is the primary plan, it shall pay or provide its benefits first;

2.[(b)][If the] Complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In that situation, the payment shall be the limit of the complying plan's liability; and

3.[(c)][If the] Noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay its benefits accordingly. If, within two (2) years of payment, the complying plan receives information as to the actual benefits of the noncomplying plan, it shall adjust payments accordingly.

(b)[(3)] If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than he or she would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation as established in paragraph (3)1. through 4. of this subsection[set forth below], then the complying plan shall advance to or on behalf of the covered person an amount equal to the difference.

(c)[(4)] The complying plan shall not advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service, and:

1.[(a)] In consideration of the advance, the complying plan shall be subrogated to all rights of the covered person against the noncomplying plan; and

2.[(b)] The advance by the complying plan shall also be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.

(3)[(5)] Coordination of benefits differs from subrogation. Provisions for one (1) may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

(4)[(6)] If the plans cannot agree on the order of benefits within thirty (30) calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that a plan shall not[no plan shall] be required to pay more than it would have paid had it been primary. [Section 6. Severability. If any provision of this administrative regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this administrative regulation and the application of that provision to other persons or circumstances shall not be affected thereby.]

NANCY G. ATKINS, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: November 13, 2017

FILED WITH LRC: November 13, 2017 at 3 p.m.

CONTACT PERSON: Patrick D. O'Connor II, Kentucky Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-2669, email Patrick.oconnor@ky.gov.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Depository Institutions
(As Amended at ARRS, January 8, 2018)

808 KAR 3:050 Conduct.

RELATES TO: KRS 286.6-100,^[290.100,] 286.6-225,^[290.225,] 286.6-585,^[290.585,] 286.6-715, **12 U.S.C. 704**, **20 U.S.C. 1071f**,^[290.715]

STATUTORY AUTHORITY: KRS 286.1-020, KRS 286.6-070 ^[290.070], KRS 286.6-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.6-070^[290.070] authorizes^[requires] the Department of Financial Institutions to promulgate administrative regulations^[make]^[prescribe] rules-and-regulations^[necessary] for the proper conduct and regulation of credit unions. This administrative regulation establishes requirements^[is] to ensure^[assure] the proper conduct of credit unions.

Section 1. Definition. A "corporate credit union"^[unit] means^[as] a credit union that:

- (1) Is operated primarily for the purpose of serving other credit unions;
- (2) Is designated by the National Credit Union Administration as a corporate credit union; and
- (3) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Section 2. Refund of Interest. When an interest refund is authorized by the board of directors under KRS 286.6-225⁽³⁾^[290.225], it shall be recorded in the books of the credit union as a reduction of interest income from loans for that year or period. ~~[Section 3. Advertising. No credit union shall represent by any means nor permit any representation by any means (including any means of advertisement) that it is under the supervision or regulation of the Department of Financial Institutions.]~~

Section 3^[4]. Credit Union Annual Assessment Fee. Each state-chartered credit union shall pay an annual assessment fee to the department based on the assets of the credit union. (1) Pursuant to KRS 286.6-100, the annual assessment fee shall be based on the assets reported to the department on **December 31**~~[the 31st day of December]~~ of the previous calendar year.

(2) The annual assessment fee shall be paid by April 1.

(3) The annual assessment fee schedule shall be as follows:

If the total amount of assets equals:	The annual assessment fee shall be:
\$0 to \$2,000,000	\$1032.50 plus \$0.45 for each \$1,000 of assets over \$1,000,000
\$2,000,001 to \$5,000,000	\$1,482.50 plus \$0.30 for each \$1,000 of assets over \$2,000,000
\$5,000,001 to \$20,000,000	\$2,382.50 plus \$0.15 for each \$1,000 of assets over \$5,000,000
\$20,000,001 to \$50,000,000	\$4,632.50 plus \$0.13 for each \$1,000 of assets over \$20,000,000
\$50,000,001 to \$100,000,000	\$8,532.50 plus \$0.10 for each \$1,000 of assets over \$50,000,000
Over \$100,000,000	\$11,532.50 plus \$0.05 for each \$1,000 of assets over \$100,000,000

~~[Fee for Examination. (1) Each credit union shall pay the department a fee for each examination in accordance with the schedule of fees fixed by this section.~~

~~(2) In establishing such fees, the commissioner shall consider the anticipated aggregate cost of the examination program of the department including supervision, salaries, travel, and all other items which affect the cost of the examination program along with the ability of credit unions to pay such fees.~~

~~(3) The schedule of examination fees shall be as follows:~~

~~(a) Newly organized credit union. No fee will be charged a newly organized credit union for the first examination made within~~

a year of the date of its organization being approved.

~~(b) Credit union with assets of less than \$25,000; a fee of \$50.~~

~~(c) Credit union with assets of \$25,000 to \$50,000; a fee of \$50 plus \$2 per \$1,000 of assets over \$25,000.~~

~~(d) Credit union with assets of \$50,000 to \$100,000; a fee of \$100 plus \$1.90 per \$1,000 of assets over \$50,000.~~

~~(e) Credit union with assets of \$100,000 to \$250,000; a fee of \$195 plus \$1.75 per \$1,000 of assets over \$100,000.~~

~~(f) Credit union with assets of \$250,000 to \$500,000; a fee of \$457.50 plus \$1.20 per \$1,000 of assets over \$250,000.~~

~~(g) Credit union with assets of \$500,000 to \$1,000,000; a fee of \$757.50 plus \$.55 per \$1,000 of assets over \$500,000.~~

~~(h) Credit union with assets of \$1,000,000 to \$2,000,000; a fee of \$1,032.50 plus \$.45 per \$1,000 of assets over \$1,000,000.~~

~~(i) Credit union with assets of \$2,000,000 to \$5,000,000; a fee of \$1,482.50 plus \$.30 per \$1,000 of assets over \$2,000,000.~~

~~(j) Credit union with assets of \$5,000,000 to \$20,000,000; a fee of \$2,382.50 plus \$.15 per \$1,000 of assets over \$5,000,000.~~

~~(k) Credit union with assets of \$20,000,000 to \$50,000,000; a fee of \$4,632.50 plus \$.13 per \$1,000 of assets over \$20,000,000.~~

~~(l) Credit union with assets of \$50,000,000 to \$100,000,000; a fee of \$8,532.50 plus \$.10 per \$1,000 of assets over \$50,000,000.~~

~~(m) Credit union with assets over \$100,000,000; a fee of \$11,532.50 plus \$.05 per \$1,000 of assets over \$100,000,000.]~~

Section 4^[5]. Fidelity Bond. (1) The minimum^[amount of the] blanket fidelity bond required by KRS 286.6-225⁽²⁾^{[290.225}(2)] shall be as follows:^[the amount set forth in the following chart based on the assets of the credit union:]

Assets	Minimum Bond
\$0 to \$10,000	Amount equal to the credit union's assets
\$10,001 to \$1,000,000	\$10,000 for each \$100,000 or fraction thereof
\$1,000,001 to \$50,000,000	\$100,000 plus \$50,000 for each million or fraction thereof over \$1,000,000
\$50,000,001 to \$295,000,000	\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000
Over \$295,000,000	\$5,000,000

(2) The board of directors of every credit union shall review their blanket fidelity bond coverage at least once each year ^[in order] to ascertain its adequacy ^[in relation to risk exposure].

Section 5^[6]. Stocks and Bonds. A credit union may invest a maximum of five (5) percent of members shares in:

(1) Stock of a corporation rated A+ in the current issue of Standard and Poore's Corporation Security Owners Stock Guide at the date of acquisition of the stock; and

(2) A corporate bond rated AAA or higher in the current issue of Standard and Poore's Corporation Bond Guide, or rated AAA in the current issue of Moody's Bond Record at the date of acquisition of the bond.

Section 6^[7]. Risk Asset. For the purpose of establishing the regular reserve, an asset shall be/is a risk asset except for the following:

(1) Cash on hand;

(2) A share^[deposit] or deposit^[share] in a federally or state-insured bank, savings and loan association, or credit union that has a remaining maturity of five (5) years or less;

(3) An asset, including a collateralized mortgage obligation that is comprised of government guaranteed mortgage loans, that has a remaining maturity of five (5) years or less and is insured by, is fully guaranteed as to principal and interest by, or is due from the U.S. Government, its agencies, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association;

(4) A loan to another credit union that has a remaining maturity of five (5) years or less;

(5) A student loan that has a remaining maturity of five (5) years or less and that is insured under the provisions of Title IV,

Part B of the Higher Education Act of 1965 (20 U.S.C. 1071, et seq.) or similar state insurance programs;

(6) A loan that has a remaining maturity of five (5) years or less and that is fully insured or guaranteed by the federal or a state government or any agency of either;

(7) A share or deposit in a corporate credit union that has a remaining maturity of five (5) years or less, other than a Membership Capital Share Deposit account as defined in 12 U.S.C. 704; ~~and~~

(8) A common trust investment, including a mutual fund, which deals exclusively in investments authorized by the Federal Credit Union Act that are either carried at the lower cost or market, or are marked to market value monthly;

(9) A prepaid expense;

(10) Accrued interest on a nonrisk investment;

(11) A loan fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;

(12) A loan ~~which is~~ purchased from a liquidating credit union and guaranteed by the National Credit Union Administration;

(13) A National Credit Union Share Insurance Fund Guaranty Account established with the authorization of the National Credit Union Administration under the authority of Section 203 ~~section 208~~ (a)(1) of the Federal Credit Union Act;

(14) An investment in shares of the National Credit Union Administration Central Liquidity Facility;

(15) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section with a maturity greater than five (5) years is not a risk asset if the asset is being carried on the credit union's records at the lower of cost or market, or is being marked to market value monthly;

(16) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section, with a remaining maturity of greater than five (5) years is not a risk asset, whether or not the asset is being carried on the credit union's records at the lower of cost or market or is being marked to market value monthly, provided the asset meets the ~~following~~ criteria established in paragraphs (a) through (c) of this subsection. ~~and~~

(a) The interest rate ~~shall be~~ is reset at least annually; ~~and~~

(b) The interest rate of the instrument ~~shall be~~ is less than the maximum allowable interest rate for the instrument on the date of the required reserve transfer; ~~and~~

(c) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index;

(17) A fixed asset ~~that~~ which includes an office, branch office, suboffice, service center, parking lot, or real estate in which ~~where~~ the credit union transacts or will transact business; and office furnishing, office machine, computer hardware and software, automated terminal, and heating and cooling equipment; and

(18) A deposit in the National Credit Union Share Insurance Fund representing a federally insured credit union's capitalization account balance of one (1) percent of insured shares.

Section 7[8]. Charitable Contribution. The board of directors shall only ~~may~~ authorize a contribution to a civic, charitable, or service organization.

Section 8[9]. Conversion. A state-chartered credit union may convert to another charter ~~by complying with the following procedures:~~

(1) The board of directors shall first put the question of conversion to a vote of the members. Written notice of the proposed conversion shall be given to all members, which shall include a statement including the reasons for the proposed conversion. The notice ~~shall~~ may be mailed to the last known address or hand delivered to the members. The notice shall state ~~set forth~~ the date and place for this meeting called to vote on the proposed conversion, which shall be at least fifteen (15) days after the date of the notice.

(2) Approval of the proposed conversion shall be by a vote of the majority of the members who vote on the proposed conversion,

in person or by absentee ballot if the bylaws of the credit union allow voting by absentee ballot ~~ballots~~.

(3) A statement of the results of the vote, verified by the president and secretary, shall be filed with the commissioner.

(4) The commissioner shall issue an order that, on the effective date of the conversion, the credit union is no longer incorporated under the laws of Kentucky. A copy of the order shall be forwarded to the Secretary of State.

CHARLES A. VICE, Commissioner

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: November 14, 2017

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

CONTACT PERSON: Joseph Donohue, General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787, email KDFI.Regis@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amended After Comments)

501 KAR 6:280. Risk and needs assessment.

RELATES TO: KRS 196.035, 197.020, 439.265, 439.3101, 439.3104, 439.3105, 439.331, 439.348, 439.480, 446.010, 533.030
STATUTORY AUTHORITY: KRS 197.020, 439.3101, 439.3104, 439.331

NECESSITY, FUNCTION, AND CONFORMITY: KRS 197.020(1)(d), 439.3101(2)(a), 439.3104(1) and (2), and 439.331(1) require the Department of Corrections to promulgate an administrative regulation for the administration of a validated risk and needs assessment to assess the criminal risk factors and correctional needs of all inmates and offenders upon commitment to the department. This administrative regulation establishes the validated risk and needs assessment requirements for assessing the criminal risk factors and correctional needs of inmates and offenders.

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for risk and needs assessment," January 12, 2018~~[November 15, 2017]~~~~[July 10, 2012]~~, are incorporated by reference. These policies and procedures include:

29.1 Risk and Needs Assessment (Amended 1/12/18~~[11/15/17]~~~~[7/10/12]~~)

29.2 Case Planning (Amended 1/12/18~~[11/15/17]~~~~[7/10/12]~~)

29.3 Risk and Needs Assessment Administration, Training, and Quality Assurance (7/10/12)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/Pages/default.aspx>.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: January 11, 2018

FILED WITH LRC: January 12, 2018 at 10 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes policies and procedures relating to risk and needs assessment and case management of offenders.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 197.020(1)(d), 439.3101(2)(a), 439.331(1), 439.3104(1) and (2) and to meet American Correctional Association (ACA) standards requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes policies and procedures that govern the risk and needs assessment and case planning of offenders to comply with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Department of Corrections employees and to offenders for risk and needs assessments and case planning.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the procedures concerning risk and needs assessments and case planning in part to better address reentry issues and changes in the assessment tool used.

(b) The necessity of the amendment to this administrative regulation: To update procedures for risk and needs assessment and case planning for which regulations are required by the authorizing statutes.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require risk and needs assessments for offenders.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and offenders information concerning the updates to the procedures for risk and needs assessment and case planning that are required by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation may affect approximately 1000 employees of the Department of Corrections, 15,000 inmates committed to the Department of Corrections, and 12,000 parolees and 29,000 probationers under community supervision of 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: Department of Corrections staff will follow the provisions of the regulation for risk and needs assessment and case planning of offenders. Offenders will be able to understand the way that risk and needs assessments will be handled by staff, and will gain a better understanding of their criminogenic needs. Use of the case plan will assist offenders in complying with their supervision and programming while incarcerated. The risk and needs assessment and corresponding case plan will assist employees to better evaluate and address the offenders' areas of risk, resulting in more effective use of staff time and department resources to most effectively attack offender's risk of recidivism.

(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 administer the risk and needs assessment tool. The case management plan requires software updates, included in \$1.2 million allocated to update the Department of Corrections offender management system per HB 463 implementation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Corrections will allocate referral resources, interventions, and programming space according to nationally set best practices. Department employees will benefit from a more streamlined assessment and case management process, allowing staff to identify higher risk offenders and appropriate resources likewise, making more productive use of staff time and Department resources. Additionally, offenders will benefit from more effective assessment, case monitoring, and therefore reduced recidivism.

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

(a) Initially: Initial cost of training staff to conduct risk and needs assessment: \$11,287.50 paid from the Department of Corrections budgeted funds for the biennium to train master trainers. In-house training for the case management plan includes 963 employees, with the only cost to the Department for employee travel and per diem. Changing the assessment tool results in a costs savings for that portion of the costs, because there is no recurring charge for continued access to the previous corporation's system.

(b) On a continuing basis: On-going costs for the risk and

needs assessment includes the cost of training new line staff. Costs to the Department include housing costs, travel reimbursement and per diem.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is from the Department of Corrections budgeted funds for the biennium.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation impacts the Kentucky 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 197.020(1)(d), 439.3101(2)(a), 439.331(1), 439.3104(1) and (2)

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

(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 does not generate revenue.

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

(c) How much will it cost to administer this program for the first year? Initial cost of training staff to conduct risk and needs assessment: \$11,287.50 paid from the Department of Corrections budgeted funds for the biennium to train master trainers. In-house training for the case management plan includes 963 employees, with the only cost to the Department for employee travel and per diem. Changing the assessment tool results in a costs savings for that portion of the costs, because there is no recurring charge for continued access to the previous corporation's system.

(d) How much will it cost to administer this program for subsequent years? Additional costs revolve around continued offender assessments and staff training. It is estimated that approximately 300 new staff members will require training annually.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amended After Comments)

922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS 194A.060, 199.892, 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, 199.8994, 214.036,

314.011(5), 337.275, 600.020[(50)], 605.120(5), 620.020(10), [2014 Ky. Acts ch. 117, Part 1, G.9(3);] 2016 Ky. Acts ch. 149, Part 1, G.9(7), 7 C.F.R. 1463, 20 C.F.R. 676-678, 34 C.F.R. 361, 463[652, 660-674], 45 C.F.R. 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, 9902(2), 9857-9858q, 10602(c)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 9857-9858q, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that [which] is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program effective October 1, 2017, to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that may affect [affects] eligibility or benefit amounts, such as:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence;
- (k) Change in marital status; or
- (l) Beginning or ending receipt of unearned income.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child Care and Development Fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined by [in] 922 KAR 1:330, Section 1(4) [(4)].

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home" is defined by KRS 199.894(5).

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) ~~Physician~~[Physician's] assistant;
- (c) Advanced practice registered nurse;
- (d) Qualified mental health professional as defined by KRS 600.020(52)(59); or
- (e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(15) "Homeless" means an individual or a family lacking a fixed, regular, and adequate nighttime residence, including a child experiencing homelessness as defined by 45 C.F.R. 98.2[due to economic hardship].

(16) "In loco parentis" means a person acting in place of a parent, including:

- (a) A legal guardian;
- (b) An individual related by blood, marriage, or adoption to the child; or
- (c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(17) "Infant" means a child who is less than one (1) year old.

(18) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(19) "Parent" is defined by 45 C.F.R. 98.2.

(20) "Part day" means child care that is provided for less than five (5) hours per day.

(21) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(22) "Preventive services" is defined by KRS 620.020(10).

(23) "Provider" means the entity providing child care services, such as:

- (a) A member of a limited liability corporation (LLC);
- (b) The head of an organization;
- (c) An owner of a corporation;
- (d) A member of a partnership;
- (e) An owner of a business;
- (f) An individual provider; or
- (g) A stockholder of a stock-holding company.

(24) "Qualified alien" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(25) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(26) "Related" means having one (1) of the following relationships:

- (a) Child;
- (b) Stepchild;
- (c) Grandchild;
- (d) Great-grandchild;
- (e) Niece;
- (f) Nephew;
- (g) Sibling;
- (h) Child in legal custody; or
- (i) Child living in loco parentis.

(27) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(28) "School-age child" means a child who has reached the sixth birthday.

(29) "State median income" or "SMI" means the estimated median income of households in the state.

(30) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

- (a) Defined by 7 U.S.C. 2012; and
- (b) Governed by 921 KAR Chapter 3.

(31) "Teenage parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(32) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its

designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

a. ~~Until April 1, 2017, a signed DCC-90, Application for Subsidized Child Care Assistance, 11/09, or DCC-90.1, Intent to Apply for Child Care Assistance, 11/09; or~~

b. ~~Effective April 1, 2017, A signed DCC-90, Subsidized Child Care Assistance Application Summary; 11/04/17; or~~

b. Submission in accordance with 921 KAR 2:040, Section 1(6); or

2. The agency is contacted, if the person:

- a. Has a physical or mental disability; and
- b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:

- 1. Deaf; or
- 2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C.[Section] 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, and 7 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:

- a. Income;
- b. Technical eligibility; and
- c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall have[be approved for CCAP with] an extended period to verify information not to exceed three (3) months[ninety (90) days] in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) ~~[To Provide written notification of the decision]~~ Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send [:

1. ~~A DCC-105, Child Care Assistance Program Notice of Action, 11/09, to the applicant in accordance with Section 11(5)(a) of this administrative regulation; or~~

2. ~~Effective April 1, 2017, notice to the applicant in accordance with Section 11(4)[11(5)(b)] of this administrative regulation.~~

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

- (a) Assistance until approval of the application for benefits; or
- (b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

1. Resident of Kentucky; and
2. U.S. citizen or qualified alien;
- (b) Is under age:
 1. Thirteen (13) at the time of application or recertification; or
 2. Nineteen (19) at the time of application or recertification and is:
 - a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;
 - b. Under court supervision; or
 - c. Identified as a priority by federal statute, regulation, or funding source; and
 - (c) Has a current immunization certificate showing that the child is immunized, unless:
 1. There is an exception pursuant to KRS 214.036; or
 2. The child is attending a:
 - a. Licensed child-care center;
 - b. Certified child-care home;
 - c. Public school;
 - d. Head Start; or
 - e. Other entity that requires the immunization record.
 - (2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.
 - (3) A family shall not be eligible for a CCAP benefit if care is provided by:
 - (a) A parent or stepparent;
 - (b) A legal guardian;
 - (c) A member of the K-TAP or SNAP case in which the child in need of child care assistance is included;
 - (d) A person living in the same residence as the child in need of care;
 - (e) A provider not:
 1. Licensed according to 922 KAR 2:090, Child-care[Child care] center licensure;
 2. Certified according to 922 KAR 2:100, Certification of family child-care[child-care] homes; or
 3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;
 - (f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care; or
 - (g) Another child care provider if the family operates the child care business in the home.
 - (4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.
 - (5) A child in foster care shall not be eligible for CCAP.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

- (a) An applicant who has employment an average twenty (20) hours per week;
- (b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;
- (c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;
- (d) ~~A recipient who is less than ninety (90) days from:~~
 1. ~~The loss of employment, required number of employment hours, or training through no fault of the recipient and is actively searching for employment in accordance 42 U.S.C. 9858c(c)(2)(N)(iii);~~

2. ~~The start of maternity leave; or~~
3. ~~The start of medical leave from employment due to a health condition verified by a health professional;~~
- (e) A relative caregiver pursuant to the conditions of a program established by KRS 605.120(5), who meets:
 1. All requirements in this section; and
 2. Income eligibility standards in Section 7 of this administrative regulation; or
 - (e)[(f)] A teen parent attending high school or pursuing a general equivalency degree (GED), including a period of recess or temporary break not to exceed three (3) months.
- (2) A child shall be eligible to receive CCAP for up to three (3) months or in accordance with Section 8 of this administrative regulation if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:
 - (a) An applicant who is homeless;
 - (b) An applicant who:
 1. Is engaged in job search; and
 2. Submits a completed DCC-90P, CCAP Job Search Documentation, within the three (3) months of job search verifying a minimum of ten (10) contacts with prospective employers;
 - (c) A recipient after the loss of employment, a reduction in the required number of employment hours, or cessation of attendance at a job training or educational program in accordance with 42 U.S.C. 9858c(c)(2)(N)(iii), to allow for job search or resumption of work or attendance at job training or educational program; or
 - (d) A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a temporary disability as verified by a health professional necessitates longer than three (3) months of CCAP eligibility.
- (3) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 7(6)(d)[7(7)(d)] of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275. [(3) Until April 1, 2017, an applicant eligible in accordance with this section shall sign and return the DCC-91, Client Rights and Responsibilities Sheet, and the DCC-94, Child Care Service Agreement and Certificate, 11/09.]

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child:

- (a) Resides with an applicant who:
 1. Receives child protective or preventive services; or
 2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and
- (b) Meets the requirements listed in Section 3 of this administrative regulation.
- (2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.
- (3)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 10 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.
- (b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan. ~~[(5) Until April 1, 2017, an applicant eligible in accordance with this section shall sign and return the DCC-91.]~~

Section 6. Kentucky Works Child Care Eligibility Determination.

- (1) A child shall be eligible for CCAP if the child:
 - (a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370; and
 - (b) Meets the requirements listed in Section 3 of this[the] administrative regulation.
- (2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a

separate application as an integral part of a Kentucky Works Program self-sufficiency plan. ~~[(3) Until April 1, 2017, an applicant eligible in accordance with this section shall sign and return the DCC-91.]~~

Section 7. Income Eligibility. (1) A child shall be eligible for ~~the~~ CCAP if the family's income is less than or equal to:

(a) 160 percent of the federal poverty level as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2018 at initial application; or

(b) 165 percent of the federal poverty level as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2018 at recertification or recalculation.

(2) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(3) A child ~~who~~ ~~that~~ is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(4) Excluded income shall be:

(a) K-TAP child only payments, including back payment;

(b) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(e) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP;

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5085 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

(v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w) The advance payment or refund of earned income tax credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);

(jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act (WIOA) pursuant to 20 C.F.R. 676-678 or 34 C.F.R. 361 or 463 ~~652 and 660 to 674~~; ~~or~~

(kk) Waiver [Michelle P. waiver] reimbursement in accordance with 907 KAR 1:170, 907 KAR 1:835, or 907 KAR 7:015 to a parent for the care of a child in the home; or

(ll) Supplemental Security Income (SSI) for a child.

(5) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(6) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by adding gross income from each pay period, dividing by the total number of pay periods considered, and converting the pay period figure to a monthly figure by multiplying a:

a. Weekly amount by:

(i) ~~4.334~~; or

(ii) ~~Effective April 1, 2017,~~ four and one-third (4 1/3);

- b. Biweekly amount by:
- 2.167; or
 - ~~Effective April 1, 2017,~~ two and one-sixth (2 1/6); or
- c. Semimonthly amount by two (2); and
4. If income has recently begun and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:
- Multiplying the:
 - Hourly rate by the estimated number of hours to be worked in a pay period; or
 - Daily rate by the estimated number of days to be worked in the pay period;
 - Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and
 - Rounding to the nearest dollar.
- (c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:
- Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
 - Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.
- (d) For a case with self-employment income, a monthly amount shall be determined as follows:
- If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);
 - If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and
 - Profit shall be determined by:
 - Rounding the total gross income to the nearest dollar;
 - Rounding the total amount of allowable expenses to the nearest dollar;
 - Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and
 - Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.
 - If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be recertified at least every twelve (12) months.

(2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(3) Unless a nonrelative is approved as fictive kin under 922 KAR 1:140 and Section 5 of this administrative regulation, a nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

(4) In accordance with 42 U.S.C. 9858(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.

Section 9. Payment Rates and Policy. (1)(a) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rate[Rates] Chart[,-02/46].

(b) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(c) The maximum payment rates shall include the following

categories:

- Full day;
 - Part day;
 - Licensed;
 - Certified;
 - Registered;
 - Infant/Toddler;
 - Preschool child; and
 - School-age child.
- (2) To the extent funds are available, a licensed or certified provider shall receive:
- Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:
 - National Association for the Education for Young Children;
 - National Early Childhood Program Accreditation;
 - National Association for Family Child Care;
 - Council on Accreditation; or
 - Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or
 - One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:
 - 7 p.m. to 5 a.m. daily; or
 - Friday, 7 p.m. through Monday, 5 a.m.
- (3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:
- With a special need; or
 - Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:
 - Physically or mentally incapable of caring for himself as determined by a health professional; or
 - Under court supervision.
- (4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.
- (5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:
- Three (3) children receiving CCAP per day; or
 - Six (6) children receiving CCAP per day, if those children are:
 - A part of a sibling group; and
 - Related to the provider.
- (6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.
- (7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 10. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(3)[5(4)] of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

Family Co-Payment Per Day								
Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0
900	999	\$2	\$2	\$3	\$2	\$2	\$2	\$2

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1,000	1,099	\$3	\$3	\$3	\$2	\$3	\$2	\$3
1,100	1,199	\$4	\$4	\$4	\$3	\$3	\$2	\$3
1,200	1,299	\$4	\$4	\$5	\$4	\$4	\$3	\$3
1,300	1,399	\$5	\$5	\$5	\$5	\$5	\$3	\$4
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$7
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$8
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$9
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$9
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$10
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$10
2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$10
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$11
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$11
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$13
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$14
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$15
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$17
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$19
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(c) In accordance with 45 C.F.R. 98.21, a copayment for an eligible family shall:

1. Be determined at initial application or recertification; and
2. Not increase during the twelve (12) month eligibility period.

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a [child care certificate: 1. The] DCC-94, Child Care Service Agreement and Certificate[11/09; or 2. Effective April 1, 2017, the DCC-94, 04/17].

(3) Upon enrollment or reenrollment with a provider, an applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the:

- (a)[The DCC-91 and the] DCC-94[; 11/09]; or
- (b)[Effective April 1, 2017, the] DCC-90[; 04/17].

(4)[Until April 1, 2017, an applicant approved in accordance with Section 5 or 6 of this administrative regulation shall sign and return the DCC-91.

(5) Notification of action. (a)[Until April 1, 2017, a DCC-105, Child Care Assistance Program Notice of Action, 11/09:

1. Shall serve many purposes in the administration of CCAP, including notice to an applicant or recipient of:

- a. Changes in:
 - (i) Copayment;
 - (ii) Certification period; or
 - (iii) Household size;
 - b. Approval of:
 - (i) Application; or
 - (ii) Continued eligibility; or
 - c. Adverse action, including:
 - (i) Denial of application;
 - (ii) Reduction of CCAP benefits; or
 - (iii) Termination of CCAP benefits;
2. Providing notice of an adverse action shall include:
- a. Reason for the adverse action;

b. Citation from an applicable state administrative regulation; and

c. Information regarding the:

(i) Informal dispute resolution process in accordance with Section 17 of this administrative regulation; and

(ii) Opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation; and

3. Shall contain language that differs according to the purpose of the notice described in subparagraphs 1 through 2 of this paragraph.

(b) Effective April 1, 2017:

4.] A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or disenrollment with a provider.

(b)[:- 2:] A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

- 1.[a:] A change in the certification period of child;
- 2.[b:] Approval of an application; or
- 3.[c:] Continued eligibility.

(c)[:- 3:] A DCC-105, Child Care Denial/Discontinuance Notice,[04/17:] shall provide notice of:

- 1.[a:] Denial of an application;
- 2.[b:] Discontinuance of a CCAP benefit;
- 3.[c:] Reason for adverse action;
- 4.[d:] Citation from an applicable state administrative regulation; and

5.[e:] Information regarding the opportunity to request an administrative hearing in accordance with Section 17 of this administrative regulation.

(d)[:- and 4:] The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection[subparagraphs 1 through 3 of this paragraph].

(5)[:- (6)] An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(6)[:- (7)] Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(7)[:- (8)] An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

- (a) Discontinued from CCAP benefits; and
- (b) Unable to participate in CCAP until the applicant meets the

requirements of the quality control or case review.

(8)(9) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 13(1)(c) of this administrative regulation.

Section 12. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child-care[Child-care] center licensure;

(c) 922 KAR 2:100, Certification of family child-care[child-care] homes;

(d) 922 KAR 2:110, Child-care center[Child-care facility] provider requirements;

(e) 922 KAR 2:120, Child-care center[Child-care facility] health and safety standards;

(f) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program; [and]

(g) 922 KAR 2:190, Civil penalties;

(h) 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

(i) 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals, upon its adoption.

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;

(d) K-TAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(e)(f) Teen parents attending high school or pursuing a general equivalency degree (GED);

(f)(g) A K-TAP recipient attempting to transition off assistance through employment;

(g)(h) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(h)(i) A low income working parent; or

(i)(h) A parent in education or training programs leading to self-sufficiency.

Section 13. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the

provider and prior to receiving payment from the CCAP, ~~the following form: 1. Until April 1, 2017, the DCC-94, 11/09; or 2. Effective April 1, 2017, the DCC-94[, 04/17];~~

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c)1. Maintain the DCC-94E, Child Care Daily Attendance Record, in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 2:090, Child-care[Child-care] center licensure;

3. 922 KAR 2:100, Certification of family child-care[child-care] homes;

4. 922 KAR 2:110, Child-care center[Child-care facility] provider requirements;

5. 922 KAR 2:120, Child-care center[Child-care facility] health and safety standards;

6. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program; [and]

7. 922 KAR 2:190, Civil penalties; [and]

8. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes, upon its adoption; and

9. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals, upon its adoption; and

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP.

(2) A licensed or certified child care provider shall complete and submit ~~the following form prior to receiving payment from the CCAP:~~

~~(a) Until April 1, 2017, the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP[10/14; or~~

~~(b) Effective April 1, 2017, the DCC-94B, 04/17].~~

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;

2. The work hours for each employee of each shift;

3. The management for each shift;

4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of:

a. For a licensed child-care center, 922 KAR 2:090, 922 KAR 2:110, and 922 KAR 2:120; or [and]

b. For a certified family child-care home, 922 KAR 2:100; and

2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a

governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.

Section 14. Other Services. To the extent[~~state~~] funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 of this administrative regulation may be eligible for:

- (1) Child care payments;
- (2) Enrollment fees;
- (3) Activity or day trip fees;
- (4) Material fees;
- (5) Transportation fees; or
- (6) Other items relating to child care services with prior approval of the cabinet.

Section 15. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 2:020.

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;
2. An illness of the:
 - a. Child; or
 - b. Applicant; or
3. A disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section ~~10~~10(4) of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

- a. Entry into the provider's premises during operating hours; or
- b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 13(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 13(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 12(8) of this administrative regulation.

Section 17. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with[:

~~(a) 922 KAR 1:320 until April 1, 2017; or (b)] 921 KAR 2:055[effective April 1, 2017].~~

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

~~(a)[1. Until April 1, 2017, 922 KAR 1:320; or 2. Effective April 1, 2017,] 922 KAR 2:260; or~~

~~(b) 922 KAR 2:020.~~

Section 18. Records. Records of CCAP shall be maintained and disclosed in accordance with:

(1) KRS 194A.060;

(2) 45 C.F.R. 98.90(e); and

(3) 45 C.F.R. 205.50(a)(1)(i).

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:

~~(a) "DCC-90, Application for Subsidized Child Care Assistance", 11/09;~~

~~(b)] "DCC-90, Subsidized Child Care Assistance Application Summary", 10/17[04/17];~~

~~(b) "DCC-90P, CCAP Job Search Documentation", 10/17;~~

~~(c) "DCC-90.1, Intent to Apply for Child Care Assistance", 11/09;~~

~~(d) "DCC-91, Client Rights and Responsibilities Sheet", 04/13;~~

~~(e) "DCC-94, Child Care Service Agreement and Certificate", 11/09;~~

~~(f)] "DCC-94, Child Care Service Agreement and Certificate", 10/17[04/17];~~

~~(d) [(g)] "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17[04/17];~~

~~(e) [(h)] "DCC-94B, Licensed or Certified Provider Agreement Form", 10/14;~~

~~(i)] "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;~~

~~(f) [(j)] "DCC-94C, Provider Notification Letter", 10/17[04/17];~~

~~(g) [(k)] "DCC-94E, Child Care Daily Attendance Record", 7/13;~~

~~(h) [(l)] "DCC-97, Provider Billing Form", 04/13;~~

~~(i) [(m)] "DCC-105, Child Care Assistance Program Notice of Action", 11/09;~~

~~(n)] "DCC-105, Child Care Denial/Discontinuance Notice", 10/17[04/17]; and~~

~~(j) [(o)] "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 10/17[02/16].~~

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

ADRIA JOHNSON, Commissioner

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: January 11, 2018

FILED WITH LRC: January 11, 2018 at 4 p.m.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email Elizabeth.Caywood@ky.gov, and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

regulation enables the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(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 CCAP in a manner which is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

(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 updates content to support the deployment of CCAP on benefit effective October 1st and to ensure policies pertaining to eligibility determinations and certification, children experiencing homelessness, and job search are consistent with federal requirements. In addition, the amendment makes updates and technical corrections in accordance with KRS Chapter 13A. The amended-after-comments version of the administrative regulation addresses a public comment by clarifying excluded income.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure CCAP policy congruence with CCAP deployment on benefit and the federal reauthorization of CCDF, thereby improving qualified families' access to CCAP and helping the state avoid threat of federal corrective action or penalty to its block grant award. The amendment is also necessary to support parents' efforts to achieve self-sufficiency and the health and welfare of vulnerable children.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations and overarching federal requirements, promoting parents' efforts to achieve self-sufficiency and the provision of quality child care, enhancing program integrity, and preserving the health and welfare of vulnerable children.

(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 refinement of CCAP in accordance with federal laws and the interests of households and children served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 2017, there were 27,280 unique children in 15,074 unique families receiving CCAP. There were 2,342 child care providers, and 1,755 child care providers were participating in CCAP.

(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: Effective with this administrative regulation, regulated entities will be able to access CCAP through the benefit self-service portal, the Department for Community Based Services (DCBS) family support call services, and all DCBS offices during state operating hours. In addition, CCAP will be offered to families seeking public assistance benefits, thus better ensuring working and low-income families have access to the full array of work supports for which they qualify.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will

create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the policies that are more parent- and work-friendly, including CCAP for initial job search, additional time for homeless households to produce verification, clarifications regarding adjustments during certification periods; and access to CCAP through benefit, family support call services, and local DCBS offices during all state operating hours. Regulated entities will also benefit from improved accuracies of an integrated eligibility and enrollment system and CCAP's alignment with the CCDF Reauthorization of 2014 preserving the state's federal award.

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

(a) Initially: The administrative regulation will be implemented within available federal and state appropriations for CCAP. Implementation of this administrative regulation better ensures the state's compliance with CCDF Reauthorization requirements and reduces the threat for federal corrective action or financial penalty.

(b) On a continuing basis: The administrative regulation will be implemented within available federal and state appropriations for CCAP. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are the federal Child Care and Development Fund Block Grant, state match, state maintenance of effort funds, and state 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: The administrative regulation requires no increase in fees or funding.

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

(9) TIERING: Is tiering applied? (Explain why or why not) The Child Care Assistance Program is implemented in a like manner statewide. However, provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. The provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

(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 Child Care Assistance Program (CCAP) has been operational for a number of years. It does not directly generate revenues for the state; however, it supports the health, safety, and welfare of children and the ability of low-income parents to work and obtain additional skills and training. This administrative regulation will not directly generate any new revenue for the first year. Research suggests that quality early care and education help avoid future public costs.

(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 directly generate any new revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? The administration of this program is projected to fall within available federal and state appropriations.

(d) How much will it cost to administer this program for subsequent years? The administration of this program is projected to fall within available federal and state appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Amendment)**

201 KAR 9:310. Continuing medical education.

RELATES TO: KRS 214.610, 214.620, 218A.205, 311.565(1)(b), 311.601, 620.020

STATUTORY AUTHORITY: KRS 311.565(1)(a), (b), 311.601(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.601(1) authorizes the board to promulgate an administrative regulation that establishes requirements to ensure the continuing professional competency of licensees. This administrative regulation establishes continuing medical education requirements for physicians in Kentucky, including requirements for courses relating to the use of KASPER, pain management, and addiction disorders required for physicians who prescribe or dispense controlled substances in the Commonwealth of Kentucky.

Section 1. Continuing Medical Education. Except as provided in Section 4 of this administrative regulation, at the time a licensee seeks to renew his or her license, the licensee shall submit verification of satisfactory completion of a program of continuing medical education using the Continuing Medical Education Certification Form by the renewal deadline established in 201 KAR 9:051.

Section 2. In order to meet the continuing medical education requirements, a licensee shall:

(1) Submit evidence that thirty (30) of the sixty (60) hours were certified in Category I by an organization accredited by the:

- (a) Accreditation Council on Continuing Medical Education; or
- (b) The American Osteopathic Association;

(2) Submit evidence that:

(a) The licensee has received the American Medical Association's "physician recognition award", or the American Osteopathic Association's "osteopathic physicians' recognition award"; and

(b) The award is in effect at the time the license is renewed;

(3) Submit verification that the:

(a) Licensee has completed continuing medical education requirements of any specialty organization which is recognized by the American Medical Association or American Osteopathic Association as at least equivalent to their recognition awards; and

(b) Certification is in effect at the time a license is renewed; or

(4) Submit verification that the licensee is in, or has been in, an approved postgraduate training program. Each year of postgraduate training shall be equivalent to fifty (50) hours of continuing medical education.

Section 3. Required Hours of Continuing Education. (1)(a) For each three (3) year continuing education cycle, a licensee shall complete a total of sixty (60) hours of continuing medical education, if his or her license has been renewed for each year of a continuing medical education cycle.

(b) If the license has not been renewed for each year of a continuing medical education cycle, a licensee shall complete twenty (20) hours of continuing medical education for each year for which the license has been renewed.

(c) A licensee whose initial licensure was granted the first year of the continuing education cycle for which verification is submitted shall complete sixty (60) hours of continuing medical education before the end of the cycle.

(d) A licensee whose initial licensure was granted the second year of the continuing education cycle for which verification is submitted shall complete forty (40) hours of continuing medical education before the end of the cycle.

(e) A licensee whose initial licensure was granted the third year of the continuing education cycle for which verification is submitted shall complete twenty (20) hours of continuing medical education

before the end of the cycle.

(2) Upon renewal of licensure following the end of a three (3) year continuing education cycle, a licensee shall certify that he or she has met the continuing medical education requirements for the cycle as provided by this section.

(3) Verification of completion of continuing medical education requirements shall be submitted upon request by the board.

Section 4. Extensions of Time. (1) To request an extension of time, the licensee shall submit:

(a) A completed Request for Extension to Complete Required CME Hours; and

(b) The fee required by 201 KAR 9:041, Section 1(17).

(2) The board may grant an extension of time to a physician who for sufficient cause has not yet received continuing medical education certification, following the submission of the items required by subsection (1) of this section. For the purposes of this subsection, sufficient cause includes situations such as the following:

(a) An illness;

(b) Any event meeting the Family Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 et seq., Pub.L. 103-3 criteria, and the federal regulations implementing the act, 29 C.F.R. Part 825;

(c) Financial exigencies; or

(d) Practice circumstances making it prohibitive to attend the courses.

Section 5. (1) For each three (3) year continuing education cycle beginning on January 1, 2015, a licensee who is authorized to prescribe or dispense controlled substances within the commonwealth at any time during that cycle shall complete at least four and one-half (4.5) hours of approved continuing education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2) or more of those subjects. A licensee may satisfy this requirement by completing a single approved program of four and one-half (4.5) hours or longer or by completing multiple approved programs for a total of four and one-half (4.5) hours or longer for that cycle.

(2) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky who is authorized to prescribe or dispense controlled substances within the commonwealth from July 20, 2012 through the end of the three (3) year continuing education cycle beginning on January 1, 2012 and ending on December 31, 2014 shall complete at least four and one-half (4.5) hours of approved Category I Credit continuing medical education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2) or more of those subjects on or before December 31, 2014. The licensee may satisfy this requirement by completing a single approved program of four and one-half (4.5) hours or longer or by completing multiple approved programs for a total of four and one-half (4.5) hours or longer for this cycle.

(3) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky who is authorized to prescribe or dispense controlled substances during the calendar years 2013 and 2014, but not during any portion of 2012, shall complete at least three (3) hours of approved Category I Credit continuing medical education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2) or more of those subjects on or before December 31, 2014. The licensee may satisfy this requirement by completing a single approved program of three (3) hours or longer or by completing multiple approved programs for a total of three (3) hours or longer for those two (2) years.

(4) Each physician licensed to practice medicine or osteopathy within the Commonwealth of Kentucky who is authorized to prescribe or dispense controlled substances during calendar year 2014, but not during any portion of 2012 or 2013, shall complete at least one and one-half (1.5) hours of approved Category I Credit continuing medical education hours relating to the use of KASPER, pain management, addiction disorders, or a combination of two (2)

or more of those subjects on or before December 31, 2014. The licensee may satisfy this requirement by completing a single approved program of one and one-half (1.5) hours or longer or by completing multiple approved programs for a total of one and one-half (1.5) hours or longer for that calendar year.

(5)(a) To qualify as approved continuing education under this section, the educational program shall have been approved in advance for the specified number of continuing education hours by the board.

(b) The board may approve an educational program that:

1. Consists of a live presentation;
2. Is presented by a live or recorded webinar; or
3. Is presented through an online module.

(c) The board shall maintain a current listing of approved continuing education programs on its official Web site, www.kbml.ky.gov.

(6)(a) In order to lawfully prescribe or dispense controlled substances within the Commonwealth of Kentucky, a licensee shall complete the required number of continuing education hours for each period designated in this section.

(b) Failure to complete the required number of continuing education hours for the required period or to submit the required written verification within the time specified shall constitute a violation of KRS 311.595(9) and (12), which shall constitute an immediate danger to the public health, safety, or welfare, for the purposes of KRS 311.592 and 13B.125.

(c) If the board determines that a licensee has failed to complete the required continuing education hours within the time specified or has failed to provide the written verification of completion within the time specified, the appropriate inquiry panel or its chair shall promptly issue an emergency order restricting that licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky until the licensee has completed the required continuing education hours for that period and has provided written verification of completion to the board.

(d) An emergency order restricting a licensee from prescribing or dispensing controlled substances within the Commonwealth of Kentucky issued pursuant to paragraph (c) of this subsection shall remain valid and in effect until the board has received written verification that the licensee has successfully completed the required continuing education hours for the time period specified. Upon receipt of the written verification, the panel or its chair shall immediately issue an order terminating the emergency order issued pursuant to this section.

(e) If a licensee who is affected by an emergency order issued pursuant to this section requests an emergency hearing pursuant to KRS 13B.125(3), the hearing officer conducting the emergency hearing shall affirm the emergency order if presented with written notification on board letterhead stating that the board has not received the required written verification that the licensee completed the required continuing education hours for the continuing medical education cycle by the deadline date for the cycle.

(7) If a licensee prescribes or dispenses a controlled substance within the Commonwealth of Kentucky during any period after the licensee has failed to complete the required continuing education hours within the time specified or has failed to provide written verification of completion within the time specified, each instance of prescribing or dispensing of a controlled substance shall constitute a separate violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b), and shall serve as the basis for disciplinary sanctions pursuant to KRS 311.595.

Section 6. Each licensee practicing in the specialty of pediatrics, radiology, family medicine, or emergency medicine and each licensee practicing in an urgent care practice environment shall complete at least one (1) hour of continuing medical education regarding the recognition and prevention of pediatric abusive head trauma in a course approved by the board pursuant to KRS 620.020, prior to December 31, 2017, or within five (5) years of initial licensure.

Section 7. A licensee may obtain Category I continuing medical

education credit for documented service to the board as a medical or osteopathic consultant. The service shall be credited at the rate of one (1) hour of continuing medical education per two (2) hours of service as a consultant, not to exceed twenty (20) hours continuing medical education credit in a three (3) year continuing education cycle.

Section 8[7]. The board may randomly require physicians submitting certification of continuing medical education to demonstrate satisfactory completion of the continuing medical education requirements stated in the certification.

Section 9[8]. (1) A licensee shall be fined \$200 or more, if he or she fails to:

(a) Certify timely completion of the continuing medical education requirements; or

(b) Obtain an extension of time for completion of the continuing medical education requirements.

(2)(a) A licensee who obtains an extension of time shall be granted an extension of six (6) months to come into compliance.

(b) If a licensee has not completed the continuing medical education requirements within the six (6) month extension established by this subsection, his or her license shall:

1. Be immediately suspended; and
2. Remain suspended until the licensee has submitted verifiable evidence that he or she has completed the continuing education requirements.

Section 10[9]. A waiver of the requirements established by the provisions of this administrative regulation shall not be granted.

Section 11[40]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Medical Education Certification Form", January 2013; and

(b) "Request for Extension to Complete Required CME Hours", January 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.[-Monday through Friday-]

RUSSELL L. TRAVIS, M.D., President

APPROVED BY AGENCY: December 28, 2017

FILED WITH LRC: January 2, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2018 at 9:00 a.m., at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 2018, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be transcribed 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 February 28, 2018. 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118, email Leanne.Diakov@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining

continuing medical education hours for physicians in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for obtaining continuing medical education hours for physicians in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours for physicians practicing in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing medical education hours for physicians practicing in the Commonwealth 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: This amendment will allow one (1) hour of Category I continuing medical education credit for two (2) hours of documented service to the board as a consultant, not to exceed twenty (20) hours in a three (3) year cycle.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to state how many hours of service may be credited toward the required continuing medical education credits in a three-year cycle for physicians who provide a public service as board consultants.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment establishes the requirements for obtaining continuing medical education hours for physicians practicing in the Commonwealth of Kentucky and providing a public service as a consultant to the board.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides clear guidance on how many hours of service may be credited toward the required continuing medical education credits in a three-year cycle for physicians who provide a public service as board consultants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians who are licensed in the Commonwealth of Kentucky. The amendment will affect those physicians who qualify and choose to engage in public service as board consultants.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Physicians who practice in the Commonwealth of Kentucky and qualify and choose to provide a public service as a consultant to the board will be able to claim one (1) hour of Category I continuing medical education credit for two (2) hours of documented service to the board as a consultant, not to exceed twenty (20) hours in a three (3) year cycle.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding comes directly from applicants/licensees.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure 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 311.565(1)(a), (b), 311.601(1), (2)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:015. Boat and motor restrictions.

RELATES TO: KRS 150.090, 150.625, 150.990, 235.010(4), 235.990

STATUTORY AUTHORITY: KRS 150.620, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters the department has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state. This administrative regulation limits the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. Definition. "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

Section 2. (1) On a lake established in subsection (2) of this section, a person shall not operate a:

(a) House boat;

(b) Monohull boat with a center-line length exceeding twenty-two (22) feet; or

(c) Pontoon boat with a float or decking exceeding twenty-two (22) feet, except on[for]:

1. Guist Creek Lake, where a pontoon boat with a float or decking up to twenty-four (24) feet or a monohull boat with a center-line length up to twenty-four (24) feet and seating for at

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least eight (8) passengers may be operated; or

2.[On] A lake established in clauses a. through c. of this subparagraph, where a pontoon boat with a float or decking up to thirty (30) feet or a monohull boat with a center-line length up to twenty-four (24) feet and seating for at least eight (8) passengers may be operated:

- a. Cedar Creek Lake;
- b. Lake Beshear; or
- c. Lake Malone.
- (2) List of lakes:
 - (a) Ballard WMA Lakes, Ballard County;
 - (b) Beaver Creek Lake, Anderson County;
 - (c) Bert Combs Lake, Clay County;
 - (d) Boatwright WMA lakes, Ballard County;
 - (e) Boltz Lake, Grant County;
 - (f) Briggs Lake, Logan County;
 - (g) Bullock Pen Lake, Grant County;
 - (h) Carnico Lake, Nicholas County;
 - (i) Carpenter Lake, Daviess County;
 - (j) Carter Caves Lake, Carter County;
 - (k) Cedar Creek Lake, Lincoln County;
 - (l) Corinth Lake, Grant County;
 - (m) Dennie Gooch Lake, Pulaski County;
 - (n) Elmer Davis Lake, Owen County;
 - (o) Fishpond Lake, Letcher County;
 - (p) Goose Lake, Muhlenberg County;
 - (q) Greenbo Lake, Greenup County;
 - (r) Guist Creek Lake, Shelby County;
 - (s) Island Lake, Ohio County;
 - (t) Kentucky River WMA, Boone Tract Lakes, Henry County;
 - (u) Kincaid Lake, Pendleton County;
 - (v) Kingdom Come Lake, Harlan County;
 - (w) Kingfisher Lakes, Daviess County;
 - (x) Lake Beshear, Caldwell County;
 - (y) Lake Chumley, Lincoln County;
 - (z) Lake Malone, Muhlenberg County;
 - (aa) Lake Mauzy, Union County;
 - (bb) Lake Reba, Madison County;
 - (cc) Lake Washburn, Ohio County;
 - (dd) Lebanon City Lake, Marion County;
 - (ee) Lincoln Homestead Lake, Washington County;
 - (ff) Marion County Lake, Marion County;
 - (gg) Martin County Lake, Martin County;
 - (hh) McNeely Lake, Jefferson County;
 - (ii) Metcalfe County Lake, Metcalfe County;
 - (jj) Pan Bowl Lake, Breathitt County;
 - (kk) Pikeville City Lake, Pike County;
 - (ll) Shanty Hollow Lake, Warren County;
 - (mm) South Lake, Ohio County;
 - (nn) Spurlington Lake, Taylor County; or
 - (oo) Wilgreen Lake, Madison County.
- (3) Length restrictions in this section shall not apply to a canoe.
- (4) A person shall not operate a personal watercraft on Cedar Creek Lake pursuant to KRS 235.010(4).

Section 3. (1) A person shall not operate a boat:

- (a) Motor without an underwater exhaust; or
- (b) Faster than idle speed while passing a boat with an occupant actively engaged in fishing, except in a designated skiing zone.

(2) The requirements established in subsection (1) of this section shall apply on:

- (a) Beaver Lake, Anderson County;
- (b) Boltz Lake, Grant County;
- (c) Bullock Pen Lake, Grant County;
- (d) Carnico Lake, Nicholas County;
- (e) Cedar Creek Lake, Lincoln County;
- (f) Corinth Lake, Grant County;
- (g) Elmer Davis Lake, Owen County;
- (h) Greenbo Lake, Owen County;
- (i) Guist Creek Lake, Shelby County;
- (j) Kincaid Lake, Pendleton County;
- (k) Lake Beshear, Caldwell County;

- (l) Lake Malone, Muhlenberg County;
- (m) Pan Bowl Lake, Breathitt County;
- (n) Shanty Hollow Lake, Warren County;
- (o) Swan Lake, Ballard County; and
- (p) Wilgreen Lake, Madison County.

Section 4. A person shall not operate an electric or an internal combustion boat motor on:

- (1) Dennie Gooch Lake, Pulaski County;
- (2) Kingdom Come Lake, Harlan County; or
- (3) Lake Chumley, Lincoln County.

Section 5. A person shall not operate an internal combustion boat motor and shall only be allowed to use an electric trolling motor on:

- (1) Bert Combs Lake, Clay County;
- (2) Briggs Lake, Logan County;
- (3) Carpenter Lake, Daviess County;
- (4) Carter Caves Lake, Carter County;
- (5) Fishpond Lake, Letcher County;
- (6) Kentucky River WMA, Boone Tract Lakes, Henry County;
- (7) Kingfisher Lake, Daviess County;
- (8) Lake Mauzy, Union County;
- (9) Lake Reba, Madison County;
- (10) Lake Washburn, Ohio County;
- (11) Lebanon City Lake, Marion County;
- (12) Lincoln Homestead Lake, Washington County;
- (13) Marion County Lake, Marion County;
- (14) Martin County Lake, Martin County;
- (15) McNeely Lake, Jefferson County;
- (16) Metcalfe County Lake, Metcalfe County;
- (17) Mill Creek Lake, Wolfe County;
- (18) Pikeville City Lake, Pike County; or
- (19) Spurlington Lake, Taylor County.

Section 6. A person shall not operate a motorboat faster than idle speed on:

- (1) Ballard WMA lakes, Ballard County;
- (2) Beulah Lake, Jackson County;
- (3) Boatwright WMA lakes, Ballard County;
- (4) Carnico Lake, Nicholas County;
- (5) Goose Lake, Muhlenberg County;
- (6) Greenbo Lake, Greenup County;
- (7) Island Lake, Ohio County;
- (8) South Lake, Ohio County;
- (9) Pan Bowl Lake, Breathitt County; or
- (10) Wilgreen Lake, Madison County.

Section 7. A person operating a boat motor greater than ten (10) horsepower shall not exceed idle speed on:

- (1) Beaver Lake, Anderson County;
- (2) Boltz Lake, Grant County;
- (3) Bullock Pen Lake, Grant County;
- (4) Corinth Lake, Grant County;
- (5) Elmer Davis Lake, Owen County;
- (6) Herb Smith-Cranks Creek Lake, Harlan County;
- (7) Kincaid Lake, Pendleton County;
- (8) Martins Fork Lake, Harlan County; or
- (9) Shanty Hollow Lake, Warren County.

GREGORY K. JOHNSON, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: January 11, 2018

FILED WITH LRC: January 12, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2018 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 February 28, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation limits the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the safety of individuals boating on these small lakes and to minimize interference with other users.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.620 authorizes the department to promulgate administrative regulations governing lands and waters the department has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps fulfill the purpose of KRS 150.620 and 235.280 by providing fair, reasonable, equitable, and safe use of small lakes in the state.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow monohull boats with a center-line length up to twenty-four feet with seating for at least eight passengers to operate on Guist Creek Lake, Cedar Creek Lake, Lake Beshear, and Lake Malone.

(b) The necessity of the amendment to this administrative regulation: On these four larger department-owned lakes, this amendment will eliminate a potential barrier for fishing and boating. These family-oriented style boats will not pose any increased safety risks at the lakes.

(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: Individuals who own boats meeting the amendment specifications will now be allowed to use them on Guist Creek Lake, Cedar Creek Lake, Lake Beshear, and Lake Malone.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: People accessing the four lakes listed in the amendment will now be able to use their boats meeting the amended specifications.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An increased number of boaters will now be able to access the four lakes listed in the amendment.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements apply to all boaters.

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 150.620 authorizes the department to promulgate administrative regulations governing lands and waters the department has acquired. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of this state.

(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:

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

301 KAR 2:132. Elk hunting seasons, permits, zones, and requirements.

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), [450.405-]150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative

regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "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.

(4) "At-large" means any portion of the elk zone not included in a limited entry area.

(5) "Bait":

(a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and

(b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(6) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(7) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(8) "Elk" means *Cervus elaphus nelsoni*.

(9) "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

(10) "Elk Restoration Permit" or "ERP" means an elk permit given to a landowner or lessee who allows the department to capture elk on the landowner or lessee's property for restoration or restocking purposes.

(11) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(12) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters into an agreement with the department to allow public access and hunting for at least five (5) years.

(13) "Limited Entry Area" or "LEA" means a designated area in the restoration zone with specific management restrictions.

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

(15) "Out-of-zone" means all counties not included in the restoration zone.

(16) "Restoration zone" means the Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(17) "Spike" means an elk having one (1) or two (2) antler points on each side.

(18) "Voucher cooperator" means a landowner or lessee who owns or leases at least 100 acres of land in the restoration zone and enters into an agreement with the department to allow elk hunting access.

(19) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall:

(1) Attach a department-issued destruction tag to an elk prior to moving the carcass; and

(2) Not remove the destruction tag until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk quota hunt application period shall be January 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youth may enter a separate drawing pool for ten (10) either-sex elk permits. These permits shall be valid for use during all elk seasons:

(a) Anywhere in the at-large portion of the restoration zone; or

(b) Within an LEA if the youth applies for and is drawn for an LEA, pursuant to Section 7(3) of this administrative regulation.

(6) A youth applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(7) An applicant for the youth-only elk quota hunt may also apply for the regular quota hunts. The regular quota hunts shall be as established in subsection (12) of this section.

(8) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) Nonresidents shall not comprise more than ten (10) percent of all drawn applicants in each quota hunt pool.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be four (4) separate regular elk quota hunts consisting of:

(a) Antlered archery and crossbow;

(b) Antlered firearms;

(c) Antlerless archery and crossbow; and

(d) Antlerless firearms.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

(b) Not be eligible to be drawn in more than one (1) of the four (4) quota hunt pools;

(c) Only be selected by a random electronic drawing; and

(d) Pay a nonrefundable application fee of ten (10) dollars for each entry.

(14) A person who is drawn for an elk quota hunt shall be ineligible to be drawn for any elk quota hunt for the following three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at 1-800-858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 7 and 8 of this administrative regulation.

(3) A landowner cooperator permit shall only be used on the land that is established in the agreement, except that it may be used on adjacent property if:

(a) The adjacent property is owned by a different landowner; and

(b) The adjacent landowner has granted permission to the permit holder.

(4) A landowner cooperator permit may be transferred to any person eligible to hunt in Kentucky, but prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

1. Name;
2. Social Security number;
3. Address; and
4. Telephone number.

(5) The landowner cooperator permit shall not be transferable if it was already used for the harvest of one (1) elk.

(6) Public access agreements with the department shall be recorded in writing.

Section 5. Voucher Cooperator Permits (1) A voucher cooperator shall accrue one (1) voucher point for each legally harvested elk:

~~(a) Two (2) voucher points for each legally harvested antlered elk; and~~

~~(b) One (1) voucher point for each legally harvested antlerless elk.~~

(2) A voucher cooperator who accrues ~~ten (10)~~twenty (20) total points on land enrolled pursuant to Section 1(18) of this administrative regulation shall receive one (1) either-sex elk permit from the department.

(3) A recipient of a voucher cooperator elk permit shall comply with all of the requirements established in Sections 7 and 8 of this administrative regulation.

(4) A voucher cooperator elk permit shall only be used on:

(a) The property enrolled with the department per agreement; or

(b) Other property that the landowner or lessee owns or leases.

(5) A voucher cooperator permit may be transferable to any person eligible to hunt in Kentucky.

(6) If a voucher cooperator permit is to be transferred, then the landowner, lessee, or person who has received the transferred permit shall provide to the department by August 15 the hunter's:

- (a) Name;
- (b) Social security number;
- (c) Address; and
- (d) Telephone number.

(7) A permit shall not be transferable after being used for the harvest of an elk.

Section 6. Elk Restoration Permits. (1) A landowner or lessee who allows the department to capture elk on the landowner or lessee's property shall accrue one (1) point for each captured elk:

~~(a) Two (2) points for each male elk captured; and~~

~~(b) One (1) point for each female elk captured.~~

(2) A landowner or lessee who accrues ~~ten (10)~~twenty (20) total points shall receive one (1) either-sex elk permit from the department that shall only be used the following hunting season.

(3) A recipient of an ERP shall comply with all the requirements established in Sections 7 and 8 of this administrative regulation.

(4) An ERP shall only be used on property that the ERP recipient owns or leases.

(5) An ERP recipient may transfer the permit to any person eligible to hunt in Kentucky.

(6) If an ERP recipient transfers an ERP to another hunter, then the ERP recipient shall provide to the department by August 15 the hunter's:

- (a) Name;
- (b) Address;

(c) Telephone number; and

(d) Social security number.

(7) An ERP shall be invalid if it has already been used to harvest an elk.

Section 7. Hunter Requirements. (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) If a legal elk hunter kills any elk, then:

(a) The person shall immediately cease hunting elk for the remainder of the elk season; and

(b) All elk permits held by that individual shall immediately become invalid.

(4) A drawn hunter may apply to hunt in up to four (4) areas in any combination of the limited entry areas by completing the application process on the department's Web site at fw.ky.gov.

(a) Up to three (3) drawn hunters may apply for their LEA choices as a party.

(b) If the party is drawn for the LEA, all hunters in the party shall be assigned to that same LEA.

(c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or to the at-large area.

(5) A hunter who does not apply for an LEA or is not drawn for an LEA shall be assigned to the at-large area.

(6) A hunter drawn for an LEA may hunt only in the assigned LEA, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(7) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(8) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs;

(c) Hunt over bait inside the elk restoration zone;

(d) Drive elk from outside the assigned area;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.

(9) A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

(10) A youth shall be accompanied by an adult who shall remain in a position to take immediate control of the youth's firearm.

(11) An adult accompanying a youth shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(12) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take an elk:

(a) A crossbow or archery equipment loaded with a 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 of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .270 caliber or larger designed to expand upon

impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(13) A crossbow shall contain a working safety device.

(14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds.

(15) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(16) A hunter drawn for a firearms elk permit shall hunt elk pursuant to that permit only during the seven (7) day period assigned during the initial drawing.

(17) An individual who receives or is transferred a landowner cooperators permit, a voucher cooperators permit, an elk restoration permit, or a special commission permit may hunt in all of the antlered-only or antlerless-only quota hunts and shall hunt in accordance with the seasons and limits established in Section 7 of this administrative regulation.

(18) A person who is drawn for an archery or crossbow permit or has a landowner cooperators permit, a special commission permit, an elk restoration permit, or voucher cooperators permit may hunt with a crossbow during all archery and crossbow seasons, if at the time of the hunt, the person:

(a) Is a youth;

(b) Is sixty-five (65) years or older; or

(c) Has a crossbow hunting method exemption permit for hunting deer pursuant to 301 KAR 3:027.

(19) A person who is drawn for an elk quota hunt permit or was issued a landowner cooperators permit, a special commission permit, an elk restoration permit, or voucher cooperators permit shall complete and submit a post-season elk hunting survey on the department's website at fw.ky.gov no later than the last day of February.

(20) A person who fails to comply with the requirements established in subsection nineteen (19) of this section shall be ineligible to apply for any quota hunt or no-hunt option the following year.

Section 8. Elk Quota Hunt Seasons and Limits. (1) A person drawn for an antlerless or antlered archery and crossbow permit shall not hunt when an elk firearms season is open.

(2) A person drawn for an antlered archery and crossbow permit shall use:

(a) Archery equipment to take an antlered elk beginning the third Saturday in September through December 31; and

(b) A crossbow to take an antlered elk from the fourth Saturday in September through December 31.

(3) A person drawn for an antlerless archery and crossbow permit shall use:

(a) Archery equipment to take an antlerless elk beginning the second Saturday in October through December 31; and

(b) A crossbow to take an antlerless elk from the second Saturday in October through December 31.

(4) A person drawn for an antlered firearms permit shall use any legal weapon as established in Section 7(12) of this administrative regulation to take an antlered elk during one (1) of two (2) seven (7) day periods randomly assigned by the department from the:

(a) Last Saturday in September for seven (7) consecutive days; or

(b) First Saturday in October for seven (7) consecutive days.

(5) A person drawn for an antlerless firearms permit shall use any legal weapon as established in Section 7(12) of this administrative regulation to take an antlerless elk during one (1) of two (2) seven day (7) periods randomly assigned by the department from the:

(a) Second Saturday in December for seven (7) consecutive days; or

(b) Third Saturday in December for seven (7) consecutive days.

Section 9. LEA Boundaries. (1) Hazard LEA - Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with

State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quicksand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary.

(2) Levisa Fork LEA - Starting at the intersection of State Hwy 1789 and State Hwy 460 at Millard, the boundary proceeds south and east on Hwy 460 to the intersection of Hwy 460 and State Hwy 1499 at Mouthcard. The boundary then runs north along State Hwy 1499 to the intersection of State Hwy 1499 and State Hwy 194. It then runs west and north on Hwy 194 to the intersection of Hwy 194 and State Hwy 3418 (Ridge Line Road). The boundary then runs west on Hwy 3418 to the intersection of State Hwy 3418 and Raccoon Road. The boundary then runs west on Raccoon Road to the intersection of Raccoon Road and State Hwy 1441. The boundary then runs south along Hwy 1441 to the intersection of State Hwy 1441 and State Highway 1789. The boundary then runs west to the intersection of Hwy 1789 and State Highway 460, completing the boundary.

(3) Middlesboro LEA - Starting at the intersection of US Hwy 25E and the Tennessee border at Middlesboro, the boundary proceeds southward and westward on the Tennessee and Kentucky border until the intersection of State Hwy 190. The boundary proceeds northward and westward on State Hwy 190 to the intersection of US Hwy 25E. The boundary then goes south on US Hwy 25E to the Tennessee border, completing the boundary.

(4) Prestonsburg LEA - The area shall be within the boundary of the Czar Hunter Access Area as indicated by signage.

(5) Straight Creek LEA - Starting at the intersection of State Hwy 66 and State Hwy 221 at Straight Creek, the boundary proceeds east on State Hwy 221 to the intersection with State Hwy 2009. The boundary then proceeds north along State Hwy 2009 to the intersection with US Route 421. The boundary then proceeds north on US Route 421 to the intersection with State Hwy 406 near Stinnett. The boundary then follows State Hwy 406 west to the intersection with State Highway 66. The boundary then follows State Hwy 66 south to the intersection with Hwy 221 to complete the boundary.

(6) Tug Fork LEA - The area shall be within the boundary of the Revelation Energy Hunter Access Areas in Martin, Pike, and Floyd Counties, as established by signage.

Section 10. Post-season Quota Hunt on Private Land. (1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants who:

(a) Were not drawn for the previous elk quota hunts; and

(b) Are residents of counties included, wholly or in part, within an EMU boundary.

(3) A drawn applicant shall comply with the requirements in Section 7 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) The EMU boundaries shall be as incorporated by reference in this administrative regulation.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 11. Tagging and Checking Requirements. (1) Immediately after taking an elk, a hunter shall record on a hunter's log:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

(d) County of harvest.

(2) A hunter shall check a harvested elk before midnight on the day the elk is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.
(3) A hunter who has checked in an elk shall record the confirmation number on a hunter's log.

(4) If the hide or head is removed from the carcass before the elk is checked in, then the hunter shall be required to demonstrate proof of the sex of the elk.

(a) For antlered elk the hunter shall retain the:

1. Head with antlers; or
2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless elk the hunter shall retain the:

1. Head; or
2. Udder or vulva attached to the carcass.

(5) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

(a) Confirmation number;

(b) Name; and

(c) Telephone number.

(6) A person shall not provide false information in:

(a) Completing the hunter's log;

(b) Checking an elk; or

(c) Creating a carcass tag.

Section 12. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in paragraphs (a) through (f) of this subsection within the restoration zone pursuant to the conditions of the permit received:

(a) Wildlife Management Areas;

(b) Hunter Access Areas;

(c) State forests;

(d) Big South Fork National River and Recreation Area;

(e) Daniel Boone National Forest; or

(f) Jefferson National Forest.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone shall be subject to the requirements established in Section 13 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as established in Section 8 of this administrative regulation.

(b) A firearm shall not be used to hunt elk.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 13. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with the weapons and ammunition requirements established in Section 7 of this administrative regulation.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 11 of this administrative regulation.

Section 14. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

Section 15. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, voucher cooperator permit, an ERP, or special commission permit may defer use of the permit to the following year if:

(1) There is a death of the permit holder's:

(a) Spouse;

(b) Child; or

(c) Legal guardian, if the permit holder is under eighteen (18) years old; and

(2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:

(a) A marriage certificate;

(b) A birth certificate; or

(c) An affidavit of paternity or maternity.

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

(a) "Knott-Floyd Elk Management Unit 2017 Edition" map; and

(b) "Mayking Letcher Elk Management Unit 2017 Edition" map.

(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: January 11, 2018

FILED WITH LRC: January 12, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2018 at 10:00 A.M. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through February 28, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission permits, landowner cooperator permits, elk restoration permits, and cooperator voucher permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage elk populations in Kentucky, while providing optimal elk hunting and tourism opportunities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist the statutes by establishing the requirements for the elk permit drawing, quota hunts, legal methods of harvest, the conditions under which special commission permits, landowner cooperator permits, elk restoration permits, and voucher cooperator permits can be used, the procedures for elk damage abatement and any postseason hunt held after the quota hunts.

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

(a) How the amendment will change this existing administrative regulation: The amendment modifies the points system in which landowners receive points under the voucher cooperator and elk restoration permits. Additionally, it modifies the total number of points landowners need to receive an elk permit under the voucher cooperator and elk restoration permit process. The amendment also requires all elk hunters to complete a post hunt survey.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adjust the point system to encourage more landowners to participate in the programs. Additionally, the postseason survey will provide vital information for the ongoing management effort for elk within the commonwealth.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 25,000 to 45,000 people who apply for the elk permit drawing in Kentucky each year, of which approximately 710 are drawn. Additionally, landowners who allow elk hunting through the agency receive elk permits every year for the enrollment of their land for elk hunting.

(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: Landowners who allow elk hunting or elk trapping on their land will need fewer harvested or trapped elk on their property in order to receive an elk hunting permit. All elk hunters will now be required to complete and submit the post hunt survey.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not change any cost to the entities identified in (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Landowners who allow the department to capture elk for restoration purposes or allow elk hunting on their property will now have fewer restrictions to receive an elk permit to be used on their property. The postseason survey will provide vital information for the ongoing elk management efforts within the commonwealth.

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

(a) Initially: Other than a minor administrative cost, there will be no additional cost to the agency to implement this administrative regulation.

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

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk management and quota hunts already exists.

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. Residents of the counties within the EMUs who are not drawn for the regular quota hunt shall be eligible for a late season depredation hunt. This hunt allows residents to assist landowners in removing elk causing property damage in 2 areas with chronic nuisance elk problems. These tags can only be used on private land within one of the 2 Elk Management Units (EMUs). The number of tags to be issued will be determined by the level of nuisance elk cases or property damage caused by elk documented within the EMUs prior to January each year.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, KRS 150.177, KRS 150.178, and KRS 150.390.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? For the 2016 elk season, approximately 74,953 applications were purchased at \$10 per application (\$749,530 of revenue to the department). Approximately 721 of the 910 drawn hunters paid for elk permits, generating \$72,000 in additional revenue to the department. Total revenue directly generated by the elk hunts for the department was \$822,000 for the 2016 season.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is estimated that approximately \$600,000 to \$850,000 will be generated from quota hunt applications and elk permits for the department. There is also a positive economic impact to cities, counties and local businesses in and near the elk restoration zone as hunters and tourists visit. This economic impact is estimated at \$2.5 million annually in or near the elk zone.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amendment)

401 KAR 8:510. Disinfectant residuals, disinfection by-products, and disinfection by-product precursors.

RELATES TO: KRS 224.10-100, 224.10-110[,-EQ-2009-538]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.53, 141.54, 141.64, 141.65, 141.130-141.135, 141.600-141.605, 141.620-141.629, 42 U.S.C. 300f-300j-26[,-EQ-2009-538]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) require the cabinet to enforce administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use. [EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.] This administrative regulation establishes the maximum contaminant levels for total trihalomethanes and haloacetic acid five (5) to limit the levels of known and unknown disinfection by-products.

Section 1. [(4)] A public water system shall meet the requirements established in 40 C.F.R. 141.130 through 141.135, 141.600 through 141.605, 141.620 through 141.629, 141.53, 141.54, 141.64, and 141.65. [(2) For the purposes of meeting the requirements of 40 C.F.R. 141.130 through 141.135 a consecutive water system shall monitor in the manner established in Section 2 of this administrative regulation.]

Section 2. [A consecutive water system shall monitor for trihalomethanes and HAA5 as established in this section.

(1) For purposes of determining the applicability and compliance dates, the sum of the populations of the system producing the water and the system purchasing the water shall be used.

(2) Producers.

(a) 1. A public water system that produces water and that provides water to another system shall be responsible for monitoring throughout the joint distribution system, which shall consist of the distribution systems of both the producing system and all purchasing systems.

2. Monitoring shall be performed pursuant to this administrative regulation at a point in the joint distribution system that reflects the longest period of retention.

(b) 1. If more than one (1) system produces water sold to a distribution system, monitoring shall be divided between or among the producing systems by a plan that reflects the likely flow of each producing system's water.

2. A monitoring plan for total trihalomethanes and HAA5s shall be submitted by all producing systems and shall be approved by the cabinet pursuant to 40 C.F.R. 141.132(f).

(3) Purchasers.

(a) 1. A system that purchases water shall alter distribution operation and maintenance practices necessary to alleviate any potential exceedance of the MCL for TTHM or HAA5 anywhere in its distribution system.

2. The altered practices may include line flushing and replacement, changes to points of disinfection, elimination of points of disinfection, tank turnover practices, or other changes to facilitate reductions in levels of contamination.

(b) 1. A purchasing system shall cooperate in the development of a monitoring plan required from the producing system as established in subsection (2) of this section.

2.] A purchasing system shall monitor for maximum residual disinfectant levels at the same points in the distribution system and at the same time as total coliforms are sampled as established in 401 KAR 8:200.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: January 4, 2018

FILED WITH LRC: January 4, 2018 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2018 at 6:00 p.m. Eastern Time at the Department for Environmental Protection, Training Room A, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 February 28, 2018. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation, to the contact person.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies required analytical techniques, monitoring, and maximum contaminant levels for drinking water disinfection by-products.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control water disinfection by-products to protect public health. All states with primary authority to implement and enforce the federal Safe Drinking Water Act must have regulations that are compatible with the federal program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use. The Safe Drinking Water Act (42 U.S.C. 300f – 300j-26) requires the establishment of national primary drinking water regulations. 40 C.F.R. 141.620 – 141.629 establishes the federal Stage 2 Disinfection Byproduct Residual rule ("DBPR").

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation identifies required analytical techniques, monitoring, and maximum contaminant levels for water disinfection by-products.

(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 removes outdated references to the federal Stage 1 DBPR rule and clarifies that the Stage 2 DBPR rule applies.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation identifies required analytical techniques, monitoring, and maximum contaminant levels for water disinfection by-products. All states with primary authority to implement and enforce the federal Safe Drinking Water Act must have regulations that are compatible with the federal program. This amendment is necessary to remove outdated references to the Stage 1 DBPR rule.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 and 224.10-110 authorize the cabinet to adopt and enforce administrative regulations for the purification of water for public and semipublic use. The Safe Drinking Water Act (42 U.S.C. 300f – 300j-26) requires the establishment of national primary drinking water regulations. 40 C.F.R. 141.620 – 141.629 establishes the federal Stage 2 Disinfection Byproduct Residual rule ("DBPR").

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation removes outdated references to the federal Stage 1 DBPR rule and clarifies that the Stage 2 DBPR rule applies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to 386 community water systems, 16 non-transient water systems, and 34 non-community transient water systems.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will not need to take additional actions. This amendment removes outdated references to the federal Stage 1 DBPR rule and clarifies that the federal Stage 2 DBPR applies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not result in additional costs. The requirements of this administrative regulation remain unchanged.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will align state and federal regulations for clarity.

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

(a) Initially: The requirements of this administrative regulation remain unchanged. The amendment to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The requirements of this administrative regulation remain unchanged. The amendment to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet receives federal funds to administer the Safe Drinking Water Act.

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

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

(9) TIERING: Is tiering applied? Yes, tiering is applied. The requirements of this administrative regulation are different based on the number of people served by, and the type of, public water system.

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 applies to public water systems including those owned by a unit of state or local government.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.10-110, 42 U.S.C. 300f – 300j-26; 40 C.F.R. 141.130-141.135, 141.53, 141.54, 141.64, 141.65, 141.600-141.605, 141.620-141.629

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment to this administrative regulation will not generate any revenue or result in additional costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 300f – 300j-26 (the Safe Drinking Water Act); 40 C.F.R. 141.130-141.135, 141.53, 141.54, 141.64, 141.65, 141.600-141.605, 141.620-141.629

2. State compliance standards. KRS 224.10-100, 224.10-110

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 300f – 300j-26 (the Safe Drinking Water Act); 40 C.F.R. 141.130-141.135, 141.53, 141.54, 141.64, 141.65, 141.600-141.605, 141.620-141.629 identify the required analytical techniques, monitoring, and maximum contaminant levels for disinfection byproducts.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No. The amendment to this administrative regulation does not impose stricter, additional, or different requirements than the federal mandate.

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

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640, 532.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," January 12, 2018~~April 11, 2017~~, are incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 6/10/14)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 2/26/16)
- 2.12 Abandoned Inmate Funds (Amended 2/26/16)
- 3.1 Code of Ethics (Amended 12/10/13)
- 3.5 Sexual Harassment and Anti-Harassment (Amended 12/10/13)
- 3.9 Student Intern Placement Procedure (Amended 11/7/16)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 1/12/18~~9/43/40~~)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
- 3.14 Employee Time and Attendance Requirements (Amended 6/14/16)

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- 3.17 Uniformed Employee Dress Code (Amended 1/12/18 [4/14/17])
 - 3.22 Staff Sexual Offenses (Amended 12/10/13)
 - 3.23 Internal Affairs Investigation (Added 8/25/09)
 - 5.1 Research and Survey Projects (Amended 12/10/13)
 - 5.3 Program Evaluation and Measurement (Amended 6/9/15)
 - 6.1 Open Records Law (Amended 5/14/07)
 - 6.2 Inmate Record (Added 11/7/16)
 - 8.2 Fire Safety (Amended 3/14/14)
 - 8.7 Notification of Extraordinary Occurrence (Amended 3/14/14)
 - 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 6/9/15)
 - 9.6 Contraband (Amended 2/26/16)
 - 9.8 Search Policy (Amended 5/13/14)
 - 9.13 Transport to Court - Civil Action (Amended 07/09/07)
 - 9.18 Informants (Amended 9/13/10)
 - 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
 - 10.2 Special Management Inmates (Amended 4/11/17)
 - 10.3 Safekeepers and Contract Prisoners (Amended 1/12/18 [9/15/04])
 - 11.2 Dietary Procedures and Compliance (Amended 1/12/17)
 - 11.4 Alternative Dietary Patterns (Amended 1/12/17)
 - 13.1 Pharmacy Policy and Formulary (Amended 1/15/15)
 - 13.2 Health Maintenance Services (Amended 2/26/16)
 - 13.3 Medical Alert System (Amended 3/14/14)
 - 13.5 Advance Healthcare Directives (Amended 6/14/16)
 - 13.6 Sex Offender Treatment Program (Amended 11/7/16)
 - 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
 - 13.8 Substance Abuse Program (Amended 10/12/12)
 - 13.9 Dental Services (Amended 10/14/05)
 - 13.10 Serious Infectious Disease (Amended 3/14/14)
 - 13.11 Do Not Resuscitate Order (Amended 8/9/05)
 - 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
 - 13.13 Behavioral Health Services (Amended 11/7/16)
 - 13.15 Inmate Observer Program (Added 8/12/16)
 - 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
 - 14.2 Personal Hygiene Items (Amended 8/20/13)
 - 14.3 Marriage of Inmates (Amended 1/12/17)
 - 14.4 Legal Services Program (Amended 3/14/14)
 - 14.5 ~~[Board of]~~ Claims Commission (Amended 1/12/18 [10/14/05])
 - 14.6 Inmate Grievance Procedure (Amended 4/11/17)
 - 14.7 Sexual Abuse Prevention and Intervention Programs (Amended 6/14/16)
 - 14.8 Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (Amended 1/12/18[Added 4/11/17])
 - 15.1 Hair, Grooming and ID Card Standards (Amended 1/12/18 [8/12/16])
 - 15.2 Rule Violations and Penalties (Amended 8/12/16)
 - 15.3 Meritorious Good Time (Amended 11/7/16)
 - 15.4 Program Credit (Amended 6/12/12)
 - 15.5 Restoration of Forfeited Good Time (Amended 2/26/16)
 - 15.6 Adjustment Procedures and Programs (Amended 11/7/16)
 - 15.7 Inmate Accounts (Amended 1/12/18[4/11/17])
 - 15.8 Possession or Use of Unauthorized Substance and Substance Abuse Testing (Amended 1/12/18[4/12/17])
 - 16.1 Inmate Visits (Amended 4/11/17)
 - 16.2 Inmate Correspondence (Amended 11/7/16)
 - 16.3 Inmate Access to Telephones (Amended 10/12/12)
 - 16.4 Inmate Packages (Amended 8/12/16)
 - 16.5 Video Visitation (Added 8/12/16)
 - 17.1 Inmate Personal Property (Amended 6/14/16)
 - 17.2 Assessment Center Operations (Amended 6/9/15)
 - 17.3 Controlled Intake of Inmates (Amended 3/14/14)
 - 17.4 Administrative Remedies: Sentence Calculations (Amended 8/12/16)
 - 18.1 Classification of the Inmate (Amended 1/15/15)
 - 18.2 Central Office Classification Committee (Amended 1/12/18 [8/20/13])
 - 18.3 Confinement of Youthful Offenders (Added 6/9/15)
 - 18.5 Custody and Security Guidelines (Amended 6/14/16)
 - 18.7 Transfers (Amended 5/13/16)
 - 18.9 Out-of-state Transfers (Amended 2/26/16)
 - 18.11 Placement for Mental Health Treatment in CPTU or PCU (Amended 6/14/16)
 - 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
 - 18.13 Population Categories (Amended 2/26/16)
 - 18.15 Protective Custody (Amended 1/12/18[2/26/16])
 - 18.16 Information to the Parole Board (Amended 1/12/18 [3/14/14])
 - 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
 - 18.18 International Transfer of Inmates (Amended 5/14/07)
 - 19.1 Governmental Services Program (Amended 10/12/12)
 - 19.2 Sentence Credit for Work (Amended 2/26/16)
 - 19.3 Inmate Wage/Time Credit Program (Amended 1/15/15)
 - 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
 - 21.1 Library Services (Added 3/14/14)
 - 22.1 Privilege Trips (Amended 10/14/05)
 - 22.2 Recreation and Inmate Activities (Added 3/14/14)
 - 23.1 Religious Programs (Amended 8/12/16)
 - 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
 - 25.3 Prerelease Program (Effective 11/15/06)
 - 25.6 Community Service Center Program and Jail Placement (Amended 11/7/16)
 - 25.10 Administrative Release of Inmates (Amended 8/12/16)
 - 25.11 Victim Services Notification (Amended 8/25/09)
 - 25.12 Home Incarceration Program (Added 8/12/16)
 - 26.1 Citizen Involvement and Volunteer Service Program (Amended 1/12/18[10/12/12])
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections website in the policies and procedures area at <https://corrections.ky.gov/Pages/default.aspx>.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: January 11, 2018

FILED WITH LRC: January 12, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2018, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Corrections (DOC) including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform

to the requirements of KRS 196.035, 197.020, 439.470, 439.590, 439.640, and 532.260 and to meet American Correctional Association (ACA) standards requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections. The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Department of Corrections and its institutions. It provides direction and information to Corrections employees and inmates concerning the operations of the department.

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

(a) How the amendment will change this existing administrative regulation: The amendment maintains the Kentucky Department of Corrections compliance with ACA standards and updates practices for the department and its institutions.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020 and update practices for the department and its institutions.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state correctional institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,907 employees, 24,680 inmates, visitors, volunteers, and others who enter state correctional institutions.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff and inmates will have to follow the changes made in the policies and procedures. The institutional employees and inmates of the Department of Corrections will have to change their actions to comply with any operational changes made by this amendment. Others who enter correctional institutions will have to comply with policies and procedures concerning entry, search, contraband and others when they enter an institution.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the state correctional institutions.

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

(a) Initially: No increase in funding is anticipated.

(b) On a continuing basis: No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted funds for the biennium.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of the Kentucky Department of Corrections and each state correctional institution.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 439.470, 439.590, 439.640, and 532.260 and to meet American Correctional Association (ACA) standards requirements.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue increase is anticipated from the amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Very minimal revenue is anticipated from the regulation as a whole in comparison to the funds budgeted to the department.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendment are not expected to increase the Kentucky Department of Corrections budgeted funds for the biennium.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendment are not expected to increase costs for the Kentucky Department of Corrections budgeted funds for the biennium.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 16:290. Preliminary and post-execution procedures concerning condemned person.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 – 431.270, 532.130 – 532.140

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270, 532.130, 532.135, 532.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet

or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes preliminary and post execution procedures concerning the condemned person.

Section 1. Initial Steps After Receipt of Execution Order. (1) After the warden receives the execution order, the warden shall:

(a) Read the execution order to the condemned person; and
(b) If the condemned person received his death sentence prior to March 31, 1998, ask the condemned person to designate in writing his choice of the method of execution pursuant to KRS 431.220(1).

~~(2) For a warrant from the Governor, if the condemned person has not been tried or retried on or after July 13, 1990 in his capital case:~~

~~(a) The warrant shall be reviewed to determine whether it reflects that the condemned person has:~~

~~1. Been determined not to be an offender with a serious intellectual disability as defined in KRS 532.130(2); or~~

~~2. Procedurally defaulted or waived the determination of whether he is an offender with a serious intellectual disability.~~

~~(b) If the warrant does not reflect one (1) of the items indicated in paragraph (a) of this subsection, then the department shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person that the condemned person is not subject to execution if determined to be an offender with a serious intellectual disability as defined in KRS 532.130(2). The notice shall state that a court order is required for the execution to be suspended.~~

~~(3) For a mandate from a court, if the condemned person has not been tried or retried on or after July 13, 1990 in his capital case, then the department shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person that the condemned person is not subject to execution if determined to be an offender with a serious intellectual disability as defined in KRS 532.130(2). The notice shall state that a court order is required for the execution to be suspended.~~

~~(4) For any designation required to be made in writing in this administrative regulation, if the condemned person cannot see, read, or write sufficiently to complete his designation, then a staff person at the penitentiary shall:~~

~~(a) Ask the condemned person to state his designation;~~
~~(b) Write the designation stated by the condemned person;~~
~~(c) Read the designation as written to the condemned person;~~

~~(d) Ask the condemned person to sign or make his mark on the document.~~

Section 2. Condemned Person's Designation of Witnesses. (1) The warden shall ask the condemned person to designate in writing his clergy witness and the three (3) other individuals who may witness the execution pursuant to KRS 431.250.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately when the warden reads the execution order.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

Section 3. Condemned Person's Designation Concerning Property, Funeral, and Disposition of Body. (1) The warden shall ask the condemned person to designate in writing the person who may:

(a) Collect the condemned person's personal property after his death;
(b) Take charge of the condemned person's body; and
(c) Make necessary funeral arrangements.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does

not allow for ten (10) days, then the condemned person shall comply at least forty-eight (48) hours prior to the time scheduled for the execution.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

(4) If the condemned person fails or refuses to designate a person to take charge of his body, burial shall be in accordance with KRS 431.270.

Section 4. Visitation Designation. (1) After an execution order has been issued, the warden shall ask the condemned person to designate in writing his minister of record.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately when the warden reads the execution order.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

Section 5. Limitations on Condemned Person's Clothing, State-issued Items, and Personal Property. Notwithstanding 501 KAR 6:020, CPP 17.1, CPP 14.2, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the warden may limit the condemned person's clothing, state-issued items, and personal property to the following:

- (1) One (1) mattress;
- (2) Two (2) sheets;
- (3) One (1) pillow;
- (4) One (1) pillow case;
- (5) One (1) pair of scrub-type pants;
- (6) One (1) scrub-type shirt;
- (7) One (1) pair of underwear;
- (8) One (1) pair of socks;
- (9) One (1) toothbrush;
- (10) One (1) tube of toothpaste;
- (11) One (1) bar of soap;
- (12) One (1) bath towel; and
- (13) One (1) wash cloth.

Section 6. Limitations on Condemned Person's Clothing, State-issued Items, and Personal Property for Females. (1) Notwithstanding 501 KAR 6:020, CPP 17.1, CPP 14.2, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the warden may limit the condemned person's clothing, state-issued items, and personal property for a female to the items in Section 5 of this administrative regulation and the following:

- (a) One (1) bra;
 - (b) Sanitary napkins; and
 - (c) Tampons.
- (2) The bra shall be white and if it contains stays or underwire, they shall be plastic.

(3) The supply of sanitary napkins and tampons shall be in a sufficient quantity to allow the individual to maintain an acceptable level of personal hygiene.

Section 7. Transfer of Female Condemned Person. If the condemned person is female, she shall be transferred to the penitentiary for execution. The date of the transfer shall be determined by the warden.

Section 8. Securing Condemned Person's Personal Property Prior to Execution. (1) The warden shall inventory and secure any personal property of the condemned person prior to the execution.

(2) The warden shall set the time for the removal of all personal property.

Section 9. Post-execution Steps. (1) The return on the judgment shall be made in accordance with KRS 431.260 within seven (7) days of the execution.

(2) If the condemned person does not make other arrangements, the department shall make arrangements for the delivery or burial of the body pursuant to KRS 431.270.

(3) The penitentiary shall call the person designated by the condemned person to pick up his personal property within three (3) days of the execution. If the person cannot be reached by phone, notice may be mailed to the person.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: January 11, 2018

FILED WITH LRC: January 12, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2018, at 9:00 a.m. at the Kentucky Transportation Cabinet Building, Room C118, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures to be carried out in preparation for an execution including the designation of witnesses, disposition of the condemned person's property, and preparation of the condemned for execution. It also establishes the procedures to be carried out after the execution including arrangements for delivery or burial of the body.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet, for the government and discipline of penitentiaries, and for official conduct of all officials connected with the penitentiary. This administrative regulation is necessary to establish the Department's procedures before and after an execution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 196.035 and 197.020, establishes the procedures before and after an execution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to be performed by Department of Corrections personnel before and after a legal execution.

(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 language concerning processes in offices outside the department and notices involving serious intellectual disability.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses changes in case law and issues in pending litigation.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public

Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides additional notice to the condemned person and counsel of potential issues for an offender with a serious intellectual disability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-four inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Office of the Kentucky State Medical Examiner, Kentucky Department of Public Advocacy, the Lyon County Coroner, Attorney General's Office, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above are mandated to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Lyon County Ambulance Service, \$1200;
Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the office.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties before and after an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. See approximate costs to conduct an execution in 4(b).

(b) On a continuing basis: See approximate costs to conduct an execution in 4(b).

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Biennial budget funds designated to the state agencies listed in 4(b) above. For the Lyon County Sheriff's Office and Lyon County

Ambulance Service, funds designated to them by the county.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and the Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner's Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, Lyon County Ambulance Service, Office of the Attorney General, and Kentucky Department of Public Advocacy will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 431.213-431.270. Further, this administrative regulation is authorized pursuant to the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for the entities listed in #1 above.

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

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Lyon County Ambulance Service, \$1200;
Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the office.

(d) How much will it cost to administer this program for subsequent years? The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response

to 3(c) above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

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

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 16:300. Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.220, 431.224, 431.240, 431.250, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. KRS 431.250 establishes persons who may attend the execution. This administrative regulation establishes preliminary and post execution procedures concerning witnesses, visitors, and demonstrators.

Section 1. Designation of Victim's Family to Witness Execution.

(1) The commissioner shall mail a letter to any of the victim's family described in KRS 431.250 for whom the commissioner has received an address.

(2) The letter sent to the victim's family shall:

(a) State the scheduled execution date; and
(b) Request the victim's family member contact the commissioner to notify him in writing if he wants to be considered for designation as a witness to the execution.

(3) The commissioner may seek an address for the victim's family by:

(a) Review of the condemned person's file; or
(b) Request made to the Commonwealth's Attorney who maintains information concerning the victims of the crime committed by the condemned person.

(4) The commissioner shall designate pursuant to KRS 431.250 the three (3) members of the victim's family who may witness the execution.

(5) A letter stating the commissioner's designation shall be mailed to each member of the victim's family who is designated to witness the execution.

Section 2. Additional Notifications Concerning Execution. (1) The department shall mail a letter that states:

(a) The time that the person shall arrive to witness the execution; and

(b) The location where the person shall go.

(2) The letter shall be mailed to the:

(a) Designated victim's family;
(b) Condemned person's clergy witness and his other three (3) designated witnesses;

(c) Media representatives selected pursuant to section 3 of this administrative regulation;

(d) Coroner of the county where the execution is to be conducted; and

(e) Sheriff of the county where the condemned person was convicted.

Section 3. Media Representative Procedures. (1) The

department shall send notice to the three (3) news organizations specifically identified in KRS 431.250 as being allowed to have one (1) representative. The notice shall request the identity of the representative who the news organization will designate to attend and witness the execution. The three (3) news organizations shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the department indicates a different time to send the names of the representatives. The notice may request additional information about the representative as needed for security or management.

(2) The Kentucky Press Association may select by lottery three (3) representatives for the newspapers within the state as authorized by KRS 431.250. The Kentucky Press Association shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the department indicates a different time to send the names of the representatives. The department may request additional information about the representatives as needed for security or management.

(3) Selection of the three (3) representatives for broadcast media identified in KRS 431.250 shall be made in the following manner:

(a) The Central Office Public Information Officer shall send a press release advising broadcast media that they may nominate a representative of their organization to attend and serve as an official media witness to the execution. The nomination shall be sent to the commissioner's office in writing at least fourteen (14) days prior to the execution unless notice from the department indicates a different time to send the names for nomination.

(b) A drawing shall be held to select the three (3) representatives for broadcast media in the office of the commissioner.

(4) After media representatives to the execution are separated from other media in preparation for transfer to the witness room, media representatives shall not be permitted to use:

(a) Any item at the execution other than a pen or pencil and paper which shall be provided by the department; and

(b) Audio or video recording devices.

Section 4. Visitors. (1) Notwithstanding 501 KAR 6:020, CPP 16.1 and 501 KAR 6:040, KSP 16-01-01, visits to the condemned person after receipt of the execution order shall be governed by this administrative regulation.

(2) The visitor shall call the Kentucky State Penitentiary in advance of the requested visit to schedule the visit.

(3) The warden shall designate the location of the visit.

(4) For any visit allowed in this administrative regulation on the day of execution, the condemned person shall not have more than one (1) visitor at a time.

(5) The condemned person may refuse any visitor.

(6) The warden may approve a request from the condemned person for a visitor that is not on the visitation list.

(7) A pat down search may be performed on all visitors before and after the visit.

(8) Media visitors.

(a) Prior to the day of the execution, a member of the media:

1. Shall not bring any item into the penitentiary, unless prior approval is given by the warden;

2. Shall make any request to bring items into the penitentiary when calling to request an appointment to visit; and

3. May request daily visits on weekdays.

(b) On the day of the execution:

1. The department may establish a media:

a. Staging area where media shall be directed to gather before entering into the penitentiary; and

b. Assembly room where scheduled press briefings may be held prior to the execution. Reporters may submit written questions at each press briefing for response at a subsequent briefing, except for the final briefing; and

2. Media shall not be allowed visits.

(c) Seven (7) days prior to the execution, the department communication director may issue a press advisory stating the date and approximate time of the pending execution.

(9) Clergy visitors and minister of record visits.

(a) A member of the clergy or the minister of record may request to bring religious items into the penitentiary by making the request to the penitentiary chaplain. The chaplain shall notify the warden of the request. The warden shall:

1. Give due consideration to any request to bring religious items into the penitentiary; and

2. Not deny a religious item needed for an end-of-life ceremony unless it poses a significant operational problem or security risk.

(b) Prior to the day of execution, a member of the clergy or the minister of record may request daily visits.

(c) On the day of the execution:

1. Clergy visits shall not be allowed, except for the minister of record;

2. The minister of record shall call for an appointment for the visit prior to the day of execution;

3. The minister of record may visit for thirty (30) minutes up to two (2) hours before the execution;

4. The visit shall not be a contact visit, unless a religious ceremony, sacrament, or rite accepted by the religion being practiced by the condemned person requires contact to be accomplished; and

5. If a contact visit is necessary pursuant to subparagraph 4 of this paragraph, then the need for a contact visit shall be stated in the call for the appointment.

(10) Personal visitors.

(a) Prior to the day of execution:

1. A personal visitor who is listed on the condemned person's visitation list may request daily visits; and

2. Personal visitors shall be limited to four (4) at a time.

(b) A personal visitor shall not bring any item into the penitentiary.

(c) On the day of execution, a personal visitor shall not be allowed a visit.

(11) Attorneys defending the condemned person and staff employed by the office of an attorney defending the condemned person.

(a) An attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person may bring into the penitentiary:

1. Pens;

2. Pads of paper without metal; and

3. Legal documents for a visit with the condemned person. The legal documents and other items shall be searched, but shall not be read by staff performing the search.

(b) Prior to the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person:

1. Shall be allowed a visit daily between 7:30 a.m. and 2:30 p.m.; and

2. May request additional visits.

(c) On the day of execution:

1. an attorney defending the condemned person:

a. Shall be allowed a visit between 7:30 a.m. and 2:30 p.m.;

b. May request additional visits until three (3) hours prior to the execution; and

c. Visits shall be noncontact, unless there is a need for the condemned person to sign a document. If a document needs to be signed, the attorney shall be allowed to obtain the signature of the condemned person in a location designated by the warden; and

2. One (1) attorney representing the condemned person shall be allowed to have phone contact with the condemned person at or near one hour prior to the execution, if requested, if required for matters concerning a stay. The call shall be allowed when a break in the execution preparations can be taken without delaying the execution at or near one hour prior to the execution.

(d) The warden shall notify the condemned person of all requests from an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person for a phone call from the condemned person.

Section 5. An attorney representing the condemned person shall be allowed a space designated by the warden on the day of the execution at the Kentucky State Penitentiary. The space shall

include access to a phone if it is within the physical and technological capability of the Kentucky State Penitentiary.

Section 6[5]. Security and Management Issues. (1) Witnesses may be staged at the discretion of the warden.

(2) The warden may deny entrance to the Kentucky State Penitentiary to any person, including a witness, media representative, or visitor, who is determined to be a security risk or who becomes disruptive while at the penitentiary.

(3) The warden may limit the:

(a) Items brought onto the grounds of the penitentiary;

(b) Areas where persons may enter or remain at the penitentiary; and

(c) Time allowed in an area or on the grounds of the penitentiary.

(4) The warden may in his discretion make an exception to the limitations on visitors in Section 4 of this administrative regulation.

Section 7[6]. Demonstrator Procedures. (1) The warden may designate an area for demonstrators.

(2) A press advisory shall be issued to identify the locations for demonstrators and the time allowed for demonstrations.

Section 8[7]. Notice of Stay. (1) Prior to the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person shall give notice of a stay of execution by providing a copy of the stay to the warden.

(2) On the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person shall give notice of a stay of execution by calling the penitentiary at its main number unless a different phone number is designated by the warden.

(3) If the warden designates a different number, he shall give notice of the designated phone number to the individual at the phone number provided by an attorney defending the condemned person.

(4) An attorney defending the condemned person shall designate an individual to whom the notice in paragraph (3) of this section shall be provided by calling the penitentiary and providing the information to the warden's secretary at least three (3) days prior to the day of execution.

Section 9[8]. Obtaining Medical Records. (1) If an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person provides an appropriate authorization signed by the condemned person to release medical and mental health records to them, the warden shall make the record available for inspection within twenty-four (24) hours.

(2) After an execution order is signed, a request for inspection or copies of the condemned person's medical or mental health records shall be made in writing to the warden.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: January 11, 2018

FILED WITH LRC: January 12, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2018, at 9:00 a.m. at the Kentucky Transportation Cabinet Building, Room C118, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General

Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for the designation of witnesses to an execution, allowance of visitors to the condemned person, and designation of an area for demonstrators.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish procedures for the designation of witnesses to the execution, visitors to the condemned person, attorney access to the condemned person, and the demonstration area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures for the designation of witnesses to the execution, visitors to the condemned person, attorney access to the condemned person, and the demonstration area, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be used by Department of Corrections personnel for the designation of witnesses to the execution, visitors to the condemned person, attorney access to the condemned person, and the demonstration area.

(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 provides telephone access for the condemned and his attorney approximately one hour prior to the time scheduled for execution. Provision is made for a designated space for the attorney for the condemned person at the Penitentiary and access to a telephone.

(b) The necessity of the amendment to this administrative regulation: This amendment addresses issues raised when this regulation was previously filed.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of a death penalty. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: This amendment addresses issues raised when this regulation was previously filed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Office of the

Kentucky State Medical Examiner, Department of Public Advocacy, Attorney General's Office, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Kentucky Department of Fish and Wildlife, Kentucky National Guard, Eddyville Fire Department, the Lyon County Coroner, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections personnel will do the preparation for and carrying out of the execution, as well as the post-execution procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Kentucky State Police, \$3,625;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Kentucky Department of Fish and Wildlife, \$450;
Kentucky National Guard, \$18,975;
Lyon County Sheriff's Office, \$900;
Kuttawa Fire Department, volunteer agency with no fiscal impact;
Eddyville Fire Department, volunteer agency with no fiscal impact;
Lyon County Ambulance Service, \$1200;
Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist the entities listed above in the proper administration of their duties during the execution process.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. See approximate costs to conduct an execution in 4(b).

(b) On a continuing basis: See approximate costs to conduct an execution in 4(b).

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Biennial budget funds designated to the state agencies listed in 4(b) above. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, funds designated to them by the county.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Office of the Kentucky State Medical Examiner, Kentucky Department of Public Advocacy, Office of the Attorney General, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, and Lyon County Ambulance Service will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 431.213-431.270. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for the entities listed in #1 above.

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

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Kentucky State Police, \$3,625;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Kentucky Department of Fish and Wildlife, \$450;
Kentucky National Guard, \$18,975;
Lyon County Sheriff's Office, \$900;
Kuttawa Fire Department, volunteer agency with no fiscal impact;
Eddyville Fire Department, volunteer agency with no fiscal impact;
Lyon County Ambulance Service, \$1200;
Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(d) How much will it cost to administer this program for subsequent years? The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 16:310. Pre-execution medical actions.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 314.011, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution.

Section 1. Pre-execution Medical Actions after Receipt of Execution Order. (1) For the fourteen (14) days prior to an execution, or for the remaining days if an execution order is received less than fourteen (14) days prior to an execution:

(a) All medical documentation shall be made in special notes in the condemned person's medical record.

(b) The department shall arrange for nurse visits ~~for~~~~and checks on~~ the condemned person during each shift daily. The contacts and observations from these nurse visits~~and checks~~ shall be recorded in the special notes of the medical record referenced in paragraph (a) of this subsection. The nurse notes shall state the presence or absence of signs of physical or emotional distress observed.

(c) A licensed psychologist shall:

1. Personally observe and evaluate the condemned person five (5) days per week on Monday through Friday;~~and~~

2. Document his observations and evaluations in the condemned person's medical record immediately after personal contact with the condemned person; ~~and~~~~:-]~~

3. Review the department medical records for the condemned person for any validated psychological testing report that contains a diagnosis of an intellectual disability as indicated by the criteria in the current Diagnostic and Statistical Manual (DSM). If any testing results are located that meets this criteria, the psychologist shall notify the warden.

(d) The designated medical professional shall review and sign the nursing documentation referenced in paragraph (b) of this subsection daily.

(e) A psychiatrist shall review the nursing documentation referenced in paragraph (b) of this subsection and any other mental health or medical documentation weekly.

(2) For the seven (7) days prior to an execution, or for the remaining days if an execution order is received less than seven (7) days prior to an execution:

(a) A doctor or advanced practice registered nurse shall:

1. Complete a physical examination; and

2. Place the documentation of the physical in the condemned person's medical record upon completion of the documentation.

(b) A psychiatric interview and evaluation to assess for signs of insanity shall be:

1. Completed by a licensed psychiatrist or a licensed advanced practice registered nurse (APRN) certified in a psychiatric mental health population focus;

2. Placed in the condemned person's medical record; and

3. Sent to the warden.

(3) The designated medical professional shall:

(a) Personally observe and evaluate the condemned person's medical condition at least twice on nonconsecutive days; and

(b) Document his observations and evaluations in the special notes of the condemned person's medical record immediately after personal contact with the condemned person.

(4) All Kentucky State Penitentiary medical and mental health staff shall be instructed to immediately notify the warden and the designated professionals of any change in the condemned

person's medical or psychiatric condition.

Section 2. Pregnancy Testing for Female Condemned Persons. (1) If the condemned person is female, a pregnancy test shall be administered.

(2) ~~A~~~~if the execution order is received at least fourteen (14) days prior to the scheduled date of execution, a]~~ pregnancy test shall be administered at least:

~~(a) fourteen (14) days prior to the scheduled date of execution; and~~
~~(b)] seven (7) days prior to the scheduled date of execution, unless the execution order is received less than seven days prior to the scheduled date of execution.~~

(3) If the execution order is received less than ~~seven~~~~fourteen~~ (14) days prior to the scheduled date of execution, a pregnancy test shall be administered as soon as practicable. ~~[A physician shall determine if a second pregnancy test is feasible given the date the execution order is received and when the initial pregnancy test is taken.]~~

(4) If a pregnancy test is positive, then:

(a) The department shall give notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person is pregnant; and

(b) Suspend the execution pursuant to KRS 431.240(2).

Section 3. Insanity Issues. (1) If the warden receives information from medical or mental health staff that the condemned person exhibits signs or symptoms indicating that he may be insane as defined in KRS 431.213(2), the warden shall inform the designated medical professional.

(2) If the designated medical professional receives information from the warden or department medical or mental health staff, he shall determine~~if the information is~~:

(a) The source of the information; and~~opinion of the department psychiatrist; or]~~

(b) If the information is not from the department psychiatrist, whether it is sufficient to indicate that an additional~~department~~ psychiatric evaluation needs to be performed on the condemned person.

(3) The designated medical professional shall order a ~~department~~ psychiatric evaluation if he determines one is needed.

(4) If a department psychiatric evaluation determines that the condemned person may be insane as defined in KRS 431.213(2), the department shall:

(a) Give notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person appears to be insane; and

(b) Suspend the execution pursuant to KRS 431.240(2) to allow procedures consistent with KRS 431.2135.

Section 4. Serious Intellectual Disability. (1) If the warden is notified by the psychologist described in Section 1(1)(c)(3) concerning a testing report that contains a diagnosis of an intellectual disability for the condemned person, the:

(a) Warden shall notify the commissioner; and

(b) Commissioner shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person of the information located. The notice shall state that a court order is required for the execution to be suspended.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: January 11, 2018

FILED WITH LRC: January 12, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2018, at 9:00 a.m. at the Kentucky Transportation Cabinet Building, Room C118, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be

cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for medical and psychological examination and evaluation prior to execution.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet, for the government and discipline of penitentiaries, and for official conduct of all officials connected with the penitentiary. This administrative regulation is necessary to establish Department procedures for examination and evaluation of the condemned person's medical and mental status prior to an execution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 196.035 and 197.020, establishes the procedures for examination and evaluation of the condemned person's medical and mental status prior to an execution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to assist Department of Corrections personnel in examining and evaluating a condemned person prior to execution.

(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 adds a review for DOC records indicating a serious intellectual disability for the condemned person and notice if located. Language is changed to require a review for signs of insanity by a psychiatrist or an APRN with a mental health population focus. The language concerning pregnancy tests is revised to require at least one pregnancy test prior to execution depending on when the execution order is received.

(b) The necessity of the amendment to this administrative regulation: This amendment revises processes and moves the review for intellectual disability to a more appropriate regulation in the chapter and addresses issues raised in previous filings of the regulation and in pending litigation.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment adds language to make the review for a diagnosis of an intellectual disability part of the medical and mental health review prior to execution. It clarifies the purpose of the psychiatric evaluation and who may perform it and reduces the pregnancy tests to one prior to execution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the

Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-four inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. Additionally, the following agencies and some of their employees will be affected: Attorney General's Office and Department for Public Advocacy.

(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: Except for the Department of Corrections personnel, none of the entities listed above are mandated to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;

Kentucky Department of Public Advocacy, \$34,463;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. See approximate costs to conduct an execution in 4(b).

(b) On a continuing basis: See approximate costs to conduct an execution in 4(b).

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Biennial budget funds designated to the state agencies listed in 4(b) above.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of

Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Office of the Kentucky State Medical Examiner, Kentucky Department of Public Advocacy, Office of the Attorney General, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

(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 does not generate any revenue.

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

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are very infrequently performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;

Kentucky Department of Public Advocacy, \$34,463;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

501 KAR 16:330. Lethal injection protocols.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 – 431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations

necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocols for execution by lethal injection.

Section 1. Procurement, Storage, and Accountability of Execution Substances. (1) Upon receipt of an execution order, the warden shall check the supply of substances and their expiration dates. If a substance is~~[additional substances are]~~ needed, the warden shall place an order to obtain the necessary substance~~[substances]~~ for the lethal injection protocol~~[protocols]~~ listed in Section 3 of this administrative regulation.

(2) The substance~~[substances]~~ shall be stored according to the manufacturer's instructions, if applicable, and placed in a secured area of the penitentiary in a locked container~~[containers]~~. The warden shall maintain control of the keys to the secured areas and container~~[containers]~~.

(3) A log shall be maintained in the storage container~~[containers]~~ which shall record: (a) New supply~~[supplies]~~ of a substance~~[substances]~~ received and added to inventory;

(b) Substance~~[Substances]~~ removed for use;

(c) Disposal of substance~~[substances]~~ due to expiration; and

(d) Any other reason that a substance is removed or deducted from inventory.

Section 2. Preliminary Steps. (1) The condemned person shall be executed by using the ~~One-Drug~~ Protocol in Section 3~~(2)~~ of this administrative regulation. ~~[If the necessary substance or quantity of the substance for the One-Drug Protocol is not in the warden's possession by seven (7) days prior to the execution, the condemned person shall be executed by using the Two-Drug Protocol in Section 3(3) of this administrative regulation. The commissioner shall notify the condemned person at least seven (7) days prior to the execution of the protocol to be used.]~~

(2) The penitentiary shall have a minimum of two (2) phones that may be used simultaneously~~[phone lines]~~ available for communication with the courts and counsel on the day of execution. The warden shall determine if necessary ~~phones~~~~[shall be checked to determine if they]~~ are operational prior to the execution.

(3) If the condemned person is to be executed by lethal injection:

(a) If male, his chest shall be shaved by a designated member of the execution team for heart monitor leads on the day of execution; and

(b) The IV team shall complete an examination of the condemned person's veins within twenty-four (24) hours prior to the execution to determine possible locations of the IV sites.

(4) On the day of execution the warden shall provide to the IV team a sufficient amount~~[amounts]~~ of one of the substances~~[each substance]~~ listed in Section 3~~(1)~~ of this administrative regulation to prepare primary and backup~~[two (2)]~~ syringes for the substance~~[drug protocol selected]~~ to be used. ~~[One (1) syringe shall serve as the primary syringe. The other syringe shall be a back-up.]~~

(5) At the execution building, the~~[each]~~ substance and saline shall be ~~prepared in accordance with the manufacturer's instructions, if applicable, and~~ drawn into the primary and backup~~[two (2)]~~ syringes by one (1) member of the IV team designated by the warden in accordance with Section 3 of this administrative regulation. The other member of the IV team shall observe preparation of the substance~~[substances]~~ and verify that the instructions and procedures have been carried out correctly.

(6) Any syringe that is~~[syringes that are]~~ loaded with a substance~~[lethal injection substances]~~ that is~~[are]~~ not used during the execution shall be destroyed and documented in the log maintained in accordance with Section 1(3) of this administrative regulation.

(7) Any unused substance that was~~[substances that were]~~ not prepared for the execution~~[lethal injection]~~ shall be:

(a) Returned to the warden;

(b) Locked in the storage container; and

(c) Documented in the log maintained in accordance with Section 1(3) of this administrative regulation.

(8) A member of the IV team shall determine the appropriate size needle based on the examination of the condemned person's veins within the five (5) hours prior to the execution.

(9) The warden shall order the condemned person escorted to the execution chamber and strapped to the gurney.

(10) The IV team shall run the IV lines to the condemned person by selecting a site and inserting the following:

(a) ~~[Site and insert]~~ One (1) primary intravenous (IV) catheter ~~[line]~~; and

(b) ~~[Site and insert]~~ One (1) backup IV catheter ~~[line]~~.

(11) The location of the IV catheters ~~[sites]~~ on the body of the condemned person shall be determined by the IV team members. The insertion site of preference shall be the following order:

- (a) Arms;
- (b) Hands;
- (c) Ankles; or
- (d) Feet.

(12) To best ensure that a catheter ~~[needle]~~ is inserted properly into a vein, the IV team members shall look for the presence of blood in the ~~hub~~ ~~[valve]~~ of the catheter ~~[sited needle]~~.

(13) If the IV team cannot secure two (2) IV catheters ~~[sites]~~ within a reasonable time, not to exceed three (3) hours ~~[one (1) hour]~~, the Commissioner shall notify the Governor's Office that the execution has been suspended until a new execution order is received ~~[contact the Governor's Office and request that the execution be scheduled for a later date]~~.

(14) If the IV team is able to establish the two IV catheters with IV tubing ~~[lines]~~, the team shall start a saline flow. A member of the IV team shall observe the IV to ensure that the flow is uninterrupted.

(15) The execution team shall:

(a) Securely connect the electrodes of the cardiac monitor to the condemned person; and

(b) Ensure the equipment is functioning.

(16) Counsel assigned by the cabinet and counsel assigned by the office of the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

(17) The viewing curtain shall be opened.

(18) The warden shall announce the execution to the witnesses.

(19) The warden shall ask the condemned person if he wants to make a final statement and provide a brief opportunity of not less than two (2) minutes for him to do so. The warden may impose reasonable restrictions on the content and length of the statement. The warden may also terminate a statement that he or she believes is intentionally offensive to the witnesses. The witnesses shall be allowed to hear the condemned person's statement.

(20) The warden shall order the execution to proceed.

Section 3. ~~Protocol~~ Protocols and Sequence of Substances.

(1) One (1) of the following substances under whatever name it may be known or sold by, including generic, trade, brand, or other name, may be used:

(a) Pentobarbital; or

(b) Thiopental sodium.

(2) (a) For pentobarbital:

1. Sufficient syringes shall be prepared for a total of five (5) grams of pentobarbital;

2. The five (5) grams may consist of two (2) syringes prepared with two and five-tenths (2.5) grams of Pentobarbital for a total of five (5) grams/100 milliliters of solution; and

3. A separate syringe shall be prepared with saline to flush the line; or

(b) For thiopental sodium:

1. Sufficient syringes shall be prepared for a total of five (5) grams of thiopental sodium;

2. The five (5) grams may consist of four (4) syringes prepared with 1.25 grams/50 milliliters; and

3. A separate syringe shall be prepared with saline to flush the line.

(3) The flow of saline through the IV to be used shall be

discontinued.

(4) The five (5) grams of the selected substance and saline shall be administered.

(5) A stopwatch shall be started after the injection of the final syringe.

(6) During the injection the warden and deputy warden shall watch the primary IV for failure, leakage, the catheter coming out of a vein, or any other problem. If the IV fails or leaks, the catheter comes out of the vein, or any other significant problem arises, the execution team shall be instructed to switch to the backup IV. The lethal injection protocols shall be as follows.

(2) One-Drug Protocol:

(a) A designated execution team member shall inject via IV three (3) gm of Sodium Thiopental (60 ml of a 50mg/ml solution) or five (5) gm of Pentobarbital (100 ml of a 50 mg/ml solution) under whatever generic or trade names they may be known or sold.

(b) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of the Sodium Thiopental or Pentobarbital in the primary site and order that the backup IV be used with a new flow of the substance.

(c) A designated execution team member shall start a stopwatch once the lethal injection is complete.

(7) [(d)] A designated execution team member shall:

1. Observe the heart monitor; and
2. Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.

(8) [(e)] The viewing curtain shall be drawn before the:

1. Coroner enters the chamber to declare death; and
2. Physician enters the chamber to certify the cause of death.

(9) If the heart monitor does not show a cessation of electrical activity of the heart after twenty (20) minutes of all injections through the primary IV, then the Warden shall order the injection of the substance and saline contained in the backup syringes be administered through the backup IV in accordance with this section.

(10) If death does not occur within a sufficient time after all injections through the backup IV, the Commissioner shall notify the Governor's Office that the execution has been suspended until a new execution order is received. [(f) An additional injection of the substance in the same dose and concentration listed in paragraph

(a) of this subsection shall be used if the:

1. Heart monitor does not indicate a flat line after ten (10) minutes;

2. Coroner is not able to declare death; and

3. Physician is unable to certify the cause of death after the ten (10) minute period.

(g) The injections shall continue until death has occurred.

(h) During the execution by lethal injection the warden and deputy warden shall watch the primary IV site for failure, leakage, the catheter coming out of a vein, or any other problem. If an IV fails or leaks, the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV.

(3) Two-Drug Protocol:

(a) A designated execution team member shall inject via IV ten (10) mg of midazolam (5mg/ml concentration) and 40 mg of hydromorphone (10 mg/ml concentration) under whatever generic or trade names they may be known or sold.

(b) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of midazolam and hydromorphone in the primary site and order that the backup IV be used with a new flow of the substances listed for this protocol in paragraph (a) of this subsection.

(c) A designated execution team member shall start a stopwatch once the lethal injection is complete.

(d) A designated execution team member shall:

1. Observe the heart monitor; and
2. Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart

monitor.

- (e) The viewing curtain shall be drawn before the:
 1. Coroner enters the chamber to declare death; and
 2. Physician enters the chamber to certify the cause of death.

(f) ~~Except as described in paragraph (g) of this subsection, an additional injection of the [lethal] substances in the same doses and concentrations listed in paragraph (a) of this subsection shall be used if the:~~

- 1. ~~Heart monitor does not indicate a flat line after ten (10) minutes;~~
- 2. ~~Coroner is not able to declare death; and~~
- 3. ~~Physician is unable to certify the cause of death after the ten (10) minute period.~~

(g) ~~Any additional injections after the initial and second injections shall be sixty (60) mg of hydromorphone (10 mg/ml concentration). The injections shall continue until death has occurred.~~

(h) ~~During the execution by lethal injection the warden and deputy warden shall watch the primary IV site for failure, leakage, the catheter coming out of a vein, or any other problem. If an IV fails or leaks, the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV.]~~

Section 4. Post Lethal Injection Steps. (1) If the Coroner declares death, the warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the warden's announcement.

- (2) The witnesses shall be escorted out of the witness room.

Section 5. Stabilization Procedure. (1) Before an execution commences:

(a) The warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and

(b) A medical crash cart and defibrillator shall be located in the execution building.

(2) If at any time during the execution process the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

Section 6. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the warden.

(2) If the execution is in process:

(a) The execution team shall stop the execution; and

(b) If any of the substances have been injected, the medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in Section 5(1) of this administrative regulation.

(3) The warden shall allow the condemned person to contact his attorney.

(4) The warden shall notify the commissioner.

(5) The commissioner shall notify the Governor's Office or court issuing the mandate.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: January 11, 2018

FILED WITH LRC: January 12, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2018, at 9:00 a.m. at the Kentucky Transportation Cabinet Building, Room C118, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish

to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the protocols for conducting an execution by lethal injection.

(b) The necessity of this administrative regulation: KRS Chapter 431.220 establishes lethal injection as one of the methods of carrying out the death penalty. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet, for the government and discipline of penitentiaries, and for official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the process for carrying out an execution by lethal injection.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the lethal injection process, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a procedure for execution by lethal injection in this 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: The amendment revises the protocol for execution by lethal injection and reduces the number of drugs that staff may handle by in an execution by deleting the two drug protocol. Language is revised to allow for singular rather than plural. The language concerning phones is changed to remove "line" to allow for various types of phones. Terminology concerning intravenous preparation for execution is clarified. Language concerning notice to the Governor's Office is changed to indicate the execution is suspended until a new execution order is received.

(b) The necessity of the amendment to this administrative regulation: This amendment address issues in pending litigation and developments in case law.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: The amendment revises the protocols for execution by lethal injection and reduces the number of drugs that may need to be handled by staff in an execution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15

witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Office of the Kentucky State Medical Examiner, Department of Public Advocacy, Attorney General's Office, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Kentucky Department of Fish and Wildlife, Kentucky National Guard, Eddyville Fire Department, the Lyon County Coroner, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above are mandated to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Kentucky State Police, \$3,625;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Kentucky Department of Fish and Wildlife, \$450;
Kentucky National Guard, \$18,975;
Lyon County Sheriff's Office, \$900;
Kuttawa Fire Department, volunteer agency with no fiscal impact;
Eddyville Fire Department, volunteer agency with no fiscal impact;
Lyon County Ambulance Service, \$1200;
Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. See approximate costs to conduct an execution in 4(b).

(b) On a continuing basis: See approximate costs to conduct an execution in 4(b).

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Biennial budget funds designated to the state agencies listed in 4(b) above. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, funds designated to them by the county.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or

entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Office of the Kentucky State Medical Examiner, Kentucky Department of Public Advocacy, Office of the Attorney General, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, and Lyon County Ambulance Service will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

(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 does not generate any revenue.

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

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Kentucky State Police, \$3,625;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Kentucky Department of Fish and Wildlife, \$450;
Kentucky National Guard, \$18,975;
Lyon County Sheriff's Office, \$900;
Kuttawa Fire Department, volunteer agency with no fiscal impact;
Eddyville Fire Department, volunteer agency with no fiscal impact;
Lyon County Ambulance Service, \$1200;
Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

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

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 16:340. Electrocution protocol.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocol for execution by electrocution.

Section 1. Preliminary Steps. (1) The penitentiary shall have a minimum of two (2) phones that may be used simultaneously~~[phone lines]~~ available for communication with the courts and counsel on the day of execution. The warden shall determine if necessary phones~~[phone lines]~~ are operational prior to the execution.

(2) The electrocution equipment shall be designed to deliver approximately five (5) to ten (10) amps depending upon the condemned person's physique at the designed voltage.

(3) The electrocution equipment shall be checked and tested in accordance with 501 KAR 16:320, Section 3(3), within forty-eight (48) hours of the time scheduled for an execution by electrocution.

(4) A sodium chloride solution shall be made by a member of the execution team within five (5) hours prior to the time scheduled for an execution by electrocution by the following:

(a) Approximately five (5) gallons of water at room temperature shall be placed in a container; and

(b) Up to 128 ounces of iodized table salt shall be slowly added to the water while continuously mixing until the water will not visibly absorb salt. Sufficient absorption is observed when the salt will not dissolve in the water and visibly collects at the bottom of the container.

(5) Natural sea sponges for the head and leg electrodes shall be prepared by soaking them in the sodium chloride solution until they are saturated.

(6) If the penitentiary does not have power when the execution is scheduled to commence, the generator for the execution building shall be started.

(7) The condemned person's head and one (1) leg shall be shaved on the day of execution.

(8) The warden shall order the condemned person escorted to the execution chamber and strapped in the chair.

(9) The warden shall order the viewing curtain opened.

(10) The warden shall announce the execution to the witnesses.

(11) The warden shall ask the condemned person if he wants to make a final statement. If a statement is made by the condemned person, it shall be limited to two (2) minutes. The witnesses shall be allowed to hear the condemned person's statement.

(12) The warden shall announce the final preparations for the execution to the witnesses.

(13) The viewing curtain shall be closed.

(14) The execution team members shall:

(a) Attach the chin strap to the condemned person;

(b) Attach the head gear to the condemned person;

(c) Attach the leg band to the condemned person;

(d) Adjust the back board;

(e) Attach the cables from the electrocution equipment to the head and leg electrodes with the nuts sufficiently tightened to ensure a firm connection;

(f) Wipe any salt water released from the sponges from condemned person's head and leg; and

(g) Secure the condemned person's leather face covering.

(15) The warden shall make a visual check of connections and

straps.

(16) The execution team shall exit the execution chamber.

(17) The viewing curtain shall be opened.

(18) The warden shall:

(a) Announce the execution of the condemned person to the witnesses; and

(b) Pull the face covering over the condemned person's face.

(19) All persons except the condemned person shall exit the execution chamber.

(20) Counsel assigned by the cabinet and counsel assigned by the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

Section 2. Execution. (1) The warden shall order the execution to proceed.

(2) The execution equipment shall be activated for a two (2) minute cycle. The cycle shall consist of:

(a) Approximately 2,400 volts for a period of fifteen (15) seconds; and

(b) Approximately 240 volts for the remainder of the two (2) minute cycle.

(3) If the warden sees evidence of a malfunction, he shall press the stop button on the electrocution equipment to end the cycle.

(4) At the end of the two (2) minute cycle:

(a) The viewing curtain shall be closed; and

(b) The warden shall observe the condemned person for signs of life for five minutes, which at a minimum shall include pulse and respiration.

(5) If the warden observes signs of life during the five (5) minute observation period:

(a) The viewing curtain shall be opened; and

(b) The warden shall order the execution cycle stated in subsection (2) of this section be repeated.

(6) If the warden observes signs of life again, the execution shall be stopped. The commissioner shall contact the Governor's Office and request that the execution be suspended.

(7) If the warden does not observe signs of life:

(a) The coroner shall check the condemned person to declare death, which at a minimum, shall include pulse and pupils; and

(b) The physician shall certify the cause of death.

Section 3. Post Execution Steps. (1) The warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the warden's announcement.

(2) The witnesses shall be escorted out of the witness room.

Section 4. Stabilization Procedure. (1) Before an execution commences:

(a) The warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and

(b) A medical crash cart and defibrillator shall be located in the execution building.

(2) If at any time during the execution process the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

Section 5. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the warden.

(2) If the execution is in process:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in Section 4(1) of this administrative regulation.

(3) The warden shall allow the condemned person to contact his attorney.

(4) The warden shall notify the commissioner.

(5) The commissioner shall contact the Governor's Office and request that the execution be suspended.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: January 11, 2018

FILED WITH LRC: January 12, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2018, at 9:00 a.m. at the Kentucky Transportation Cabinet Building, Room C118, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686 email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the protocol for conducting an execution by electrocution.

(b) The necessity of this administrative regulation: KRS Chapter 431.220 establishes electrocution as one of the methods of carrying out the death penalty. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the process for carrying out an execution by electrocution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the process for execution by electrocution, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a procedure for execution by electrocution in this 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: The amendment changes language about phones to match language changed in the lethal injection protocol.

(b) The necessity of the amendment to this administrative regulation: It maintains similar language for similar procedures in both protocols.

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet. The Department of Corrections is responsible for the execution of death penalties. This amendment addresses that responsibility.

(d) How the amendment will assist in the effective administration of the statutes: It maintains similar language for similar procedures in both protocols.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes

procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Office of the Kentucky State Medical Examiner, Department of Public Advocacy, Attorney General's Office, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Kentucky Department of Fish and Wildlife, Kentucky National Guard, Eddyville Fire Department, the Lyon County Coroner, and the Lyon County Ambulance Service.

(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: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;

Kentucky State Police, \$3,625;

Office of the Kentucky State Medical Examiner, \$2,000;

Kentucky Department of Public Advocacy, \$34,463;

Kentucky Department of Fish and Wildlife, \$450;

Kentucky National Guard, \$18,975;

Lyon County Sheriff's Office, \$900;

Kuttawa Fire Department, volunteer agency with no fiscal impact;

Eddyville Fire Department, volunteer agency with no fiscal impact;

Lyon County Ambulance Service, \$1200;

Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009). The execution process has been in effect for many years, so this process will not be newly implemented. See approximate costs to conduct an execution in 4(b).

(b) On a continuing basis: See approximate costs to conduct an execution in 4(b).

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Biennial budget funds designated to the state agencies listed in 4(b) above. For the Lyon County Sheriff's Office and Lyon County Ambulance Service, funds designated to them by the county.

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

regulation impacts how the Kentucky Department of Corrections and other entities listed in 4(b) above operate, but should not necessitate an increase in funding. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Office of the Kentucky State Medical Examiner, Kentucky Department of Public Advocacy, Office of the Attorney General, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, Kuttawa Fire Department, and Lyon County Ambulance Service will also be impacted during the execution process.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, 301 S.W.3d 478 (Ky. 2009).

(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 does not generate any revenue.

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

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #1 above should also not see any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the cost will be the following approximate figures:

Department of Corrections, \$35,840;
Kentucky State Police, \$3,625;
Office of the Kentucky State Medical Examiner, \$2,000;
Kentucky Department of Public Advocacy, \$34,463;
Kentucky Department of Fish and Wildlife, \$450;
Kentucky National Guard, \$18,975;
Lyon County Sheriff's Office, \$900;
Kuttawa Fire Department, volunteer agency with no fiscal impact;
Eddyville Fire Department, volunteer agency with no fiscal impact;
Lyon County Ambulance Service, \$1200;
Office of Criminal Appeals within the Attorney General's Office handles all felony appeals within the existing budget of the Office.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to 3(c) above should also not see

any increase in costs. Executions are infrequently performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Behavioral Health, Developmental and Intellectual Disabilities to

employ a mental health professional who has specialized training in the care of a resident with mental illness or intellectual disability.

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

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

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

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

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

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

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

(4) A mandatory payment shall discontinue if:

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

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

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

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

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

(a) 907 KAR 20:001;

(b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 11;

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

(d) 907 KAR 20:025; or[and]

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

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

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

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

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and

(c)1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);

3. Receives caretaker services and is at least eighteen (18) years of age; or

4.a. Resides in a private residence;

b. Is at least eighteen (18) years of age; and

c. Has SMI.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131;

(c) A situation in which a caretaker is required to be hired to provide care other than room and board; or

(d) A private residence, which shall:

1. Be permanent housing with:

a. Tenancy rights; and

b. Preference given to single occupancy; and

2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

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

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or

b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

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

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

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

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

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of Inspector General.

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

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

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

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified

annually by the cabinet with the caretaker to establish how:

- (a) Often the service is provided;
- (b) The service prevents institutionalization; and
- (c) Payment is made for the service.
- (4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:
 - (a) Client is taken daily or periodically to the home of the caretaker; or
 - (b) Caretaker service is provided by the following persons living with the applicant:
 - 1. The spouse;
 - 2. Parent of an adult or minor child who has a disability; or
 - 3. Adult child of a parent who is aged, blind, or has a disability.

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

- (a) Not include a primary diagnosis of Alzheimer's disease or dementia;
- (b) Be described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), fourth (4th) edition or edition currently in use;
- (c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and
- (d) Be unlikely to improve without treatment, services, or supports.

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

- (a) Often services are provided;
- (b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and
- (c) Payment is made for the services.
- (3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:
 - (a) Licensed or registered in accordance with KRS Chapter 216B; or
 - (b) Certified in accordance with KRS Chapter 194A.

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

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:020, Section 2(4)(a);
- (c) 907 KAR 20:025; and
- (d) 907 KAR 20:040, Section 1.
- (2) An individual or couple shall not be eligible if countable resources exceed the limit of:
 - (a) \$2,000 for an individual; or
 - (b) \$3,000 for a couple.

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

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:020, Section 2(4)(a);
- (c) 907 KAR 20:025; and
- (d) 907 KAR 20:040, Section 1.
- (2) The optional supplementation payment shall be determined by:
 - (a) Adding:
 - 1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and
 - 2. A payment made to a third party on behalf of an applicant or recipient; and

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

(3) Income of an ineligible spouse shall be:

- (a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and
- (b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

- 1. The applicant or recipient; and
- 2. Each minor dependent child.

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

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

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

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

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

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

(a) For a resident of a personal care home on or after January 1, 2018, \$1,270~~[January 1, 2017, \$1,255]~~;

(b) For a resident of a family care home on or after January 1, 2018, \$922~~[January 1, 2017, \$907]~~;

(c) For individuals who receive caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after January 1, 2018, \$812~~[January 1, 2017, \$797]~~;

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after January 1, 2018, \$1,186~~[January 1, 2017, \$1,164]~~; or

3. An eligible couple, both aged, blind or have a disability and both requiring care on or after January 1, 2018, \$1,240~~[January 1, 2017, \$1,218]~~; or

(d) For an individual who resides in a private residence and has SMI on or after January 1, 2018, \$1,270~~[January 1, 2017, \$1,255]~~.

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

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

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

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

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

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

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

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

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

(a) The non-SSI recipient meets the requirements of

subsection (1)(c) of this section;

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

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

1. Notification of the temporary admission; and

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

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

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

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

(1) Citizen of the United States; or

(2) Qualified alien.

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

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

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

(b) Shall not be eligible for a payment for a Type A Citation that is not abated; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of

Decision to Personal Care Home, to a personal care home following:

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

(b) Approval or denial of an application.

(4) A personal care home shall:

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

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

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

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

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

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

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

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

1. Mail;

2. Fax; or

3. Electronically.

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

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

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

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

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

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

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

(a) Importance of proper medication administration;

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

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

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

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

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

(3) Initial training shall:

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

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

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

may be trained during a year.

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

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

1. Has successfully completed certified medication technician training; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Observe and interview residents and staff; and

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

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

2. The personal care home:

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

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

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

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

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

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

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

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

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

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

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

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

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[-]

VICKIE YATES BROWN GLISSON, Secretary

APPROVED BY AGENCY: December 28, 2017

FILED WITH LRC: December 28, 2017 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested,

be held on February 26, 2018, 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 February 19, 2018, 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 February 28, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, Phone (502) 564-3703, Email Elizabeth.Caywood@ky.gov; and Laura Begin

(1) Provide a brief summary of:

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

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the eligibility requirements and standards of need for the State Supplemental Program for persons who are aged, blind, or have a disability.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will increase the standards of need for the State Supplemental Program to reflect the cost of living adjustment (COLA) to be implemented in calendar year 2018 by the Social Security Administration for Supplemental Security Income (SSI) recipients.

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

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes by complying with an agreement between Kentucky and the Social Security Administration to pass along the cost of living adjustment for Supplemental Security Income to State

Supplementation Program through an increase in the program's standards of need for all recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by passing along the 2018 two (2) percent COLA for the Supplemental Security Income benefit by modifying the standards of need for the State Supplementation Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of October 2017, there were 2,409 individuals who received State Supplementation Program benefits. As of fall 2017, there are 28 personal care homes participating in the MI/ID Supplement Program.

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

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

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question. (3): Regulated entities will benefit from a two (2) percent COLA adjustment to the standards of need, thereby increasing net resources by fifteen (15) or twenty-two (22) dollars. Benefit amounts in the State Supplementation Program are the difference between the applicable standard of need and countable income.

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

(a) Initially: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through mandate, which would jeopardize the state's federal Medicaid funding.

(b) On a continuing basis: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the 2018 SSI cost of living adjustment. Not complying with the federal pass-through mandate would jeopardize the state's federal Medicaid funding.

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1382 e-g, 20 C.F.R. Part 416

2. State compliance standards. KRS 194.050 (1), 205.245

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department of 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 194.050 (1), 205.245, 20 C.F.R. Part 416, 42 U.S.C.1328e-g

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-)

Other Explanation:

NONE

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of January 8, 2018

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Monday, January 8, 2018, at 1:00 p.m. In Room 149 of the Capitol Annex. Senator Harris, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the December 2017 meeting were approved.

Present were:

Members: Senators Perry Clark, Ernie Harris, Alice Forgy Kerr and Julie Raque Adams, and Representatives David Hale, Jason Petrie, Mary Lou Marzian, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Becky Gilpatrick, Higher Education Assistance Authority; Stafford Easterling, Personnel Board; Todd Renner, Lisa Swiger, Department of Revenue; Julie Campbell, Quincy Ward, Board of Hairdressers & Cosmetologists; Nathan Goldman, Board of Nursing; Shan Dutta, Elizabeth Morgan, Board of Medical Imaging & Radiation Therapy; Amber Arnett, David Bruce, Karen Waldrop, Department of Fish and Wildlife Resources; Sean Alteri, Melissa Duff, Aaron Keatley, Division for Air Quality; Amy Barker, Office of Legal Services; William Codell, LaShana Harris, Department of Juvenile Justice; Ann D'Angelo, Jeff Wolfe, Department of Transportation, Kevin Brown, Amy Peabody, Earl Simms, Board of Education; Todd Allen, Amanda Ellis, Department of Education, Stephen Humphress, Department of Alcoholic Beverage Control; Patrick O'Connor, Department of Insurance; Joe Donohue, Department of Financial Institutions.

The Administrative Regulation Review Subcommittee met on Monday, January 8, 2018, and submits this report:

Administrative Regulations Reviewed by the subcommittee:

HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student and Administrative Services: Kentucky Higher Education Assistance Authority

[11 KAR 4:080](#). Student aid applications. Becky Gilpatrick, director of student aid, represented the authority.

Kentucky Educational Excellence Scholarship Program

[11 KAR 15:090](#). Kentucky Educational Excellence Scholarship (KEES) program.

In response to questions by Co-Chair Harris, Ms. Gilpatrick stated that, in the case of dual credit, the weighted college-level grade was used toward calculating scholarship qualification. Generally, for a student taking a dual-credit class at a specific institution and if the student later enrolled in that institution, the grade and credit earned during the dual-credit period was credited toward the student's transcript at that institution. For a student transferring to a different institution, most institutions applied the credit, but not the grade, to the student's transcript. The authority had established counseling to assist students with the ramifications of dual-credit scholarships.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL BOARD

[101 KAR 1:325](#). Probationary periods. Stafford Easterling, general counsel, represented the board.

In response to a question by Co-Chair Harris, Mr. Easterling stated that changes to probationary periods were initiated by the appropriate cabinets and consolidated into this administrative regulation.

A motion was made and seconded to approve the following

amendments: to amend 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.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; Corporations

[103 KAR 16:240](#). Nexus standard for corporations and pass-through entities. Todd Renner, executive director, and Lisa Swiger, tax policy consultant, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to add "member" and "shareholder" to the provision that one is "doing business" in Kentucky if he or she is a partner in a pass-through entity that is doing business in Kentucky. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Board of Hairdressers and Cosmetologists

[201 KAR 12:100](#). Sanitation standards. Julie Campbell, board administrator, and Quincy Ward, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 and Sections 8, 11, and 14 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 Nursing

[201 KAR 20:095](#). Retired nurse licensure status. Nathan Goldman, general counsel, represented the board.

[201 KAR 20:400](#). Delegation of nursing tasks.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 and 5 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

[201 KAR 46:010](#). Definitions for 201 KAR Chapter 46. Shan Dutta, assistant attorney general, and Elizabeth Morgan, executive director, represented the board.

In response to a question by Co-Chair Harris, Ms. Morgan stated that the independent study program was implemented long ago, prior to the availability of formal education related to medical imaging and radiation therapy. The program was no longer appropriate.

A motion was made and seconded to approve the following amendments: 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.

[201 KAR 46:020](#). Fees.

[201 KAR 46:035](#). Practice standards, scopes of practice, and ethical standards.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 46:081](#). Limited x-ray machine operator.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4, 7, 11, and 12 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 46:095](#). Administrative subpoena.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

[301 KAR 5:010](#). License agent applications and agreements. Amber Arnett, counsel; David Bruce, director of engineering and IT; and Karen Waldrop Deputy Commissioner, represented the department.

In response to questions by Representative Turner, Ms. Waldrop stated that the department was initiating a new licensing system. Licensing agents remained, but the terminal system was being replaced with a Web-based, online system. Mr. Bruce stated that initially some agents were opposed to the new system, but after introduction to the ease of use, many agents changed to support the system. A few smaller stores elected to not renew as licensing agents due to the new system. The department had anticipated that approximately twenty (20) percent of licensing agents would not renew due to the changes; however, the actual loss was only around fourteen (14) percent.

Representative Turner stated that he was concerned that some small, rural stores without online capabilities would lose sales because of opting out of the new system, thus having reduced store traffic. Ms. Waldrop stated that the new system had some features that might increase store traffic. For example, with the new system a discount coupon toward purchases could be printed out with the license. Representative Turner requested to be recorded as voting in opposition to 301 KAR 5:010 and 5:020.

In response to questions by Co-Chair Harris, Ms. Waldrop stated that the letter to the subcommittee from the department (relating to the fee increase for the senior or disabled combination hunting and fishing license for residents) was revised to correct language regarding the commission. The department's commitments in the letter remained the same.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph 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.

[301 KAR 5:020](#). License agent requirements and responsibilities.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Air Quality: New Source Standards

[401 KAR 59:015](#). New indirect heat exchangers. Sean Alteri, division director, and Aaron Keatley, commissioner, represented the division.

In response to questions by Co-Chair Harris, Mr. Alteri stated that these administrative regulations applied to industrial boilers, boilers that produced heat or processed steam, and boilers for chemical processes. The division amended these administrative regulations after comments to clarify workplace practice standards during periods of startup and shutdown.

Existing Source Standards

[401 KAR 61:015](#). Existing indirect heat exchangers.

JUSTICE AND PUBLIC SAFETY CABINET: Law Enforcement Council

[503 KAR 1:140](#). Peace officer, telecommunicator, and court security officer professional standards. Amy Barker, assistant

general counsel, represented the council.

In response to a question by Co-Chair Harris, Ms. Barker stated that more staff were retiring than being hired. There was also limited availability for basic training. This administrative regulation allowed trained, experienced staff to be hired without as many basic academy hours required.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 10 and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice: Child Welfare

[505 KAR 1:170](#). Department of Juvenile Justice Policies and Procedures: Prison Rape Elimination Act of 2003 (PREA). William Codell, attorney, and LaShana Harris, assistant director, represented the department.

In response to questions by Co-Chair Harris, Ms. Harris stated that implementation of this administrative regulation would cost the department approximately four (4) million dollars and require approximately eighty (80) new staff. Mr. Codell stated that the primary penalty for failure to comply with federal PREA regulations was a five (5) percent reduction in the amount of certain federal grant funds. Funds were still available if the department certified that, upon release of the funds, that money would be used exclusively to comply with federal PREA requirements. The penalty funding that would be withheld for failure to comply was in the low six (6) figures, much lower than the four (4) million that would be required to implement this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a citation; and (2) to amend Section 1 and various policies to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Highways: Division of Traffic Operations: Traffic

[603 KAR 5:025](#). Fully controlled access highways. Ann D'Angelo, assistant general counsel, and Jeff Wolfe, division director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; and (2) to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT: Kentucky Board of Education: Department of Education: Charter Schools

[701 KAR 8:010](#). Charter school student application, lottery, and enrollment. Kevin Brown, general counsel and associate commissioner; Amy Peabody, attorney; and Earl Simms, charter schools division director, represented the department.

Representative Marzian requested to be recorded as voting in opposition to 701 KAR 8:010, 8:020, 8:030, and 8:040.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 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.

[701 KAR 8:020](#). Valuation of charter school authorizers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5, 7, 8, 10,

and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[701 KAR 8:030](#). Charter school appeal process.

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.

[701 KAR 8:040](#). Conversion charter school petition, conversion, and operation.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 and 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 Instruction

[704 KAR 3:370](#). Kentucky framework for personnel evaluation. Kevin Brown, general counsel and associate commissioner, and Todd Allen, deputy general counsel represented the office.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

[804 KAR 4:241](#). Repeal of 804 KAR 4:240. Stephen Humphress, general counsel, represented the department.

Alcoholic Beverage Control Board

[804 KAR 6:011](#). Repeal of 804 KAR 6:010.

Malt Beverage Equipment, Supplies, and Service

[804 KAR 11:010](#). Equipment and supplies.

In response to questions by Co-Chair Harris, Mr. Humphress stated that KRS 446.080(3) stated that a law was not retroactive unless specifically stated to be retroactive. Licensees that provided coolers prior to the change were "grandfathered in" in this administrative regulation. These were not the large coolers, such as in grocery stores, but the smaller, point-of-purchase coolers usually located near register checkout areas.

A motion was made and seconded to approve the following amendments: to amend Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Insurance: Commissioner's Office: Group and Blanket Health Insurance

[806 KAR 18:011](#). Repeal of 806 KAR 18:010. Patrick O'Connor II, deputy commissioner, represented the office.

[806 KAR 18:030](#). Group health insurance coordination of benefits.

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 the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Financial Institutions: Division of Depository Institutions: Credit Unions

[808 KAR 3:050](#). Conduct. Joe Donohue, general counsel, and Charles Vice, commissioner, represented the division.

In response to a question by Co-Chair Harris, Mr. Donohue stated that the fee frequency was changed to comply with legislation from the 2017 regular session of the General Assembly.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 4, 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.

Other Business: Co-Chair Harris introduced Representative David Hale who was appointed to the subcommittee to fill the House vacancy. Representative Marzian made a motion, seconded by Representative Turner, that Representative Hale be nominated for House Co-Chair. Representative Hale accepted the nomination. Representative Marzian made a motion, seconded by Representative Turner, to end House Co-Chair nominations. Representative Hale was unanimously endorsed by all House subcommittee members as House Co-Chair of the subcommittee.

Representative Hale stated that he was honored by the nomination and confidence of his colleagues. He looked forward to working with this subcommittee.

The following administrative regulations were deferred or removed from the January 8, 2018, subcommittee agenda:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: General Administration

[16 KAR 1:016](#). Standards for certified teacher leader.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

[501 KAR 6:280](#). Risk and needs assessment.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Benefit Exchange: Kentucky Health Benefit Exchange

[900 KAR 10:031](#). Repeal of 900 KAR 10:030 and 900 KAR 10:100.

Office of Health Policy: Certificate of Need

[900 KAR 6:130](#). Certificate of Need criteria for physician exemption.

Department for Public Health: Office of Inspector General: Division of Healthcare: Health Services and Facilities

[902 KAR 20:016](#). Hospitals; operations and services.

Department for Medicaid Services: Managed Care

[907 KAR 17:005](#). Definitions for 907 KAR Chapter 17.

[907 KAR 17:010](#). Managed care organization requirements and policies relating to enrollees.

[907 KAR 17:015](#). Managed care organization requirements and policies relating to providers.

[907 KAR 17:020](#). Managed care organization service and service coverage requirements and policies.

[907 KAR 17:026](#). Repeal of 907 KAR 17:025 and 907 KAR 17:030.

[907 KAR 17:035](#). External independent third-party.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

[921 KAR 2:040 & E](#). Procedures for determining initial and continuing eligibility.

Division of Family Support: Division of Child Care: Daycare

[922 KAR 2:160 & E](#). Child Care Assistance Program.

[922 KAR 2:260 & E](#). Child care service appeals.

The subcommittee adjourned at 1:50 p.m. until February 12, 2018, 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.

SENATE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting of January 18, 2018

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of January 17, 2018, having been referred to the Committee on January 3, 2018, pursuant to KRS 13A.290(6):

201 KAR 2:390
201 KAR 2:400
201 KAR 20:065
201 KAR 35:040
201 KAR 35:055
201 KAR 35:070
921 KAR 3:045
921 KAR 3:090

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 17, 2018 meeting, which are hereby incorporated by reference.

**HOUSE STANDING COMMITTEE ON HEALTH AND
FAMILY SERVICES**
Meeting of January 18, 2018

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Family Services for its meeting of January 18, 2018, having been referred to the Committee on January 3, 2018, pursuant to KRS 13A.290(6):

201 KAR 2:390
201 KAR 2:400
201 KAR 20:065
201 KAR 35:040
201 KAR 35:055
201 KAR 35:070
921 KAR 3:045
921 KAR 3:090

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 18, 2018 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

H - 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

H - 16

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

H - 27

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

H - 28

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.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	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 <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2017 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			201 KAR 20:056		
* Statement of Consideration not filed by deadline			Amended	1799	
** Withdrawn, not in effect within 1 year of publication			As Amended	2125	6-21-2017
*** Withdrawn before being printed in Register			201 KAR 20:057		
‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			Amended	1802	6-21-2017
IJC Interim Joint Committee			201 KAR 20:070		
(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.			Amended	2187	See 44 Ky.R.
			201 KAR 20:110		
			Amended	2189	See 44 Ky.R.
			201 KAR 20:225		
			Amended	2191	8-16-2017
			201 KAR 20:480		
			Amended	2193	8-16-2017
			201 KAR 22:070		
			Amended	2022	See 44 Ky.R.
			201 KAR 26:125		
			Amended	1805	See 44 Ky.R.
			201 KAR 26:130		
			Amended	1807	See 44 Ky.R.
			201 KAR 26:140		
			Amended	1809	See 44 Ky.R.
			201 KAR 26:145		
			Amended	1811	See 44 Ky.R.
			201 KAR 26:155		
			Amended	1814	See 44 Ky.R.
			201 KAR 26:160		
			Amended	1816	See 44 Ky.R.
			201 KAR 26:165		
			Amended	1818	See 44 Ky.R.
			201 KAR 26:171		
			Amended	1819	See 44 Ky.R.
			201 KAR 26:175		
			Amended	1823	
			Reprint	2109	
			Am Comments	2156	See 44 Ky.R.
			201 KAR 26:180		
			Amended	1826	
			Am Comments	2158	See 44 Ky.R.
			201 KAR 26:185		
			Amended	1827	See 44 Ky.R.
			201 KAR 26:190		
			Amended	1829	See 44 Ky.R.
			201 KAR 26:200		
			Amended	1831	See 44 Ky.R.
			201 KAR 26:210		
			Amended	1833	See 44 Ky.R.
			201 KAR 26:215		
			Amended	1834	See 44 Ky.R.
			201 KAR 26:225	1900	See 44 Ky.R.
			201 KAR 26:250		
			Amended	1836	See 44 Ky.R.
			201 KAR 26:280		
			Amended	1838	See 44 Ky.R.
			201 KAR 26:290		
			Amended	1840	See 44 Ky.R.
			201 KAR 32:050		
			Amended	1841	See 44 Ky.R.
			201 KAR 32:060		
			Amended	1843	See 44 Ky.R.
			201 KAR 34:020		
			Amended	2023	See 44 Ky.R.
			201 KAR 34:030		
			Amended	2025	See 44 Ky.R.
			201 KAR 34:050		
			Amended	2029	See 44 Ky.R.
301 KAR 2:225E	2112	5-12-2017			
Replaced	2199	8-3-2017			
501 KAR 1:030E	2115	4-17-2017			
Replaced		See 44 Ky.R.			
787 KAR 2:040E	1922	3-31-2017			
Replaced		See 44 Ky.R.			
907 KAR 1:041E(r)	1924	3-31-2017			
Expired		9-27-2017			
907 KAR 3:206E(r)	1925	3-31-2017			
Expired		9-27-2017			
907 KAR 23:001E	1927	3-31-2017			
Expired		9-27-2017			
907 KAR 23:010E	1930	3-31-2017			
Replaced		See 44 Ky.R.			
907 KAR 23:020E	1935	3-31-2017			
Replaced		See 44 Ky.R.			
ORDINARY ADMINISTRATIVE REGULATIONS:					
4 KAR 1:010					
Amended	2176	See 44 Ky.R.			
4 KAR 1:040					
Amended	2178	See 44 Ky.R.			
4 KAR 1:050	2239	See 44 Ky.R.			
16 KAR 2:020					
Amended	2005	See 44 Ky.R.			
16 KAR 5:020					
Amended	2008	See 44 Ky.R.			
16 KAR 6:020					
Amended	1627	7-7-2017			
16 KAR 8:040					
Amended	2011	See 44 Ky.R.			
30 KAR 2:010					
Amended	2180	See 44 Ky.R.			
30 KAR 5:060					
Amended	2182	See 44 Ky.R.			
40 KAR 2:145					
Amended	2013	See 44 Ky.R.			
40 KAR 2:150					
Amended	2015	See 44 Ky.R.			
200 KAR 5:080					
Repealed	2240	9-1-2017			
200 KAR 5:081(r)	2240	9-1-2017			
201 KAR 2:074					
Amended	1796	See 44 Ky.R.			
201 KAR 2:076					
Amended	2184	See 44 Ky.R.			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	43 Ky.R. Page No.	Effective Date	Regulation Number	43 Ky.R. Page No.	Effective Date
201 KAR 39:001			Amended	2202	See 44 Ky.R.
Amended	1636		401 KAR 49:040		
Am Comments	2160	See 44 Ky.R.	Repealed	2205	9-8-2017
201 KAR 39:030			401 KAR 49:080		
Amended	1639	See 44 Ky.R.	Amended	2205	9-8-2017
201 KAR 39:050			401 KAR 49:090		
Amended	1846	See 44 Ky.R.-	Repealed	2205	9-8-2017
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----- SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, not in effect within 1 year of publication
- *** Withdrawn before being printed in Register
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, not in effect within 1 year of publication
- *** Withdrawn before being printed in Register
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- IJC Interim Joint Committee
- (*r*) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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205.593	907 KAR 17:015	216B.075	902 KAR 20:016
205.622	907 KAR 1:047	216B.085	902 KAR 20:016
	907 KAR 1:102	216B.095	900 KAR 6:090
	907 KAR 3:005		900 KAR 6:130
205.624	907 KAR 17:010	216B.105 – 216B.125	902 KAR 20:016
205.646	907 KAR 17:035	216B.140 – 216B.175	902 KAR 20:016
205.712	601 KAR 2:030	216B.185	902 KAR 20:016
205.2005	921 KAR 3:025	216B.190	902 KAR 20:016
205.8451	907 KAR 1:045	216B.230 – 216B.239	902 KAR 20:016
	907 KAR 1:047	216B.250	902 KAR 20:016
	907 KAR 1:102	216B.400 – 216B.402	902 KAR 20:016
	907 KAR 3:005	216B.990	900 KAR 6:090
205.8451 – 205.8483	907 KAR 17:005		900 KAR 6:130
209	902 KAR 20:016		902 KAR 20:016
	922 KAR 5:090		902 KAR 20:145
	922 KAR 5:111(r)		902 KAR 20:360
209.020	921 KAR 2:015	216C.010	900 KAR 11:010
	922 KAR 1:320	216C.030	900 KAR 11:010
	922 KAR 5:040	216C.040	900 KAR 11:010
209.030	922 KAR 5:040	216C.050	900 KAR 11:010
209.140	922 KAR 5:040	216C.060	900 KAR 11:010
209A	922 KAR 5:040	216C.070	900 KAR 11:010
	922 KAR 5:111(r)	216C.080	900 KAR 11:010
209A.020	922 KAR 1:320	216C.090	900 KAR 11:010
	922 KAR 5:090	216C.100	900 KAR 11:010
210.366	201 KAR 28:200	216C.110	900 KAR 11:010
	201 KAR 36:030	216C.120	900 KAR 11:010
210.370 – 210.485	907 KAR 1:045	216C.160	900 KAR 11:010
	907 KAR 1:047	216C.170	900 KAR 11:010
	907 KAR 3:010	216C.180	900 KAR 11:010
211.350 – 211.380	922 KAR 5:040	216C.200	900 KAR 11:010
211.680 – 211.686	922 KAR 1:421	216C.210	900 KAR 11:010
211.684	922 KAR 1:330	216C.220	900 KAR 11:010
	922 KAR 1:490	216C.230	900 KAR 11:010
211.842 – 211.852	902 KAR 20:016	217.005 – 217.215	902 KAR 55:015
211.842 – 211.990	902 KAR 100:180		902 KAR 55:041
211.892	805 KAR 1:060	217.015	301 KAR 1:155
211.893	805 KAR 1:060	218A.010	902 KAR 55:015
213.101	902 KAR 20:360		902 KAR 55:110
214	902 KAR 20:016	218A.020	902 KAR 55:015
214.036	922 KAR 1:330	218A.020 – 218A.130	902 KAR 55:040
	922 KAR 2:160		902 KAR 55:041
214.610	201 KAR 9:310	218A.040	902 KAR 55:015
214.620	201 KAR 9:310	218A.060	902 KAR 55:015

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218A.080	902 KAR 55:015		401 KAR 38:002
218A.100	902 KAR 55:015		401 KAR 43:002
218A.120	902 KAR 55:015		401 KAR 44:002
218A.175	902 KAR 20:145		401 KAR 48:005
218A.180	902 KAR 55:095		401 KAR 48:090
218A.200	902 KAR 55:095	224.43-815	410 KAR 1:002
218A.202	902 KAR 55:110	224.46	401 KAR 31:002
218A.205	201 KAR 5:130		401 KAR 32:002
	201 KAR 9:260		401 KAR 33:002
	201 KAR 9:310		401 KAR 34:002
	201 KAR 20:057		401 KAR 35:002
218A.205	201 KAR 25:090		401 KAR 36:002
218.172	201 KAR 25:090		401 KAR 37:002
218A.240	902 KAR 55:110		401 KAR 38:002
219.011 – 219.081	902 KAR 20:016		401 KAR 39:005
224	401 KAR 61:015		401 KAR 39:011
	902 KAR 100:180		401 KAR 39:060
224.1	401 KAR 31:002		401 KAR 39:080
	401 KAR 32:002		401 KAR 39:090
	401 KAR 33:002		401 KAR 39:120
	401 KAR 34:002		401 KAR 43:002
	401 KAR 35:002		401 KAR 44:002
	401 KAR 36:002		401 KAR 45:060
	401 KAR 37:002	224.46-505	410 KAR 1:002
	401 KAR 38:002	224.46-510	410 KAR 1:002
	401 KAR 39:005	224.46-520	410 KAR 1:002
	401 KAR 39:120	224.46-810	410 KAR 1:002
	401 KAR 43:002	224.46-820	410 KAR 1:002
	401 KAR 45:060	224.46-825	410 KAR 1:002
	401 KAR 48:005	224.46-830	410 KAR 1:002
	401 KAR 48:090	224.46-840	410 KAR 1:002
224.10	401 KAR 31:002	224.46-850	410 KAR 1:002
	401 KAR 32:002	224.46-860	410 KAR 1:002
	401 KAR 33:002	224.46-870	410 KAR 1:002
	401 KAR 34:002	224.50	401 KAR 34:002
	401 KAR 35:002		401 KAR 35:002
	401 KAR 36:002		401 KAR 38:002
	401 KAR 37:002		401 KAR 39:120
	401 KAR 38:002		401 KAR 44:002
	401 KAR 39:005		401 KAR 45:060
	401 KAR 39:011		401 KAR 48:005
	401 KAR 39:060	224.50-130	401 KAR 31:002
	401 KAR 39:080	224.50-760	410 KAR 1:002
	401 KAR 39:090	224.70	401 KAR 34:002
	401 KAR 39:120		401 KAR 37:002
	401 KAR 43:002	224.71-110	402 KAR 3:030
	401 KAR 44:002	224.71-120	402 KAR 3:030
	401 KAR 45:060	224.99	401 KAR 31:002
	401 KAR 48:005		401 KAR 32:002
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	401 KAR 59:015		401 KAR 34:002
224.10-100	401 KAR 8:510		401 KAR 35:002
	402 KAR 3:030		401 KAR 36:002
224.10-110	401 KAR 8:510		401 KAR 37:002
224.40	401 KAR 31:002		401 KAR 38:002
	401 KAR 32:002		401 KAR 39:011
	401 KAR 33:002		401 KAR 39:060
	401 KAR 34:002		401 KAR 39:080
	401 KAR 35:002		401 KAR 39:090
	401 KAR 36:002		401 KAR 39:120
	401 KAR 37:002		401 KAR 45:060
	401 KAR 38:002		401 KAR 48:005
	401 KAR 39:120		401 KAR 48:090
	401 KAR 43:002	224.500	804 KAR 11:010
	401 KAR 44:002	224.590	804 KAR 11:010
	401 KAR 45:060	230.215	811 KAR 1:215
	401 KAR 48:005		811 KAR 1:220
	401 KAR 48:090	230.260	811 KAR 1:215
224.40-310	410 KAR 1:002		811 KAR 1:220
224.43	401 KAR 31:002	230.280	811 KAR 1:220
	401 KAR 34:002	230.290	811 KAR 1:220
	401 KAR 35:002	230.310	811 KAR 1:220
	401 KAR 36:002	230.398	811 KAR 1:220

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230.770	811 KAR 1:215	304.5-010	806 KAR 5:031
230.802	811 KAR 1:215	304.5-080	806 KAR 5:031
230.990	811 KAR 1:215	304.7-340	806 KAR 7:011
235.010	301 KAR 1:015	304-9	806 KAR 9:051
235.040	301 KAR 6:005	304.9-030	806 KAR 5:031
235.050	301 KAR 6:005	304.9-390	806 KAR 9:051
235.070	301 KAR 6:005	304.12-020	806 KAR 20:010
235.080	301 KAR 6:005		806 KAR 20:021
235.990	301 KAR 1:015	304.14-120	806 KAR 14:006
236	815 KAR 15:010		806 KAR 20:010
	815 KAR 15:025	304.14-135	907 KAR 17:015
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	815 KAR 15:041	304.14-210	806 KAR 20:010
236.010	815 KAR 15:026	304.17-042	806 KAR 18:030
236.030	815 KAR 15:026	304.17A-250	806 KAR 18:030
236.110	815 KAR 15:026	304.17A-700 – 304.17A-730	907 KAR 17:015
236.240	815 KAR 15:026	304.18-032	806 KAR 18:030
236.250	815 KAR 15:026	304.18-085	806 KAR 18:030
236.990	815 KAR 15:026	304.18-130	806 KAR 18:011
241.020	804 KAR 6:020	304.18-140	806 KAR 18:011
241.060	804 KAR 4:241	304.18-150	806 KAR 18:011
	804 KAR 4:400	304.18-160	806 KAR 18:011
	804 KAR 4:410	304.18-170	806 KAR 18:011
	804 KAR 6:011	304.20-040	806 KAR 20:010
	804 KAR 9:051		806 KAR 20:021
241.065	804 KAR 9:051	304.20-160	806 KAR 20:010
243.090	804 KAR 4:390	304.20-300 – 304.20-350	806 KAR 20:010
	804 KAR 4:400	304.21-010	806 KAR 14:006
	804 KAR 6:020	304.22-020	806 KAR 14:006
243.200	804 KAR 8:050	304.23-010	806 KAR 14:006
243.240	804 KAR 9:051	304.24-410	806 KAR 24:022
243.250	804 KAR 9:051	304.30-110	806 KAR 20:010
243.380	804 KAR 4:400	304.32-145	806 KAR 18:030
	804 KAR 4:410	304.32-158	806 KAR 18:011
243.390	804 KAR 4:400	304.38-185	806 KAR 18:030
	804 KAR 4:410	304.38-197	806 KAR 18:011
243.630	804 KAR 4:400	304.39-060	806 KAR 39:030
244.080	804 KAR 5:070	309.0814	201 KAR 35:070
244.085	804 KAR 5:070	309.083	201 KAR 35:055
244.090	804 KAR 5:070		201 KAR 35:070
244.440	804 KAR 4:241	309.0831	201 KAR 35:055
247	302 KAR 17:010		201 KAR 35:070
260.850 – 260.869	302 KAR 50:011	309.0832	201 KAR 35:070
	302 KAR 50:020	309.0833	201 KAR 35:070
	302 KAR 50:030	309.085	201 KAR 35:040
	302 KAR 50:040	309.331	201 KAR 45:110
	302 KAR 50:050		201 KAR 45:120
	302 KAR 50:060		201 KAR 45:170
	302 KAR 50:070	309.334	201 KAR 45:120
	302 KAR 50:080		201 KAR 45:170
275.015	202 KAR 3:030	309.335	201 KAR 45:071
278	807 KAR 5:026		201 KAR 45:120
	807 KAR 5:027		201 KAR 45:170
	807 KAR 5:081	309.336	201 KAR 45:170
278.485	807 KAR 5:022	309.0813	201 KAR 35:080
281.010	907 KAR 3:066	310	902 KAR 20:016
281.605	907 KAR 3:066	310.070	201 KAR 33:070
281.635	907 KAR 3:066	310.200	201 KAR 33:070
281.872	907 KAR 3:066	311.271	900 KAR 6:130
281.875	907 KAR 3:066	311.530 – 311.620	201 KAR 9:260
286.6-100	808 KAR 3:050	311.550	907 KAR 17:005
286.6-225	808 KAR 3:050	311.560	902 KAR 20:016
286.6-585	808 KAR 3:050	311.565	201 KAR 9:310
286.6-715	808 KAR 3:050	311.601	201 KAR 9:310
292.330	808 KAR 10:082	311.621 – 311.643	907 KAR 17:010
292.370	808 KAR 10:082	311.695	201 KAR 9:480
292.390	808 KAR 10:082	311.697	201 KAR 9:480
292.410	808 KAR 10:082	311.699	201 KAR 9:480
304.1-050	806 KAR 14:006	311.710 – 311.830	902 KAR 20:360
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304.2-180	806 KAR:011	311.840 – 311.862	907 KAR 3:005
304.3-100	806 KAR:011	311.990	201 KAR 9:260
304.3-240	806 KAR:011	311.992	902 KAR 20:016
304.4-010	806 KAR 14:006	311A.030	202 KAR 7:501

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	202 KAR 7:550	316.010	201 KAR 15:110
	202 KAR 7:555	316.030	201 KAR 15:050
	202 KAR 7:560		201 KAR 15:110
311A.060	202 KAR 7:565	316.125	201 KAR 15:030
311A.170	202 KAR 7:565		201 KAR 15:110
311A.180	201 KAR 20:400	316.127	201 KAR 15:110
	202 KAR 7:550	316.130	201 KAR 15:030
	202 KAR 7:565	316.132	201 KAR 15:030
311A.190	202 KAR 7:501	316.140	201 KAR 15:030
	202 KAR 7:545	317A.020	201 KAR 12:030
	202 KAR 7:550		201 KAR 12:082
	202 KAR 7:555	317A.040	201 KAR 12:010
	202 KAR 7:560	317A.050	201 KAR 12:030
	202 KAR 7:565		201 KAR 12:082
311B	902 KAR 20:016		201 KAR 12:260
311B.020	201 KAR 46:010	317A.060	201 KAR 12:041
	201 KAR 46:081		201 KAR 12:060
311B.050	201 KAR 46:020	317A.062	201 KAR 12:030
	201 KAR 46:095		201 KAR 12:260
311B.080	201 KAR 46:035	317A.070	201 KAR 12:060
311B.100	201 KAR 46:020	317A.100	201 KAR 12:030
	201 KAR 46:081	317A.130	201 KAR 12:100
311B.110	201 KAR 46:020	317A.140	201 KAR 12:060
	201 KAR 46:081	317A.145	201 KAR 12:060
311B.120	201 KAR 46:020	317B.020	201 KAR 12:060
	201 KAR 46:081		201 KAR 12:100
311B.130	201 KAR 46:020		201 KAR 12:260
311B.140	201 KAR 46:020	317B.025	201 KAR 12:030
311B.150	201 KAR 46:081		201 KAR 12:260
311B.160	201 KAR 46:095	317B.045	201 KAR 12:060
311B.170	201 KAR 46:095	317B.050	201 KAR 12:060
311B.180	201 KAR 46:020	317B.055	201 KAR 12:060
	201 KAR 46:081	319.050	902 KAR 20:058
311B.190	201 KAR 46:020	319.056	902 KAR 20:058
	201 KAR 46:081	319.064	902 KAR 20:058
314	902 KAR 20:058	319A.010	907 KAR 1:047
314.011	201 KAR 20:057	319A.070	201 KAR 28:200
	201 KAR 20:065	319A.080	201 KAR 28:235
	201 KAR 20:400	319A.160	201 KAR 28:200
	902 KAR 20:016	319A.300	201 KAR 28:235
	902 KAR 20:360	320.210	902 KAR 20:016
	907 KAR 1:102	322.010	401 KAR 34:002
	907 KAR 1:104		401 KAR 35:002
	907 KAR 3:005		401 KAR 39:005
	907 KAR 17:005		405 KAR 8:010
	922 KAR 2:160	322.340	405 KAR 8:010
314.021	201 KAR 20:400	322A.050	201 KAR 31:010
314.041	201 KAR 20:095	322A.060	201 KAR 31:010
314.042	201 KAR 20:057	322A.070	201 KAR 31:010
	201 KAR 20:065	326.020	201 KAR 13:040
	902 KAR 20:016		201 KAR 13:060
314.051	902 KAR 20:360	326.035	201 KAR 13:040
314.091	201 KAR 20:095	326.040	201 KAR 13:060
314.175	201 KAR 20:400		201 KAR 13:060
314.193	201 KAR 20:505E	326.080	201 KAR 13:040
314.196	201 KAR 20:057	327.010	201 KAR 22:020
315.002	201 KAR 20:057		907 KAR 1:047
	201 KAR 2:390	327.050	201 KAR 22:020
	201 KAR 2:400		201 KAR 22:040
315.005	201 KAR 2:390		201 KAR 22:070
	201 KAR 2:400	327.060	201 KAR 22:070
315.010	201 KAR 2:380	327.070	201 KAR 22:040
	201 KAR 2:400	327.075	201 KAR 22:020
315.191	201 KAR 2:380	327.080	201 KAR 22:020
	201 KAR 2:390	327.300	201 KAR 22:170
	201 KAR 2:400	327.310	201 KAR 22:020
315.340	201 KAR 2:400	333	902 KAR 20:360
315.342	201 KAR 2:400	333.030	902 KAR 20:016
315.400	201 KAR 2:390	334A.020	907 KAR 1:047
315.4102	201 KAR 2:390	335.080	902 KAR 20:058
315.4104	201 KAR 2:390	335.100	902 KAR 20:058
315.4106	201 KAR 2:390	335.330	902 KAR 20:058
315.4108	201 KAR 2:390	335.500	201 KAR 36:060

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	201 KAR 36:070	350.450	405 KAR 8:010
335.500 – 335.599	201 KAR 36:030	350.445	405 KAR 8:050
335.505	201 KAR 36:060	350.450	405 KAR 8:050
	201 KAR 36:065	350.465	405 KAR 8:010
335.515	201 KAR 36:072		405 KAR 8:050
335.525	201 KAR 36:060		405 KAR 16:110
	201 KAR 36:065		405 KAR 18:010
	201 KAR 36:070		405 KAR 18:040
	902 KAR 20:058		405 KAR 18:060
335.527	201 KAR 36:070		405 KAR 18:110
335.540	201 KAR 36:050		405 KAR 18:260
335.545	201 KAR 36:050		405 KAR 20:080
335B.010	900 KAR 1:009		405 KAR 20:090
335B.020	900 KAR 1:009	350.500 – 350.521	405 KAR 8:010
336.165	803 KAR 6:011	350.990	405 KAR 7:095
336.1661	803 KAR 3:051	351.102	805 KAR 7:020
336.1662	803 KAR 3:051	351.103	805 KAR 7:040
336.1663	803 KAR 3:051		805 KAR 7:050
336.1664	803 KAR 3:051	351.106	805 KAR 7:030
336.220	922 KAR 2:280	351.1041	805 KAR 8:030
337	780 KAR 3:072		805 KAR 8:040
	803 KAR 1:121		805 KAR 8:050
337.275	922 KAR 2:160	351.120	805 KAR 8:030
338.015	803 KAR 2:505		805 KAR 8:040
339.210 – 339.450	803 KAR 1:100	351.194	805 KAR 8:030
341.020	103 KAR 18:070		805 KAR 8:040
341.090	103 KAR 18:070		805 KAR 8:050
341.395	103 KAR 18:070	352	902 KAR 100:180
349.025	805 KAR 9:041	352.010 – 352.540	805 KAR 8:030
350	405 KAR 7:001		805 KAR 8:040
	405 KAR 8:001		805 KAR 8:050
	405 KAR 10:001	353.110	805 KAR 1:071
	405 KAR 12:001	353.120	805 KAR 1:071
	405 KAR 16:001	353.170	805 KAR 1:071
	405 KAR 18:001	353.180	805 KAR 1:060
	405 KAR 20:001	353.550	805 KAR 1:060
350.010	405 KAR 20:080		805 KAR 1:071
350.020	405 KAR 8:010	353.739	805 KAR 1:071
	405 KAR 18:010	369.101 – 369.120	907 KAR 1:047
	405 KAR 18:260		907 KAR 1:102
350.028	405 KAR 18:260		907 KAR 3:005
350.055	405 KAR 8:010	387.025	922 KAR 1:140
350.060	405 KAR 8:010	387.500 – 387.800	907 KAR 17:010
	405 KAR 8:040	387.510	907 KAR 17:005
350.070	405 KAR 8:010	403.352	922 KAR 1:470
350.085	405 KAR 8:010	403.720	922 KAR 5:040
350.090	405 KAR 8:010		922 KAR 5:090
	405 KAR 18:010	424.110 – 424.120	405 KAR 8:010
350.093	405 KAR 8:050	431.213 - 431.270	501 KAR 16:290
	405 KAR 18:010		501 KAR 16:300
350.100	405 KAR 16:110		501 KAR 16:310
	405 KAR 18:060		501 KAR 16:330
	405 KAR 18:110		501 KAR 16:340
350.130	405 KAR 8:010	431.600	922 KAR 1:330
350.135	405 KAR 8:010	433.750	603 KAR 5:025
350.151	405 KAR 8:040	433.753	603 KAR 5:025
	405 KAR 18:010	439	501 KAR 6:020
	405 KAR 18:040		501 KAR 6:110
	405 KAR 18:060		501 KAR 6:230
	405 KAR 18:110		501 KAR 6:270
	405 KAR 18:260	439.265	501 KAR 6:280
	405 KAR 20:080	439.331	501 KAR 6:280
	405 KAR 20:090	439.348	501 KAR 6:280
350.405	405 KAR 16:110	439.480	501 KAR 6:280
	405 KAR 18:110	439.3101	501 KAR 6:280
350.410	405 KAR 18:010	439.3104	501 KAR 6:280
350.420	405 KAR 16:110	439.3105	501 KAR 6:280
	405 KAR 18:040	440.170	907 KAR 3:066
	405 KAR 18:060	446.010	501 KAR 6:280
	405 KAR 18:110	446.400	902 KAR 20:016
350.421	405 KAR 8:040	503.110	922 KAR 1:330
	405 KAR 18:060	514	921 KAR 2:015
350.440	405 KAR 18:010	527.100	922 KAR 1:140

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527.110	922 KAR 1:140		921 KAR 2:015
529.010	922 KAR 1:330		922 KAR 2:160
532.130 - 532.140	501 KAR 16:290	21 C.F.R.	902 KAR 55:015
533.030	501 KAR 6:280		902 KAR 55:040
600 – 645	505 KAR 1:130		902 KAR 55:041
	505 KAR 1:170		902 KAR 55:095
600.010	922 KAR 1:330	26 C.F.R.	105 KAR 1:140
	922 KAR 1:430	27 C.F.R.	405 KAR 8:010
600.020	922 KAR 1:140	28 C.F.R.	505 KAR 1:170
	922 KAR 1:320	29 C.F.R.	105 KAR 1:140
	922 KAR 1:330		780 KAR 3:072
	922 KAR 1:430		803 KAR 1:100
	922 KAR 1:470		803 KAR 2:425
	922 KAR 1:480		803 KAR 2:505
	922 KAR 1:490		900 KAR 1:009
	922 KAR 2:160		902 KAR 20:016
605.090	922 KAR 1:320		902 KAR 20:360
	922 KAR 1:330	30 C.F.R.	405 KAR 7:001
	922 KAR 1:490		405 KAR 7:095
605.102	922 KAR 1:550		405 KAR 8:001
605.120	922 KAR 1:490		405 KAR 8:010
	922 KAR 2:160		405 KAR 8:040
605.130	922 KAR 1:330		405 KAR 10:001
	922 KAR 1:430		405 KAR 12:001
	922 KAR 1:490		405 KAR 16:001
610.010	922 KAR 1:330		405 KAR 18:001
610.110	922 KAR 1:140		405 KAR 18:010
610.125	922 KAR 1:140		405 KAR 18:060
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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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