



# ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, February 15, 2018.

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet March 12, 2018, at 1:00 p.m. in room 149 Capitol Annex. **Tentative Agenda**..... **1911**  
**Regulation Review Procedure** ..... **1913**  
**ARRS Report**..... **2171**  
**Other Committee Reports** ..... **2175**

## EMERGENCIES

### State Board of Elections

[31 KAR 3:010E](#). Current address of Kentucky registered voters and distribution of voter registration lists. .... 1914

### Department for Community Based Services

[922 KAR 2:090E](#). Child-care center licensure ..... 1916  
[922 KAR 2:100E](#). Certification of Family Child-Care Homes..... 1925  
[922 KAR 2:111E](#). Repeal of 922 KAR 2:110. .... 1936  
[922 KAR 2:120E](#). Child-care center health and safety standards. .... 1937  
[922 KAR 2:180E](#). Requirements for registered child care providers in the Child Care Assistance Program. .... 1946  
[922 KAR 2:190E](#). Civil penalties. .... 1952

## AS AMENDED

### Education Professional Standards Board

[16 KAR 1:016](#). Standards for certified teacher leader. .... 1956  
[16 KAR 5:040](#). Admission, placement, and supervision in student teaching. .... 1956

### Department of Revenue

[103 KAR 5:230](#). Information to be provided by the sheriff when transferring delinquent property tax bills to the county clerk. .... 1959

### Kentucky Retirement Systems

[105 KAR 1:140](#). Employer's administrative duties..... 1959

### Department of Military Affairs

[106 KAR 1:350](#). Rescue squad minimum equipment..... 1963  
[106 KAR 1:390](#). Search and rescue training requirements. .... 1968

### Board of Medical Licensure

[201 KAR 9:480](#). Fee schedule regarding genetic counselors..... 1970

### Board of Hairdressers and Cosmetologists

[201 KAR 12:030](#). Licensing, permits, and examinations. .... 1970  
[201 KAR 12:041](#). Repeal of 201 KAR 12:020, 12:025, 12:031, 12:040, 12:045, 12:050, 12:055, 12:065, 12:070, 12:080; 12:083; 12:085, 12:088, 12:101, 12:105, 12:110, 12:120, 12:125, 201 KAR 12:130, 12:140, 12:150, 12:180, 12:190, 12:220, 12:230, 12:250, and 12:270. .... 1972

## INDEXES

**Locator Index - Effective Dates** ..... **I - 2**  
**KRS Index**..... **I - 16**  
**Technical Amendments** ..... **I - 28**  
**Subject Index**..... **I - 29**

[201 KAR 12:060](#). Compliance. .... 1973  
[201 KAR 12:260](#). Fees. .... 1975

### Board of Physical Therapy

[201 KAR 22:170](#). Physical Therapy Compact Commission. .... 1976

### Lottery Corporation

[202 KAR 3:030](#). Retailers. .... 1982

### Department of Fish and Wildlife Resources

[301 KAR 2:195](#). Falconry, raptor take, and raptor propagation. .... 1989

### Department of Agriculture

[302 KAR 50:020](#). Policies and procedures for growers..... 1993  
[302 KAR 50:030](#). Policies and procedures for processors and handlers. .... 2000  
[302 KAR 50:040](#). Affiliated universities and colleges. .... 2005  
[302 KAR 50:050](#). THC sampling and testing; post-testing actions..... 2007  
[302 KAR 50:060](#). Fees and forms. .... 2007  
[302 KAR 50:070](#). Prohibited products. .... 2008  
[302 KAR 50:080](#). Materials incorporated by reference..... 2008

### Department of Education

[703 KAR 5:270](#). Kentucky's Accountability System..... 2008  
[704 KAR 3:540](#). Uniform academic course codes..... 2015  
[704 KAR 7:090](#). Homeless Children and Youth Education Program. .... 2015

### Department of Workplace Standards

[803 KAR 2:505](#). Cranes and derricks in construction..... 2018

### Kentucky Horse Racing Commission

[811 KAR 1:215](#). Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund. .... 2019  
[811 KAR 1:220](#). Harness racing at county fairs..... 2023

### Department for Community Based Services

[922 KAR 2:160](#). Child Care Assistance Program..... 2025

## AMENDED AFTER COMMENTS

### Education Professional Standards Board

[16 KAR 2:010](#). Kentucky professional and provisional teacher certificates. .... 2033  
[16 KAR 5:030](#). Proficiency evaluation. .... 2039

### Board of Emergency Medical Services

[202 KAR 7:545](#). License classifications..... 2041  
[202 KAR 7:550](#). Required equipment and vehicle standards. .... 2042  
[202 KAR 7:555](#). Ground agencies..... 2049

|   |  |      |
|---|--|------|
| <a href="#">202 KAR 7:560.</a>          | Ground vehicle staff. ....   | 2052 |
| <b>Department for Public Health</b>     |  |      |
| <a href="#">902 KAR 20:016.</a>         | Hospitals; operations and services. ....   | 2054 |
| <b>Department for Medicaid Services</b> |  |      |
| <a href="#">907 KAR 17:010.</a>         | Managed care organization requirements and policies relating to enrollees.....         | 2067 |
| <a href="#">907 KAR 17:015.</a>         | Managed care organization requirements and policies relating to providers. ....        | 2075 |
| <a href="#">907 KAR 17:020.</a>         | Managed care organization service and service coverage requirements and policies. .... | 2081 |

## PROPOSED AMENDMENTS

### State Board of Elections

|                               |  |      |
|-------------------------------|--|------|
| <a href="#">31 KAR 3:010.</a> | Current address of Kentucky registered voters and distribution of voter registration lists. .... | 2086 |
|-------------------------------|--|------|

### Board of Licensure and Certification for Dietitians and Nutritionists

|                                 |                                   |      |
|---------------------------------|-----------------------------------|------|
| <a href="#">201 KAR 33:070.</a> | Telehealth and telepractice. .... | 2087 |
|---------------------------------|-----------------------------------|------|

### Board of Licensed Diabetes Educators

|                                 |  |      |
|---------------------------------|--|------|
| <a href="#">201 KAR 45:001.</a> | Definitions for 201 KAR Chapter 45. .... | 2089 |
|---------------------------------|--|------|

### Department of Fish and Wildlife

|                                |  |      |
|--------------------------------|--|------|
| <a href="#">301 KAR 2:178.</a> | Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas. .... | 2091 |
|--------------------------------|--|------|

### Department of Corrections

|                                |  |      |
|--------------------------------|--|------|
| <a href="#">501 KAR 6:270.</a> | Probation and parole policies and procedures. .... | 2097 |
|--------------------------------|--|------|

### Department of Education

|                                |   |      |
|--------------------------------|---|------|
| <a href="#">701 KAR 5:110.</a> | Use of local monies to reduce unmet technology need. ....       | 2099 |
| <a href="#">703 KAR 5:225.</a> | Continuous improvement planning for schools and districts. .... | 2101 |

### Claims Before the Commission

|                                |   |      |
|--------------------------------|---|------|
| <a href="#">802 KAR 2:010.</a> | Negligence claims before the Kentucky Claims Commission. .... | 2106 |
|--------------------------------|---|------|

### Department for Community Based Services: Day Care

|                                |   |      |
|--------------------------------|---|------|
| <a href="#">922 KAR 2:090.</a> | Child-care center licensure .....   | 2109 |
| <a href="#">922 KAR 2:100.</a> | Certification of Family Child-Care Homes.....   | 2118 |
| <a href="#">922 KAR 2:120.</a> | Child-care center health and safety standards. ....   | 2129 |
| <a href="#">922 KAR 2:180.</a> | Requirements for registered child care providers in the Child Care Assistance Program. .... | 2138 |
| <a href="#">922 KAR 2:190.</a> | Civil penalties. ....   | 2144 |

## NEW ADMINISTRATIVE REGULATION

### Kentucky Claims Commission

|                                |  |      |
|--------------------------------|--|------|
| <a href="#">107 KAR 1:011.</a> | Repeal of 107 KAR 1:005, 107 KAR 1:010, 107 KAR 1:015, 107 KAR 1:025, 107 KAR 1:030, and 107 KAR 1:040. .... | 2147 |
|--------------------------------|--|------|

### Sexual Assault Examination Program

|                                |                               |      |
|--------------------------------|-------------------------------|------|
| <a href="#">107 KAR 2:011.</a> | Repeal of 107 KAR 2:010. .... | 2148 |
|--------------------------------|-------------------------------|------|

### Board of Claims

|                                |  |      |
|--------------------------------|--|------|
| <a href="#">108 KAR 1:011.</a> | Repeal of 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040..... | 2149 |
|--------------------------------|--|------|

### Board of Nursing

|                                 |                                |      |
|---------------------------------|--------------------------------|------|
| <a href="#">201 KAR 20:501.</a> | Repeal of 201 KAR 20:500. .... | 2150 |
| <a href="#">201 KAR 20:506.</a> | Nurse licensure compact.....   | 2151 |

### Board of Licensure and Certification for Dietitians and Nutritionists

|                                 |                         |      |
|---------------------------------|-------------------------|------|
| <a href="#">201 KAR 33:080.</a> | Scope of practice. .... | 2154 |
|---------------------------------|-------------------------|------|

### Department of Agriculture

|                                 |                                |      |
|---------------------------------|--------------------------------|------|
| <a href="#">302 KAR 38:011.</a> | Repeal of 302 KAR 38:010. .... | 2155 |
| <a href="#">302 KAR 39:011.</a> | Repeal of 302 KAR 39:010. .... | 2156 |

|                                |  |      |
|--------------------------------|--|------|
| <a href="#">703 KAR 5:191.</a> | Repeal of 703 KAR 5:190 and 703 KAR 5:260..... | 2157 |
| <a href="#">703 KAR 5:280.</a> | School improvement procedures. ....            | 2158 |

### Kentucky Claims Commission

|                                |                             |      |
|--------------------------------|-----------------------------|------|
| <a href="#">802 KAR 1:010.</a> | Tax appeal procedures. .... | 2164 |
|--------------------------------|-----------------------------|------|

### Crime Victim Claims

|                                |  |      |
|--------------------------------|--|------|
| <a href="#">802 KAR 3:010.</a> | Crime victim's compensation. ....                      | 2166 |
| <a href="#">802 KAR 3:020.</a> | Payment schedule for sexual assault examinations. .... | 2167 |

### Office of Health Policy: Certificate of Need

|                                |                               |      |
|--------------------------------|-------------------------------|------|
| <a href="#">900 KAR 6:121.</a> | Repeal of 900 KAR 6:120. .... | 2169 |
|--------------------------------|-------------------------------|------|

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| Title                                    |     | Chapter                                       | Regulation             |
|--|-----|---|------------------------|
| 806                                      | KAR | 50:   | 155                    |
| Cabinet, Department,<br>Board, or Agency |     | Office, Division, Board,<br>or Major Function | Specific<br>Regulation |

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**VOLUME 44, NUMBER 9 – MARCH 1, 2018**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, MARCH 12, 2018, at 1:00 p.m., Room 149 Capitol Annex**

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

**Teaching Certificates**

[16 KAR 2:010](#). Kentucky professional and provisional teacher certificates. (Amended After Comments)

**Administrative Certificates**

[16 KAR 5:030](#). Proficiency evaluation. (Amended After Comments)

**FINANCE AND ADMINISTRATION CABINET  
Department of Revenue**

**General Administration**

[103 KAR 1:010](#). Protests and appeals. (Not Amended After Comments)

**GENERAL GOVERNMENT  
Board of Medical Licensure**

**Board**

[201 KAR 9:310](#). Continuing medical education.

**COMMUNITY AND TECHNICAL COLLEGE SYSTEM  
Board of Emergency Medical Services**

**Board**

[202 KAR 7:501](#). Ambulance agency licensure. (Deferred from February)

[202 KAR 7:545](#). License classifications. (Amended After Comments)

[202 KAR 7:550](#). Required equipment and vehicle standards. (Amended After Comments)

[202 KAR 7:555](#). Ground agencies. (Amended After Comments)

[202 KAR 7:560](#). Ground vehicle staff. (Amended After Comments)

[202 KAR 7:565](#). Clinical pilot programs. (Deferred from February)

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

**Fish**

[301 KAR 1:015](#). Boat and motor restrictions.

**Game**

[301 KAR 2:132](#). Elk hunting seasons, permits, zones, and requirements.

**ENERGY AND ENVIRONMENT CABINET  
Department for Environmental Protection  
Division of Water**

**Public Water Supply**

[401 KAR 8:510](#). Disinfectant residuals, disinfection by-products, and disinfection by-product precursors.

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

**Office of the Secretary**

[501 KAR 6:020](#). Corrections policies and procedures.

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Driver Licensing**

**Administration**

[601 KAR 2:030 & E](#). Ignition interlock. ("E" expires 5-14-2018) (Comments Received, SOC due 2-15-2018)

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

**Quotas**

[804 KAR 9:051](#). Repeal of 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050. (Not Amended After Comments)

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Commissioner's Office**

**Insurance Contract**

[806 KAR 14:006](#). Property and casualty insurance form filings. (Deferred from February)

**Casualty Insurance Contracts**

[806 KAR 20:010](#). Declination, cancellation, and nonrenewal of property and casualty insurance. (Deferred from February)

[806 KAR 20:021](#). Repeal of 806 KAR 20:020. (Deferred from February)

## VOLUME 44, NUMBER 9 – MARCH 1, 2018

### ENERGY AND ENVIRONMENT CABINET Public Service Commission

#### Utilities

[807 KAR 5:027](#). Gas pipeline safety; reports of leaks; drug testing. (Deferred from February)

[807 KAR 5:081](#). Repeal of 807 KAR 5:023 and 807 KAR 5:031. (Deferred from February)

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Office of Inspector General Division of Healthcare

#### Health Services and Facilities

[902 KAR 20:016](#). Hospitals; operations and services. (Amended After Comments)

[902 KAR 20:058](#). Operation and services; primary care center. (Not Amended After Comments)

[902 KAR 20:145](#). Operations and services; rural health clinics. (Not Amended After Comments)

#### Department for Medicaid Services

#### Managed Care

[907 KAR 17:005](#). Definitions for 907 KAR Chapter 17. (Not Amended After Comments)

[907 KAR 17:010](#). Managed care organization requirements and policies relating to enrollees. (Amended After Comments)

[907 KAR 17:015](#). Managed care organization requirements and policies relating to providers. (Amended After Comments)

[907 KAR 17:020](#). Managed care organization service and service coverage requirements and policies. (Amended After Comments)

[907 KAR 17:026](#). Repeal of 907 KAR 17:026 and 907 KAR 17:030. (Not Amended After Comments)

[907 KAR 17:035](#). External independent third-party. (Not Amended After Comments)

#### Department for Community Based Services Division of Family Support

#### K-TAP, Kentucky Works, Welfare to Work, State Supplementation

[921 KAR 2:015 & E](#). Supplemental programs for persons who are aged, blind, or have a disability. ("E" expires 6-26-2018)

## REMOVED FROM MARCH AGENDA

### STATE BOARD OF ELECTIONS

#### Board

[31 KAR 3:010](#). Current address of Kentucky registered voters and distribution of voter registration lists. (Withdrawn by agency, 1-23-2018)

### GENERAL GOVERNMENT CABINET Board of Podiatry

#### Board

[201 KAR 25:090](#). Prescribing and dispensing controlled substances. (Deferred from February)

### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections

#### Capital Punishment

[501 KAR 16:290](#). Preliminary and post-execution procedures concerning condemned person. (Comments Received, SOC due 3-15-2018)

[501 KAR 16:300](#). Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators.

(Comments Received, SOC due 3-15-2018)

[501 KAR 16:310](#). Pre-execution medical actions. (Comments Received, SOC due 3-15-2018)

[501 KAR 16:330](#). Lethal injection protocols. (Comments Received, SOC due 3-15-2018)

[501 KAR 16:340](#). Electrocution protocol. (Comments Received, SOC due 3-15-2018)

### ENERGY AND ENVIRONMENT CABINET Public Service Commission

#### Utilities

[807 KAR 5:022](#). Gas service. (Withdrawn 2-15-2018, SOC not filed by deadline)

[807 KAR 5:026](#). Gas service; gathering systems. (Withdrawn 2-15-2018, SOC not filed by deadline)

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care

#### Daycare

[922 KAR 2:280 & E](#). Background checks for child care staff members, reporting requirements, and appeals. ("E" expires 6-13-2018)  
(Comments Received, SOC ext., due 3-15-2018)

**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  
31 KAR 3:010E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. Currently this administrative regulation does not conform with state and federal privacy laws. This is being filed as an emergency administrative regulation in order to ensure that Kentuckians' voter registration data is protected in compliance with state and federal privacy laws. This emergency administrative regulation will be replaced by an ordinary administrative regulation because Kentuckians' voter registration data will remain information that needs to be protected in compliance with state and federal privacy laws for at least one (1) year. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATT BEVIN, Governor  
ALISON LUNDERGAN GRIMES, Secretary of State,  
Chair of the State Board of Elections

STATE BOARD OF ELECTIONS  
(Emergency Amendment)

**31 KAR 3:010E. Current address of Kentucky registered voters and distribution of voter registration lists.**

RELATES TO: KRS 116.085, 116.155, 117.025, 117.225

STATUTORY AUTHORITY: KRS 117.015

EFFECTIVE: January 23, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015 authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation establishes the procedures for election officials and voters to follow to correct and maintain voter registration records and establishes standards for the State Board of Elections to follow when reviewing a request for a voter registration list.

Section 1. Definitions. (1) "Advertisement" means any attempt by publication, dissemination, solicitation, or circulation to induce any person to enter into any obligation, or acquire any title or interest in any good or service.

(2) "Alphabetical labels" means labels of registered voters within the precinct with one (1) name per label and sorted in alphabetical order.

(3) "Alphabetical lists" means lists of registered voters generated from the statewide voter registration database and sorted in alphabetical order by last name within a precinct that have the name, address, age code, party, gender, zip code, and five (5) year voting history of every voter in the precinct.

(4) "Duly qualified candidate" means any person who has filed:

(a) A letter of intent with the Kentucky Registry of Election Finance, or

(b) Nomination papers with the Office of the Secretary of State or county clerk. ["CD-R" means a compact computer disc with read-only memory containing the voter's name and address, county code, precinct code, gender, party, zip code, date of birth, date of registration, and five (5) year voting history generated from the statewide voter registration database.]

(5) "Household labels by street order" means labels that are generated from the statewide voter registration database and sorted by street address within the precinct with as many as four (4) names per label of the voters whose last name and address are an identical match.

(6) "Household labels by zip code order" means labels that are generated from the statewide voter registration database and sorted by zip code within the county with as many as four (4) names per label of the voters whose last name and address are an identical match.

(7) "Sale" means any sale, rental, distribution, offer for sale, rental, or distribution, or attempt to sell, rent, or distribute any good

or service to another.

(8) "Statewide voter registration database" means a complete roster of all qualified voters within the state by county and precinct that the State Board of Elections is required to maintain pursuant to KRS 117.025(3)(a).

(9) "Street order lists" means lists of registered voters generated from the statewide voter registration database sorted in street order within a precinct and contain the name, address, age code, party, gender, zip code, and a five (5) year voting history of every registered voter in the precinct.

(10) "Voter registration list" means a list of registered voters generated from the statewide voter registration database in any format in any given election precinct in the Commonwealth of Kentucky that the State Board of Elections is required to furnish pursuant to KRS 117.025(3)(h).

Section 2. Correction of Voter Registration Records. (1) Each county clerk shall instruct the precinct election officers of the necessity for informing each voter that he or she shall correct any error existing in his or her address as it appears upon the precinct signature roster.

(2) Each precinct election officer shall instruct each voter to correct any error existing in his or her address as it appears upon the precinct signature roster.

(3) Each voter shall, when he or she signs the precinct signature roster, correct any error existing in his or her address as it appears upon the precinct signature roster.

(4) Each county clerk shall take all steps necessary to correct and update each voter's address upon the statewide voter registration database.

Section 3. Interpretation of Commercial Use. Commercial use, as that term is used in KRS 117.025(3)(h), shall be interpreted by the Board of Elections to mean:

(1) The use by the requester of the voter registration list, or any part thereof, in any form, for profit, the solicitation of donations, or for the sale or advertisement of any good or service; or

(2) The transfer of a voter registration list by the requester for a profit to any other person whom the requester knew or should have known intended to use the voter registration list, or any part thereof, in any form, for profit, the solicitation of donations, or for the sale or advertisement of a good or service.

Section 4. Exceptions to Commercial Use Interpretation. Commercial use shall not include use of a voter registration list, or any part thereof, for the following purposes:

(1) Use for scholarly, journalistic, political (including political fund raising), or governmental purposes;

(2) Use for publication, broadcast, or related use by a newspaper, magazine, radio station, television station, or other news medium in its news or other publications or broadcasts; or

(3) Use in a publication provided or sold to duly qualified candidates; political party committees, or officials thereof; or any committee that advocates or opposes an amendment or public question.

Section 5. Requests for Voter Registration Lists. A request for voter registration lists shall be made by submitting a completed Request for Voter Registration Data, form SBE-84, to the State Board of Elections with payment of costs as follows:

(1) The minimum charge for lists and label orders shall be ten (10) dollars.

(2) The charge for alphabetical lists shall be four (4) dollars per precinct.

(3) The charge for street order lists shall be four (4) dollars per precinct.

(4) The charge for alphabetical labels shall be ten (10) dollars per thousand labels.

(5) The charge for household labels by street order shall be ten (10) dollars per thousand labels.

(6) The charge for household labels by zip code order shall be



ten (10) dollars per thousand labels.

(7) Upon request, any of the above lists may be made available in a password-protected electronic format at like charge. ~~The minimum charge for CD-R shall be twenty-five (25) dollars.~~

~~(8) The charge for CD-R shall be one (1) dollar per 1,000 records up to 100,000 records; fifty (50) cents per thousand records over 100,000 records; \$450 statewide.]~~

Section 6. Incorporation by Reference. (1) "Request for Voter Registration Data", SBE 84, October 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 West Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State,  
Chair of the State Board of Elections

APPROVED BY AGENCY: November 21, 2017

FILED WITH LRC: January 23, 2018 at 4 p.m.

CONTACT PERSON: Lindsay Hughes Thurston, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687. Email Lindsay.thurston@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for requesting voter registration data.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for requesting voter registration data.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the State Board of Elections to fulfill its duties under KRS 117.025(3)(h), this administrative regulation is necessary to establish the procedure for requesting voter registration data.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for requesting voter registration data.

(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 defines "Duly Qualified Candidate", a term used in the regulation that previously was not defined. Additionally, it allows for the State Board of Elections to fulfill a request for voter registration data by electronic means if requested.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to define a term used in the regulation and to allow for alternative methods for fulfilling data requests.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 117.025(3)(h).

(d) How the amendment will assist in the effective administration of the statutes: This amendment defines "Duly Qualified Candidate", a term used in the regulation that previously was not defined. Additionally, it allows for the State Board of Elections to fulfill a request for voter registration data by electronic means if requested.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment could affect requesters of voter registration data.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals identified in question (3) will have to familiarize themselves with this amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is unknown if individuals identified in question (3) will incur costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue to the entities identified in question (3).

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

(a) Initially: There will be no cost to implement this administrative regulation for the first year.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

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

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

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

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

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact requesters of voter registration data and registered Kentucky voters.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 117.025(3)(h).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY**  
**922 KAR 2:090E**

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 and 3 to ensure implementation and enforcement of 2017 Ky Acts ch. 135 and the Child Care and Development Fund Block Grant (CCDF) as reauthorized by Public Law 114-183. In addition, the emergency administrative regulation supports more comprehensive background checks of child care staff members, improved access to emergency medications for children in care, and reflects assessment of child care provider standards in accordance with the Red Tape Reduction effort, enhancing provider operations and better protecting the health, safety, and welfare of children in child care settings in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect background checks to comply with state and federal mandates, preserve federal award, and better protect children's health, safety, and welfare in child care settings. 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  
SCOTT W. BRINKMAN, Acting Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Care**  
**(Emergency Amendment)**

**922 KAR 2:090E. Child-care center licensure.**

RELATES TO: KRS Chapter 13B, [17.465, 17.500–17.580,] Chapter 157, 158.030, 199.011(3)(4), (4), (16), 199.892, 199.894(1), (3), 199.895, 199.896, 199.898, 214.010, 314.011(5), 600.020(1), 620.020(8), 620.030(4), 45 C.F.R. 98.2, 42 U.S.C. 601-619, 42 U.S.C. 9857-9858g

EFFECTIVE: February 14, 2018

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6) NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate 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 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

Section 1. Definitions. (1) "Applicant" means an individual or entity applying to become a licensee or renew status as a licensee. "Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

(4) "Child care" means care of a child in a center or home that regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(5) "Child-care center" is defined by KRS 199.894(3).

(6) "Director" means an individual who meets the education and training requirements established in Section 10 of this administrative regulation.

(7)(5) "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020, Section 4(4)(a)1, that is accepted for investigation and substantiated by the cabinet's Office of Inspector General.

(8) "Health professional" means a person actively licensed as

a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(9) "Infant" means a child who is less than twelve (12) months of age.

(10)(6) "Licensee" means the owner or [and] operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education,

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(11)(7) "Nontraditional hours" means the hours of:

(a) 7 p.m. through 5 a.m. Monday through Friday; or

(b) 7 p.m. on Friday until 5 a.m. on Monday.

(12)(8) "Parent" is defined by 45 C.F.R. 98.2.

(13) "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities, including:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar; or

(c) A conference between the provider and a parent.

(14) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(15)(9) "Premises" means the building and contiguous property in which child care is licensed.

(16) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(17) "Qualified substitute" means a person who meets the requirements of a staff person established in Section 11 of this administrative regulation.

(18) "School-age" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

(19)(40) "Secretary" is defined by KRS 199.011(16)(4).

(20) "Toddler" means a child between the age of twelve (12) and thirty-six (36) months. (11) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

Section 2. Child-care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center. This child-care center shall be licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee; and

(2) A Type II child-care center. This child-care center shall be primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. The following child-care settings shall be exempt from licensure requirements of this administrative regulation. [922 KAR 2:110, and] 922 KAR 2:120, and 922 KAR 2:280:

(1) Summer camps certified by the cabinet as youth camps that [which] serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs and preschools regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization that[which] a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted;~~[and]~~

(9) A program providing instructional and educational programs:

(a) That operates for a maximum of twenty (20) hours per week; and

(b) ~~That~~Which a child attends for no more than ten (10) hours per week;

(10) A child-care center that meets requirements of KRS 199.896(19) or (20); and

(11) An after-school program, which is:

(a) A continuation of the school day during the academic year;

(b) Operated and staffed by an accredited private or public school under the purview of the Kentucky Department of Education; and

(c) Not participating in the Child Care Assistance Program in accordance with 922 KAR 2:160.

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Initial Child-Care Center License Application.

(2) Approval of an applicant for initial licensure shall result in the issuance of a preliminary license for a probationary period not to exceed six (6) months.

(3) The issuance of a preliminary license, or the issuance or reapproval of a regular license, shall be governed under the provisions of this section and Sections 6 and~~[5-through]~~ 7 of this administrative regulation.

(4) If the applicant for licensure is a:

(a) Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) Partnership, the application shall include:

1. A written statement from each partner assuring that the partnership is current and viable; and

2. Proof that each individual is twenty-one (21) years or older by photo identification or birth certificate.

(5) If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-DRCC-01.

(6) If ownership of a child-care center changes and the cabinet approves preliminary licensure upon inspection of the child-care center under the new ownership, the effective date on the preliminary license shall be the date of the approved inspection under the new ownership.

(7) The cabinet shall return the OIG-DRCC-01 and accompanying fee to an applicant if the applicant:

(a) Has an ownership interest in a facility that is licensed or regulated by the cabinet, and that is subject to a finding of fraud or is involved in an~~[other]~~ investigation of alleged fraud by:

1. The cabinet's Office of Inspector General; or

2. An agency with investigative authority; and

(b) Is requesting a:

1. Change in ownership; or

2. License for a new facility.

(8) An applicant or an applicant's lead representative shall submit to background checks in accordance with 922 KAR 2:280~~[Section 6(5) of this administrative regulation to confirm compliance with Section 11(7)(j) of this administrative regulation even if the applicant for licensure is not described in Section 6(4) of this administrative regulation].~~

(9) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 5. Evacuation Plan. (1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895 and 42 U.S.C. 9858c(c)(2)(U).

(2) The cabinet shall post an online template of an evacuation plan that:

(a) Fulfills requirements of KRS 199.895;

(b) Is optional for a child-care center's use; and

(c) Is available to a licensed child-care center without charge.

Section 6. License Issuance. (1) The cabinet shall monitor a child-care center that operates under a preliminary license issued pursuant to Section 4(2) of this administrative regulation.

(2) Upon completion of the probationary period required in Section 4(2) of this administrative regulation, the cabinet shall:

(a) Approve regular licensure for a child-care center operating under a preliminary license; or

(b) If a condition specified in Section 16~~[14]~~ of this administrative regulation exists, deny regular licensure.

(3) A preliminary or regular license shall not be issued unless each background check required by 922 KAR 2:280~~[KRS 199.896(19)]~~ has been completed on behalf of an applicant for licensure.

(4) Background checks in accordance with 922 KAR 2:280 shall apply to:

(a) An applicant or an applicant's representative;

(b) A director;

~~(c) [(b)]~~ An employee or volunteer who is present during the time a child is receiving care;

~~(d) [(e)]~~ Any person with supervisory or disciplinary control over a child in care; or

(e) A~~(d) Any~~ person in accordance with 42 U.S.C. 9858f and 45 C.F.R. 98.43~~[having unsupervised contact with a child in care].~~

~~(5) [An individual described in subsection (4) of this section shall:~~

~~(a) Submit to background checks described in paragraph (b) of this subsection;~~

~~(b) May be employed or work with a child on a probationary basis for up to ninety (90) calendar days, pending completion of a:~~

~~1. Child abuse or neglect check using the central registry in accordance with 922 KAR 1:470;~~

~~2. Criminal records check required by KRS 199.896(19);~~

~~3. Criminal records check for any previous state of residence if the person resided outside the state of Kentucky in the last five (5) years; and~~

~~4. An address check of the Sex Offender Registry; and~~

~~(c) Not be left alone in the presence of a child until copies of the background checks in accordance with paragraph (b) of this subsection have been received by the licensee.~~

~~(6) Upon completion of background checks described in subsection (4)(b) of this section, a licensee shall discharge immediately:~~

~~(a) An individual whose name is listed on the central registry established by 922 KAR 1:470;~~

~~(b) An individual who has been convicted of, or has entered an Alford plea or a plea of guilty to, a crime in accordance with KRS 17.165;~~

~~(c) An individual who is confirmed by an address check of the Sex Offender Registry and supporting documentation as a registered sex offender;~~

~~(d) An individual who has been convicted of, or entered an Alford plea or a plea of guilty to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;~~

~~(e) A director who has been convicted of, or entered an Alford plea or a plea of guilty to, a felony offense involving fraud, embezzlement, theft, or forgery; and~~

~~(f) An individual who has been convicted of, or has entered an Alford plea or a plea of guilty to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this subsection.~~

~~(7) An individual who has been convicted of, or entered an~~

~~Alford plea or a plea of guilty to, a nonviolent felony or misdemeanor not specified in this section shall be handled on a case-by-case basis by the licensee with consideration given to the:~~

- ~~(a) Nature of the offense;~~
- ~~(b) Length of time that has elapsed since the event; and~~
- ~~(c) Individual's life experiences after conviction, Alford plea, or guilty plea.~~

~~(8)] If an applicant for licensure has had a previous ownership interest in a child-care provider ~~that~~[which] has 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, the cabinet shall grant the applicant a license if:~~

- ~~(a) A seven (7) year period has expired from the:~~
  - ~~1. Date of the prior denial, suspension, or revocation;~~
  - ~~2. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or pending adverse action;~~
  - ~~3. Last day of legal remedies being exhausted; or~~
  - ~~4. Administrative hearing decision; and~~
- ~~(b) The applicant has:~~
  - ~~1. Demonstrated compliance with the provisions of this administrative regulation, [922 KAR 2:140,] 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896;~~
  - ~~2. Completed, since the time of the prior denial, suspension, revocation, or relinquishment, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its designee; and~~
  - ~~3. Not had an application, certification, license, registration, or permit denied, revoked, suspended, or voluntarily relinquished as a result of an investigation or pending adverse action:~~
    - ~~a. For one (1) of the reasons set forth in:~~
      - ~~(i) KRS 199.896(19); or~~
      - ~~(ii) 922 KAR 2:280[Subsection (6) of this section; or~~
      - ~~(iii) Section 11(2) or 11(7)(j) of this administrative regulation];~~

~~or~~

~~b. Due to a disqualification from:~~

- ~~(i) The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or~~
- ~~(ii) Another governmental assistance program for fraud, [or] abuse, or criminal conviction related to [of] that program.~~

~~(6)](9)] If a license is granted after the seven (7) year period specified in subsection (5)(a)](8)(a)] of this section, the licensee shall serve a two (2) year probationary period during which the child-care center shall be inspected no less than semi-annually[en at least a quarterly basis].~~

~~(7)](40)] A preliminary or regular license shall specify:~~

- ~~(a) A particular premises;~~
- ~~(b) A designated licensee;~~
- ~~(c) Age category of the children in care;~~
- ~~(d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:~~
  - ~~1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;~~
  - ~~2. Adequacy of program;~~
  - ~~3. Equipment; and~~
  - ~~4. Staff;~~
  - ~~(e) If provided, nontraditional hours;~~
  - ~~(f) If provided, transportation; and~~
  - ~~(g) A list of services to be provided by the child-care center.~~

~~(8)](44)] To qualify for a preliminary license, or maintain a regular license, a child-care center shall:~~

- ~~(a) Provide written documentation from the local authority showing compliance with local zoning requirements;~~
- ~~(b) Be approved by the Office of the State Fire Marshal or designee;~~
- ~~(c) Have an approved water and sewage system in accordance with local, county, and state laws;~~
- ~~(d) Provide written proof of liability insurance coverage of at least \$100,000 per occurrence;~~
- ~~(e) Comply with provisions of this administrative~~

~~regulation, [922 KAR 2:140, and] 922 KAR 2:120, and 922 KAR 2:280;~~

~~(f) Cooperate with the cabinet, the cabinet's designee, or another agency with regulatory authority during:~~

- ~~1. An investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030(4); and~~
- ~~2. Unannounced inspections; and~~

~~(g) Have a director who meets the requirements listed in Section 10 of this administrative regulation [922 KAR 2:140].~~

~~(9)](42)] A child-care center shall allow the cabinet or its designee, another agency with regulatory authority, and a parent of an enrolled child unannounced access to the child-care center during the hours of operation.~~

~~(10)](43)] Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet or another agency with regulatory authority, to enter the child-care center or deny access to records relevant to the inspection shall result in the cabinet pursuing adverse action in accordance with Section 15, 16, or 17 [40, 41, or 42] of this administrative regulation.~~

~~(11)](44)] A regular license shall be issued [and reapproved] if the center has met the requirements contained in this administrative regulation, [922 KAR 2:140,] 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896(3), (13), (15), (16), (18), and (19).~~

~~(12)](45)] A preliminary or regular license shall not be sold or transferred.~~

~~(13)](46)] Changes to a child-care center as listed in 922 KAR 2:140, Section 6(4) shall be:~~

- ~~(a) In writing to the cabinet or its designee; and~~
- ~~(b) Signed by each owner listed on the preliminary or regular license.~~

~~(17) The cabinet or its designee shall not charge a fee for acting upon reported changes.~~

~~(18) The preliminary or regular license shall be posted in a conspicuous place in the child-care center.~~

~~(19)] A child-care center shall not begin operation without a preliminary license to operate from the cabinet.~~

~~(14)](20)] A child-care center operating without a preliminary or regular license shall be subject to legal action.~~

~~(15)](24)] The voluntary relinquishment of a preliminary or regular license shall not preclude the cabinet's pursuit of adverse action.~~

Section 7. Fees. (1) A nonrefundable initial licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) A nonrefundable renewal fee of twenty-five (25) dollars shall be charged in accordance with KRS 199.896(3).

(3) Licensing fees shall be:

- (a) Payable to the Kentucky State Treasurer;
- (b) Attached to the licensure application; and
- (c) Paid by:
  - 1. Cashier's check;
  - 2. Certified check; [or]
  - 3. Business check; or
  - 4. Money order.

Section 8. General. (1) A licensee shall be responsible for the operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.

(2) Child-care center staff shall be:

(a) Instructed by the child-care center's director regarding requirements for operation; and

(b) Provided with a copy of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.

(3) A volunteer or board member shall comply with the policies and procedures of the child-care center.

(4) Program policies and procedures shall:

- (a) Be in writing; and
- (b) Include:
  - 1. Staff policies;
  - 2. Job descriptions;
  - 3. An organization chart;

4. Chain of command; and
5. Other procedures necessary to ensure implementation of:
  - a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;
  - b. 922 KAR 2:120, Child-care center health and safety standards;
  - c. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals; and
  - d. This administrative regulation.
- (5) An activity of a person living in a child-care center that is a dwelling unit shall not interfere with the child-care center program.
- (6) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:
  - (a) The provider's preliminary or regular license;
  - (b) Each statement of deficiency and civil penalty notice issued by the cabinet during the current licensure year;
  - (c) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;
  - (d) Information on the Kentucky Consumer Product Safety Program and the program's Web site as specified in KRS 199.897;
  - (e) A description of services provided by the child-care center, including:
    1. Current rates for child care; and
    2. Each service charged separately and in addition to the basic rate for child care;
  - (f) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and
  - (g) Daily planned program.
- (7) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:
  - (a) For the duration of the assessment or investigation; and
  - (b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 9. Records. (1) A child-care center shall maintain:

- (a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;
- (b) A written record for each child:
  1. Completed and signed by the child's parent;
  2. Retained on file on the first day the child attends the child-care center; and
  3. To contain:
    - a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;
    - b. Contact information to enable a person in charge to contact the child's:
      - (i) Parent at the parent's home or place of employment;
      - (ii) Family physician; and
      - (iii) Preferred hospital;
    - c. The name of each person who is designated in writing to pick-up the child;
    - d. The child's general health status and medical history including, if applicable:
      - (i) Allergies;
      - (ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and
      - (iii) Permission from the parent for third-party professional services in the child-care center;
    - e. The name and phone number of each person to be contacted in an emergency involving or impacting the child;
    - f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence; and
    - g. A permission form for each trip off the premises signed by

the child's parent in accordance with 922 KAR 2:120, Section 12:

- (c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the child-care center through the Child Care Assistance Program;
  - (d) A written schedule of staff working hours;
  - (e) A current personnel file for each child-care center staff person to include:
    1. Name, address, date of birth, and date of employment;
    2. Proof of educational qualifications;
    3. Record of annual performance evaluation;
    4. Documentation of compliance with tuberculosis screening in accordance with Section 11(1)(b) of this administrative regulation; and
    5. The results of background checks conducted in accordance with 922 KAR 2:280;
  - (f) A written annual plan for child-care staff professional development;
  - (g) A written evacuation plan in accordance with Section 5 of this administrative regulation;
  - (h) A written record of quarterly practiced earthquake drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;
  - (i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;
  - (j) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, posted in a prominent place;
  - (k) A written record of reports to the cabinet required in Section 12 of this administrative regulation; and
  - (l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 12.
- (2) A child-care center shall:
- (a) Maintain the confidentiality of a child's record and information concerning a child or the child's parent;
  - (b) Maintain all records for five (5) years; and
  - (c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4) and (5).
- Section 10. Director Requirements and Responsibilities. (1) A director shall:
- (a) Be at least twenty-one (21) years of age;
  - (b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;
  - (c) Not be employed in a position other than an onsite child care director, or director of multiple facilities, during the hours the child-care center is in operation;
  - (d) Ensure:
    1. Compliance with 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation; and
    2. The designation of one (1) adult staff person in charge to carry out the director's duties if the director is not present in the child-care center during operating hours. The director shall be responsible for the actions of the designee during the director's absence;
  - (e) Manage the staff in their individual job descriptions;
  - (f) Assure the development, implementation, and monitoring of child-care center plans, policies, and procedures;
  - (g) Supervise staff conduct to ensure implementation of program policies and procedures;
  - (h) Post a schedule of daily activities, to include dates and times of activities to be conducted with the children in each classroom;
  - (i) Conduct, manage, and document in writing recurring staff meetings;
  - (j) Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation;
  - (k) Assure that additional staff are available during cooking and

cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;

(l) Assure the health, safety, and comfort of each child;

(m) Notify the parent immediately of an accident or incident requiring medical treatment of a child;

(n) Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the background checks as described in 922 KAR 2:280;

(o) Assure each mandatory record specified in Section 9 of this administrative regulation has not been altered or falsified;

(p) Coordinate at least one (1) annual activity involving parental or family participation; and

(q) Not have had previous ownership interest in a child-care provider that had its certification, license, or registration, or permit to operate denied, suspended, or revoked.

(2) The director of a Type I child-care center shall meet one (1) of the following educational requirements:

(a) Master's degree in education or child development field;

(b) Bachelor's degree in education or child development field;

(c) Master's degree or a bachelor's degree in a field other than education or child development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;

(d) Associate degree in Early Childhood Education and Development;

(e) Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children;

(f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program;

(g) Child development associate plus one (1) year of verifiable paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program; or

(h) Three (3) years of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program.

(3) The director of a Type II child-care center shall:

(a) Meet the requirements in subsection (2) of this section; or

(b) Meet two (2) of the following:

1. Have twelve (12) hours of orientation and child development training;

2. Have one (1) year of verifiable full-time paid experience working directly with children in:

a. A school-based program following Department of Education guidelines;

b. An early childhood development program, such as Head Start; or

c. A licensed or certified child-care program; or

3. Obtain six (6) additional hours of training in child day care program administration.

Section 11. Staff Requirements. (1) Child-care center staff:

(a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:

1. High school diploma;

2. GED or qualifying documentation from a comparable

educational entity; or

3. Commonwealth Child Care Credential as described in 922 KAR 2:250; and

(b) Shall provide, prior to employment and every two (2) years thereafter:

1. A statement from a health professional that the individual is free of active tuberculosis; or

2. A copy of negative tuberculin results.

(2)(a) A child-care center shall not employ a person:

1. With a disqualifying background check result in accordance with 922 KAR 2:280; or

2. Determined by a physician to have a health condition that renders the person unable to care for children.

(b) An individual described in Section 6(4) of this administrative regulation shall report to the licensee if the individual:

1. Meets a disqualifying criterion or has a disqualifying background check result as specified in 922 KAR 2:280;

2. Is the subject of a cabinet child abuse or neglect investigation; or

3. Is determined by a physician to have a health condition that renders the person unable to care for children.

(3) For a child-care center licensed for infant, toddler, or preschool-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

(a) Infant and child cardiopulmonary resuscitation; and

(b) Infant and child first aid.

(4) For a child-care center licensed for school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

(a) Adult cardiopulmonary resuscitation; and

(b) First aid.

(5) Cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15) clock hours requirement in subsection (16) of this section.

(6) Child-care centers shall have available in case of need:

(a) One (1) qualified substitute staff person for a Type II child-care center; or

(b) Two (2) qualified substitute staff persons for a Type I child-care center.

(7) Each qualified substitute staff person shall:

(a) Meet the staff requirements of this administrative regulation; and

(b) Provide the required documentation to verify compliance with this administrative regulation.

(8) A qualified substitute who works in more than one (1) licensed child-care center shall provide the required documentation to verify compliance with this administrative regulation at the time of employment with each child-care center.

(9) If the operator of a Type II child-care center is unable to provide care in accordance with this administrative regulation, 922 KAR 2:280, or 922 KAR 2:120, the Type II child-care center shall:

(a) Close temporarily until the operator is able to resume compliance; and

(b) Immediately notify parents of enrolled children of the temporary closure.

(10) The minimum number of adult workers in a child-care center shall be sufficient to ensure that:

(a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed;

(b) Each staff person under eighteen (18) years of age and each student trainee are under the direct supervision of a qualified staff person who meets the requirements of this section; and

(c) Unless providing care with a qualified staff person, a person under the age of eighteen (18) shall not be counted as staff for the staff-to-child ratio.

(11) Except for medication as prescribed by a physician, a controlled substance shall not be permitted on the premises during hours of operation.

(12) Alcohol shall:

(a) Not be consumed by any person on the licensed child-care center's premises during hours of operation; and

(b) Be kept out of reach and sight of a child in care.

(13) Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2(11)(f).

(14) For each adult residing at a Type II child-care center, the results of the following shall be maintained on file at the center:

(a) Background checks conducted in accordance with 922 KAR 2:280; and

(b) A copy of negative tuberculin results or a health professional's statement documenting that the adult is free of tuberculosis. Every two (2) years, the adult shall provide negative tuberculin results or health professional's statement documenting that the adult is free of tuberculosis.

(15) If a new adult begins residing in a Type II child-care center, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household.

(16) In accordance with KRS 199.896(15) and (16), a staff person with supervisory authority over a child shall complete the following:

(a) Six (6) hours of cabinet-approved orientation within the first three (3) months of employment;

(b) Nine (9) hours of cabinet-approved early care and education training within the first year of employment, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training; and

(c) Fifteen (15) hours of cabinet-approved early care and education training during each subsequent year of employment, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training completed once every five (5) years.

(17) A staff person's compliance with training requirements of this section shall be verified through the cabinet-designated database maintained pursuant to 922 KAR 2:240.

Section 12. Reports. (1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery:

(a) Communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

(b) An accident or injury to a child that requires medical care initiated by the child-care center or the child's parent;

(c) An incident that results in legal action by or against the child-care center that:

1. Affects a child or staff person; or

2. Includes the center's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(d) An incident involving fire or other emergency, including a vehicular accident when the center is transporting a child receiving child care services;

(e) A report of child abuse or neglect that:

1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with a child in care as the alleged perpetrator; or

(f) An individual specified in Section 6(4) of this administrative regulation meeting a disqualifying criterion or background check result pursuant to 922 KAR 2:280.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirements of Section 10 of this administrative regulation.

(4)(a) Written notification of the following shall be:

1. Made to the cabinet, in writing, to allow for approval before implementation:

a. Change of ownership;

b. Change of location;

c. Increase in capacity;

d. Change in hours of operation;

e. Change of services in the following categories:

(i) Infant;

(ii) Toddler;

(iii) Preschool-age;

(iv) School-age;

(v) Nontraditional hours; or

(vi) Transportation; or

f. Addition to or reduction of the square footage of a child-care center's premises; and

2. Signed by each owner listed on the preliminary or regular license.

(b) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a child-care center's temporary or permanent closure.

Section 13. Annual Renewal[Reapproval]. (1)(a) A regular license shall expire one (1) year from the effective date or last renewal date unless the licensee renews the regular license in accordance with this section and KRS 199.896(3).

(b) A preliminary license shall expire six (6) months from the date of issuance.

(c) A regular license that expires shall lapse and shall not be subject to appeal.

(2) A licensee seeking renewal[reapproval] of a regular license shall:

(a) Submit one (1) month prior to the anniversary of the regular license's effective date[, one (1) month prior to license expiration], an OIG-DRCC-06, Child-Care Center License Renewal Form[OIG-DRCC-04]; [and]

(b) Meet the requirements specified in Sections 4 through 12[7] of this administrative regulation; and

(c) Pay the nonrefundable renewal fee in accordance with KRS 199.896(3).

(2) If requirements of subsection (1) of this section are met, the cabinet shall renew the license in the form of a validation letter.

(3) An application for renewal shall be denied in accordance with Section 16[44] of this administrative regulation.

Section 14[9]. Statement of Deficiency and Corrective Action Plans. (1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within fifteen (15)[ten-(10)] calendar days of the date[receipt] of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or shall be completed;[and]

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; and

(e) Signature of the licensee or designated representative of the licensee and the date of signature.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 16[44] of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:

(a) Within fifteen[ten-(10)] calendar days of the notification's date[notification], submit an amended plan; or

(b) Have its license revoked or denied for failure to:

1. Submit an acceptable amended plan in accordance with

KRS 199.896(4); or

2. Implement the corrective measures identified in the plan of correction.

(7) The cabinet shall not review or accept more than three (3) corrective action plans from a licensed child-care center in response to the same written statement of deficiency. Following two (2) unacceptable plans of correction, in a forty-five (45) calendar day period, the cabinet may deny or revoke an application for licensure or license.

(8) If a licensed child-care center fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke the center's license.

(9) The administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days from the date of the statement of deficiency in accordance with KRS 199.896(5)(c).

Section 15[40]. Directed Plan of Correction (DPOC)[Intermediate Sanctions].[(1)] If the cabinet determines that a child-care center is in violation of this administrative regulation, [922 KAR 2:110, or] 922 KAR 2:120, or 922 KAR 2:280, [the cabinet may,] based on the severity of the violation, the cabinet:

(1) Shall (a) Require the provider to participate in additional training;

(b) Increase the frequency of monitoring by cabinet staff;

(c) enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance;

(2) Shall (or (d)) notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC [an intermediate sanction] has been imposed;

(3) Shall increase the frequency of monitoring by cabinet staff;

(4) May require the provider to participate in additional training; and

(5) May amend the agreement with the provider if the cabinet identifies an additional violation during the DPOC. [(2) An intermediate sanction shall result in a suspension or revocation of the license if a child-care center:

(a) Fails to meet a condition of the intermediate sanction; or

(b) Violates a requirement of an intermediate sanction.]

Section 16[14]. Basis for Denial, Suspension or Revocation.

(1)(a) The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896[(4) and (19)] if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation, [or those of 922 KAR 2:110 or] 922 KAR 2:120, 922 KAR 2:280, or 922 KAR 2:190.

(b) A licensee whose regular license is suspended or revoked shall:

1. Receive a new license certificate indicating that the license is under adverse action; and

2. Post the new license certificate in accordance with Section 8(6) of this administrative regulation.

(2)[For the purposes of KRS 199.896(19), an applicant who has been found by the cabinet to have abused or neglected a child shall mean an individual who is listed on the central registry described in 922 KAR 1:470.

(3) An individual described in Section 6(4) of this administrative regulation shall report to the licensee if:

(a) Convicted of, or entered an Alford or guilty plea to:

1. A violent crime or sex crime in accordance with KRS 17.165;

or

2. A crime specified in Section 6(6) of this administrative regulation;

(b) The subject of a cabinet child abuse or neglect investigation;

(c) Found by the cabinet or a court to have abused or neglected a child;

(d) Convicted of, or entered an Alford or guilty plea to, a drug-related felony, and five (5) years have not elapsed since the person

was fully discharged from imprisonment, probation, or parole;

(e) Placed on the Sex Offender Registry; or

(f) determined by a physician to have a health condition that renders the person unable to care for children.

(4) Each licensee shall report to the cabinet or its designee if the:

(a) licensee or an individual described in Section 6(4) of this administrative regulation meets a criterion of subsection (3) of this section; or

(b) Licensee meets a criterion of subsection (7)(i) of this section.

(5) Emergency Action.

(a) The cabinet shall take emergency action in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center's license.

(b) An emergency order shall:

1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and

2. Specify the regulatory violation that caused the emergency condition to exist.

(c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.

(d) The cabinet or its designee and the child-care center shall make reasonable efforts to:

1. Notify a parent of each child in care of the center's suspension; and

2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within twenty (20)[five (5)] calendar days of receipt of the order to determine the propriety of the licensure's suspension in accordance with KRS 199.896(7).

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).

(g)1. Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend licensure.

2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(h) A provider's license shall be revoked if the:

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. Condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order[The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B].

(3)[(6)] Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(4)[(7)] Unless an applicant for a license meets requirements of Section 6(5)[6(8)] of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if:

(a) The applicant has had previous ownership interest in a child-care provider ~~that~~[which] had its certification, license, or registration, or permit to operate denied, suspended, or revoked;

(b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;

(c) An appeal of a denial, suspension, or revocation is pending;

(d) The applicant previously failed to comply with the requirements of KRS 199.896,[922 KAR 2:110,] 922 KAR 2:120, 922 KAR 2:280, 922 KAR 2:190,[or] this administrative regulation, or another administrative regulation effective at the time;

(e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud,[or] abuse, or criminal conviction related to[or] that program;

(f) The applicant or the applicant's representative is the parent, spouse, sibling, or child of a previous licensee whose license was denied, suspended, revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this subsection, and the



previous licensee will be involved in the child-care center in any capacity;

(g) The applicant listed as an officer, director, incorporator, or organizer of a corporation or limited liability company whose child-care center license was denied, suspended, revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7) years;

(h) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;

(i) The applicant interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section ~~6(8)(f)[6(44)(f)]~~ or ~~6(9)[6(42)]~~ of this administrative regulation;

(j) The applicant's background check reveals that the applicant is disqualified in accordance with 922 KAR 2:280[- 1. Is listed on the:

a. Central registry in accordance with 922 KAR 1:470; or

b. Sex Offender Registry; or

2. Has been convicted of, or entered an Alford or guilty plea to, a crime specified in Section 6(6) of this administrative regulation, including a felony offense involving fraud, embezzlement, theft, or forgery]; [or]

(k) The applicant has been[licensee is] the subject of more than two (2) directed plans of correction[intermediate sanctions] during a three (3) year period; or

(l) The applicant has failed to comply with payment provisions in accordance with 922 KAR 2:190.

~~(5)[(8)]~~ A child-care center's license shall be revoked if:

(a) A representative of the center interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section ~~6(8)(f)[6(44)(f)]~~ or ~~6(9)[6(42)]~~ of this administrative regulation;

(b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:

1. A child;[or]

2. The child-care center; or

3. Child-care center staff;

(c) The licensee is discontinued or disqualified from participation in:

1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or

2. A governmental assistance program as a result of fraud, [or] abuse, or criminal conviction related to[or] that program;

(d) The licensee fails to meet a condition of, or violates a requirement of a directed plan of correction[an intermediate sanction] pursuant to Section ~~15[40(2)]~~ of this administrative regulation;

(e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet; [or]

(f) The licensee is the subject of more than two (2) directed plans of correction[intermediate sanctions] during a three (3) year period; or

(g) The licensee has failed to comply with payment provisions in accordance with 922 KAR 2:190.

~~(6)[(9)]~~ The cabinet or its designee shall suspend the license if:

(a) A regulatory violation is[violations are] found to[that] pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or

(b) The child care-center fails to comply with the approved plan of correction[corrective active plan].

Section 17[42]. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.

Section 18[43]. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension or revocation, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution. The request shall:

(a) Be submitted to the secretary of the cabinet or designee within twenty (20) calendar days of[receipt of] the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-DRCC-02 for a hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

(a) Abate the formal hearing pending completion of the informal dispute resolution process; and

(b) Proceed to informal dispute resolution.

Section 19[44]. Informal Dispute Resolution. (1) A request for informal dispute resolution shall:

(a) Accompany the request for a hearing;

(b) Identify the licensure deficiency in dispute;

(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and

(d) Include documentation that disputes the deficiency.

(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:

(a) Review documentation submitted by the applicant for licensure or licensee; and

(b) If requested, schedule an[a first-level] informal dispute resolution meeting with the applicant for licensure or licensee.

(3) The[first-level] informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(4) The[first-level] informal dispute resolution meeting shall be conducted by:

(a) The regional program manager or designee; and

(b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.

(5) Within ten (10) calendar days of completion of the[first-level] informal dispute resolution meeting or request, the regional program manager or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(6) An applicant or a licensee may:

(a) Accept the determination; or

(b) Proceed to[appeal a decision issued by the regional program manager or designee by:

(a) Proceeding with] a hearing according to KRS 13B.050[-; or

(b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Regulated Child Care or designee within ten (10) calendar days of receipt of the first level decision. The request shall specify whether the applicant for licensure or licensee requests a meeting with cabinet staff].

~~(7)[Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Regulated Child Care or designee shall:~~

~~(a) Review the decision issued from the first-level informal dispute resolution;~~

~~(b) Review the documentation described in subsection (1)(d) of this section; and~~

~~(c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or licensee.~~

~~(8) The second-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.~~

~~(9) Within ten (10) calendar days of completion of the second-level informal dispute resolution meeting or request, the Director of the Division of Regulated Child Care or designee shall:~~

~~(a) Issue a decision by written notification to the return address~~

~~specified in the request for second-level informal dispute resolution;~~

~~(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and~~

~~(c) Specify whether the adverse action has been rescinded.~~

~~(10) If a second-level informal review is requested in lieu of a first-level informal dispute resolution meeting, the Director of the Division of Regulated Child Care or designee shall comply with the provisions of subsection (9)(a) through (c) of this section within ten (10) calendar days of receipt of the request for second-level informal dispute resolution.~~

~~(11) If an applicant for licensure or licensee is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.~~

~~(12) If an applicant for licensure or licensee is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B concerning the deficiencies that were reviewed in the informal review process.~~

~~(13) A request for informal dispute resolution shall not:~~

~~(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or~~

~~(b) Delay submission of a written plan of correction.~~

~~(8)[(14)] Emergency action taken in accordance with Section 16(2)[14(5)] of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).~~

Section 20[15]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG-DRCC-01, Initial Child-Care Center License Application", 2018[~~edition 4/2013~~];[~~and~~]

(b) "OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution",[~~edition~~] 8/3/12; and

(c) "OIG-DRCC-06, Child-Care Center License Renewal Form", 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 1, 2018

FILED WITH LRC: February 14, 2018 at 10 a.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](mailto:Laura.Begin@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure standards for a child-care center, and describes an applicant's and a child-care center's appeal rights and informal dispute resolution processes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a child-care center's licensure standards, appeal rights, and informal dispute resolution process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of licensure standards for a child-care center and related due process.

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

administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care center license and related due process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation consolidates content from 922 KAR 2:110, which is subject to concurrent repeal; adds exemptions in accordance with 2015 Ky. Acts ch. 16; aligns the administrative regulation with the Child Care and Development Fund's 2014 reauthorization, including more comprehensive background checks for child care providers per the federal law and 2017 Ky. Acts ch. 135; streamlines licensure renewal processes; clarifies due process for emergency suspensions and corrective action; replaces an intermediate sanction with a directed plan of correction; expands payment methods for licensure; and requires a child care provider to post a new license when the provider's license is subject to revocation or suspension to foster awareness by the public entering and using the center. The amendment also makes technical corrections in accordance with KRS Chapter 13A, including corresponding updates to material incorporated.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to better support the health, safety, and welfare of children in care; respond to Red Tape Reduction comments and related agency reviews; incorporate statutory requirements and changes that have occurred since the administrative regulation's last amendment; and ensure congruency among the administrative regulations governing licensed child-care centers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its update and clarification of child-care center licensure standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of child-care center licensure standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of November 22, 2017, there were 1,980 Kentucky licensed child-care centers, both Type I and Type II.

(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: Given the new federally mandated background check requirements applicable to licensed child-care centers, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation and be responsive to the recently enacted legislation and the Red Tape Reduction comments and agency reviews.

(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 should entail no new costs to licensed child-care centers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicant and licensed child-care centers and the children in their care will benefit from improved clarity, greater program integrity, and enhanced quality assurance in the child care community.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2, 42 U.S.C. 601-619, 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2), (6)

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98.2, 42 U.S.C. 601-619, 42 U.S.C. 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, 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, 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 is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), (6), 45 C.F.R. 98.2, 42 U.S.C. 601-619

(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 generate no 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 amendment to this administrative regulation will generate no revenue in the 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 in the first year.

(d) How much will it cost to administer this program for

subsequent years? There are no additional costs to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY

##### 922 KAR 2:100E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 and 3 to ensure implementation and enforcement of 2017 Ky Acts ch. 135 and the Child Care and Development Fund Block Grant (CCDF) as reauthorized by Public Law 114-183. In addition, the emergency administrative regulation supports more comprehensive background checks of child care staff members, improved access to emergency medications for children in care, and reflects assessment of child care provider standards in accordance with the Red Tape Reduction effort, enhancing provider operations and better protecting the health, safety, and welfare of children in child care settings in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect background checks to comply with state and federal mandates, preserve federal award, and better protect children's health, safety, and welfare in child care settings. 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

SCOTT W. BRINKMAN, Acting Secretary

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Community Based Services

##### Division of Child Care

##### (Emergency Amendment)

#### 922 KAR 2:100E. Certification of Family Child-Care Homes.

RELATES TO: KRS Chapter 13B, ~~158.030~~[~~17.165~~, ~~17.500~~—~~17.580~~], 186.020, 189.125, 194A.050(1), 199.011(~~3~~)(~~2~~), (4), 199.894(~~1~~), (5), 199.895, 199.896(18), 199.897, 199.898, 199.8982, 214.010, 214.036, 311.646, 314.01(5), 527.070(1), 600.020, 620.020(8), 620.030, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q

EFFECTIVE: February 14, 2018

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8982(1)(f)

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 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care home. The statute authorizes the cabinet to establish minimum safety requirements for operation of a certified family child-care home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

Section 1. Definitions. (1) [~~"Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.~~

(2)] "Assistant" means a person:

(a) Who meets the requirements listed in Section 2(6) and Section 10(6), (7), and (8)~~], and (9)]~~ of this administrative regulation; and

(b) Whose work is either paid or unpaid.

(2)](3)] "Cabinet" is defined by the KRS 199.011(3) and 199.894(1)(2)].

(3)](4)] "Child" is defined by KRS 199.011(4).

(4)](5)] "Corporal physical discipline" is defined by KRS 199.896(18).

(5)](6)] "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(6)](7)] "Family child-care home" is defined by KRS 199.894(5).

(7)](8)] "Health professional" means a person currently licensed as a:

(a) Physician;

(b) Physician[Physician's] assistant;

(c) Advanced practice registered nurse[or-practitioner]; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(8)](9)] "Home" means the private primary residence of the certified family child-care home provider and contiguous property.

(9)](10)] "Infant" means a child who is less than twelve (12) months of age.

(10)](11)] "Parent" is defined by 45 C.F.R. 98.2.

(11)](12)] "Parental or family participation" means a family child-care home's provision of information or inclusion of a child's parent in the child-care home's activities such as:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and the parent; or

(d) Other activity designed to engage a parent in the program's activities.

(12)](13)] "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(13)](14)] "Premises" means the building and contiguous property in which child care is certified.

(14)](15)] "Preschool-age" means a child who is older than a toddler and younger than school-age.

(15)](16)] "Provider" means an owner, operator, or person who:

(a) Cares for a child in the provider's own home;

(b) Is not required to be licensed under 922 KAR 2:090; and

(c) Meets the requirements of Section 2 of this administrative regulation.

(16)](17)] "Related" means having one (1) of the following relationships with the provider:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Step-child; or

(g) Child in legal custody of the provider.

(17)](18)] "School-age child" means a child who meets the age requirements of KRS 158.030 or who attends[attending] kindergarten, elementary, or secondary education.

(18)](19)] "~~Sex Offender Registry~~" means ~~the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.~~

(20)] "Toddler" means a child between the age of twelve (12) months and thirty-six (36)[twenty-four (24)] months.

Section 2. Certification Process. (1) The cabinet or its designee shall be responsible for certifying a family child-care home.

(2) An applicant for certification shall:

(a) Show proof by photo identification or birth certificate that the individual is at least eighteen (18) years of age;

(b) Obtain commercial liability insurance of at least \$50,000 per occurrence; and

(c) Submit within ninety (90) days of initiation of the application process:

1. A completed OIG-DRCC-03, Initial Certification Application

for Family Child-Care Home;

2. A nonrefundable certification fee pursuant to KRS 199.8982(1)(b);

3. Written documentation from the local authority showing the child-care home is in compliance with local zoning requirements;

4. Documentation of the requirements of KRS 199.8982(1)(a)1 through 3 and 5;

5. Background checks completed in accordance with 922 KAR 2:280; and

6. A physician's statement documenting that the family child-care home provider's health is satisfactory for operation of a family child-care home, including that the provider is free of active tuberculosis[A DCC-157, Certified Family Child-Care Home Central Registry Check, to complete:

a. A child abuse or neglect check using the central registry in accordance with 922 KAR 1:470; and

b. An address check of the Sex Offender Registry;

6. ~~A completed criminal records check required by KRS 17.165(5); and~~

7. ~~A criminal records check for any previous state of residence completed once if:~~

a. ~~The applicant resided outside the state of Kentucky in the last five (5) years; and~~

b. ~~No criminal records check has been completed for the applicant's previous state of residence].~~

(3) An[initial] applicant for certification shall have a:

(a) High school diploma, general equivalency diploma (GED), or documentation from a comparable educational entity; or

(b) Commonwealth Child Care Credential in accordance with 922 KAR 2:250.

(4) An applicant shall be currently certified by an agency approved in accordance with 922 KAR 2:240 in infant and child:

(a) Cardiopulmonary resuscitation (CPR); and

(b) First aid.

(5) An adult living in the home of the applicant, present during the hours of operation, or having unsupervised contact with a child in care, and the applicant's assistant shall[submit to the cabinet]:

(a) Complete background checks in accordance with 922 KAR 2:280[A criminal records check pursuant to KRS 17.165(5) by the Kentucky State Police or the Administrative Office of the Courts within one (1) year prior to application;

(b) ~~A DCC-157 to complete:~~

1. ~~A child abuse or neglect check using the central registry in accordance with 922 KAR 1:470; and~~

2. ~~An address check of Sex Offender Registry;~~

(c) ~~A criminal records check completed once for any previous state of residence if:~~

1. ~~The adult resided outside the state of Kentucky in the last five (5) years; and~~

2. ~~No criminal records check has been completed for the adult's previous state of residence]; and~~

(b) ~~Submit~~[(d)] a copy of negative tuberculin results or a health professional's statement documenting that the adult is free of active tuberculosis.

(6) If an adult other than an adult listed on the initial application begins living in the provider's home, present during the hours of operation or having unsupervised contact with a child in care, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household[An applicant or assistant who has been convicted of, or entered an Alford or guilty plea to, a non-violent felony or misdemeanor may be approved on a case by case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) ~~Applicant's life experiences after the conviction, Alford plea, or guilty plea].~~

(7) Upon receipt of a completed application for certification, and a nonrefundable certification fee pursuant to KRS 199.8982(1)(b), cabinet staff shall:

(a) Review and process the application; and

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b), including review of the evacuation plan in accordance with Section 18(7) of this administrative regulation.

(8) If the requirements of 922 KAR 2:280, subsections (1) through (7) of this section~~[-Section 3]~~, and Sections 10 through 19 of this administrative regulation have been met, an applicant shall be certified as described in KRS 199.8982.

(9) Within three (3) months of submission to the cabinet of a complete OIG-DRCC-03, an applicant shall:

(a) Demonstrate completion of six (6) hours of cabinet-approved training in accordance with KRS 199.8982(1)(a)6; and

(b) Develop and implement a written plan for obtaining nine (9) hours of annual cabinet-approved training as required in Section 10(1) of this administrative regulation.

(10)(a) A family child-care home certificate shall:

1. ~~(a)~~ Be displayed in a prominent place, as required by KRS 199.8982(1)(c);

2. ~~(b)~~ Contain the:

a. ~~(1-)~~ Name and address of the child care provider;

b. ~~(2-)~~ Maximum number of unrelated children who may be served;

c. ~~(3-)~~ Identification number; and

d. ~~(4-)~~ Effective and expiration dates; and

3. ~~(e)~~ Be valid for only the:

a. ~~(1-)~~ Name of the individual authorized on the certificate to operate a family child-care home; and

b. ~~(2-)~~ Residential address printed on the certificate.

(b) A certified family child-care home whose certificate is suspended or revoked shall:

1. Receive a new certificate indicating that the provider is under adverse action; and

2. Post the new certificate in accordance with paragraph (a) of this subsection.

(11) A change of location shall require:

(a) A ten (10) calendar day notice;

(b) A completed OIG-DRCC-03;

(c) An inspection of the new home; and

(d) Continued compliance with this administrative regulation.

Section 3. Renewal of Certification. (1) A family child-care certification shall expire[be renewed every] two (2) years from the date of issuance unless the certificate holder meets the requirements of subsection (2) of this section. A certificate that expires shall lapse and shall not be subject to appeal.

(2) A family child-care home provider shall submit one (1) month prior to expiration of the provider's certification:

(a) A completed OIG-DRCC-04, Certified Family Child-Care Home Renewal Form[OIG-DRCC-03];

(b) A nonrefundable renewal fee pursuant to KRS 199.8982(1)(b);

(c) A physician's statement documenting that the family child-care home provider's health is satisfactory for continued operation of a family child-care home; and

(d) Proof that the family child-care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 10 through 19 of this administrative regulation.

(3) The cabinet shall:

(a) Review and process the OIG-DRCC-03 submitted in accordance with subsection (2) of this section[application];

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b); and

(c) Approve the family child-care home within fifteen (15) calendar days of receipt of the OIG-DRCC-03 submitted in accordance with subsection (2) of this section[application] if the requirements in Sections 2, 3, and 10 through 19 of this administrative regulation are met.

(4) To the extent funds are available, the cabinet ~~shall~~[may] conduct an annual unannounced inspection of the home pursuant to KRS 199.8982(1)(b) and 42 U.S.C. 9858c(c)(2)(K)[annually as a condition of certification renewal].

Section 4. Statement of Deficiency and Corrective Action Plans. (1) If the cabinet finds a provider noncompliant with Sections 2, 3, or 10 through 19 of this administrative regulation, the cabinet or its designee shall complete a written statement of deficiency.

(2) Except for a violation posing an immediate threat, a family child-care home shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or ~~shall~~[will] be completed; ~~and~~

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; and

(e) Signature of the provider and the date of signature.

(4) The cabinet or its designee shall review the plan and notify a family child-care home within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the family child-care home's certification in accordance with Section 5, 6, 7, or 8 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(6) A family child-care home notified of an unaccepted plan shall:

(a) Submit an amended plan within fifteen (15)~~ten (10)~~ calendar days of notification; or

(b) Have its certification revoked or denied for failure to:

1. Submit an acceptable amended plan; or

2. Implement corrective measures identified in the corrective action plan.

(7) If a family child-care home fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan[Following two (2) unacceptable plans of correction in a forty-five (45) calendar day period], the cabinet shall ~~deny an application for certification~~ or revoke a provider's certification.

(8) The cabinet shall not review or accept more than three (3) corrective action plans from a family child-care home in response to the same written statement of deficiency.

(9) An administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected by the family child-care home provider within five (5) working days of notification.

(10)[(9)] The voluntary relinquishment of a family child-care home's certification shall not preclude the cabinet's pursuit of adverse action.

Section 5. Denial of Application for Certification. (1) An application for initial certification~~[or renewal of certification]~~ as a family child-care home shall be denied if the applicant, an assistant, or an adult residing in the household:

~~(a) Has abused or neglected a child according to a check of the central registry in accordance with 922 KAR 1:470;~~

~~(b) has a history of behavior that may impact the safety or security of a child in care including:~~

~~(a)[(1-)] A disqualifying criterion or background check result in accordance with 922 KAR 2:280[criminal conviction of, or an Alford plea or a plea of guilty to, a sex crime or violent crime in accordance with KRS 17.165;~~

~~2. A conviction for, or an Alford plea or a plea of guilty to, a drug-related felony, and (5) five years has not elapsed since the person was fully discharged from imprisonment, probation, or parole]; or~~

~~(b)[(3-)] Other behavior or condition indicating inability to provide reliable care to a child[; or~~

~~(c) Is placed on the Sex Offender Registry].~~

(2) An application for certification as a family child-care home provider shall be denied if the applicant or certificate holder:

(a) Fails to comply with the minimum certification standards specified in Sections 10 through 19 of this administrative regulation and KRS 199.8982;

(b) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its

designee;

(c) Refuses, during the hours of operation, access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

- a. A child in care; or
- b. The provider's premises; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;

(d) Is placed on a directed plan of correction[~~intermediate sanction~~] more than two (2) times in a three (3) year period; or

(e) Has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud,~~[or]~~ abuse, or criminal conviction related to[~~of~~] that program.

(3) Effect of previous denial or revocation.

(a) If an applicant has had a previous child care registration, certification, license, or permit to operate subject to denial, suspension, revocation, or voluntary relinquishment pending an investigation or adverse action, the cabinet shall grant the applicant a certificate to operate a family child-care home if:

1. A seven (7) year period has expired from the:

a. Date of the prior notice of denial, suspension, or revocation; or

b. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or a pending adverse action[;]

~~c. Last day of legal remedies being exhausted; or~~

~~d. Date of the Final Order from an administrative hearing]; and~~

2. The applicant has:

a. The proven ability to comply with the provisions of this administrative regulation and KRS 199.8982;

b. Completed, since the time of the prior denial or revocation, sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice; and

c. Not had an application, registration, certificate, license, or permit to operate as a child care provider denied or revoked for:

(i) A disqualifying criterion or background check result in accordance with 922 KAR 2:280[~~Conviction of, or an Alford plea or a plea of guilty to, a sex crime or violent crime in accordance with KRS 17.165;~~

(ii) Abuse or neglect of a child according to a child abuse and neglect check of the central registry in accordance with 922 KAR 1:470;

(iii) Placement on the Sex Offender Registry;

(iv) Conviction of, or an Alford or guilty plea to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole]; or

(ii) Discontinuation or disqualification[~~(v) Has been discontinued or disqualified~~] from participation in[~~;~~ 4.] the Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020[~~;~~]; or[2.] another governmental assistance program due to fraud,~~[or]~~ abuse, or criminal conviction related to[~~of~~] that program.

(b) If a certificate is granted after the seven (7) year period specified in paragraph (a) of this subsection, the provider shall serve a two (2) year probationary period during which the home shall be inspected on at least a quarterly basis.

Section 6. Directed Plan of Correction (DPOC)[~~Intermediate Sanctions~~]. (1) If the cabinet determines that a certified family child-care home provider is in violation of this administrative regulation or 922 KAR 2:280,[~~the cabinet may,~~] based on the severity of the violation, the cabinet:

(a) Shall[~~Require the provider to participate in additional training;~~

(b) Increase the frequency of monitoring by cabinet staff;

(c) enter into an agreement with the provider directing[~~detailing~~] the requirements for remedying a violation and achieving compliance; [or]

(b) Shall[~~(d)~~] notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC[~~an~~

~~intermediate sanction~~] has been imposed;

(c) Shall increase the frequency of monitoring by cabinet staff to verify the implementation of the DPOC;

(d) May require the certified family child-care home to participate in additional training; and

(e) May amend the agreement with the certified family child-care home if the cabinet identifies an additional violation during the DPOC period.

(2) A DPOC[~~An intermediate sanction~~] shall result in a suspension or revocation of certification or shall be modified to impose additional requirements if a certified family child-care home provider:

(a) Fails to meet a condition of the DPOC[~~intermediate sanction~~]; or

(b) Violates a requirement of the DPOC[~~an intermediate sanction~~].

Section 7. Suspension. The cabinet shall take emergency action in accordance with KRS 13B.125[~~, by issuing an emergency order that results in suspension of the operation of a certified family child-care home~~]. (1) An emergency order issued pursuant to this section shall:

(a) Be served to a certified family child-care home provider in accordance with KRS 13B.050(2); and

(b) Specify the regulatory violation that caused the emergency condition[~~to exist~~].

(2) Upon receipt of an emergency order, a provider shall surrender the certificate of operation to the cabinet.

(3) The cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care of the suspended provider; and

(b) Refer a parent for assistance in locating alternate child care arrangements.

(4) A certified family child-care home required to comply with an emergency order issued in accordance with this section may submit a written request for an emergency hearing within twenty (20)[~~five (5)~~] calendar days of receipt of the order to determine the propriety of the certification's suspension.

(5) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13A.125(3).

(6)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming or reversing[~~, modifying, or revoking~~] the emergency order to suspend certification.

(b) The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(7) A provider's certification shall be revoked if the[;]

(a) Provider does not request a hearing within the timeframes established in subsection (6) of this section;

(b) The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B; or

(c) The condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

Section 8. Revocation.(1) A family child-care home provider's certification shall be revoked if a provider:

(a) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(b) Interferes with a cabinet representative's ability to perform an official duty;

(c) Refuses, during the hours of operation, access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

- a. A child in care; or
- b. The provider's premises; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;

(d) Is convicted of, or enters an Alford or guilty plea to, a

criminal charge that threatens the health, safety, or welfare of a child in care;

(e) Is unable to operate a family child-care home due to a medical condition;

(f) ~~Does not~~~~[is unable to continue to]~~ meet the requirements of KRS 199.8982(1) or Sections 2, 3, and Sections 10 through 19 of this administrative regulation;

(g) Is placed on a directed plan of correction~~[intermediate sanction]~~ more than two (2) times in a three (3) year period; or

(h) Has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, ~~[or]~~ abuse, or criminal conviction related to ~~[of]~~ that program.

(2)(a) If the cabinet determines that a condition of subsection (1) of this section exists, the cabinet or its designee shall send a written notice of its intention to revoke the certificate to the family child-care home~~[revocation delivered]~~ by personal service delivery or through certified mail~~[at least thirty (30) calendar days prior to the effective date of the revocation]~~.

(b) Subsequent to the notice provided in accordance with paragraph (a) of this subsection, a family child-care home's failure to request an appeal pursuant to Section 9 of this administrative regulation shall result in the final determination revoking the home's certification.

(3) The notice of revocation shall:

(a) Explain the reason for the revocation;

(b) Specify that the child care provider shall cease operation as a certified family child-care home upon revocation;

(c) Advise the family child-care home provider of the right to request an appeal on an OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal, prior to the effective date of the revocation;

(d) Specify that revocation shall be stayed if an appeal is requested; and

(e) Require the family child-care home provider to surrender the certificate of operation to cabinet staff when the revocation becomes effective.

(4) If a provider's certification has been revoked, the cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care; and

(b) Refer the parent for assistance in locating alternate child care arrangements.

Section 9. Appeal of Denials,~~[Intermediate Sanctions,]~~ Suspension, and Revocation. (1) If the cabinet denies certification,~~[imposes an intermediate sanction,]~~ suspends certification, or revokes certification, the family child-care home provider may request an appeal by completing an OIG-DRCC-05 within twenty (20) calendar days of receipt of the notice of adverse action.

(2) Upon request of the appeal, the provider shall be afforded a hearing in accordance with KRS Chapter 13B.

(3) If a final order from an administrative hearing does not uphold a suspension, the provider may resume providing child care.

Section 10. Standards for the Provider. (1)(a) A provider shall complete annually at least nine (9) hours of cabinet-approved early care and education training beginning with the second year of operation, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.8982(2):

1. Within the second year of employment or operation in child care; and

2. Every subsequent five (5) years of employment or operation in child care.

(b) A provider or assistant's compliance with the training in accordance with paragraph (a) of this subsection or subsection (8)(9) of this section shall~~[may]~~ be verified through the cabinet-designed database maintained pursuant to 922 KAR 2:240.

(2) A provider shall not provide care for more unrelated

children than the number authorized on the certificate of operation.

(3) A provider shall have an assistant present if the~~[a]~~ provider cares for more than:

(a) Four (4) infants, including the provider's own or related infants; or

~~(b) the provider shall have an assistant present. (4) A provider shall not care for more than~~ Six (6) children under the age of six (6) years old, including the provider's own or related children.

~~(4)(5)~~ The maximum number of unrelated children in the care of a certified family child-care home provider shall not exceed six (6) at any one (1) time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one (1) time.

~~(5)(6)~~ If a provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:

(a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours during a twenty-four (24) hour period; and

(b) Employ an assistant during the period of respite.

~~(6)(7)~~ Prior to being left alone with a child, an assistant shall be certified by a cabinet-approved agency in infant and child:

(a) CPR; and

(b) First aid.

~~(7)(8)~~ An assistant shall be:

(a) Eighteen (18) years of age or older;

(b) Under ~~[direct]~~ supervision of a provider;

(c) Used for providing care in a certified family child-care home; and

(d) Used in the absence of the certified provider.

~~(8)(9)~~ An assistant used ~~[in the absence of the family child-care home provider]~~ in excess of fourteen (14) calendar days during a one (1) year period shall demonstrate completion of at least nine (9) hours of cabinet-approved training, including:

(a) Six (6) hours of cabinet-approved training in accordance with KRS 199.8982(1)(a)6; and

(b) Pediatric abusive head trauma training pursuant to KRS 199.8982(2), in accordance with subsection (1) of this section.

~~(9)(10)~~ If a provider, an assistant, or a member in a provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the ~~[family-in-need-of-services assessment or]~~ investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

~~(10)(11)~~ During hours of operation, a provider and another person in the home shall:

(a) Be free of the influence of alcohol or a controlled substance except for use of a controlled substance as prescribed by a physician; and

(b) Prohibit smoking or vaping in the presence of children in care.

~~(11)(12)~~ During a provider's absence, an assistant shall be physically present with a child in care~~[at the home]~~ during hours of operation.

~~(12)(13)~~ A provider shall:

(a) Not be employed outside of the home during regular hours of operation; and

(b) Maintain daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the provider through the Child Care Assistance Program.

Section 11. The General Requirements of the Family Child-Care Home Environment. (1) A provider's home and each play area used for child care shall:

(a) Be free from risk of harm in accordance with the requirements of this administrative regulation; and

(b) Have adequate:

1. Heating and cooling;



2. Light; and
3. Ventilation.
- (2) Each floor level used for child care shall have at least one
- (1):
  - (a) Unblocked exit to the outside;
  - (b) Smoke detector;
  - (c) Fire extinguisher; and
  - (d) Carbon monoxide detector if the home:
    1. Uses fuel burning appliances; or
    2. Has an attached garage.
- (3) ~~A new applicant or a provider who changes location shall have at least two (2) unblocked exits to the outside on each floor level used for child care.~~
- (4) The areas of the home that are accessible to children in care shall be free from items harmful to children including the following items:
  - (a) Cleaning supplies, poisons, paints, and insecticides;
  - (b) Knives, scissors, and sharp objects;
  - (c) Power tools, lawn mowers, hand tools, nails, and other equipment;
  - (d) Matches, cigarettes, lighters, combustibles, and flammable liquids;
  - (e) ~~Alcoholic beverages;~~
  - (f) ~~Plastic bags; and~~
  - (g) ~~Litter and rubbish.~~
  - (4) Alcohol shall:
    - (a) Not be consumed by any person on the certified family child-care home's premises during hours of operation; and
    - (b) Be kept out of reach and sight of a child in care.
- (5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored away from the presence of children, in separate locked containers, which, in order to be opened, require a:
  - (a) Key; or
  - (b) Combination.
- (6) Electrical outlets not in use shall be covered.
- (7) An electric fan, floor furnace, or freestanding heater or fireplace shall:
  - (a) Be out of the reach of a child; or
  - (b) Have a safety guard to protect a child from injury.
- (8) A certified family child-care home shall have:
  - (a) At least one (1) accessible and working ~~land-line~~ telephone on each level used for child care while a child in care is present on that level ~~unless the cabinet has been notified that the telephone is temporarily out of service~~; and
  - (b) A list of emergency numbers posted on each level used for child care or maintained in the contacts of ~~by~~ each telephone, including numbers for the:
    1. Police;
    2. Fire station;
    3. Emergency medical care and rescue squad; and
    4. Poison control center.
- (9) Equipment and toys shall be:
  - (a) Designated by the manufacturer as developmentally appropriate to the age of children in care;
  - (b) In sufficient quantity for the number of children in care; and
  - (c) Safe, sound, clean, and in good repair.
- (10) Stairs and steps used for children in care shall be:
  - (a) Solid;
  - (b) Safe; and
  - (c) Railed.
- (11) If an infant or toddler is in the care of a provider, indoor stairs with more than two (2) steps shall be blocked.
- (12) Exclusive of the bathroom and storage area, an indoor area, including furnishings, used for child care shall contain at least thirty-five (35) square feet per child for:
  - (a) Play; and
  - (b) Activities that meet the developmental needs of the children in care.
- (13) An outdoor play area shall be free of unavoidable danger or risk.
- (14) Each child in an outdoor play area shall be under the direct supervision of the provider or assistant.

- (15) Outdoor stationary play equipment shall be:
  - (a) Securely anchored;
  - (b) Developmentally appropriate; and
  - (c) Safe.
- (16) A trampoline shall not be accessible to a child in the care of a provider.
- (17) A swimming pool on the premises shall:
  - (a) Be maintained and free of debris and body waste;
  - (b) Have a water filtering system or be emptied daily;
  - (c) Be supervised when in use; and
  - (d) Be inaccessible to a child ~~children~~ when not in use.
- (18) An above-ground pool shall have:
  - (a) A stationary wall no less than four (4) feet tall; and
  - (b) Hand holds or foot holds that are inaccessible when the pool is not in use.
- (19) A fire drill shall be:
  - (a) Conducted during hours of operation at least monthly; and
  - (b) Documented.
- (20) An earthquake drill and a tornado drill shall be:
  - (a) Conducted during hours of operation at least quarterly; and
  - (b) Documented.
- (21) A family child-care home shall:
  - (a) Be clean;
  - (b) Be uncluttered;
  - (c) Be free of insects and rodents;
  - (d) Have a water supply that is:
    1. Potable;
    2. Adequate; and
    3. From an approved public water supply; and
  - (e) Have bathrooms, including toilets, sinks, and potty chairs that are:
    1. Sanitary; and
    2. In good working condition.
- (22) Windows, doors, and outer openings shall be screened to prevent the entrance of vermin.
- (23) Indoor and outdoor garbage shall be stored in a waterproof container with a tight-fitting cover.
- (24) Playpens and play yards shall:
  - (a) Meet the federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;
  - (b) Be manufactured for commercial use; and
  - (c) Not be used for sleeping or napping.

Section 12. Care Requirements for a Provider. (1) A provider shall ensure the health, safety, and comfort of each child.

(2)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(3) Television or video viewing by a child shall be limited to:

- (a) Two (2) hours daily;
- (b) The planned program activities; and
- (c) Developmentally appropriate child-related content, as designated by standardized content guidelines.

(4) A child shall:

(a) Wash hands with liquid soap and warm running water:

1. ~~(a)~~ Before and after eating or handling food;

2. ~~(b)~~ After toileting or diaper change;

3. ~~(c)~~ After handling animals;

4. ~~(d)~~ After wiping or blowing nose;

(e) After touching an item or an area of the body ~~items~~ soiled with body fluids or waste; and

5. ~~(f)~~ After outdoor and indoor play time; or

(b) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (a) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.

(5) A provider and an assistant shall:

(a) Wash hands with liquid soap and warm running water:

1. Before and after diapering a child;
2. Before and after feeding a child;



3. After toileting or assisting a child with toileting;  
 4. After handling animals;  
 5. Before dispensing medication;  
 6. After caring for a sick child;[and]  
 7. After wiping or blowing a child's or own nose; and  
 8. After smoking or vaping; or  
 (b) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (a) of this subsection. The provider or assistant shall wash the provider or assistant's hands as soon as practicable once liquid soap and warm running water are available.  
 (6) A provider shall assure that a child does not share:  
 (a)[1-] Cups;  
 (b)[2-] Eating utensils;  
 (c)[3-] Wash cloths;  
 (d)[4-] Towels; and  
 (e)[5-] Toiletry items.  
 (7)[(6)] An infant shall sleep and nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.  
 (8)[(7)] Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.  
 (9)[(8)] Rest time shall include adequate space specified by the child's age as follows:  
 (a) For an infant:  
 1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;  
 2. A firm crib mattress in good repair with a clean tight-fitted sheet that is changed:  
 a. Weekly; or  
 b. Immediately if it is soiled or wet;  
 3. No loose bedding, such as a bumper or a blanket; and  
 4. No toys or other items except for the infant's pacifier; or  
 (b) For a toddler or preschool-age child:  
 1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and  
 2. Bedding that is in good repair and is changed:  
 a. Weekly; or  
 b. Immediately if it is soiled or wet.  
 (10)[(9)] Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending nontraditional hours or is sick.  
 (11)[(10)] A child who does not sleep shall be permitted to play quietly and be visually supervised.  
 (12)[(11)] If overnight care is provided, a provider or an assistant shall:  
 (a) Remain awake until every child in care is asleep; and  
 (b) Sleep on the same floor level of the home as an infant or toddler.  
 (13)[(12)] A certified family child care home shall provide a daily planned program:  
 (a) That is available to a parent of a child in care or the cabinet upon request[~~Posted in writing in a conspicuous location~~];  
 (b) Of activities that are[~~individualized and~~] developmentally appropriate for each child served;  
 (c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and  
 (d) That offers a variety of creative activities, such as[~~including~~]:  
 1. Art or music;  
 2. Math or numbers[~~Music~~];  
 3. Dramatic play;  
 4. Stories and books;  
 5. Science or nature;  
 6. Block building or stacking;  
 7. Tactile or sensory activity;  
 8. Multi-cultural exposure[~~Culture~~];  
 9. Indoor or outdoor play in which a child makes use of both small and large muscles;  
 10. A balance of active and quiet play, including group and individual activity; and  
 11. An opportunity for a child to:

a. Have some free choice of activities;  
 b. If desired, play apart from the group at times; and  
 c. Practice developmentally appropriate self-help procedures in respect to:  
 (i) Clothing;  
 (ii) Toileting;  
 (iii) Hand-washing; and  
 (iv) Eating.  
 (14)[(13)] Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child shall not be permitted off the premises of a family child-care home without a caregiver.  
 (15)[(14)] Use of corporal physical discipline shall be prohibited pursuant to KRS 199.896(18).  
 (16)[(15)] A child shall be released from a family child-care home to:  
 (a) The child's custodial parent;  
 (b) The person designated in writing by the parent to receive the child; or  
 (c) In an emergency, a person designated over the telephone by the parent.

Section 13. Toilet and Diapering Requirements. (1) A toilet room shall:  
 (a) Have an adequate supply of toilet paper; and  
 (b) Be cleaned and sanitized daily.  
 (2) A sink shall be:  
 (a) Located near or in close proximity[~~or immediately adjacent~~] to toilets;  
 (b) Equipped with hot and cold running water that allows for hand washing;  
 (c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;  
 (d) Equipped with liquid soap and single use, disposable hand drying material;  
 (e) Equipped with an easily cleanable, covered waste receptacle; and  
 (f) Near or in close proximity[~~Immediately adjacent~~] to a changing area used for infants and toddlers.  
 (3) Each toilet shall:  
 (a) Be kept in clean condition;  
 (b) Be kept in good repair;  
 (c) Be in a lighted room; and  
 (d) Have ventilation.  
 (4) Toilet training shall be coordinated with the child's parent.  
 (5) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.  
 (6) If a toilet training chair is used, the chair shall be:  
 (a) Emptied promptly; and  
 (b) Sanitized after each use.  
 (7) Diapers or clothing shall be:  
 (a) Changed when soiled or wet;  
 (b) Stored in a covered leak proof container temporarily; and  
 (c) Washed or disposed of at least once a day.  
 (8) The proper methods of diapering and hand-washing shall be available[~~posted~~] at each diaper changing area.  
 (9) If a child is being diapered, the child shall:  
 (a) Not be left unattended; and  
 (b) Be placed on a surface that is:  
 1. Clean;  
 2. Padded;  
 3. Free of holes, rips, tears, or other damage;  
 4. Nonabsorbent;  
 5. Easily cleaned; and  
 6. Free of items not used for diaper changing.  
 (10) Unless another cleaning method is authorized by the child's parent or prescribed by a physician, individual disposable washcloths shall be used to thoroughly clean the affected area of a[~~the~~] child.  
 (11) A provider or an assistant shall disinfect the diapering surface after each child is diapered.  
 (12) If a provider or an assistant wear disposable gloves, the

gloves shall be changed and disposed of after each child is diapered.

Section 14. Food Requirements. (1) A provider and an assistant shall:

- (a) Use sanitary procedures when preparing and serving food;
- (b) Refrigerate perishable food and beverages; and
- (c) Serve:

1. Breast milk or iron-fortified formula to a child;

a. Age birth to twelve (12) months; or

b. Beyond twelve (12) months of age as documented by the parent or the child's physician;

2. Pasteurized whole milk to a child age twelve (12) months to twenty-four (24) months; or

3. Pasteurized skim or low fat one (1) percent milk to a child age twenty-four (24) months to school-age.

(2) Water shall be:

(a) Available to a child in care; and

(b) Served in addition to meal requirements if a child requests throughout the day.

(3) A certified family child-care home shall offer each child the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.

(4) Second servings shall be available to a child.

(5) Food shall not be:

(a) Used for:

1. Reward; or

2. ~~Discipline~~[Punishment]; or

(b) Withheld until all other food items are consumed.

(6) Meals shall:

(a) Be served in an amount appropriate to the age of the child;

(b) Include appropriate types of food according to the age of the child;~~and~~

(c) Not be served during television or video viewing;

(d) Be served every two (2) to three (3) hours; and

(e) Be served to a child:

1. Seated with sufficient room to manage food and tableware; and

2. Supplied with individual eating utensils designed for use by a child.

(7) Breakfast shall include:

(a) Milk;

(b) A whole grain or an enriched grain bread; and

(c) Fruit, vegetable, or 100 percent juice.

(8) A snack shall include two (2) of the following:

(a) Milk;

(b) Protein source;

(c) Fruit, vegetable, or 100 percent juice; or

(d) A whole grain or an enriched grain bread.

(9) Lunch and dinner shall include:

(a) Milk;

(b) Protein source;

(c) 1. Two (2) vegetables;

2. Two (2) fruits; or

3. One (1) fruit and one (1) vegetable; and

(d) A whole grain or an enriched grain bread.

(10) A weekly menu shall be:

(a) Prepared;

(b) Dated;

(c) Available to a parent of a child in care or the cabinet upon request[~~Posted in a conspicuous place~~]; and

(d) Kept on file for thirty (30) calendar days.

(11) Substitutions to a~~posted~~ weekly menu shall be noted on the day the meal is served.

(12) Unless provided as part of the fee for child care or the provider is a participant in the food program, an infant's formula shall be prepared, labeled, and provided by the parent.

(13) Each child's bottle shall be:

(a) Labeled;

(b) Covered; and

(c) Refrigerated.

(14) The refrigerator shall:

(a) Be in working order; and

(b) Maintain a product temperature at or below forty-five (45) degrees Fahrenheit.

(15) Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.

(16) While bottle-feeding an infant, the:

(a) Child shall be held; and

(b) Bottle shall not be:

1. Propped;

2. Left in the mouth of a sleeping infant; or

3. Heated in a microwave.

(17) A certified family child-care home shall meet requirements of subsections (1)(c) and (7) through (9) of this section if the provider participates in the Child and Adult Food Care Program and meets meal requirements specified in 7 C.F.R. 226.20.

Section 15. Medication and First Aid. (1) Medication, including medicine that requires refrigeration, shall be stored in a locked container or area with a lock unless the medication is:

(a) A first aid supply. A first aid supply shall be maintained in accordance with subsection (4) of this section;

(b) Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child in care;

(c) An epinephrine auto-injector. In accordance with KRS 199.8951:

1. An epinephrine auto-injector shall be inaccessible to a child in care;

2. A certified family child-care home provider shall have training on the administration of an epinephrine auto-injector if the provider maintains an epinephrine auto-injector for a child;

3. A certified family child-care home shall seek emergency medical care for a child if an auto-injector is administered to a child; and

4. A certified family child-care home shall report to the child's parent and the cabinet in accordance with subsection (6) of this section and Section 19(10) of this administrative regulation if an epinephrine auto-injector is administered to a child; or

(d) An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care.

(2) Prescription and nonprescription medication shall be administered to a child in care;

(a) With a[daily] written request of the child's parent or the child's prescribing health professional; or

(b) In accordance with KRS 311.646.

(3) Prescription and nonprescription medications shall be:

(a) Labeled; and

(b) Administered according to directions or instructions on the label.

(4) A provider shall:

(a) Maintain first aid supplies that are easily accessible for use in an emergency, and these supplies shall be inaccessible to the children in care; and

(b) Wash superficial wounds with soap and water before bandaging.

(5) First aid supplies shall include a fully-equipped first aid kit containing the following non-expired items:

~~(a)~~[Liquid soap;

~~(b)~~] Adhesive bandages;

~~(c)~~[~~(e)~~] Sterile gauze;

~~(c)~~[~~(d)~~] Medical tape;

~~(d)~~[~~(e)~~] Scissors;

~~(e)~~[~~(f)~~] Thermometer;

~~(f)~~[~~(g)~~] Flashlight;

~~(h)~~] Cold pack;

~~(i)~~] First-aid book;

~~(j)~~] Disposable gloves; and

~~(g)~~[~~(k)~~] CPR mouthpiece.

(6) A provider shall provide immediate notification of a medical emergency to a child's:

(a) Parent; or

(b) Emergency contact~~[Family physician]~~, if the parent is unavailable.

(7) A quiet, separate area that is easily supervised shall be provided for a child too sick to remain with other children.

(8) A provider and an assistant shall:

(a) Be able to recognize symptoms of childhood illnesses;

(b) Be able to provide basic first aid; and

(c) Maintain a child care program that assures affirmative steps are taken to protect children from abuse or neglect pursuant to KRS 600.020(1).

Section 16. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

1. The animal is under the supervision and control of an adult;

2. Written parental consent has been obtained; and

3. The animal is certified as vaccinated against rabies; or

(b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a certified family child-care home unless the animal is:

(a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and

(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

Section 17. Transportation. (1) If transportation is provided or arranged by the certified family child-care home provider, the provider shall:

(a) Have written permission from a parent to transport his or her child;

(b) Have a car or van equipped with seat belts;

(c) Require that a child:

1. Be restrained in an appropriate safety seat meeting state and federal motor vehicle safety standards in accordance with KRS 189.125 and 49 C.F.R. 571.213;

2. Remain seated while the vehicle is in motion; and

3. If under thirteen (13) years of age, be transported in the back seat;

~~(d) Have a valid driver's license issued by the Division of Motor Vehicles;~~

~~(e)~~ Have emergency and identification information about each child in the vehicle if children are being transported; and

~~(e)(f)~~ Conform to state laws pertaining to vehicles, driver's license, and insurance pursuant to KRS 186.020.

(2) A child shall not be left unattended:

(a) At the site of aftercare delivery; or

(b) In a vehicle.

(3) A child shall not be left in a vehicle while it is being repaired.

(4) The back of a pickup truck shall not be used to transport a child.

(5) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(6) A vehicle shall not transport children and hazardous materials at the same time.

(7) A vehicle transporting a child shall have the headlamps on.

(8) If the driver is not in the driver's seat, the:

(a) Engine shall be turned off;

(b) Keys shall be removed; and

(c) Emergency brake shall be set.

(9) A driver of a vehicle transporting a child for a certified provider shall:

(a) Be at least twenty-one (21) years old;

(b) Complete:

1. The background checks described in Section 2(2)(c)5 or 2(5) of this administrative regulation; and

2. An annual check of the:

a. Kentucky driver history records in accordance with KRS 186.018; or

b. Driver history records through the state transportation agency that issued the driver's license;

(c) Hold a current driver's license that has not been suspended or revoked during the last five (5) years; and

(d) Not caused an accident which resulted in the death of a person.

(10) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall pursue an adverse action in accordance with Section 5, 6, 7, or 8 of this administrative regulation:

(a) For a violation of this section; or

(b) If the provider:

1. Fails to report an accident in accordance with Section 19(10)(a) of this administrative regulation; or

2. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

Section 18. Records. (1) A provider shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the family child-care home; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable the provider to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

(i) Allergies;

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the family child-care home;

e. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;

f. Authorization by the parent for the provider to seek emergency medical care for the child in the parent's absence; and

g. A permission form for each trip away from the family child-care home signed by the child's parent in accordance with Section 17(1) of this administrative regulation; and

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the provider through the Child Care Assistance Program.

(2) A certified family child-care home provider shall maintain the confidentiality of a child's records.

(3) The cabinet shall provide, upon request, public information pursuant to KRS 199.8982(1)(d) and (e).

(4) A certified family child-care home provider shall:

(a) Report an incident of suspected child abuse or neglect pursuant to KRS 620.030(1); and

(b) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4).

(5) A certified family child-care home provider shall maintain a written record of:

(a) Quarterly practiced earthquake drills and tornado drills detailing the date, time, and participants in accordance with Section 11(20) of this administrative regulation;

(b) Monthly practiced fire drills detailing the date, time, and participants in accordance with Section 11(19) of this administrative regulation; and

(c) Reports to the cabinet that are required in accordance with

Section 19(10) of this administrative regulation.

(6) A certified family child-care home provider shall keep all records for five (5) years.

(7)(a) A certified family child-care home provider shall have a written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care in accordance with KRS 199.895.

(b) The cabinet shall post an online template of an evacuation plan that:

1. Fulfills requirements of KRS 199.895;
2. Is optional for an applicant or a family child-care home's use; and
3. Is available to an applicant or a family child-care home without charge.

Section 19. Certified Family Child-Care Home Program. The certified family child-care home provider shall:

(1) Develop written information that specifies the:

- (a) Rate for child care;
- (b) Expected frequency of payment for the program;
- (c) Hours of operation; and
- (d) Policy regarding:

1. Late fees;
2. Holidays;
3. Vacation;
4. Illness; and
5. Emergency pick up;

(2) Make available a copy of the certification standards to each parent;

(3) Provide each parent with the name, address, and telephone number of the cabinet for the purpose of registering a complaint if the parent believes the family child-care home provider is not meeting the standards;

(4) Post and provide to each parent a copy of children and parent rights, as required by KRS 199.898;

(5) Allow a parent, the cabinet, the cabinet's designee, or another agency with regulatory authority access to the family child-care home at any time a child is in care;

(6) Communicate with each child's parent about the child's:

- (a) Development;
- (b) Activities;
- (c) Likes; and
- (d) Dislikes;

(7) Make available to a parent upon request~~Post in a prominent area in the home~~;

(a) The staff to child ratios described in Section 10 of this administrative regulation;

(b) The planned program of activities;

(c) Each statement of deficiency issued by the cabinet during the current certification period;

(d) Each plan of correction submitted by the certified family child-care home to the cabinet during the current certification period; and

(e) Daily schedule including any trips outside the family child-care home;

(8) Coordinate at least one (1) annual activity involving parental or family participation;

(9) Maintain a written child care agreement with each child's parent, including the name of each person designated by the parent to pick up the child; and

(10) Report:

(a) The following to the cabinet within twenty-four (24) hours from the time of discovery:

1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

2. An accident or injury to a child that requires medical care;

3. An incident that results in legal action by or against the family child-care home that:

a. Affects:

- (i) A child in care;
- (ii) The provider;
- (iii) An assistant; or
- (iv) A member of the provider's household; or

b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud, ~~abuse, or criminal conviction related to~~ that program;

4. An incident involving fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services; or

5. A report of child abuse or neglect that:

a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

b. Names the alleged perpetrator as the:

- (i) Provider;
- (ii) Provider's assistant; or
- (ii) Member of the provider's household;
- (b) The death of a child to the cabinet within one (1) hour; ~~or~~
- (c) Temporary or permanent closure as soon as practicable to the cabinet and the parent of a child in the family child-care home; or

(d) A child care staff member meeting a disqualifying criterion or background check result in accordance with 922 KAR 2:280.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ~~["DCC-157, Certified Family Child-Care Home Central Registry Check", edition 4/13;~~

~~(b)] "OIG-DRCC-03, Initial Certification Application for Family Child-Care Home", 2018[edition 7/13]; and]~~

(b) "OIG-DRCC-04, Certified Family Child-Care Home Renewal Form", 2018; and

(c) "OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal", 2018[edition 8/3/12].

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

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.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](mailto:Laura.Begin@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for a certified family child-care home.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for certified family child-care homes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of standards for certification as a family child-care home.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a certified family child-care home.

(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 clarifies numerous provisions and eliminates others due to public comments received and agency reviews conducted as a result of the Red Tape Reduction initiative, including feeding and meal requirements and access to hygiene products. In addition, the administrative regulation assures more consistent terminology use,

clarifies due process for emergency suspensions and correction action, replaces intermediate sanctions with directed plans of correction, updates and clarifies renewal requirements, aligns the administrative regulation with the Child Care and Development Fund's 2014 federal reauthorization and other concurrent regulatory changes, requires hand-washing by staff after smoking or vaping, and incorporates epi-pen allowances authorized by 2016 Ky. Acts ch. 122. Lastly, the amendment also makes technical corrections in accordance with KRS Chapter 13A, including conforming corrections to incorporated material and notice requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to better support the health, safety, and welfare of children in care; reduce "red tape" for providers; incorporate statutory requirements and changes that have occurred since the administrative regulation's last amendment; and ensure congruency among the administrative regulations governing certified family child-care homes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by clarifying and enhancing minimum requirements to foster provider integrity and to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of certified family child-care home standards in a manner congruent with recognized practice and other provider types' standards, and supportive of integrity in the child care community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for a certified family child-care home or an existing provider will be impacted by this administrative regulation. As of last November 22, 2017, there were 263 certified family child-care homes operating in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Given the new federally mandated background check requirements applicable to certified family child-care homes, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation and be responsive to the recently enacted legislation and the Red Tape Reduction comments and agency reviews.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified family child-care homes and children in their care will benefit from the clarity and specificity provided in this administrative regulation and new permissions afforded.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858g

(2) State compliance standards. KRS 194A.050(1), 199.8982(1)(f)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.8982(1)(f), 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858g

(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 generate no 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 amendment to this administrative regulation will generate no revenue in the 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 in the first year.

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

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

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

**STATEMENT OF EMERGENCY**  
**922 KAR 2:111E**

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 and 3 to ensure implementation and enforcement of 2017 Ky Acts ch. 135 and the Child Care and Development Fund Block Grant (CCDF) as reauthorized by Public Law 114-183. In addition, the emergency administrative regulation supports more comprehensive background checks of child care staff members and reflects assessment of child care provider standards in accordance with the Red Tape Reduction effort, enhancing provider operations and better protecting the health, safety, and welfare of children in child care settings in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect background checks to comply with state and federal mandates, preserve federal award, and better protect children's health, safety, and welfare in child care settings. This emergency administrative regulation will not be replaced by an ordinary administrative regulation, because this emergency repealer will accomplish the task of permanently repealing the administrative regulation, 922 KAR 2:110.

MATTHEW G. BEVIN, Governor  
SCOTT W. BRINKMAN, Acting Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Care**  
**(Emergency Repealer)**

**922 KAR 2:111E. Repeal of 922 KAR 2:110.**

RELATES TO: KRS 199.892-199.8996

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

EFFECTIVE: February 14, 2018

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 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This administrative regulation repeals 922 KAR 2:110, Child-care center provider requirements. The relevant content of 922 KAR 2:110 shall be incorporated within concurrent amendment to 922 KAR 2:090.

Section 1. 922 KAR 2:110, Child-care center provider requirements, is hereby repealed.

ADRIA JOHNSON, Commissioner  
SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 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-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov), and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 922 KAR 2:110, Child-care center provider requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 922 KAR 2:110 due to its relevant content being consolidated within 922 KAR 2:090 through concurrent amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The only purpose of this administrative regulation is to repeal 922 KAR 2:110.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The only purpose of this administrative regulation is to repeal 922 KAR 2:110.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of November 22, 2017, there were 1,980 Kentucky licensed child-care centers, both Type I and Type II.

(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: Content from 922 KAR 2:110 remaining relevant will be incorporated into a concurrent amendment to 922 KAR 2:090.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The current content of 922 KAR 2:110 has been reorganized in 922 KAR 2:090, which should enhance clarity and ease in reference.

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

(a) Initially: There are no new or additional costs associated with this repealer.

(b) On a continuing basis: There are no new or additional costs associated with this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of child-care center licensure.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2, 42 U.S.C. 601-619, 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2), (6)

(3) Minimum or uniform standards contained in the federal mandate. The only purpose of this administrative regulation is to repeal 922 KAR 2:110.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The only purpose of this administrative regulation is to repeal 922 KAR 2:110.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The only purpose of this administrative regulation is to repeal 922 KAR 2:110.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation. Local governments and school districts that operate a licensed child-care center, in whole or in part, will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), (6), 45 C.F.R. 98.2, 42 U.S.C. 601-619, 42 U.S.C. 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? This repealer will generate no revenue.

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

(c) How much will it cost to administer this program for the first year? This repealer creates no new cost in the initial year.

(d) How much will it cost to administer this program for subsequent years? This repealer creates no new cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY 922 KAR 2:120E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 and 3 to ensure implementation and enforcement of 2017 Ky Acts ch. 135 and the

Child Care and Development Fund Block Grant (CCDF) as reauthorized by Public Law 114-183. In addition, the emergency administrative regulation supports more comprehensive background checks of child care staff members, improved access to emergency medications for children in care, and reflects assessment of child care provider standards in accordance with the Red Tape Reduction effort, enhancing provider operations and better protecting the health, safety, and welfare of children in child care settings in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect background checks to comply with state and federal mandates, preserve federal award, and better protect children's health, safety, and welfare in child care settings. 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

SCOTT W. BRINKMAN, Acting Secretary

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Emergency Amendment)

#### 922 KAR 2:120E. Child-care center health and safety standards.

RELATES TO: KRS Chapter 151, 158.030, Chapter 186, 189.125, 199.011(3), 199.894(1), 199.896(2), (18), (19), 199.898, 211.350-211.380, Chapter 217, 227.220, 311.646, Chapter 318, 314.011(5), 527.070(1), 620.030, 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

EFFECTIVE: February 14, 2018

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 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This administrative regulation establishes health and safety standards for child-care centers.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(2) "Corporal physical discipline" is defined by KRS 199.896(18).

(3) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(4) "Director" means an individual:

(a) Who meets the education and training requirements as specified in 922 KAR 2:090[2:110], Section 10[4];

(b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:280[922 KAR 2:110], and this administrative regulation; and

(c) Who is responsible for directing the program and managing the staff at the child-care center.

(5) "Health professional" means a person currently licensed as a:

(a) Physician;

(b) Physician[Physician's] assistant;

(c) Advanced practice registered nurse[practitioner]; or

(d) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(6) "Infant" means a child who is less than twelve (12) months of age.

(7) "Licensee" means the owner or[and] operator of a child-care center to include:



- (a) Sole proprietor;
- (b) Corporation;
- (c) Limited liability company;
- (d) Partnership;
- (e) Association; or
- (f) Organization, such as:
  - 1. Board of education;
  - 2. Private school;
  - 3. Faith-based organization;
  - 4. Government agency; or
  - 5. Institution.
- (8) "Nontraditional hours" means the hours of:
  - (a) 7 p.m. through 5 a.m. Monday through Friday; or
  - (b) 7 p.m. on Friday until 5 a.m. on Monday.
- (9) "Parent" is defined in 45 C.F.R. 98.2.
- (10) "Premises" means the building and contiguous property in which child care is licensed.
- (11) "Preschool-age" means a child who is older than a toddler and younger than school-age.
- (12) "Protective surface" means loose surfacing material not installed over concrete, which includes the following:
  - (a) Wood mulch;
  - (b) Double shredded bark mulch;
  - (c) Uniform wood chips;
  - (d) Fine sand;
  - (e) Coarse sand;
  - (f) Pea gravel, except for areas used by children under three (3) years of age;
  - (g) Certified shock absorbing resilient material; or
  - (h) Other material approved by the cabinet or designee.
- (13) "Related" means having one (1) of the following relationships with the operator of the child-care center:
  - (a) Child;
  - (b) Grandchild;
  - (c) Niece;
  - (d) Nephew;
  - (e) Sibling;
  - (f) Stepchild; or
  - (g) Child in legal custody of the operator.
- (14) "School-age child" means a child who meets the age requirements of KRS 158.030 or who attends~~attending~~ kindergarten, elementary, or secondary education.
- (15) "Toddler" means a child between the age of twelve (12) months and thirty-six (36)~~twenty-four (24)~~ months.
- (16) "Transition" means the changing from one (1) child care arrangement to another.
- (17) "Transition plan" means a document outlining the process to be used in moving a child from one (1) child care arrangement to another.
- (18) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:
  - (a) Four (4) or more children in a nonresidential setting; or
  - (b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.
- (19) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Child Care Services. (1) Services described in this administrative regulation shall be maintained during all hours of operation that child care is provided.

(2) Minimum staff-to-child ratios and group size for an operating child-care center shall be maintained as follows:

| Age of Children                | Ratio                  | Maximum Group Size* |
|--------------------------------|------------------------|---------------------|
| Infant                         | 1 staff for 5 children | 10                  |
| Toddler <u>12 to 24 months</u> | 1 staff for 6 children | 12                  |

|  |   |    |
|--|---|----|
| <u>Toddler 24 to 36 months</u> <del>Preschool-age 2 to 3 years</del> | 1 staff for 10 children                               | 20 |
| Preschool-age 3 to 4 years   | 1 staff for 12 children                               | 24 |
| Preschool-age 4 to 5 years   | 1 staff for 14 children                               | 28 |
| School-age 5 to 7 years  | 1 staff for 15 children                               | 30 |
| School-age 7 and older   | 1 staff for 25 children (for before and after school) | 30 |
|  | 1 staff for 20 children (full day of care)            | 30 |

\*Maximum Group Size shall be applicable only to Type I child-care centers.

(a) In a Type I child-care center, a group size shall:

- 1. Be separately maintained in a defined area unique to the group; and
  - 2. Have specific staff assigned to, and responsible for, the group.
- (b) The age of the youngest child in the group shall determine the:

- 1. Staff-to-child ratio; and
- 2. Maximum group size.

(c) This subsection and subsection (9) of this section shall not apply during normal school hours to a center:

- 1. Providing early childhood education to mixed-age groups of children whose ages range from two and one-half (2 1/2) years to six (6) years; and

2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.

(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.

(3)(a) Each center shall maintain a child-care program that assures each child will be:

1. Provided with adequate supervision at all times by a qualified staff person who ensures the child is:

- a. Within scope of vision and range of voice; or
- b. For a school-age child, within scope of vision or range of voice; and

2. Protected from abuse or neglect.

(b) The program shall include:

1. A procedure to ensure compliance with and inform child care staff of the laws of the Commonwealth pertaining to child abuse or neglect set forth in KRS 620.030; and

2. Written policy that specifies that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.

(4) The child-care center shall provide a daily planned program:

(a) Posted in writing in a conspicuous location with each age group and followed;

(b) Of activities that are individualized and developmentally appropriate for each child served;

(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) Unless the child-care center is a before- or after-school program that operates part day or less, that offers a variety of creative activities including the following:

- 1. Art or music;
- 2. Math or numbers~~Music~~;
- 3. Dramatic play;
- 4. Stories and books;
- 5. Science or nature;
- 6. Block building or stacking;
- 7. Tactile or sensory activity;
- 8. Multi-cultural exposure~~Culture~~;
- 9. Indoor or outdoor play in which a child makes use of both small and large muscles;



10. A balance of active and quiet play, including group and individual activity;

11. An opportunity for a child to:

- Have some free choice of activities;
- If desired, play apart from the group at times; and
- Practice developmentally appropriate self-help procedures in respect to:
  - Clothing;
  - Toileting;
  - Hand-washing; and
  - Eating; and

12. Use of electronic viewing and listening devices if the:

- Material is appropriate to the child using the equipment;
- Material does not include any violence, adult content viewing, or inappropriate language;
- Viewing or individual listening is limited to two (2) hours per day;
- Viewing or listening is discussed with parents prior to viewing or listening; and
- Viewing or listening is designed as an educational tool.

(5) A child who does not wish to use the electronic devices during the planned program shall be offered other appropriate activities.

(6) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.

(7) Sufficient time shall be allowed for an activity so that a child may progress at their own developmental rate.

(8) A child shall not be required to stand or sit for a prolonged period of time:

- During an activity;
- While waiting for an activity to start; or
- As ~~discipline~~[punishment].

(9) If school-age care is provided:

- A separate area or room shall be provided in a Type I child-care center; and
- Each child shall be provided a snack after school.

(10) A child shall not be subjected to:

- Corporal physical discipline pursuant to KRS 199.896(18);
- Loud, profane, threatening, frightening, humiliating, or abusive language; or
- Discipline that is associated with:
  - Rest;
  - Toileting; or
  - Food.

(11) If nontraditional hours of care are provided:

- Including time spent in school, a child shall not be permitted to spend more than sixteen (16) hours in the child-care center during one (1) twenty-four (24) hour period;
- At least one (1) staff member shall be assigned responsibility for each sleeping room;
- A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity that is developmentally appropriate for the child;
- A child sleeping three (3) hours or more shall sleep in:
  - Pajamas; or
  - A nightgown;
- If a child attends school from the child-care center, the child shall be offered breakfast; and
- Staff shall:
  - If employed by a Type I child-care center, remain awake while on duty; or
  - If employed by or is the operator of a Type II child-care center, remain awake until every child in care is asleep.

(12)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 3. General Requirements. (1) Electronic viewing and listening devices shall only be used in the center as a part of the child's planned program of activity described in Section 2(4) of this

administrative regulation.

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity can be given adequate supervision by staff.

(3) Computer equipment shall be equipped with a monitoring device which limits access by a child to items inappropriate for a child to view or hear.

(4) A child shall:

(a) Be helped with personal care and cleanliness based upon their developmental skills; ~~and~~

(b) Wash his or her hands with liquid soap and warm running water:

- Upon arrival at the center; or
- Within thirty (30) minutes of arrival for school-age children;
- Before and after eating or handling food;
- After toileting or diaper change;
- After handling animals;
- ~~After wiping or blowing nose;~~
- After touching an item or an area of the body~~[items]~~ soiled with body fluids or wastes; and
- ~~After outdoor or indoor play time; and~~

(c) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (b) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.

(5) Staff shall:

- Maintain personal cleanliness;
- Conform to hygienic practices while on duty; ~~and~~
- Wash their hands with liquid soap and running water:

- Upon arrival at the center;
- After toileting or assisting a child in toileting;
- Before and after diapering each child;
- After wiping or blowing a child's or own nose;
- After handling animals;
- After caring for a sick child;
- Before and after feeding a child or eating;
- Before dispensing medication;~~and~~
- ~~After smoking or vaping; and~~
- If possible, before administering first aid; and
- Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (c) of this subsection. The staff shall wash the staff's hands as soon as practicable once liquid soap and warm running water are available.

(d) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (c) of this subsection. The staff shall wash the staff's hands as soon as practicable once liquid soap and warm running water are available.

(6) A staff person suspected of being infected with a communicable disease shall:

(a) Not perform duties that may allow for the transmission of the disease until the infectious condition can no longer be transmitted; and

(b) Provide a statement from a health professional, if requested.

~~(7)[Except in accordance with subsection (8) of this section,] The following shall be inaccessible to a child in care:~~

- Toxic cleaning supplies, poisons, and insecticides;
- ~~[Knives and sharp objects;~~
- ~~Matches, cigarettes, lighters, and flammable liquids; and~~
- ~~(d) Plastic bags;~~
- ~~Litter and rubbish;~~
- ~~Bar soap; and~~
- ~~Personal belongings and medications of staff.~~

(8) The following shall be inaccessible to a child in care unless under direct supervision and part of planned program of instruction:

- Knives and sharp objects;
- Litter and rubbish;~~and~~
- Bar soap; and
- Plastic bags not used for personal belongings.

(9) In accordance with KRS 527.070(1), firearms and ammunition shall be stored separately in a locked area outside of the designated child care area.

(10) Smoking or vaping shall:

- Be permitted in accordance with local ordinances;
- Be allowed only in outside designated areas; and

(c) Not be permitted in the presence of a child.

(11) While bottle feeding a child~~[an infant]~~, the:

(a) Child shall be held; and

(b) Bottle or beverage container shall not be:

1. Propped;

2. Left in the mouth of a sleeping child~~[infant]~~; or

3. Heated in a microwave.

(12) A fire drill shall be:

(a) Conducted during hours of operation at least monthly; and

(b) Documented.

(13) An earthquake drill and a tornado drill shall be:

(a) Conducted during hours of operation at least quarterly; and

(b) Documented.

Section 4. Premises Requirements. (1) The premises shall be:

(a) Suitable for the purpose intended;

(b) Kept clean and in good repair; and

(c) Equipped with:

1. A working~~[land-line]~~ telephone accessible to a room used by a child; and

2. A list of emergency numbers posted by the telephone or maintained in the telephone's contact, including numbers for the:

a. Police;

b. Fire station;

c. Emergency medical care and rescue squad; and

d. Poison control center.

(2) A child-care center shall be in compliance with the State Fire Marshal and the local zoning laws.

(3) Fire and emergency exits shall be kept clear of debris.

(4) A working carbon monoxide detector shall be required in a licensed child-care center that is in a home if the home:

(a) Uses fuel burning appliances; or

(b) Has an attached garage.

(5) The building shall be constructed to ensure the:

(a) Building is:

1. Dry;

2. ~~Adequately heated;~~

3. ~~Ventilated;~~ and

3. ~~4.~~ Well lit, including clean light fixtures that are:

a. In good repair in all areas; and

b. Shielded or have shatter-proof~~[shattered-proof]~~ bulbs installed; and

(b) Following are protected:

1. Windows;

2. Doors;

3. Stoves;

4. Heaters;

5. Furnaces;

6. Pipes; and

7. Stairs.

(6) Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child.

(7) Measures shall be utilized to control the presence of:

(a) Rodents;

(b) Flies;

(c) Roaches; and

(d) Other vermin.

(8) An opening to the outside shall be effectively protected against the entrance of vermin by:

(a) Self-closing doors;

(b) Closed windows;

(c) Screening;

(d) Controlled air current; or

(e) Other effective means.

(9) Floors, walls, and ceilings shall be smooth, in good repair, and constructed to be easily cleaned.

(10) The water supply shall be:

(a) Potable;

(b) Protected from contamination;

(c) Adequate in quality and volume;

(d) Under sufficient pressure to permit unrestricted use; and

(e) Obtained from an approved public water supply or a source

approved by the local health department.

(11) Groundwater supplies for a child-care center caring for:

(a) More than twenty-five (25) children shall meet the specifications of the Energy and Environment Cabinet~~[for Environmental and Public Protection]~~ Division of Water~~[.]~~ established in KRS Chapter 151; or

(b) Twenty-five (25) children or less shall secure approval from the:

1. Energy and Environment Cabinet~~[for Environmental and Public Protection]~~; or

2. Local health department.

(12) Sewage shall be properly disposed by a method approved by the:

(a) Energy and Environment Cabinet~~[for Environmental and Public Protection]~~; or

(b) Cabinet.

(13) All plumbing shall comply with the State Plumbing Code established in KRS Chapter 318.

(14) Solid waste shall be kept in a suitable receptacle in accordance with local, county and state law, as governed by KRS 211.350 to 211.380.

(15) If a portion of the building is used for a purpose other than child care:

(a) Necessary provisions shall be made to avoid interference with the child-care program; and

(b) A separate restroom shall be provided for use only by those using the building for its child care purpose.

(16) The temperature of the inside area of the premises shall be sixty-five (65) to eighty-two (82) degrees Fahrenheit:

(a) ~~Sixty-five (65) to seventy-five (75) degrees Fahrenheit during the winter; or~~

(b) ~~Sixty-eight (68) to eighty-two (82) degrees Fahrenheit during the summer months.~~

(17) Outdoor activity shall be restricted based upon:

(a) Temperature;

(b) Weather conditions; or

(c) Weather alerts, advisories, and warnings issued by the National Weather Service.

(18) A kitchen shall not be required if:

(a) The only food served is an afternoon snack to school-age children; and

(b) Adequate refrigeration is maintained.

(19) The Department of Housing, Buildings and Construction, State Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.

(20) An outdoor play area shall be:

(a) Except for an after-school child-care program~~[.]~~ located on the premises of a public or state-accredited nonpublic school~~[.]~~ ~~[and]~~ fenced for the safety of the children;

(b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;

(c) Free from:

1. Litter;

2. Glass;

3. Rubbish; and

4. Flammable materials;

(d) Safe from foreseeable hazard;

(e) Well drained;

(f) Well maintained;

(g) In good repair; and

(h) Visible to staff at all times.

(21) A protective surface shall:

(a) Be provided for outdoor play equipment used to:

1. Climb;

2. Swing; and

3. Slide; and

(b) Have a fall zone equal to the height of the equipment.

(22) If a child-care center does not have access to an outdoor play area, an indoor space shall:

(a) Be used as a play area;

(b) Have a minimum of sixty (60) square feet per child,

separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;

(c) Include equipment for gross motor skills; and

(d) ~~Be well-ventilated;~~

(e) ~~Be heated; and~~

(f) Have a protective surface of at least two (2) inches thick around equipment intended for climbing.

(23) Fences shall be:

(a) Constructed of safe material;

(b) Stable; and

(c) In good condition.

(24) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.

(25) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.

(26) A sandbox shall be:

(a) Constructed to allow for drainage;

(b) Covered when not in use;

(c) Kept clean; and

(d) Checked for vermin prior to use.

(27) Bodies of water that shall not be utilized include:

(a) Portable wading pools;

(b) Natural bodies of water; and

(c) Unfiltered, nondisinfected containers.

(28) A child-care center shall have enough toys, play apparatus, and developmentally appropriate materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.

(29) Storage space shall be provided:

(a) In the form of:

1. Shelves; or

2. Other storage device accessible to the children; and

(b) In sufficient quantity for each child's personal belongings.

(30) Supplies shall be stored so that the adult can reach them without leaving a child unattended.

Section 5. Infant and Toddler Play Requirements. (1) Infant and toddler inside areas shall:

(a) Be separate from an area used by an older child;

(b) Not be an exit or entrance; and

(c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.

(2) Except in accordance with subsection (3) of this section or Section 2(2)(c) of this administrative regulation, an infant or toddler shall not participate in an activity with an older child for more than one (1) hour per day.

(3) A toddler may participate in an activity with an older child for more than one (1) hour per day if:

(a) The toddler is in transition to the pre-school age group;

(b) The toddler is thirty-two (32)~~twenty-one (21)~~ months or older;

(c) Space for the toddler is available in the preschool-age group;

(d) The staff-to-child ratios and group sizes are maintained based on the age of the youngest child;

(e) The center has a procedure for listing a transitioning toddler on attendance records, including a specific day and time the toddler is with either age group; and

(f) The child care center has obtained the signature and approval of the toddler's parent on the toddler's transition plan.

(4) If a child-care center provides an outdoor play area for an infant or toddler, the outdoor area shall be:

(a) Shaded; and

(b) A separate area or scheduled at a different time than an older child.

(5) Playpens and play yards shall:

(a) Meet federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;

(b) Be manufactured for commercial use; and

(c) Not be used for sleeping or napping.

Section 6. Sleeping and Napping Requirements. (1) An infant shall sleep or nap on the infant's back unless the infant's health

professional signs a waiver that states the infant requires an alternate sleeping position.

(2) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(3) Rest time shall include adequate space specified by the child's age as follows:

(a) For an infant:

1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;

2. A firm crib mattress in good repair with a clean tight-fitted sheet that shall be changed:

a. Weekly; or

b. Immediately if it is soiled or wet;

3. No loose bedding, such as a bumper or a blanket; and

4. No toys or other items except the infant's pacifier; or

(b) For a toddler or preschool-age child:

1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and

2. Bedding that is in good repair and is changed:

a. Weekly; or

b. Immediately if it is soiled or wet.

(4) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending the child-care center during nontraditional hours.

(5) A child who does not sleep shall be permitted to play quietly and shall be visually supervised.

(6) Cots, equipment, and furnishings used for sleeping and napping shall be spaced twelve (12) inches apart to allow free and safe movement by a person.

(7) If cots or mats are used, floors shall be free from:

(a) Drafts;

(b) Liquid substances;

(c) Dirt; and

(d) Dampness.

(8) ~~(a)~~ Cots or mats not labeled for individual use by a child shall be disinfected~~[sanitized]~~ after each use.

(b) Cots or mats labeled for individual use by a child shall be disinfected:

1. At least weekly; or

2. Immediately if it is soiled or wet.

(9) Individual bedding shall be stored in a sanitary manner.

Section 7. First Aid and Medicine. (1) First aid supplies shall:

(a) Be available to provide prompt and proper first aid treatment;

(b) Be stored out of reach of a child;

(c) Be periodically inventoried to ensure the supplies have not expired~~[are current]~~;

(d) If reusable, be:

1. Sanitized; and

2. Maintained in a sanitary manner; and

(e) Include:

1. Liquid soap;

2. Adhesive bandages;

3. Sterile gauze;

4. Medical tape;

5. Scissors;

6. A thermometer;

7. Flashlight;

8. Cold pack;

9. First aid book;

10. Disposable gloves; and

11. A cardiopulmonary resuscitation mouthpiece protector.

(2) A child showing signs of an illness or condition that may be communicable shall not be admitted to the regular child-care program.

(3) If a child becomes ill while at the child-care center:

(a) The child shall be placed in a supervised area isolated from the rest of the children;

(b) The parent shall be contacted immediately; and

(c) Arrangements shall be made to remove the child from the child-care center as soon as practicable.

(4) Prescription and nonprescription medication shall be

administered to a child in care:

(a) 1. With a [daily] written request of the child's parent or the child's prescribing health professional; and

2. [(b)] According to the directions or instructions on the medication's label; or

(b) In accordance with KRS 311.646.

(5) The child-care center shall keep a written record of the administration of medication, including:

(a) Time of each dosage;

(b) Date;

(c) Amount;

(d) Name of staff person giving the medication;

(e) Name of the child; and

(f) Name of the medication.

(6) Medication, including refrigerated medication, shall be:

(a) Stored in a separate and locked place, out of the reach of a child unless the medication is:

1. A first aid supply and is maintained in accordance with subsection (1) of this section;

2. Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child;

3. An epinephrine auto-injector. In accordance with KRS 199.8951:

a. An epinephrine auto-injector shall be inaccessible to a child;

b. A child-care center shall have at least one (1) person onsite who has received training on the administration of an epinephrine auto-injector if the child-care center maintains an epinephrine auto-injector;

c. A child-care center shall seek emergency medical care for a child if an auto-injector is administered to the child; and

d. A child-care center shall report to the child's parent and the cabinet in accordance with 922 KAR 2:090, Section 12(1)(b) if an epinephrine auto-injector is administered to a child; or

4. An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care;

(b) Kept in the original bottle; and

(c) Properly labeled.

(7) Medication shall not be given to a child if the medication's expiration date[~~on the bottle~~] has passed.

Section 8. Kitchen Requirements. (1) The kitchen shall:

(a) Be clean;

(b) Be equipped for proper food:

1. Preservation;

2. Storage;

3. Preparation; and

4. Service;

(c) Be adequately ventilated to the outside air; and

(d) Except in a Type II child-care center when a meal is not being prepared, not be used for the activity of a child.

(2) A child-care center required to have a food service permit shall be in compliance with 902 KAR 45:005 and this administrative regulation.

(3) Convenient and suitable sanitized utensils shall be:

(a) Provided; and

(b) Used to minimize handling of food during preparation.

(4) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:

(a) Have an indicating thermometer or other appropriate temperature measuring device;

(b) Be in a safe environment for preservation; and

(c) Be forty (40) degrees Fahrenheit or below.

(5) Frozen food shall be:

(a) Kept at a temperature of zero degrees Fahrenheit or below; and

(b) Thawed:

1. At refrigerator temperatures;

2. Under cool, potable running water;

3. As part of the cooking process; or

4. By another method in accordance with the Department of Public Health's food safety standards and permits, established in

KRS Chapter 217.

(6) Equipment, utensils, and surfaces contacting food shall be:

(a) Smooth;

(b) Free of breaks, open seams, cracks, and chips;

(c) Accessible for cleaning; and

(d) Nontoxic.

(7) The following shall be clean and sanitary:

(a) Eating and drinking utensils;

(b) Kitchenware;

(c) Food contact surfaces of equipment;

(d) Food storage utensils;

(e) Food storage containers;

(f) Cooking surfaces of equipment; and

(g) Nonfood contact surfaces of equipment.

(8) A single-service item shall be:

(a) Stored;

(b) Handled and dispensed in a sanitary manner; and

(c) Used only once.

(9) Bottles shall be:

(a) Individually labeled;

(b) Promptly refrigerated;

(c) Covered when not in use; and

(d) Consumed within one (1) hour of being heated or removed from the refrigerator.

Section 9. Food and Meal Requirements. (1) Food shall be:

(a) Clean;

(b) Free from:

1. Spoilage;

2. Adulteration; and

3. Misbranding;

(c) Safe for human consumption;

(d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;

(e) Obtained from a source that is in compliance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217;

(f) Acceptable if from an established commercial food store;

(g) Served in a quantity that is developmentally appropriate for the child with additional portions provided upon request of the child; and

(h) Protected against contamination from:

1. Dust;

2. Flies;

3. Rodents and other vermin;

4. Unclean utensils and work surfaces;

5. Unnecessary handling;

6. Coughs and sneezes;

7. Cuts in skin;

8. Communicable disease;

9. Flooding;

10. Drainage; and

11. Overhead leakage.

(2) Food shall not be:

(a) Used for reward;

(b) Used for discipline;

(c) Withheld until all other foods are consumed; or

(d) Served while viewing electronic devices.

(3) A serving of milk shall consist of:

(a) Breast milk or iron-fortified formula for a child;

1. Age birth to twelve (12) months; or

2. Beyond twelve (12) months of age as documented by the parent or the child's physician;

(b) Pasteurized whole milk for children ages twelve (12) months to twenty-four (24) months; or

(c) Pasteurized low fat one (1) percent or fat-free skim milk for children ages twenty-four (24) months to school-age.

(4) Formula or breast milk provided by the parent shall be prepared and labeled.

(5) A child-care center may participate in the Child and Adult Care Food Program (CACFP).

(6) A serving of bread shall only consist of whole or enriched grain.

(7) Drinking water shall be freely available to a child throughout the day.

(8) Food shall be stored on:

- Clean racks;
- Clean shelves;
- Other clean surfaces; or
- If maintained in a sanitary condition, in nonabsorbent labeled containers a minimum of six (6) inches off the floor.

(9) Fruits and vegetables shall be washed before cooking or serving.

(10) Meat salads, poultry salads, and cream-filled pastries shall be:

- Prepared with utensils that are clean; and
- Refrigerated unless served immediately.

(11) An individual portion of food served to a child or adult shall not be served again.

(12) Wrapped food that is still wholesome and has not been unwrapped may be reserved.

(13) Meals shall be:

- Served every two (2) to three (3) hours; and
- Served to a child:

- Seated with sufficient room to manage food and tableware; and
- Supplied with individual eating utensils designed for use by a child.

(14) All children shall be offered the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.

(15) A child-care center shall serve:

- Breakfast; or
- A mid-morning snack;
- Lunch; or
- A mid-afternoon snack; and
- If appropriate, dinner.

(16) A weekly menu shall be:

- Prepared;
- Dated;
- Posted in advance in a conspicuous place;
- Kept on file for thirty (30) days; and
- Amended in writing with any substitutions on the day the meal is served.

(17) Breakfast shall include:

- Milk;
- Bread; and
1. Fruit;
- Vegetable; or
- 100 percent juice.

(18) A snack shall include two (2) of the following:

- Milk;
- Protein;
- Bread; or
1. Fruit;
- Vegetable; or
- 100 percent juice.

(19) Lunch and dinner shall include:

- Milk;
- Protein;
- Bread; and
1. Two (2) vegetables;
- Two (2) fruits; or
- One (1) fruit and one (1) vegetable.

(20) A child-care center shall meet requirements of subsections (3), (15), and (17) through (19) of this section if the child-care center participates in the Child and Adult Food Care Program and meets meal requirements specified in 7 C.F.R. 226.20.

Section 10. Toilet, Diapering, and Toiletry Requirements. (1) A child-care center shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male

toilet room.

(2) A toilet room shall:

- Be provided for each gender; or
- A plan shall be implemented to use the same toilet room at separate times;
- Have a supply of toilet paper; and
- Be cleaned and disinfected[sanitized] daily.

(3) A sink shall be:

- Located in or immediately adjacent to toilet rooms;
- Equipped with hot and cold running water that allows for hand washing;
- Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;
- Equipped with liquid soap;
- Equipped with hand-drying blower or single use disposable hand drying material;
- Equipped with an easily cleanable waste receptacle; and
- Immediately adjacent to a changing area used for infants and toddlers.

(4) Each toilet shall:

- Be kept in clean condition;
- Be kept in good repair;
- Be in a lighted room; and
- Have ventilation to outside air.

(5) Toilet training shall be coordinated with the child's parent.

(6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(7) If a toilet training chair is used, the chair shall be:

- Used over a surface that is impervious to moisture;
- Out of reach of other toilets or toilet training chairs;
- Emptied promptly; and
- Disinfected[Sanitized] after each use.

(8) Diapers or clothing shall be:

- Changed when soiled or wet;
- Stored in a covered container temporarily; and
- Washed or disposed of at least once a day.

(9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.

(10) When a child is diapered, the child shall:

- Not be left unattended; and
- Be placed on a surface that is:

- Clean;
- Padded;
- Free of holes, rips, tears, or other damage;
- Nonabsorbent;
- Easily cleaned; and
- Free of any items not used for diaper changing.

(11) Unless allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.

(12) Staff shall disinfect the diapering surface after each child is diapered.

(13) If staff wears disposable gloves, the gloves shall be changed and disposed after each child is diapered.

(14) Combs, towels or washcloths, brushes, and toothbrushes used by a child shall be:

- Individually stored in separate containers; and
- Plainly labeled with the child's name.

(15) Toothbrushes shall be:

- Individually identified;
- Allowed to air dry; and
- Protected from contamination.

(16) Toothpaste used by multiple children shall be dispensed onto an intermediate surface, such as waxed paper, to avoid cross contamination.

Section 11. Toys and Furnishings. (1) All toys~~[-equipment,]~~ and furniture contacted by a child shall be:

- Kept clean and in good repair; and
- Free of peeling, flaking, or chalking paint.

(2) Indoor and outdoor equipment shall:

- Be clean, safe, and in good repair;
- Meet the physical, developmental needs, and interests of

children of different age groups;

(c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint; and

(d) Be designed to guard against entrapment or situations that may cause strangulation.

(3) Toys shall be:

(a) Used according to the manufacturer's safety specifications;

(b) Durable; and

(c) Without sharp points or edges.

(4) ~~A toy or another item that is~~[Toys and other items that are] considered a mouth contact surface~~[surfaces]~~ by a child not toilet trained shall be sanitized daily by:

(a) 1. Scrubbing in warm, soapy water using a brush to reach into crevices;

2.~~[(b)]~~ Rinsing in clean water;

3.~~[(c)]~~ Submerging in a sanitizing solution for at least two (2) minutes; and

4.~~[(d)]~~ Air dried; or

(b) Cleaning in a dishwasher if the toy or other item is dishwasher safe.

(5) Tables and chairs shall be of suitable size for children.

(6) Chairs appropriate for staff shall be provided to use when feeding, holding, or playing with a child.

Section 12. Transportation. (1) A center shall document compliance with KRS Chapter 186 and 603 KAR 5:072 pertaining to:

(a) Vehicles;

(b) Drivers; and

(c) Insurance.

(2) A center providing or arranging transportation service shall:

(a) Be licensed and approved by the cabinet or its designee prior to transporting a child;

(b) Have a written plan that details the type of transportation, staff schedule, transportation schedule, and transportation route; and

(c) Have written policies and procedures, including emergency procedures practiced monthly by staff who transports children.

(3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of the:

(a) Type of transportation offered;

(b) Type of vehicle used for transportation;

(c) Plan for ensuring staff perform duties relating to transportation properly;

(d) Full insurance coverage for each vehicle;

(e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle;

(f) Contracts, agreements, or documents detailing arrangements with any third party for services; and

(g) Safety procedures for:

1. Transporting a child;

2. Loading and unloading a child; and

3. Providing adequate supervision of a child.

(4) A vehicle used to transport children shall be equipped with:

(a) A fire extinguisher;

(b) First aid supplies as described in Section 7 of this administrative regulation;

(c) Emergency reflective triangles; and

(d) A device to cut the restraint system, if necessary.

(5) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this section.

(6) A vehicle used to transport children shall meet the following requirements:

(a) ~~For a twelve (12) or more passenger vehicle, the child-care center shall maintain~~[display] a current certification of inspection from the Transportation Cabinet~~[on the designated window]~~.

(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:

1. Signal lamps;

2. Identifying colors; and

3. Cautionary words.

(c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.

(d) A vehicle shall not transport children and hazardous materials at the same time.

(7) The appropriate car safety seat meeting federal and state motor vehicle safety standards in 49 C.F.R. 571.213 and KRS 189.125 shall be used for each child.

(8) A daily inspection of the vehicle shall be performed prior to the vehicle's use and documented for the following:

(a) Tire inflation consistent with tire manufacturer's recommended air pressure~~[Tires]~~;

(b) Working lights, signals, mirrors, gauges, and wiper blades;

(c) Working safety restraints;

(d) Adequate fuel level; and

(e) Cleanliness and good repair~~[free of debris]~~.

(9)(a) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.

(b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).

(10) Each child shall:

(a) Have a seat;

(b) Be individually belted or harnessed in the seat; and

(c) Remain seated while the vehicle is in motion.

(11) A child shall not be left unattended:

(a) At the site of aftercare delivery; or

(b) In a vehicle.

(12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be picked up.

(13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.

(14) A vehicle transporting a child shall have the headlamps on.

(15) If a vehicle needs to be refueled, it shall be refueled when not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(16) If the driver is not in the driver's seat, the:

(a) Engine shall be turned off;

(b) Keys shall be removed; and

(c) Emergency brake shall be set.

(17) Transportation services provided shall:

(a) Be recorded in writing and include:

1. The first and last name of the child transported; and

2. The time each child gets on and the time each child gets off;

(b) Be completed by a staff member other than the driver; and

(c) Be kept for five (5) years.

(18) A driver of a vehicle transporting a child for a center shall:

(a) Be at least twenty-one (21) years old;

(b) Complete:

1. The background checks as described in 922 KAR 2:280~~[2:140]~~; and

2. An annual check of the:

a. Kentucky driver history records in accordance with KRS 186.018; or

b. Driver history records through the state transportation agency that issued the driver's license;

(c) Hold a current driver's license which has not been suspended or revoked during the last five (5) years; and

(d) Not caused an accident which resulted in the death of a person.

(19) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(20)(a) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall revoke a center's privilege to transport a child or pursue an adverse action in accordance with Section 14, 15, 16, or ~~17~~[9, 40, 41, or 42] of 922 KAR 2:090:

1. For a violation of this section; or

2. If the center:

a. Fails to report an accident in accordance with 922 KAR 2:090[2:140], Section 12[6]; or

b. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

(b) Revocation of a center's privilege to provide transportation services in accordance with paragraph (a) of this subsection shall:

1. Apply to each site listed under the licensee; and

2. Remain effective for no less than a twelve (12) month period.

(21) A parent may use the parent's vehicle to transport the parent's child during a field trip.

Section 13. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

1. The animal is under the supervision and control of an adult;

2. Written parental consent has been obtained; and

3. The animal is certified as vaccinated against rabies; or

(b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a child-care center unless the animal is:

(a) A part of a planned program activity led[lead] by an animal specialist affiliated with a zoo or nature conservatory; and

(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

(4) This section shall not apply to wild animals on the outer property of the child-care center which are expected to be found outdoors, such as squirrels and birds, if they are not:

(a) Disturbed; or

(b) Brought indoors.

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.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](mailto:Laura.Begin@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov), and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes health and safety standards for child-care centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards regarding health and safety for child-care centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing minimum health and safety standards for child-care centers as condition of their licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the health and safety standards for child-care centers.

(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 clarifies numerous provisions and eliminates others due to public comments received and agency reviews conducted as a result of the Red Tape Reduction initiative, including feeding and meal requirements, multi-aged children in a classroom, and access to hygiene and health products. In addition, the administrative regulation assures more consistent terminology use, aligns the

administrative regulation with the Child Care and Development Fund's 2014 reauthorization and other concurrent regulatory changes, requires hand-washing by staff after smoking and vaping, and incorporates epi-pen allowances authorized by 2016 Ky Acts ch. 122. Lastly, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to clarify health and safety requirements of licensed child-care centers, make the administrative regulations governing licensed child-care centers congruent, and be responsive to provider and agency inputs resulting from the Red Tape Reduction initiative.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorized statutes by further clarifying and specifying health and safety standards for licensed child-care centers.

(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 provision of enhanced health and safety measures for licensed child care providers in a manner responsive to recent context, congruent with recognized practice, and supportive of integrity in the child care community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of November 22, 2017, there were 1,980 Kentucky licensed child-care centers, both Type I and Type II.

(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: Given the new federally mandated background check requirements applicable to licensed child-care centers, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation and be responsive to the recently enacted legislation and the Red Tape Reduction comments and agency reviews.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will impose no new or additional cost on providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed child-care centers and children in their care will benefit from the clarity and specificity provided in this administrative regulation and new permissions afforded.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any ongoing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? This administrative regulation does not establish any fees, or directly or indirectly increased any fees.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, 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, 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 is impacted by this administrative regulation. A local government or a school district operating a licensed child-care center, in whole or in part, will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 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 amendment to this administrative regulation will generate no 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 amendment to this administrative regulation will generate no revenue in the 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 in the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### STATEMENT OF EMERGENCY

##### 922 KAR 2:180E

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 and 3 to ensure implementation and enforcement of 2017 Ky Acts ch. 135 and the

Child Care and Development Fund Block Grant (CCDF) as reauthorized by Public Law 114-183. In addition, the emergency administrative regulation supports more comprehensive background checks of child care staff members, improved access to emergency medications for children in care, and reflects assessment of child care provider standards in accordance with the Red Tape Reduction effort, enhancing provider operations and better protecting the health, safety, and welfare of children in child care settings in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect background checks to comply with state and federal mandates, preserve federal award, and better protect children's health, safety, and welfare in child care settings. 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

SCOTT W. BRINKMAN, Acting Secretary

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Community Based Services

##### Division of Child Care

##### (Emergency Amendment)

#### 922 KAR 2:180E. Requirements for registered child care providers in the Child Care Assistance Program.

RELATES TO: KRS[~~17.165, 17.500-17.580,~~] 189.125, 199.011(3)(2), (4), 199.894(1), 199.896(16), (18), 199.898, 199.8982, 199.8994, 214.010, 314.011(5), [KRS] 527.070(1), 620.020(8), 620.030, 45 C.F.R. 98,[~~604-619, 9858,~~] 20 U.S.C. 6081-6084, 42 U.S.C. 601-619, 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8994(6)

EFFECTIVE: February 14, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8994(6) requires the cabinet to promulgate administrative regulations to establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child care provider that receives a child care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care. This administrative regulation establishes requirements for providers to participate in the Child Care Assistance Program and the application procedures.

Section 1. Definitions. (1)[~~"Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.~~

(2) "Cabinet" is defined by KRS 199.011(3) and 199.894(1)(2).

(2)[(3)] "Child" is defined by KRS 199.011(4).

(3)[(4)] "Closed" means the provider is no longer a registered program provider.

(4)[(5)] "Conditional Approval" means time-limited approval while completing required training.

(5)[(6)] "Corporal physical discipline" is defined by KRS 199.896(18).

(6)[(7)] "Denied" means the application for program registration is not approved and the applicant will be penalized.

(7)[(8)] "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(8)[(9)] "Health professional" means a person actively licensed in Kentucky as a:

(a) Physician;

(b) Physician[Physician's] assistant;

(c) Advanced practice registered nurse[practitioner]; or

(d) Registered nurse as defined by[in] KRS 314.011(5) under



the supervision of a physician or advanced practice registered nurse.

~~(9)[(10)] "Related" means having one (1) of the following relationships with the registered provider:~~

- ~~(a) Child;~~
- ~~(b) Grandchild;~~
- ~~(c) Niece;~~
- ~~(d) Nephew;~~
- ~~(e) Sibling;~~
- ~~(f) Step-child;~~
- ~~(g) Child in legal custody of the provider; or~~
- ~~(h) Child living with the provider acting in loco parentis.~~

~~(11)] "Parent" is defined by 45 C.F.R. 98.2.~~

~~(10)[(12)] "Pediatric abusive head trauma" is defined by~~  
KRS 620.020(8).

(11) "Related" means having one (1) of the following relationships with the registered provider:

- (a) Child;
- (b) Grandchild;
- (c) Niece;
- (d) Nephew;
- (e) Sibling;
- (f) Step-child;
- (g) Child in legal custody of the provider; or
- (h) Child living with the provider acting in loco parentis.

(12)[(13)] "Revoked" means the provider is no longer a registered provider and the provider will be penalized.

~~(13)[(14)] "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.~~

~~(15)] "Withdrawn" means the application for program registration is removed from consideration without a penalty.~~

Section 2. Application Rights and Requirements for Child Care Provider Registration. (1) An individual shall notify the cabinet or its designee of the individual's intent to apply for child care provider registration:

- (a) Directly by:
  1. Telephone; or
  2. Written statement; or

(b) Indirectly by being designated as the choice for providing unregulated child care by an applicant for benefits under the Child Care Assistance Program (CCAP) in accordance with 922 KAR 2:160.

(2) An individual may apply or reapply for child care provider registration on the same day that the notice of intent to apply in accordance with subsection (1) of this section is made with the cabinet or its designee.

(3) An individual who intends and requests to apply for registration as a child care provider shall not be required to appear in person to complete an application and supporting documentation in accordance with subsections (4) and (5) of this section, but may receive all necessary forms and instructions by mail.

(4) To apply for child care provider registration in CCAP, an individual shall, within thirty (30) calendar days of giving notice of intent to apply pursuant to subsection (1) of this section:

- (a) Submit:
  - 1.a. A completed DCC-95, Application for Registered Child Care Provider in Provider's Home; or
  - b. A completed DCC-96, Application for Registered Child Care Provider in Child's Home;
- 2. Written verification from a health professional that the individual is:
  - a. Free of active tuberculosis; and
  - b. In good general health and able to care for children;
- 3. A completed DCC-94A, Registered Child Care Provider Information Form;
- 4. A completed IRS W-9, Request for Taxpayer Identification Number and Certification; and
- 5. A written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care that includes:

- a. A designated relocation site;
- b. Evacuation routes;
- c. Measures for notifying parents of the relocation site and ensuring a child's return to the child's parent; and
- d. Actions to address the needs of an individual child to include a child with a special need. The cabinet shall post an online template of an evacuation plan that fulfills requirements of this administrative regulation for an individual's free and optional use;

(b) Show proof by photo identification or birth certificate that the individual is eighteen (18) years or older;

(c) Show verification of Social Security number; and

(d) Submit to background checks in accordance with 922 KAR 2:280~~Meet the requirements of KRS 17.165(5), as shown by providing:~~

~~1. A criminal records check conducted by the Kentucky State Police or the Administrative Office of the Courts within the previous twelve (12) months on the individual;~~

~~2. A child abuse and neglect check using the central registry in accordance with 922 KAR 1:470 on the individual;~~

~~3. A criminal records check for any previous state of residence completed once if:~~

~~a. The applicant resided outside the state of Kentucky in the last five (5) years; and~~

~~b. No criminal records check has been completed for the applicant's previous state of residence; and~~

~~4. An address check of the Sex Offender Registry].~~

(5)(a) An applicant may receive conditional approval in accordance with Section 4(2) of this administrative regulation.

(b) Within ninety (90) calendar days of giving notice of intent to apply for registration as a child care provider in CCAP pursuant to subsection (1) of this section, the applicant shall provide verification that the applicant has obtained six (6) hours of training approved by the cabinet or its designee, in the areas of:

- 1. Health, safety, and sanitation;
- 2. Recognition of child abuse and neglect, which may include cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.896(16); and
- 3. Developmentally appropriate child care practice.

(c) An applicant who fails to complete training in accordance with paragraph (b) of this subsection shall be subject to cabinet action in accordance with Section 4(4) of this administrative regulation.

Section 3. Additional Requirements for Registered Providers in Provider's Home. (1) If a registered child care provider provides child care services in the provider's home, ~~the~~ the provider shall:

~~(a)[4.]~~ Submit written verification from a health professional that each member of the provider's household age eighteen (18) or older is free from tuberculosis; ~~and]~~

(b)[2.] Provide written verification that each member of the provider's household who is age eighteen (18) or older has submitted to background checks in accordance with 922 KAR 2:280; and

(c) Complete and sign the DCC-107A, Registered Provider Home Safety Checklist, with a cabinet representative~~meets the requirements in KRS 17.165 by the member's provision of the following to the cabinet or its designee:~~

~~a. Criminal records check conducted by the Kentucky State Police or the Administrative Office of the Courts;~~

~~b. Criminal records check for any previous state of residence completed once if:~~

~~(i) The household member resided outside the state of Kentucky in the last five (5) years; and~~

~~(ii) No criminal records check has been completed for the household member's previous state of residence; and~~

~~c. Child abuse and neglect check using the central registry in accordance with 922 KAR 1:470.~~

~~(b) An address check of the Sex Offender Registry and supporting documentation shall confirm that no individual residing in the provider's household is a registered sex offender].~~

(2) A registered child care provider shall certify that the provider's home and each play area used for child care are safe and have adequate:

(a) Heat;  
 (b) Light; and  
 (c) Ventilation.  
 (3) Each floor of a registered child care provider's home used for child care shall have at least one (1):  
 (a) Unblocked exit to the outside;  
 (b) Smoke detector;  
 (c) Fire extinguisher; and  
 (d) Carbon monoxide detector if the home:  
 1. Uses fuel burning appliances; or  
 2. Has an attached garage.  
 (4) A registered child care provider's home and areas accessible to children in care shall be free of hazards, and the following items shall be inaccessible to a child in care:  
 (a) Cleaning supplies, poisons, paints, and insecticides;  
 (b) Knives, scissors, and other sharp objects;  
 (c) Power tools, lawn mowers, hand tools, nails, and other like equipment;  
 (d) Matches, cigarettes, vaping devices, lighters, combustibles, and flammable liquids;  
 (e) Alcoholic beverages; and  
 (f) Medications.  
 (5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored and locked in locations separate from each other and inaccessible to a child in care.  
 (6) Electrical outlets not in use shall be covered.  
 (7) An electric fan, floor furnace, freestanding heater, wood burning stove, or fireplace, shall:  
 (a) Be out of the reach of a child; or  
 (b) Have a safety guard to protect a child from injury.  
 (8) A registered child care provider shall use protective gates to block all stairways if a child in care is under age three (3).  
 (9) Stairs and steps shall:  
 (a) Be in good repair; and  
 (b) Include railing of comparable length to the stairs or steps.  
 (10) A registered child care provider's home shall have:  
 (a) At least one (1) working telephone with a residential line or an active mobile service; and  
 (b) An accessible list of emergency telephone numbers, including the numbers for the:  
 1. Police;  
 2. Fire station;  
 3. Emergency medical care;  
 4. Poison control center; and  
 5. Reporting of child abuse and neglect.  
 (11) A registered child care provider's home shall have a:  
 (a) Refrigerator in working order that maintains a temperature of forty-five (45) degrees Fahrenheit or below; and  
 (b) Freezer that maintains a temperature of zero degrees Fahrenheit.  
 (12) A registered child care provider shall maintain first aid supplies that include:  
 (a) Liquid soap;  
 (b) Band aids;  
 (c) Sterile gauze; and  
 (d) Adhesive tape.  
 (13) A registered child care provider shall wash hands with liquid soap and running water:  
 (a) Before and after diapering a child;  
 (b) Before and after food preparation;  
 (c) Before feeding a child;[and]  
 (d) After smoking or vaping; and  
 (e) At other times when necessary to prevent the spread of disease.  
 (14) In accordance with KRS 199.896(18), a registered child care provider shall not use corporal physical discipline on a child entrusted to the provider's care.  
 (15) Pets or livestock shall be vaccinated and not left alone with a child.  
 (16) If transportation is provided by a registered child care provider, the provider shall:  
 (a) Have written permission from a parent or guardian to transport the child;

(b) Have a vehicle equipped with seat belts; and  
 (c) Comply with KRS 189.125 regarding child restraint and seating.

(17)(a) If a registered provider provides child care in the provider's home, the cabinet or its designee shall complete an initial or an annual home inspection of the registered child care provider in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and this administrative regulation.

(b) If the cabinet or its designee finds the registered provider is noncompliant with Section 2(4), 5, 6, or 7(2) or this section, the registered provider shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from the cabinet's statement of noncompliance.

(c) A corrective action plan shall include:

1. Specific action undertaken to correct a violation;

2. The date action was or shall be completed;

3. Action utilized to assure ongoing compliance;

4. Supplemental documentation requested as a part of the plan; and

5. Signature of the provider and the date of signature.

(d) The cabinet or its designee shall review the plan and notify a registered provider within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

1. Accept the plan;

2. Not accept the plan; or

3. Take negative action in accordance with Section 8 of this administrative regulation.

(e) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(f) A registered provider notified of an unaccepted plan shall:

1. Submit an amended plan within ten (10) calendar days of notification; or

2. Be subject to negative action in accordance with Section 8 of this administrative regulation.

(g) If a registered provider fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall take negative action in accordance with Section 8 of this administrative regulation.

(h) The cabinet shall not review or accept more than three (3) corrective action plans from a registered provider in response to the same written statement of deficiency.

(18) A registered provider's voluntary closure shall not preclude the cabinet's pursuit of negative action.

Section 4. Actions on Applications. (1) The cabinet or its designee shall approve, deny, or withdraw an individual's application for registration within thirty (30) calendar days from receipt of the individual's notice of intent to apply made in accordance with Section 2(1) of this administrative regulation.

(2) The cabinet or its designee may conditionally approve an individual who made a notice and application pursuant to Section 2(1) and (4) of this administrative regulation, to provide child care services to a child for ninety (90) calendar days, if the applicant meets the requirements of:

(a) Sections 2(4), 5, and 6 of this administrative regulation;[and]

(b) Section 3 of this administrative regulation, if child care is given in the home of the provider; and

(c) 922 KAR 2:280.

(3) The cabinet or its designee shall approve an individual who made a notice and application pursuant to Section 2(1) and (4) of this administrative regulation as a registered child care provider for one (1) year, if the applicant meets the requirements specified in:

(a) Sections 2(4) through (5), 5, and 6 of this administrative regulation;[and]

(b) Section 3 of this administrative regulation if child care is given in the home of the provider; and

(c) 922 KAR 2:280 for:

1. The applicant; and

2. Any member of the applicant's household who is age eighteen (18) or older if child care is given in the home of the provider.

(4) If a conditionally approved provider, as specified in subsection (2) of this section, has not completed the training requirement ~~within the ninety (90) day timeframe~~ pursuant to Section 2(5) of this administrative regulation, or if a background check has not been completed in accordance with 922 KAR 2:280, the cabinet or its designee shall:

(a) Not approve an applicant for payment pursuant to 922 KAR 2:160 past the ninety (90) days of conditional approval; and

(b) Deny another:

1. Period of conditional approval for the same applicant; or

2. Application from the same applicant unless;

a. Training has been completed in accordance with Section 2(5) of this administrative regulation; and

b. Background checks have been completed in accordance with 922 KAR 2:280.

(5) The cabinet may confirm training verification provided by an applicant, conditionally approved applicant, or registered child care provider through the cabinet-approved training database maintained in accordance with 922 KAR 2:240.

Section 5. General Requirements for Registered Child Care Providers. (1) A registered child care provider shall not:

(a) Live in the same residence as the child in care;

(b) Hold a license to provide child care in accordance with 922 KAR 2:090;

(c) Hold certification to provide child care in accordance with 922 KAR 2:100; or

(d) Provide care for more than three (3) children unrelated to the provider in accordance with KRS 199.8982(1)(a).

(2) A registered child care provider shall not provide other home based services, including services, such as:

(a) A personal care home in accordance with 902 KAR 20:036;

(b) A family care home in accordance with 902 KAR 20:041;

(c) An adult day care in accordance with 910 KAR 1:160; or

(d) Supports for community living in accordance with 907 KAR 1:145 or 907 KAR 12:010.

(3) A registered child care provider shall:

(a) Comply with the:

1. Provisions of KRS 199.898; and

2. Provider requirements in accordance with 922 KAR 2:160, Section 13;

(b) Allow the cabinet, the cabinet's designee, another agency with regulatory authority, and a parent of a child in care access to the premises where a child receives care during the hours that the child care services are provided; and

(c) Report within ten (10) calendar days any change to the provider's:

1. Address;

2. Name;

3. Telephone number;

4. Household members; or

5. Location where the child care is provided.

(4)(a) A registered child care provider who gives care in the provider's home shall comply with the requirements of Section 3(1) of this administrative regulation within thirty (30)~~ten (10)~~ calendar days for a:

1. [(a)] New household member who is eighteen (18) years or older; or

2. [(b)] Household member who turns age eighteen (18).

(b) If a background check in accordance with Section 3(1) and 922 KAR 2:280 is pending on a member of the registered provider's household who is eighteen (18) years or older, the registered child care provider who gives care in the provider's home shall prohibit unsupervised contact between the household member and a child in care.

(5)(a) A registered child care provider shall maintain an attendance sheet in which the daily arrival and departure times of each child are recorded in accordance with 922 KAR 2:160, Section 13.

(b) A registered child care provider shall retain attendance sheets completed in accordance with paragraph (a) of this subsection for five (5) years.

(6)(a) Care for a child with a special need shall be consistent

with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(7) While providing child care services, a registered provider and another person in the provider's home shall:

(a) Be free of the influence of alcohol or a controlled substance, except for use of a controlled substance as prescribed by a physician; and

(b) Prohibit smoking or vaping in the presence of a child in care.

(8) A registered child care provider shall report to the cabinet or designee:

(a) Within twenty-four (24) hours from the time of discovery:

1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

2. An accident or injury to a child that requires medical care;

3. An incident that results in legal action by or against the registered child care provider that:

a. Affects:

(i) A child in care;

(ii) The registered child care provider; or

(iii) An adult residing in the registered child care provider's household if child care services are provided in the provider's home; or

b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud,~~or~~ abuse, or criminal conviction related to~~of~~ that program;

4. An incident involving a fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services;~~or~~

5. A report of child abuse or neglect that:

a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

b. Names:

(i) The registered child care provider as the alleged perpetrator; or

(ii) A member of the registered child care provider's household as alleged perpetrator if child care services are provided in the provider's home; or

6.a. The registered child care provider is disqualified in accordance with 922 KAR 2:280; or

b. If child care is given in the provider's home, a member of the registered provider's household who is eighteen (18) years or older meets a disqualifying criterion or background check result in accordance with 922 KAR 2:280;

(b) An incident of child abuse or neglect pursuant to KRS 620.030;

(c) The death of a child in care within one (1) hour; or

(d) The provider's temporary or permanent closure as soon as practicable, which shall also be given to the parent of a child in care.

Section 6. Child Ratios. During hours of operation, a registered child care provider shall not care for more than:

(1) Three (3) children receiving CCAP per day;

(2) Six (6) children receiving CCAP per day, if those children are:

(a) A part of a sibling group; and

(b) Related to the provider; or

(3) A total of eight (8) children inclusive of the provider's own children.

Section 7. Renewal of Registration. (1) The cabinet or its designee shall send a reminder notice to a registered child care provider at least forty-five (45) calendar days prior to the expiration date of the provider's registration issued in accordance with Section 4(3) of this administrative regulation.

(2) To renew child care provider registration prior to the expiration of the registration, a registered child care provider shall:

(a) Meet the requirements specified in;

1. Sections 2(4), 5, and 6 of this administrative regulation; and

2. 922 KAR 2:280;

(b) Complete, and provide verification of, three (3) hours of training in early care and education approved by the cabinet or its designee:

1. To include one and one-half (1 1/2) hours of pediatric abusive head trauma training:

a. Within first year of employment or operation as a child care provider; and

b. Completed once during each subsequent five (5) years of employment or operation as a child care provider; and

2. In one (1) or more of the following subjects:

a. Child growth and development;

b. Learning environments and nutrition;

c. Health, safety, and nutrition;

d. Family and community partnerships;

e. Child assessment;

f. Professional development and professionalism; or

g. Program management and evaluation;

(c) Submit an updated version of the evacuation plan described in Section 2(4)(a)5 of this administrative regulation;

(d) Retain a copy of the updated evacuation plan; and

(e) Provide a copy of the updated evacuation plan to each parent of a child in care.

(3) In addition to the requirements of subsection (2) of this section, a registered provider who gives care in the provider's home shall also meet the requirements of Section 3 of this administrative regulation.

Section 8. Negative Action for An Applicant or A Registered Child Care Provider. (1) If a registered child care provider or a member of the provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the ~~family-in-need-of-services assessment~~ investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(2) The cabinet or its designee shall send written notice of negative action to:

(a) An applicant for registration, if the application is:

1. Withdrawn; or

2. Denied; or

(b) A registered child care provider, if the provider's registration is:

1. Closed; or

2. Revoked.

(3) The notice of negative action shall include the:

(a) Reason for the negative action; and

(b) Effective date.

(4) An application for registration shall be denied or a registered provider's registration shall be revoked if:

(a) Written verification from a health professional confirms a diagnosis of tuberculosis;

(b) A disqualifying criterion or background check result in accordance with 922 KAR 2:280 is met~~[A background check pursuant to KRS 17.165(5) reveals a:~~

1. ~~Substantiated incident of child abuse or neglect in accordance with 922 KAR 1:470; or~~

2. ~~Conviction of, or an Alford or guilty plea to, a:~~

a. ~~Violent crime; or~~

b. ~~Sex crime];~~

(c) A history of behavior exists that may impact the safety or security of a child in care including:

1. A conviction, an Alford plea, or a guilty plea related to the abuse or neglect of an adult; or

2. ~~[A conviction for, or an Alford or guilty plea to, a drug-related felony unless five (5) years have elapsed since the person was fully discharged from imprisonment, probation, or parole;~~

3. ~~A confirmation through an address check and supporting documentation that a:~~

a. ~~Provider is a registered sex offender; or~~

b. ~~Member of the provider's household is a registered sex~~

~~offender, if the provider provides child care services in the provider's home; or~~

4.] Other behavior or condition indicating inability to provide reliable care to a child;

(d) The provider uses or allows the use of any form of corporal physical discipline on a child entrusted to the provider's care;

(e) The cabinet has probable cause to believe there is an immediate threat to the health, safety, or welfare of a child;

(f) The applicant or provider has been discontinued or disqualified from participation in:

1. CCAP, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud,~~[or]~~ abuse, or criminal conviction related to~~[ef]~~ that program;

(g) The applicant or provider knowingly misrepresents or submits false information on a form required by the cabinet; or

(h) During the hours that child care services are provided, the provider refuses access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

a. A child in care; or

b. The location of the child care; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records.

(5) If an applicant 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 a pending adverse action in accordance with 922 KAR 2:090, 2:100,~~[2:140,]~~ 2:120, or this administrative regulation, the cabinet shall grant the applicant registration if:

(a) A seven (7) year period has expired from the:

1. Date of the prior denial, suspension, or revocation;

2. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or a pending adverse action;

3. Last day of legal remedies being exhausted; or

4. Date of the final order from an administrative hearing; and

(b) The applicant complies with:

1. Sections 2, 5, and 6 of this administrative regulation; ~~[and]~~

2. If care is given in the home of the provider, Section 3 of this administrative regulation; and

3. 922 KAR 2:280;

(c) The applicant completes, and provides verification of, an additional twelve (12) hours of training approved by the cabinet or its designee in early care and education;

(d) The applicant has not had an application, certificate, license, registration, or permit to operate as a child care provider denied, revoked, or voluntarily relinquished for:

1. A disqualifying criterion or background check result in accordance with 922 KAR 2:280~~(Conviction of, or an Alford or guilty plea to, a sex crime or violent crime in accordance with KRS 17.165); or~~

2. ~~[Abuse or neglect of a child according to a child abuse and neglect check of the central registry in accordance with 922 KAR 1:470;~~

3. ~~Placement on the Sex Offender Registry;~~

4. ~~Conviction of, or an Alford or guilty plea to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole; or~~

5.] Discontinuance or disqualification from participation in:

a. CCAP, including an intentional program violation in accordance with 922 KAR 2:020; or

b. Another governmental assistance program due to fraud,~~[or]~~ abuse, or criminal conviction related to~~[ef]~~ that program.

(6) An application may be withdrawn:

(a) If all required documentation for the application process is not received within thirty (30) calendar days in accordance with Section 2(4) of this administrative regulation; or

(b) At the request of the applicant.

(7) A registered child care provider's status may be closed:

(a) At the request of the provider; or

(b) If the provider fails to comply with requirements in Section

3, 5, 6, or 7(2) of this administrative regulation.

(8) The voluntary withdrawal, closure, or relinquishment of a provider's registration shall not preclude the cabinet's pursuit of adverse action.

Section 9. Appeal of Negative Action. If the cabinet or its designee denies or withdraws an application for registration, revokes a provider's registration, or closes a provider, the applicant or provider may request an appeal in accordance with 922 KAR 2:260[1-320].

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

(a) "DCC-94A Registered Child Care Provider Information Form", 2018[edition 7/12];

(b) "DCC-95, Application for Registered Child Care Provider in Provider's Home", 2018[edition 7/12];

(c) "DCC-96, Application for Registered Child Care Provider in Child's Home", 2018[edition 7/12]; [and]

(d) "DCC-107A, Registered Provider Home Safety Checklist", 2018; and

(e) "IRS W-9, Request for Taxpayer Identification Number and Certification", December 2014[edition 10/07].

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

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.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](mailto:Laura.Begin@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov), and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for child care providers, who are family, friends, or neighbors, to register and participate in the Child Care Assistance Program (CCAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for child care providers to register and participate in CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of requirements for a child care provider to register and participate in CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care provider to register and participate in CCAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates reference to the new administrative regulation governing comprehensive background checks for child care providers and onsite inspection requirements for a registered provider serving a child in the provider's home pursuant to the Child Care and Development Fund's federal reauthorization. The amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to foster provider integrity in CCAP and to ensure the

cabinet is capable of appropriately responding to deficiently operating providers. The amendment also ensures the state's avoidance of federal penalty and registered providers' continued eligibility for CCAP funded through federal award.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its update and clarification of the requirements for a child-care provider to register and participate in CCAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of standards for registered child care providers to participate in CCAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicant and existing registered child care providers will be impacted by this administrative regulation. As of December 14, 2017, there were 116 registered child-care providers.

(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: Given the new federally mandated background check requirements and onsite inspection requirements for registered child care providers, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will entail no or minimal new costs to new applicants or existing registered providers. Registered providers serving children in their homes will be required to undergo an onsite inspection. While this results in some operating burden for the applicable registered providers, it is another assurance measure for the health, safety, and welfare of children in their care. In addition, it preserves federal funding of CCAP.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and registered child-care-providers and the children in their care will benefit from the improved health and safety measures afforded through this and other concurrently filed administrative regulations.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort funds for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 20 U.S.C. 6081-6084, 42 U.S.C. 601-619, 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.8994(6)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.8994(6), 45 C.F.R. 98, 20 U.S.C. 6081-6084, 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 amendment to this administrative regulation will generate no 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 amendment to this administrative regulation will generate no revenue in the 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 in the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY**  
**922 KAR 2:190E**

This emergency administrative regulation is necessary in accordance with KRS 13A.190(1)(a)2 and 3 to ensure implementation and enforcement of 2017 Ky. Acts ch. 135 and the Child Care and Development Fund Block Grant (CCDF) as reauthorized by Public Law 114-183. In addition, the emergency administrative regulation supports more comprehensive background checks of child care staff members, improved access to emergency medications for children in care, and reflects assessment of child care provider standards in accordance with

the Red Tape Reduction effort, enhancing provider operations and better protecting the health, safety, and welfare of children in child care settings in accordance with KRS 13A.190(1)(a)1. An ordinary administrative regulation would not allow the agency sufficient time to effect background checks to comply with state and federal mandates, preserve federal award, and better protect children's health, safety, and welfare in child care settings. 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

SCOTT W. BRINKMAN, Acting Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Care**  
**(Emergency Amendment)**

**922 KAR 2:190E. Civil penalties.**

RELATES TO: KRS Chapter 13B, 194A.030, 199.011(3), 199.894(1), (3), 199.896, 199.990, 42 U.S.C. 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

EFFECTIVE: February 14, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other states and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the secretary to promulgate administrative regulations to establish procedures for enforcement of penalties. This administrative regulation establishes the cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(2) "Child-care center" is defined by KRS 199.894(3).

(3) "Licensee" means the owner or[and] operator of a child-care center to include:

- (a) Sole proprietor;
- (b) Corporation;
- (c) Limited liability company;
- (d) Partnership;
- (e) Association; or
- (f) Organization, such as:
  - 1. Board of education;
  - 2. Private school;
  - 3. Faith-based organization;
  - 4. Government agency; or
  - 5. Institution.

(4) "Office of Inspector General" or "OIG" means the organizational unit of the cabinet established in accordance with KRS 194A.030(1)(c) or its designee.

(5) "Statement of deficiency" means a finding of a regulatory noncompliance issued in accordance with 922 KAR 2:090, Section 14[9].

Section 2. Types of Violations. The cabinet shall issue a licensee a:

(1) Type A violation if:

(a) A child-care center violates a standard or a requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, [922 KAR 2:110, or] 922 KAR 2:120, or 922 KAR 2:280; and

(b) The violation creates harm, an imminent threat, or an imminent danger to the health, safety, or welfare of a child in the center's care, such as the center:

1. Failing to:

a. Provide for the health, safety, or welfare of a child in care that results in injury to the child, the child's hospitalization, or death of the child;

b. Complete a ~~background[criminal records check and a child abuse and neglect]~~ check required in accordance with 922 KAR 2:280;

(i) ~~922 KAR 2:090, Section 6; or~~

(ii) ~~922 KAR 2:140, Section 5~~;

c. Remove a person with a ~~disqualifying offense[substantiation of child abuse or neglect]~~ from contact with a child in care in accordance with 922 KAR 2:280;

(i) ~~922 KAR 2:090, Section 6; or~~

(ii) ~~922 KAR 2:140, Section 5~~;

d. Comply with a suspension of services; or

e. Administer discipline in accordance with 922 KAR 2:120, Section 2(8), ~~or~~ 2(10), or 9(2);

2. Falsifying records;

3. Operating contrary to approved licensed services; or

4. Changing location without prior approval of the cabinet.

(2) Type B violation if:

(a) A child-care center violates a standard or requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, ~~922 KAR 2:140; or~~ 922 KAR 2:120; and

(b) The violation presents a concern or risk to the health, safety, or welfare of a child in care, but does not create harm, an imminent threat, or an imminent danger to the child, such as the center:

1. Failing to:

a. ~~Complete one (1) of a person's background checks required in accordance with:~~

(i) ~~922 KAR 2:090, Section 6; or~~

(ii) ~~922 KAR 2:140, Section 5~~;

b. ~~Respond to a child's first aid and medical needs in accordance with 922 KAR 2:120, Section 7;~~

c. ~~Have staff currently certified in cardiopulmonary resuscitation and first aid in accordance with 922 KAR 2:090[2:140], Sections 11(3)[5(3)] through 11(5)[5(5)];~~

d. ~~Provide adequate supervision in accordance with 922 KAR 2:120, Section 2(3);~~

e. ~~Make toxic supplies inaccessible to a child in accordance with 922 KAR 2:120, Section 3(7) or 3(8); or~~

f. ~~Maintain sufficient records on a child in accordance with 922 KAR 2:090[2:140], Section 9[3];~~

2. Releasing a child to a person who is not designated by the child's parent to pick up the child;

3. Leaving a child alone with an underage caregiver; or

4. Exceeding the staff-to-child ratios in 922 KAR 2:120, Section 2 by fifty (50) percent or more.

Section 3. Assessment of a Civil Penalty. (1) The cabinet shall assess a civil penalty in accordance with KRS 199.896(8) and KRS 199.990(4).

(2) A statement of deficiency shall be issued prior to, or concurrent with, the notice described in Section 4 of this administrative regulation.

(3) A statement of deficiency with a Type A violation shall be:

(a) Corrected within five (5) working days in accordance with 922 KAR 2:090, Section 14(3)[9(3)] and 14(9)[9(8)]; and

(b) Subject to a civil penalty of no more than \$1000 for each occurrence of a Type A violation.

(4) A statement of deficiency with a Type B violation shall:

(a) Have a written corrective action plan within ~~fifteen (15)~~ ten (10) days in accordance with 922 KAR 2:090, Section 14(2)[9(2)] and 14(3)[9(3)]; and

(b) Be subject to a civil penalty of \$250 for each occurrence of a Type B violation.

(5) In accordance with KRS 199.896(8)(b)-(d), a licensee shall receive a monetary credit applied towards a civil penalty in the amount of:

(a) Fifty (50) dollars if a review of the licensee's history finds no Type A or Type B violation cited during the three (3) years prior to the date of the statement of deficiency;

(b) Fifty (50) dollars if the written corrective action plan is:

1. Received by the cabinet within the timeframe specified for the violation type pursuant to subsection (3)(a) or (4)(a) of this section; and

2. Accepted by the cabinet; or

(c) Twenty-five (25) percent of the civil penalty if the licensee waives appeal rights described in Section 5 of this administrative regulation.

(6) Treble penalties shall be assessed pursuant to KRS 199.990(4).

Section 4. Civil Penalty Requirements. Notice that a civil penalty has been levied shall:

(1) Be hand delivered by cabinet staff or delivered by certified mail, return receipt requested, to the:

(a) Licensee; or

(b) Director of the child-care center or the director's designee in accordance with 922 KAR 2:090[2:140]; and

(2) Specify:

(a) The violation for which a civil penalty has been levied;

(b) The amount of the civil penalty;

(c) That, in accordance with KRS 199.990(4), the civil penalty shall:

1. Not exceed \$1,000 for each occurrence;

2. Be made payable to the Kentucky State Treasurer; and

3. Be mailed to the Office of Inspector General;

(d) That an appeal of a civil penalty shall not act to stay correction of a violation, pursuant to KRS 199.896(7);

(e) That payment of a civil penalty shall be stayed if an appeal is requested; and

(f) That the cabinet may:

1. Deny, suspend, or revoke a license for the same offense for which a civil penalty is imposed; and

2. Take other action in accordance with KRS 199.896(9).

Section 5. Appeal Rights. (1) A licensee shall have appeal rights in accordance with KRS 199.990(4) and 922 KAR 2:090, Section 18[13].

(2) An appeal shall not limit the authority of the cabinet to:

(a) Issue an emergency order pursuant to KRS 13B.125(2); or

(b) Take action pursuant to KRS 199.896(9).

Section 6. Payment of Civil Penalty. (1) The cabinet shall deny an application for child-care center licensure or revoke a child-care center's license if:

(a) Sixty (60) days have lapsed since the latter of either:

1. The notice in accordance with Section 4 of this administrative regulation; or

2. Completion of the administrative appeal process upholding the civil penalty; and

(b) A licensee fails to:

1. Pay the civil penalty levied against the child-care center;

2. Enter into an arrangement to pay a civil penalty that is approved by the cabinet; or

3. Comply with the payment arrangement for the civil penalty.

(2) The cabinet may approve an amendment to a payment arrangement if:

(a) A request for an amendment is received from the licensee; and

(b) The cabinet makes a determination that the payment arrangement creates a hardship for the licensee or the child-care center's operation with consideration given to:

1. The individual circumstances of the licensee or child-care center; and

2. Factors specified in KRS 199.896(8).

(3) The cabinet may terminate collection of a civil penalty if the:

(a) Licensee dies;

(b) Cabinet is unable to locate the licensee; or

(c) Cabinet's continued pursuit of the civil penalty would exceed the:

1. Amount of civil penalty; or

2. Public benefit.

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.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](mailto:Laura.Begin@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov), and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the penalties to be assessed for violations that pose an immediate threat, concern, or risk to a child served by a child-care center and related appeals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of the civil penalty and appeal processes used when a child-care center commits a violation or is subject to an adverse action from the cabinet.

(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 cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

(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 change the existing administrative regulation by aligning its content with the new child care provider background checks and other concurrent amendments to administrative regulations governing the standards for a licensed child-care center. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for congruency among the administrative regulation and clarity in the public and among regulated entities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its update of cabinet procedures pertaining to civil monetary penalties.

(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 alignment of civil monetary penalties with concurrent changes to the standards governing licensed child-care centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: From June 1, 2017, to December 18, 2017, the department processed eighty-eight civil monetary penalties impacting the licensed child-care center's quality rating.

(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 on the part of regulated entities. A regulated entity is only impacted by this administrative regulation if the entity has committed a health and safety violation of licensure standards that subjects the entity to a civil monetary penalty.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not change to the civil monetary penalty amounts. There will be no new or enhanced cost for a licensed child-care center subject to a civil monetary penalty due to a health

and safety violation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will ensure congruency among the administrative regulations governing licensed child-care providers. In addition, in terms of the public served, the amendment will promote programmatic integrity, health, and safety in licensed child-care centers.

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

(a) Initially: The administrative body will absorb no new initial cost to implement the amendment to this administrative regulation.

(b) On a continuing basis: The administrative body will absorb no new ongoing cost to implement the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no 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 directly establish any fees; rather, it enforces the civil penalties procedures and enforcement per KRS 199.896 and KRS 199.990. This administrative regulation does not directly or indirectly increase any fees.

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 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. The federal law does not expressly address civil penalties or prohibit their application.

(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, namely the Department for Community Based Services and the Office of Inspector General, will be impacted by this administrative regulation. Local governments and school districts that support a licensed child-care center, in whole or in part, would be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 42 U.S.C. 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.



**VOLUME 44, NUMBER 9 – MARCH 1, 2018**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation for government in its first year. Penalties imposed by this administrative regulation have not been increased or enhanced.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(As Amended at ARRS, February 12, 2018)

16 KAR 1:016. Standards for Certified Teacher Leader.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires the Education Professional Standards Board to establish standards for obtaining and maintaining educator certification. This administrative regulation establishes the standards required for certified teachers to obtain or maintain certification as a teacher leader.

Section 1. Teacher Leader Standards for Educator Preparation and Certification. Effective August 1, 2019, the Education Professional ~~Standards~~**[Standard]** Board shall use the standards established in this section in the evaluation and assessment of a teacher leader for advanced certification and for the approval of teacher leader master preparation programs.

(1) Standard 1. Foster a Collaborative Culture to Support Educator Development and Student Learning.

(a) The teacher leader shall be well versed in adult learning theory and shall use that knowledge to create a community of collective responsibility within his or her school; and

(b) In promoting this collaborative culture among fellow teachers, administrators, and other school leaders, the teacher leader shall ensure improvement in educator instruction and, consequently, student learning.

(2) Standard 2. Access and Use Research to Improve Practice and Student Learning.

(a) The teacher leader shall keep abreast of the latest research about teaching effectiveness and student learning, and shall implement best practices ~~if~~**[where]** appropriate; and

(b) He or she shall model the use of systematic inquiry as a critical component of teachers' ongoing learning and development.

(3) Standard 3. Promote Professional Learning for Continuous Improvement.

(a) The teacher leader shall understand that the processes of teaching and learning are constantly evolving; and

(b) The teacher leader shall design and facilitate job-embedded professional development opportunities aligned with school improvement goals.

(4) Standard 4. Facilitate Improvements in Instruction and Student Learning.

(a) The teacher leader shall possess a deep understanding of teaching and learning, and model an attitude of continuous learning and reflective practice for colleagues; and

(b) The teacher leader shall work collaboratively with other teachers to improve instructional practices constantly.

(5) Standard 5: Promote the Use of Assessments and Data for School and District Improvement.

(a) The teacher leader shall be knowledgeable about the design of assessments, both formative and summative; and

(b) ~~The teacher leader shall work~~**[He or she works]** with colleagues to analyze data and interpret results to inform goals and to improve student learning.

(6) Standard 6: Improving Outreach and Collaboration with Families and Community

(a) The teacher leader shall understand the impact that families, cultures, and communities have on student learning; and

(b) As a result, the teacher leader shall seek to promote a sense of partnership among these different groups toward the common goal of excellent education.

(7) Standard 7: Advocate for Student Learning and the Profession.

(a) The teacher leader shall understand the landscape of education policy and shall identify key players at the local, state, and national levels; and

(b) The teacher leader shall advocate for the teaching profession and for policies that benefit student learning.

Section 2. The teacher leader may utilize the guidance contained within the Teacher Leader Model Standards published by the Teacher Leadership Exploratory Consortium.

Section 3. Incorporation by Reference. (1) "Teacher Leader Model Standards", 2011 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or online at <http://www.epsb.ky.gov/mod/data/view.php?id=6&rid=352>.

ROB AKERS, Board Chair

MARY GWEN WHEELER, Board Chair

APPROVED BY AGENCY: November 7, 2017

FILED WITH LRC: November 9, 2017 at 3 p.m.

CONTACT PERSON: Lauren Graves, Executive Staff Advisor, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, email [Lauren.Graves@ky.gov](mailto:Lauren.Graves@ky.gov), phone (502) 564-4606, fax (502) 564-7080.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(As Amended at ARRS, February 12, 2018)

16 KAR 5:040. Admission, placement, and supervision in student teaching.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.042

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that an educator preparation institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate be issued to a person who has completed a program approved by the Education Professional Standards Board. KRS 161.042 requires the Education Professional Standards Board to promulgate an administrative regulation relating to student teachers, including the qualifications for cooperating teachers. This administrative regulation establishes the standards for admission, placement, and supervision in student teaching.

~~Section 1.[Definition. "Cooperating teacher" means a teacher employed in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association who is contracting with an educator preparation institution to supervise a student teacher for the purpose of fulfilling the student teaching requirement of the approved educator preparation program.]~~

~~Section 2.] Cooperating Teacher Eligibility Requirements. (1) The cooperating teacher, whether serving in a public or nonpublic school, shall have:~~

~~(a) A valid teaching certificate or license for each grade and subject taught; and~~

~~(b) At least three (3) years of teaching experience as a certified educator.~~

~~(2) A teacher assigned to a teaching position on the basis of a provisional[,probationary,] or emergency certificate issued by the Education Professional Standards Board shall not be eligible for serving as a cooperating teacher. [(3) The district and educator preparation program shall select teachers to be cooperating teachers who demonstrate the following:~~

~~(a) Effective classroom management techniques that promote an environment conducive to learning;~~  
~~(b) Best practices for the delivery of instruction;~~  
~~(c) Mastery of the content knowledge or subject matter being taught;~~  
~~(d) Aptitude and ability to contribute to the mentoring and development of a preservice educator;~~  
~~(e) Usage of multiple forms of assessment to inform instruction; and~~  
~~(f) Creation of learning communities that value and build upon students' diverse backgrounds.~~

~~(4) An educator preparation program shall give a teacher who holds a teacher leader endorsement pursuant to 16 KAR 5:010, Section 12(3), priority consideration when selecting a cooperating teacher.]~~

~~(3) [(5) Beginning September 1, 2013,] Prior to student teacher placement, a cooperating teacher shall receive training approved by the Education Professional Standards Board and provided at no cost to the cooperating teacher by the educator preparation institution which shall include the following components:~~

- ~~(a) Basic responsibilities of a cooperating teacher;~~
- ~~(b) Best practice in supporting the student teacher; and~~
- ~~(c) Effective assessment of the student teacher.~~

~~(4) [(6) Beginning September 1, 2013, educator preparation programs shall maintain a pool of cooperating teachers who have met the requirements of this section.]~~

~~(7) Beginning September 1, 2013,] Each educator preparation institution shall file an electronic report with the Education Professional Standards Board every semester which identifies the following:~~

- ~~(a) Each candidate at the educator preparation institution enrolled in student teaching;~~
- ~~(b) The candidate's assigned school;~~
- ~~(c) The cooperating teacher assigned to each candidate;~~
- ~~(d) The cooperating teacher's area of certification;~~
- ~~(e) The cooperating teacher's years of experience as a certified or licensed educator; and~~
- ~~(f) The number of days the cooperating teacher supervised the student teacher during the semester.] The date the cooperating teacher completed the training required in subsection (5) of this section.~~

~~Section 3. Admission to Student Teaching. In addition to the appropriate sections of the National Council for Accreditation of Teacher Education (NCATE) standards which are incorporated by reference in 16 KAR 5:010, each educator preparation institution shall determine minimum standards for admission to student teaching which shall include the procedures established in this section.]~~

Section 2. Admission to Student Teaching. Admission to student teaching shall include a formal application procedure for each teacher candidate. (1) [A record or report from a valid and current medical examination, which shall include a tuberculosis (TB) risk assessment, shall be placed on file with the admissions committee.]

(2) Prior to and during the student teaching experience, the teacher candidate shall adhere to the Professional Code of Ethics for Kentucky School Personnel established in 16 KAR 1:020.

(2) [(3) Beginning September 1, 2013,] Prior to admission to student teaching, each teacher candidate shall complete a minimum of 200 clock hours of field experiences in a variety of primary through grade 12 (P-12) school settings which allow the candidate to participate in the following:

- (a) Engagement with diverse populations of students which include:
  1. Students from a minimum of two (2) different ethnic or cultural groups of which the candidate would not be considered a member;
  2. Students from different socioeconomic groups;
  3. English language learners;
  4. Students with disabilities; and
  5. Students from across elementary, middle school, and secondary grade levels;
- (b) Observation in schools and related agencies, including:
  1. Family Resource Centers; or
  2. Youth Service Centers;
- (c) Student tutoring;
- (d) Interaction with families of students;
- (e) Attendance at school board and school-based council meetings; ~~and~~
- (f) Participation in a school-based professional learning community; and

(g) Opportunities to assist teachers or other school professionals.

~~(3) [(4) The educator preparation program shall require the candidate to submit a record of clinical hours for review and confirmation that the candidate has fulfilled the field experiences required in subsection (3) of this section.]~~

(5) The educator preparation institution [program] shall maintain electronic records that confirm [that] all candidates enrolled in student teaching [after September 1, 2013,] have fulfilled the field experiences required in subsection (2) [(3)] of this section. Beginning July 1, 2019, the educator preparation institution shall maintain electronic records in the Kentucky Field Experience Tracking System (KFETS) that confirm all candidates enrolled in student teaching have fulfilled the field experiences required in subsection (2) of this section.

Section 3. [4.] Cooperating Teacher to Student Teacher Ratio. The ratio of student teachers to cooperating teachers shall be one-to-one.

Section 4. [5.] University Supervisor. (1) The university supervisor shall conduct a minimum of four (4) observations of the student teacher in the actual teaching situation, a portion of which may be remote. Requests for remote observation(s) shall be submitted to and approved by EPSB prior to observation(s)] The university supervisor shall make periodic observations of the student teacher in the classroom and shall prepare a written report on each observation and share it with the student teacher.

(2) The observation reports shall be filed as a part of the student teacher record and used as a validation of the supervisory function.

~~(3) [A student teacher shall receive periodic and regular on-site observations and critiques of the actual teaching situation a minimum of four (4) times, excluding seminars and workshops.]~~

~~(4) The university supervisors shall be available to work with the student teacher and personnel in the cooperating school regarding any problems that may arise relating to the student teaching situation.~~

~~(4) [(5) The educator preparation program shall select a clinical faculty member to serve as a university supervisor who demonstrates the following:~~

- ~~(a) Effective classroom management techniques that promote an environment conducive to learning;~~
- ~~(b) Best practices for the delivery of effective instruction;~~
- ~~(c) Dispositions that contribute to the mentoring and development of a preservice educator;~~
- ~~(d) Knowledge and skills in the use of formative and summative assessments; and~~
- ~~(e) The ability to participate in a community of professionals committed to supporting the effective instructional practice of each student teacher.~~

~~(6) Beginning September 1, 2013,] University supervisors shall receive training approved by the Education Professional Standards Board and provided at no cost to the university supervisor by the educator preparation institution which shall include the following components:~~

- ~~(a) Basic responsibilities of a university supervisor;~~
- ~~(b) Best practice in supporting the student teacher; and~~
- ~~(c) Effective assessment of the student teacher. [(7) Beginning September 1, 2013, educator preparation programs shall maintain a pool of clinical faculty members who have met the requirements of this section.]~~

Section 5. [6.] Professional Experience. (1) ~~[In addition to the appropriate NCATE standards incorporated by reference in 16 KAR 5:010,] The educator preparation institution shall provide opportunities for the student teacher to assume major responsibility for the full range of teaching duties, including extended co-teaching experiences, in a real school situation under the guidance of qualified personnel from the educator preparation institution and the cooperating elementary, middle, or high school. The educator preparation institution [program] and the school district shall make reasonable efforts to place student teachers in settings that provide opportunities for the student teacher to develop and demonstrate the practical skills, knowledge, and professional dispositions essential to help all P-12 students learn and develop.~~

~~(2) A student teacher shall not be placed in a setting that is not consistent with his or her planned certification content and grade range.~~

~~(3) [Beginning September 1, 2013,] The student teacher placement~~

shall provide the student teacher with the opportunity to engage with diverse populations of students.

~~(4)[Beginning September 1, 2013,] Each educator preparation institution shall provide a full professional semester to include a period of student teaching for a minimum of seventy (70) full days, or its equivalent, in instructional settings that correspond to the grade levels and content areas of the student teacher's certification program. Institutions unable to locate a placement aligned with grade level requirements in this section shall submit an alternative placement request to EPSB staff. EPSB staff may pre-approve the alternative placement request if the alternative placement request includes:~~

~~(a) A description of the efforts of the institution to locate a placement aligned with grade level requirements in this section;~~

~~(b) The rationale for the choice of the identified alternative placement;~~

~~(c) Statements of support for the alternative placement from the principal and the cooperating teacher; and~~

~~(d) Evidence of the candidate's variety of field experiences prior to student teaching. All alternative placement requests shall be placed on the consent agenda for the next regularly scheduled meeting of the board and shall be contingent upon board approval. The EPSB waiver committee may review submissions prior to the board meeting and recommend that the board move items from the consent items to the action or waiver items on the agenda. Pre-approval shall not be granted if the alternative placement does not meet the criteria set forth in this subsection. All alternative placements that are not eligible for pre-approval shall be placed on the agenda of the next regularly scheduled meeting of the board as a waiver item for consideration.~~

~~1.[(a)] Candidates pursuing a primary through grade 12 certificate shall have their student teaching balanced between an elementary school placement and middle school or high school placement.~~

~~2.[(b)] Candidates pursuing an elementary certificate shall have their student teaching balanced between a placement in primary through grade 3 and a placement in grade 4 or grade 5.~~

~~3.[(c)] Candidates seeking dual certification in either middle school or secondary content areas shall have equal placements in both content areas.[(5) Beginning September 1, 2013, the educator preparation program shall support the student teacher's placement and classroom experiences by:~~

~~(a) Cooperating with the district in determining the specific placement of the student teacher;~~

~~(b) Collaborating with the district to provide necessary program resources and expertise;~~

~~(c) Using multiple performance assessments to document the student teacher's ability to support learning for all P-12 students;~~

~~(d) Requiring the use of technology by the student teacher to:~~

~~1. Enrich the learning of P-12 students; and~~

~~2. Support the student teacher's professional growth and communication; and~~

~~(e) Providing opportunities for the student teacher to:~~

~~1. Engage in extended co-teaching experiences with an experienced teacher;~~

~~2. Engage in reflective self-assessment that informs practice;~~

~~3. Maintain regular professional conversations with experienced teachers other than the cooperating teacher;~~

~~4. Participate in regular and extracurricular school activities;~~

~~5. Participate in professional decision-making; and~~

~~6. Engage in collegial interaction and peer review with other student teachers.]~~

~~(5)[(6)] The educator preparation institution[program] shall use the Kentucky Teacher Internship Program Teacher Performance Assessment documents[tasks] established in 16 KAR 7:010[Section 2, or a variation of these tasks to meet the requirement specified in subsection (5) of this section].~~

~~(6)[(7)] A student teacher shall not have responsibility for the supervision or instruction of P-12 students without the direct supervision of a certified educator.~~

~~(7) A student teacher shall not receive direct compensation for student teaching[(8) A student teacher shall not be employed within the school in which he or she is assigned concurrent with student teaching].~~

~~(8)[(9)] The educator preparation institution[program] shall maintain electronic records that confirm that all students[admitted after September 1, 2013,] meet the requirements of this section.~~

Section ~~6.7~~[7] Compensation of Cooperating Teachers. (1) The Education Professional Standards Board may make arrangements with local school districts to compensate a cooperating teacher.

(2) (a) The educator preparation institution shall electronically submit a report of all cooperating teachers and their corresponding student teachers to the Education Professional Standards Board:

1. On or before ~~September 30~~[October 15] for a cooperating teacher supervising a student teacher during the fall semester; or

2. On or before February 1[15] for a cooperating teacher supervising a student teacher during the spring semester.

(b) Each report shall include:

1. The number of contract weeks that the cooperating teacher is working with each student teacher for that semester;

2. The cooperating teacher's full name and Social Security number;

3. The student teacher's full name, Social Security number, demographic data, and contact information;

4. The student teacher's preparation and certification area by assigned certification code; and

5. The names of the school district and school where the cooperating teacher is employed and the student teaching requirement is being fulfilled. If the certified cooperating teacher is employed in a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association, the institution shall submit the name of the school.

(c) If an educator preparation institution fails to provide the report by the date established in paragraph (a) of this subsection, the Education Professional Standards Board shall not be liable for payment under this administrative regulation.

~~(3)(a)[Upon receipt of the report, the Education Professional Standards Board shall contact each cooperating teacher by electronic mail and forward a copy of the Instructions for Electronic Payment Vouchers to the cooperating teacher to provide instructions on how to create and electronically sign an electronic payment voucher.~~

~~(b)] The electronic[payment] voucher shall be electronically signed by the cooperating teacher[, building principal,] and the university[college] supervisor as verification of the cooperating teacher's service to the student teacher and submitted to the Education Professional Standards Board:~~

~~1. On or before December 15 during the fall semester; or~~

~~2. On or before May 1 during the spring semester.~~

~~(b) If a cooperating teacher fails to provide the completed electronic payment voucher by the date established in paragraph (a) of this subsection, the cooperating teacher shall not be eligible to receive any compensation available under this administrative regulation.~~

~~(4)(a) The payment to a cooperating teacher shall be determined based upon available funding allocated under the biennial budget bill and the total number of days[weeks] served by all cooperating teachers reported for the fiscal year.~~

~~(b) The payment shall be allocated to a cooperating teacher based upon the number of days[weeks] the teacher supervised a student teacher as reported in subsections (2) and (3) of this section, not to exceed more than seventy (70) days in a semester.~~

~~(5) Payments to cooperating teachers shall be disbursed to the school districts or to cooperating teachers in nonpublic schools by the Education Professional Standards Board:~~

~~(a) On an annual basis; and~~

~~(b) On or before June 30.~~

~~(6) Any payment of state funds under this administrative regulation shall:~~

~~(a) Be a supplement to the compensation provided by an educator preparation institution to a cooperating teacher who is supervising an institution's student teacher; and~~

~~(b) Not supplant the educator preparation institution's compensation responsibility.~~

ROB AKERS, Board Chair

APPROVED BY AGENCY: December 11, 2017

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

CONTACT PERSON: Lauren Graves, Executive Staff Advisor, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone number (502) 564-4606, fax (502) 564-7080, email [Lauren.Graves@ky.gov](mailto:Lauren.Graves@ky.gov).

**FINANCE AND ADMINISTRATION CABINET**  
**Department of Revenue**  
**(As Amended at ARRS, February 12, 2018)**

**103 KAR 5:230. Information to be provided by the sheriff when transferring delinquent property tax bills to the county clerk.**

RELATES TO: KRS 134.122

STATUTORY AUTHORITY: KRS 134.122(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.122 requires the Department of Revenue to promulgate an administrative regulation providing the criteria for the information required to be provided by the sheriff when transferring delinquent property tax bills to the county clerk. This administrative regulation provides a listing of information to be included in those transfers.

Section 1. ~~Each county sheriff shall transfer all delinquent property tax bills on real and personal property to the county clerk as provided in KRS 134.122.~~

**Section 2. (1)** The sheriff and county clerk may mutually agree to a list of information that is needed to ensure a successful electronic transfer of delinquent property tax data from the sheriff's office to the county clerk's office by the date required by KRS 134.122 ~~in Section 1 of this administrative regulation~~.

**Section 2. (2)** If the sheriff and county clerk do not mutually agree on the information to be provided electronically in the delinquent property tax data transfer, the following demographic information shall be included in any electronic form utilized to transfer delinquent tax bill data from the sheriff's office to the county clerk's office:

- ~~(1)(a)~~ Tax year;
- ~~(2)(b)~~ Tax bill number;
- ~~(3)(c)~~ Tax district;
- ~~(4)(d)~~ Taxpayer name;
- ~~(5)(e)~~ Street address;
- ~~(6)(f)~~ City, state, and zip code;
- ~~(7)(g)~~ Property location address;
- ~~(8)(h)~~ Class of property;
- ~~(9)(i)~~ Assessed value of property;
- ~~(10)(j)~~ Applicable tax districts;
- ~~(11)(k)~~ Tax rates imposed by each tax district;
- ~~(12)(l)~~ Tax amount due each tax district;
- ~~(13)(m)~~ Total tax amount due;
- ~~(14)(n)~~ Total penalty amount due;
- ~~(15)(o)~~ Total sheriff's fee due;
- ~~(16)(p)~~ Total sheriff's commission due; and
- ~~(17)(q)~~ Grand total due at the time of transfer.

**Section 3. (3)** The demographic information described in Section 2 of this administrative regulation ~~above~~ shall be transferred via an electronic data file that is usable by any software vendor utilized by the sheriff or county clerk.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: December 11, 2017

FILED WITH LRC: December 13, 2017 at 4 p.m.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant,  
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**FINANCE AND ADMINISTRATION CABINET**  
**Kentucky Retirement Systems**  
**(As Amended at ARRS, February 12, 2018)**

**105 KAR 1:140. Employer's administrative duties.**

RELATES TO: KRS 16.583, 16.645(18), 18A.105, 61.546, 61.552(23), 61.560, 61.565, 61.569, 61.597, 61.598, 61.637(17), 61.675, 61.685, 61.702, 78.545(33), (37), 78.616, 78.625, 78.652, 26 U.S.C. 401(a)(17), (31), 403(b), 408(a), (b), 414(g)(6), 457(b), 3121(b)(10), Pub.

L. 104-191, Pub. L. 111-5, Div. A, Title XIII, Div. B, Title IV, 26 C.F.R. 31.3121(b)(10)-2, 29 C.F.R. 519.2(a), 42 C.F.R. 423.504(b)(4)(vi), 45 C.F.R. Parts 160, 162, 164

STATUTORY AUTHORITY: KRS 16.645(18), 61.565, 61.645(9) ~~(e)(g)~~, 61.675, 78.545(33), 78.625

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9) ~~(e)(g)~~ requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System are required by KRS 16.645(18), 61.565, 61.675, 78.545(33), and 78.625 to make contributions to the retirement systems, to report creditable compensation to the retirement systems and other information that the Board of Trustees may require, and perform other duties and responsibilities as participating employers. 26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made. This administrative regulation sets out the reporting requirements for all participating agencies.

Section 1. (1) Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site by:

(a) The Enter Report Details Module; or

(b) Uploading an electronic file that meets the requirements of the Employer Contribution Record Layout. The employer shall submit a test file to the retirement systems, which shall be reviewed for compliance with the requirements of the Employer Contribution Record Layout. If the test file is in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall certify the electronic file and inform the employer of the month when the employer may begin using the electronic file for submitting reports. If the test file is not in compliance with the requirements of the Employer Contribution Record Layout, the retirement systems shall inform the employer of the needed corrections to the test file. The employer shall not submit a report by electronic file pursuant to this subsection until the test file is certified by the retirement systems.

(2) The retirement systems shall notify each employer of the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site and shall notify each employer if the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site changes.

(3) Each employer shall submit the contributions required by KRS 61.675 and KRS 78.625:

(a) Electronically using the secure Kentucky Retirement Systems' Employer Self Service Web site;

(b) By mailing or hand delivering a check;

(c) By the eMARS system maintained by the Finance and Administration Cabinet; or

(d) By wire transfer.

(4) The employer shall report all creditable compensation paid during a month by the tenth day of the following month.

(a) The employer shall designate the month to which the creditable compensation should be applied if it is not the month for which the employer is reporting and if the month the creditable compensation was earned is the month in which the employee:

1. Became employed;

2. Became eligible to participate in one of the systems administered by Kentucky Retirement Systems;

3. Was transferred to hazardous coverage from nonhazardous participation;

4. Was transferred from hazardous coverage to nonhazardous participation;

5. Terminated from employment; or

6. Became ineligible to participate in one (1) of the systems administered by Kentucky Retirement Systems.

(b) If the employee is paid creditable compensation in a lump sum or nonrecurring payment, the employer shall designate the reason for the lump sum or nonrecurring payment.

1. If the lump sum or nonrecurring payment was earned during a specific time period, the employer shall designate the time period during which the lump sum or nonrecurring payment was earned.



2. If the employer fails to designate a specific time period during which the lump sum or nonrecurring payment was earned, the payment shall be considered a lump sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).

(5) The provisions of subsection (1) of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.

(6) Each employer shall report employees who are regular full-time employees as defined by KRS 61.510(21) and 78.510(21) and shall remit employer and employee contributions for those employees.

(7) If an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.560, 61.597, or 61.702:

(a) The retirement systems shall notify the employer of the additional amount of employee contributions due from the employee;

(b) The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.583, 61.560, 61.697, or 61.702 from the employee's creditable compensation and remit the additional contributions to the retirement systems;

(c) If the employee is no longer employed by the employer, the employer shall notify the retirement systems and the retirement systems shall refund the contributions submitted by the employer on behalf of the employee to the employer, which shall withhold the applicable taxes from the contributions and remit the remaining money to the employee; and

(d) If the contributions are refunded in accordance with paragraph (c) of this subsection, then that service credit shall be omitted service in accordance with KRS 61.552(23).

(8) Each employer shall report employees who are not regular full-time employees as defined by KRS 61.510(21) and 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6), except:

(a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2; and

(b) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and are classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a).

(9)(a) An employer participating in Kentucky Employees Retirement System or County Employees Retirement System shall not classify an employee in more than one (1) non-participating position status during the fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(d)(e) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.

(b) An employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System shall not change an employee's position status from full-time to seasonal, temporary, or interim in the same fiscal year.

(c) An employer shall not classify an employee as a seasonal employee pursuant to KRS 61.510(21)(a) or 78.510(21)(a) unless the duties of the job can only be performed during a defined time period during a fiscal or calendar year. If the employer classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a three (3) calendar month break in employment before the employer may again classify the employee as a seasonal employee, except for employers that are school boards. If an employer that is a school board classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a six (6) calendar month break in employment before the employer may again classify the employee as a seasonal employee.

(d) If an employer violates the provisions of this subsection, the retirement systems shall determine if the employee worked or averaged the necessary hours to be in a regular full-time position as provided in KRS 61.510(21) or 78.510(21). If the employee worked or averaged the necessary hours to be in a regular full-time position as defined by KRS 78.510(21), the service credit shall be omitted service in accordance with KRS 61.552(23).

Section 2. (1) Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.

(2)(a) If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by hand delivery, mail, fax, or in an electronic format; the employer shall notify affected employees in writing of the disclosure of personal information and provide information regarding obtaining credit reports.

(b) Personal information includes the member's first name or first initial and last name in combination with the member's:

1. Social Security number;
2. Driver's license number;
3. Personal Identification Number permitting access to the member's account; or
4. Medical Information.

(c) The retirement systems shall notify the employer of a disclosure upon discovery.

(d) The employer shall notify the retirement systems of a disclosure upon discovery.

(e) The employer shall submit a draft of the written notification to be made to affected employees to the retirement systems for approval or denial.

(f) The employer shall submit copies of the written notifications made to affected employees to the retirement systems after the notifications have been made.

(g) If the retirement systems is required by federal or state law to provide notification to affected members about the employer's disclosure of personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement systems for its costs in notifying members affected by the employer's disclosure.

(h) In transmitting any medically related personal information, the employer shall comply with all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 "HIPAA", Pub.L. 104-191 and the Health Information Technology for Economic and Clinical Health Act "HITECH", Pub.L. 111-5.

(i) Each employer shall execute a data use agreement with retirement systems.

Section 3. (1)(a) The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports.

(b) The employer shall remit payment to the retirement systems by the due date provided on the invoice.

(2) The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.

Section 4. (1) An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.

(2) The interest shall be assessed from the time period for which the creditable compensation has been reinstated.

Section 5. If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement systems, the retirement systems may, if appropriate, hold all payments of:

- (1) Any funds due to the employer; or
- (2) Refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement system.

Section 6. (1) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). The retirement system shall notify employers of the maximum annual compensation limit. Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer or employee contributions on the employee's creditable compensation. If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

(2) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.

(3) Effective with respect to plan years beginning on and after July 1, 2002, a plan member's annual compensation that exceeds \$200,000 (as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B)) shall not be taken into account in determining benefits or contributions due for any plan year. Annual compensation shall include compensation during the plan year or any other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(4) A participating member may pay contributions for the creditable compensation over the maximum annual compensation limit for the years used to determine the member's final compensation for purposes of retirement if:

(a) The member's creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

(b) The member has filed a notification of retirement; and

(c) The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003. Upon receipt of employee contributions, the retirement systems shall bill the employer for the employer contributions on the excess creditable compensation, and the employer shall remit the employer contributions to the retirement systems. The excess shall only be included in retirement calculations if both the employee and employer have paid their respective contributions. ~~[Section 7. (1) An employer may request that the retirement systems make a determination if a change in position or hiring of an employee is a bona fide promotion or career advancement prior to the employee's change of position or hiring as provided in KRS 61.598.~~

~~(2) An employer may submit a Form 6480, Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement, describing the proposed change in position or hiring of an employee or potential employee including:~~

~~(a) The employee's or potential employee's full name;~~

~~(b) The employee's or potential employee's Kentucky Retirement Systems Member Identification Number or Social Security Number;~~

~~(c) The potential employee's current employer;~~

~~(d) The employee's current job description;~~

~~(e) The job description for the employee's proposed job;~~

~~(f) Documentation of additional training, skills, education, or expertise gained by the employee or potential employee;~~

~~(g) Employer's organizational chart; and~~

~~(h) Any additional information the employer wants to be considered~~

~~by the retirement systems.~~

~~(3) The employer shall provide any additional information requested by the retirement systems.~~

~~(4) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.~~

~~(5) In determining if a change in position or hiring would be a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).~~

~~(6) Increases or proposed increases in an employee's creditable compensation caused by overtime, compensatory time other than lump-sum payment made at the time of termination, or bonuses shall not be a bona fide promotion or career advancement.~~

~~(7) The retirement systems shall issue a final administrative decision in writing informing the employer whether the employee's change in position or potential employee's hiring is a bona fide promotion or career advancement. The retirement systems' determination shall be specific to the employee or potential employee and shall be based on the information and documentation provided by the employer. If the information or documentation provided by the employer is not accurate, the final administrative decision of the retirement systems shall not be binding on the retirement systems pursuant to KRS 61.685.~~

~~(8) An employer who disagrees with the retirement systems' final administrative decision may request an administrative hearing in accordance with KRS Chapter 13B. The request for administrative hearing shall be made in writing within thirty (30) days of the date of the final administrative decision of the retirement systems.]~~

Section 7.[8.] (1) For members retiring on or after January 1, 2014, but prior to July 1, 2017,~~[After the member retires,]~~ the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.

(a) For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.

(b) For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).

(2) If the retirement systems determine~~[determines]~~[determine] that the member received annual increases in creditable compensation greater than ten (10) percent over his or her~~[the member's]~~ last five (5) fiscal years of employment, the retirement systems shall send written notice to the member's last participating employer of the retirement systems' determination that the member has experienced annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, and the amount of the additional actuarial cost to the retirement systems attributable to the increases.

(3) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, the employer shall file a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, for a determination that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement. The Form 6481 shall be filed within sixty (60) days of the date on~~[of]~~ the notice. If the retirement systems had previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, the employer shall submit the determination and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring.

(4) The employer shall provide any additional information requested by the retirement systems.

(5) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.

(6) In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).

(7) The retirement systems shall issue a final administrative decision in writing informing the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.

(8) If the employer fails to submit a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, within sixty (60) days of the date on[ef] the notice, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(9) If the employer disagrees with the final administrative decision by the retirement systems, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date on[ef] the final administrative decision. The hearing shall be limited to the issue of whether the retirement systems correctly determined that the annual increases in the member's creditable compensation greater than ten (10) percent were not due to a bona fide promotion or career advancement.

(10) If the employer fails to file a written request for administrative hearing within thirty (30) days of the date on[ef] the final administrative decision, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(11) The retirement systems shall issue an invoice to the last participating employer representing the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment. The employer may request that the retirement systems allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the retirement systems shall establish a payment plan for the employer.

(12) If the member was employed by more than one (1) participating employer when the member retired, the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment shall be divided equally among the member's last participating employers.

(13) An employer who is required to pay the additional actuarial cost pursuant to KRS 61.598 shall be treated as a participating employer in the system to which the employer is required to pay the additional actuarial cost solely for purposes of making the payment required pursuant to KRS 61.598.

Section 8. (1) For members retiring on or after January 1, 2018, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.

(a) For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.

(b) The fiscal year immediately preceding the member's last five (5) fiscal years shall be used for comparison to determine if an increase in creditable compensation greater than ten (10) percent occurred in the initial fiscal year of the member's last five (5) fiscal years.

(c) For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).

(2) The member shall receive a refund of all pre-tax and post-tax

member contributions and interest directly attributable to the reduction in creditable compensation.

(a) Pre-tax member contributions shall be refunded to the member by the employer who picked-up the contributions.

(b) Post-tax member contributions shall be refunded to the member directly from the retirement systems.

(c) Interest earned on pre-tax and post-tax member contributions shall be refunded to the member directly from the retirement systems.

Section 9. (1) If the retirement systems ~~determine~~determines that the member received annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the retirement systems shall send the member's employer the Form 6487, Request for Member Pension Spiking Exemption Amounts.

(a) Pursuant to KRS 16.645, 61.675, and 78.545, the employer shall furnish the information required by the retirement systems in the discharge of its duties. The employer shall complete the Form 6487 in its entirety and provide supporting documentation.

(b) The employer shall submit a completed Form 6487 at the retirement office within sixty (60) days from the date the Form 6487 was mailed. If the employer fails to submit a completed Form 6487 within that sixty (60) day time period, Kentucky Retirement Systems shall issue a final administrative decision and provide adjustment correspondence to the member.

(2) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was not due to a bona fide promotion or career advancement, a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, leave without pay, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall indicate on the Form 6487 that none of the listed exemptions are applicable.

(a) The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, or leave without pay during the employer's normal monthly reporting. If, upon review of the Form 6487, the employer believes that adjustments to the reported salaries are required, then the employer shall make those adjustments during the next monthly reporting cycle pursuant to KRS 16.645, 61.675, and 78.545.

(3) If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall include the salary directly attributable to each exemption in Part 2 of the Form 6487.

(a) If the employer believes that any of the salary is directly attributable to a bona fide promotion or career advancement, the employer shall complete Part 3 of the Form 6487.

(b) The employer shall provide an explanation and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement.

(c) In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).

(4) The employer shall provide any additional information requested by the retirement systems.

(a) The retirement systems may require the employer to make certifications regarding the information and documentation submitted.

(5) If the increases in creditable compensation are not directly attributable to any of the listed exemptions and no reporting information needs to be corrected, then any annual increase in creditable compensation greater than ten (10) percent shall not be used to calculate the member's retirement allowance.

(6) The retirement systems shall not issue a refund to the employer for the excess employer contributions. The retirement systems shall utilize any employer contributions directly attributable to the reduction in creditable compensation to pay the unfunded liability of the pension fund in which the retiring member participated.

Section 10.[9-] Incorporation by Reference. (1) The following



material is incorporated by reference:

(a) Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", July 2015/September 2013 [Form 6480, "Employer Request for Pre-Determination of Bona Fide Promotion or Career Advancement", July 2013;] and

(b) Form 6487, "Request for Member Pension Spiking Exemption Amounts", February 2018/November 2017 [Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", September 2013;]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

DAVID L. EAGER, Interim Executive Director

APPROVED BY AGENCY: December 15, 2017

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**DEPARTMENT OF MILITARY AFFAIRS  
Division of Emergency Management  
(As Amended at ARRS, February 12, 2018)**

**106 KAR 1:350. Rescue squad minimum equipment.**

RELATES TO: KRS 39F.030(1)(d), 39F.040(5), 39F.050(3)(d), 39F.070(3)(d), 39F.120(12), 42.738, 186.650, 189.010, 33 C.F.R. 183  
STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.100, 39F.110, 39F.120(12), 39F.130, 39F.140, 39F.150, 338.031

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.120(12) requires a rescue squad to have the minimum equipment necessary to perform a mission and [KRS 39F.120(12)] requires the division to promulgate an administrative regulation establishing minimum equipment for a rescue squad. This administrative regulation establishes the minimum equipment requirements for a rescue squad.

Section 1. Definitions. (1) "ANSI" means the American National Standards Institute.

(2) "CE" means the European Community.

(3) "County" means county, including urban-county governments and consolidated local governments.

(4) "Equine rescue squad" means a rescue squad utilizing two (2) or more horses, with a minimum of twelve (12) total members.

(5) "Fund" means the rescue aid fund established in KRS 39F.100(2).

(6) "High angle rescue service" means any rescue-related activity in which a patient or rescuer is raised or lowered vertically or near vertically by means of a rope or cable, or moved across or up or down a fifty (50) degree or greater slope or grade.

(7) "Mission" means one (1) or more activities in which the rescue squad is involved, and which is listed in the mission statement provided by the rescue squad to the Kentucky Division of Emergency Management.

(8) "NFPA" means the National Fire Protection Association.

(9) "UIAA" means the Union Internationale des Associations d'Alpinisme.

(10) "Vehicle" means:

(a) A motor "vehicle" as defined by KRS 189.010(19) that is lawfully operated on the roadways of the commonwealth and that is capable of carrying two (2) or more passengers within an enclosed passenger compartment and carrying the minimum equipment required for the owning rescue squad within an enclosed area or;

(b) Any fully enclosed "trailer" as defined by KRS 186.650(1) with a cargo capacity of at least 1,200 pounds and in compliance with Section 12(3) of this administrative regulation; or

(c) Any covered or enclosed horse trailer used by a rescue squad that performs search functions for lost or missing persons and utilizes two (2) or more horses and riders to assist in the performance of the search function. [Any trailer, as defined by KRS 186.650(1) and

189.010(19) shall include a standard size ball, and the ball, receiver slide, and pin, as well as the electric adapter, shall remain with the trailer continuously, including if not connected to towing vehicle.

(10) "UIAA" means the Union Internationale des Associations d'Alpinisme. [(1) "Fund" means the rescue aid fund established in KRS 39F.100(2).

(2) "New or replacement equipment" means equipment that a rescue squad is not required to have prior to becoming eligible to participate in the fund.

(3) "Replacement-only equipment" means equipment that a rescue squad shall have in its possession before becoming eligible to participate in the fund.]

Section 2. The minimum equipment for a rescue squad that has as a light duty rescue and extrication of persons from vehicles mission [new or replacement equipment for a general rescue squad] shall be:

(1) Twelve (12) pairs of protective eyewear;

(2) Twelve (12) protective coats or jumpsuits;

(3) Twelve (12) rescue helmets;

(4) Two (2) first aid kits, twenty-four (24) unit industrial type or equivalent;

(5) Two (2) full backboards;

(6) One (1) basket litter;

(7) 100 feet of one (1) inch diameter of tubular nylon webbing;

(8) One (1) twelve (12) foot chain, grade 80 or greater, recovery rated;

(9) Two (2) hacksaw frames with spare blades or equivalent saws;

(10) Two (2) pairs of pliers, slip-joint;

(11) One (1) pair of locking pliers;

(12) Two (2) pairs wire cutters with insulated grips;

(13) One (1) center or rescue punch;

(14) Four (4) screwdrivers, flat blade (slot head), assorted sizes;

(15) (a) Four (4) Phillips head screwdrivers; and

(b) Assorted sizes of Allen wrenches, torx drives, and Robertson square head screwdrivers, Allen Wrench, torx drive, and Robertson square head screwdriver, assorted sizes;

(16) One (1) seat belt cutter;

(17) One (1) pair tin snips;

(18) One (1) claw hammer;

(19) Two (2) adjustable wrenches;

(20) Two (2) pipe wrenches;

(21) Two (2) axes, single bit;

(22) One (1) mattock;

(23) One (1) bow saw;

(24) One (1) pair of bolt cutters;

(25) One (1) sledge hammer;

(26) One (1) chain saw with fourteen (14) inch bar;

(27) One (1) rounded point shovel, short handle;

(28) Two (2) wrecking or pry bars;

(29) One (1) minimum of one and one-half (1 1/2) ton cable puller or come-along;

(30) One (1) minimum of ten (10) ton manual hydraulic power supply;

(31) One (1) minimum of five (5) ton hydraulic jack;

(32) One (1) halligan tool, or equivalent;

(33) Two (2) rescue pulleys;

(34) 200 feet of utility rope;

(35) 100 feet of half-inch inch static rescue kernmantle rope;

(36) One (1), eight (8) foot ladder;

(37) Two (2) tarps or salvage covers;

(38) One (1), three (3) gallon gas can, safety type;

(39) Two (2), ten (10) pound fire extinguishers, ABC rated;

(40) One (1), two-point-five (2.5) KVA portable generator, or equivalent;

(41) One (1), fifty (50) foot section of No. 10 electrical extension cord, GFI equipped;

(42) One (1), 100 foot section of No. 10 electrical extension cord, GFI equipped;

(43) One (1), 100 foot section of No. 12 electrical extension cord, GFI equipped;

(44) Twelve (12) ANSI-approved traffic safety reflective vests; [i] and

(45) Five (5), thirty-six (36) inch traffic cones with reflective collars (only required for rescue squads that perform vehicle extrication). [(4)

Twelve (12) pairs of gloves;  
 (2) Twelve (12) pairs of safety goggles;  
 (3) Twelve (12) squad coats;  
 (4) Twelve (12) helmets;  
 (5) Twelve (12) pairs of boots with protective toe;  
 (6) Two (2) first aid kits, twenty-four (24) unit industrial type or equivalent;  
 (7) Two (2) full backboards;  
 (8) Two (2) half backboards;  
 (9) One (1) basket litter;  
 (10) Four (4) sections of fifteen (15) foot by one (1) inch tubular nylon webbing;  
 (11) One (1) splint kit, with half arm, half leg, full arm, full leg;  
 (12) One (1) twelve (12) foot tow chain;  
 (13) Two (2) hacksaw frames;  
 (14) Twelve (12) hacksaw blades;  
 (15) Two (2) pairs of pliers, minimum of eight (8) inch, slip joint;  
 (16) One (1) pair of locking pliers;  
 (17) Two (2) pairs wire cutters with insulated grips;  
 (18) One (1) center punch;  
 (19) Four (4) screwdrivers, flat blade, assorted sizes;  
 (20) Four (4) Phillips screwdrivers, assorted sizes;  
 (21) One (1) seat belt cutter;  
 (22) One (1) pair of minimum of eight (8) inch tin snips;  
 (23) One (1) claw hammer;  
 (24) Two (2) crescent wrenches;  
 (25) Two (2) twenty-four (24) inch pipe wrenches;  
 (26) Two (2) axes, single butt, four (4) pound head;  
 (27) One (1) mattock;  
 (28) One (1) eighteen (18) inch bow saw;  
 (29) One (1) pair of thirty-six (36) inch bolt cutters;  
 (30) One (1) eight (8) pound sledge hammer;  
 (31) One (1) minimum of fourteen (14) inch chain saw;  
 (32) One (1) rounded point shovel, (short handle);  
 (33) One (1) rounded point shovel, (long handle);  
 (34) Two (2) one half (1/2) inch by twelve (12) inch gooseneck wrecking bars;  
 (35) Two (2) one (1) inch by thirty (30) inch gooseneck wrecking bars;  
 (36) One (1) six (6) foot pry bar;  
 (37) One (1) minimum of one and one-half (1 1/2) ton come-along;  
 (38) One (1) air chisel with extra tank;  
 (39) One (1) minimum of ten (10) ton porta-power;  
 (40) One (1) minimum of five (5) ton hydraulic jack;  
 (41) One (1) thirty-six (36) inch, hooligan tool;  
 (42) Two (2) rescue pulleys;  
 (43) Four (4) minimum of fifty (50) foot sections of nylon rope;  
 (44) Two (2) minimum of 150 foot by one-half (1/2) inch static kernmantle rope;  
 (45) One (1) minimum of eight (8) foot straight ladder;  
 (46) Two (2) fire retardant blankets or salvage covers;  
 (47) Two (2) five (5) gallon gas cans, safety type;  
 (48) Two (2) minimum of ten (10) pound fire extinguishers, ABC rated;  
 (49) One (1) minimum of two-point-five (2.5) KVA portable generator;  
 (50) One (1) minimum of fifty (50) foot section of No. 10 electrical extension cord, GFI equipped;  
 (51) One (1) minimum of 100 foot section of No. 10 electrical extension cord, GFI equipped;  
 (52) One (1) minimum of 100 foot section of No. 12 electrical extension cord, GFI equipped;  
 (53) Four (4) portable (hand-held) radios;  
 (54) One (1) mobile radio with antenna per vehicle;  
 (55) One (1) encoder;  
 (56) One (1) base station radio with antenna; and  
 (57) One (1) base station radio tower.  
 (58) The requirement for one (1) encoder in subsection (55) of this section, one (1) base station radio with antenna in subsection (56) of this section, and one (1) base station tower in subsection (57) of this section is not required minimum new or replacement equipment if the rescue squad is dispatched by another agency, city or county public safety communications center.]

Section 3. The minimum equipment for a rescue squad specializing in water rescue and recovery operations not utilizing divers and not classified as swiftwater shall be:

(1) One (1) rigid hull boat, a minimum of (12) feet in length with U.S. Coast Guard required lighting and equipment (33 C.F.R. 183);  
 (2) One (1) boat motor, appropriate for boat;  
 (3) Two (2) marine-type gas tanks;  
 (4) One (1) boat anchor;  
 (5) One (1) boat trailer, appropriate for boat;  
 (6) Two (2) boat oars or paddles;  
 (7) Four (4), Type III personal flotation devices approved by the U.S. Coast Guard (33 C.F.R. 183.101-335);  
 (8) Two (2) electric lanterns or spot lights;  
 (9) Four (4) buoy markers;  
 (10) One (1) tool box;  
 (11) One (1) flat blade (slot head) screwdriver;  
 (12) One (1) Phillips head screwdriver;  
 (13) One (1) pair of pliers, slip joint;  
 (14) One (1) pair of locking pliers;  
 (15) Two (2) grapppling irons or drag hooks;  
 (16) Two (2) pike poles, shepherd's hooks, or boat hooks;  
 (17) 500 feet of half-inch diameter nylon or polypropylene rope, with rope bags;  
 (18) Two (2) water throw bags with seventy-five (75) feet of nylon rope for each bag;  
 (19) Two (2) rescue pulleys;  
 (20) One (1) full backboard, basket litter, or equivalent;  
 (21) One (1) first aid kit, twenty-four (24) unit industrial-type or equivalent; and  
 (22) Two (2) flashlights. [(1) New or replacement equipment:  
 (a) One (1) john boat, in excess of nineteen (19) feet;  
 (b) One (1) minimum of twenty-five (25) horse power boat motor;  
 (c) Two (2) marine type gas tanks;  
 (d) One (1) boat anchor;  
 (e) One (1) electronic depth finder;  
 (f) Four (4) Type III personal flotation devices approved by the United States Coast Guard;  
 (g) Two (2) electric lanterns;  
 (h) Four (4) buoy markers;  
 (i) Two (2) spot lights;  
 (j) One (1) tool box;  
 (k) One (1) flat blade screwdriver;  
 (l) One (1) Phillips head screwdriver;  
 (m) One (1) pair of pliers, minimum of eight (8) inch slip joint;  
 (n) One (1) pair of locking pliers;  
 (o) One (1) pair of eighteen (18) inch bolt cutters;  
 (p) One (1) bow saw;  
 (q) Four (4) pairs of rubberized gloves;  
 (r) Two (2) grapppling irons or drag hooks;  
 (s) One (1) body bag;  
 (t) Two (2) pike poles or shepherd's hooks;  
 (u) Two (2) sections of minimum of 250 feet by one-half (1/2) inch nylon or polypropylene rope;  
 (v) Two (2) water throw bags with a minimum of fifty (50) feet of nylon rope for each bag;  
 (w) Two (2) minimum of 250 foot line bags;  
 (x) Two (2) rescue pulleys;  
 (y) One (1) full backboard;  
 (z) One (1) first aid kit, twenty-four (24) unit industrial-type or equivalent;  
 (aa) One (1) basket litter;  
 (bb) Two (2) signal lights; and  
 (cc) Two (2) flash lights.  
 (2) Replacement equipment only:  
 (a) One (1) vehicle dedicated to water rescue and recovery;  
 (b) One (1) john boat, sixteen (16) foot or larger;  
 (c) One (1) boat motor with a minimum capacity of fifteen (15) horse power;  
 (d) One (1) boat trailer; and  
 (e) Two (2) boat oars.]

Section 4. The minimum equipment for a rescue squad specializing in water rescue and recovery operations utilizing divers shall be:

(1) For Level 1:

(a) One (1) full or partial face mask suitable for snorkeling;

(b) One (1) snorkel;

(c) One (1) pair of swim fins; and

(d) Appropriate swimwear and snorkeling shoes for the environment;

(2) For Level 2:

(a) One (1) full face mask per certified diver;

(b) One (1) drysuit per certified diver; and

(c) One (1) independent back-up air supply;

(3) For Level 3, in addition to the equipment established in

subsection (2) of this section[paragraph (b) of this subsection], at a minimum[;

(a)] surface supplied air and redundant air supply; and

(4) For Level 4, in addition to the equipment established in subsections (2) and (3) of this section[paragraphs (b) and (c) of this subsection], at a minimum[;

(a)] fully encapsulated HAZMAT drysuit; and[;

(5) In addition to the equipment established in[subsection (1) of this section, all squads[under this section] shall have the minimum equipment listed in Section 3 of this administrative regulation.[(1) New or replacement equipment:

(a) One (1) mask per certified diver;

(b) One (1) pressure gauge per certified diver;

(c) One (1) knife per certified diver;

(d) One (1) wet suit per certified diver;

(e) One (1) snorkel per certified diver;

(f) One (1) buoyancy compensator per certified diver;

(g) One (1) weight belt per certified diver;

(h) One (1) depth gauge per certified diver;

(i) One (1) waterproof flashlight per certified diver;

(j) One (1) pair of fins per certified diver;

(k) One (1) air tank per certified diver; and

(l) One (1) regulator per certified diver.

(2) Replacement equipment only:

(a) The water rescue and recovery equipment established in Section 3 of this administrative regulation;

(b) Two (2) extra tanks per certified diver;

(c) One (1) dry suit per certified diver;

(d) Three (3) dive flags; and

(e) One (1) underwater radio communications system.]

Section 5. The minimum equipment for a rescue squad specializing in cave rescue shall be:

(1) One (1) litter, basket style;

(2) One (1) litter, flexible, full length, vertical lift capability;

(3) One (1) splint kit;

(4) Thirty (30) carabiners, locking, D's;

(5) Twelve (12) rescue helmets, with hands-free or helmet lighting;

(6) Four (4) friction devices, G-rated, 5 bar minimum, with tie-off;

(7) Two hundred (200) feet of webbing;

(8) Two (2) pulleys, two (2) inch, single, prusik minding;

(9) Four (4) pulleys, two (2) inch double, prusik minding;

(10) One (1) pulley - knot passing;

(11) Four (4) sets of prusik cords, matched for pulleys;

(12) Six (6) edge protection, appropriate for cave environment;

(13) One (1) flexible ladder, fifteen (15) feet;

(14) One (1) swivel;

(15) One (1) radium load release hitch, or equivalent;

(16) Six (6) rope grabs, mechanical;

(17) Three (3) ropes, seven-sixteenths (7/16), two hundred (200) static kernmantle lifeline;

(18) One (1) rope, ten and five-tenths (10.5) mm, or 7/16 inches, 150 feet, dynamic kernmantle lifeline (UIAA approved);

(19) 400 feet, half-inch diameter static kernmantle lifeline;

(20) 200 feet, half-inch diameter static kernmantle lifeline; and

(21) Six (6) rope bags, with drain hole or waterproof.[(4) New or replacement equipment:

(a) Twenty-four (24) minimum of twenty (20) feet by one (1) inch tubular nylon webbing;

(b) Six (6) pairs of rappelling gloves;

(c) Six (6) rappelling, climbing seat, or full-body harnesses;

(d) Two (2) minimum of 300 feet by one-half (1/2) inch static kernmantle rope;

(e) Two (2) minimum of 200 feet by seven-sixteenths (7/16) inch static kernmantle rope;

(f) Two (2) minimum of 300 feet by seven-sixteenths (7/16) inch static kernmantle rope;

(g) Minimum of 200 feet of accessory cord;

(h) Eight (8) rope bags;

(i) Six (6) rescue pulleys;

(j) Six (6) brake bar rappel racks, six (6) bar type;

(k) Twenty (20) large "D" locking carabiners, steel;

(l) Twenty (20) large "D" offset locking carabiners, steel;

(m) Ten (1) extra large "D" offset locking carabiners, steel;

(n) Eighteen (18) mechanical ascenders;

(o) Four (4) figure-eight descenders;

(p) One (1) SKED stretcher or equivalent;

(q) Two (2) miles of field phone wire;

(r) Three (3) field phones for underground communications;

(s) Two (2) waterproofed first aid kits, twenty-four (24) unit industrial type or equivalent;

(t) One (1) splint kit with half-arm, half-leg, full-arm, full-leg;

(u) One (1) set assorted sizes of rigid or semirigid cervical collars;

(v) One (1) Kendrick Extrication Device or Oregon spine splint or equivalent; and

(w) Three (3) wool blankets, or one (1) synthetic sleeping bag and vapor barrier.

(2) Replacement equipment only:

(a) One (1) vehicle dedicated to cave rescue;

(b) One (1) basket litter;

(c) Six (6) rappelling helmets, UIAA-approved, with helmet head lamps;

(d) Six (6) sturdy caving packs;

(e) Twelve (12) rugged waterproof flashlights with extra batteries and bulbs;

(f) Three (3) field phones for underground communications;

(g) 4,000 feet of field phone wire;

(h) One (1) 200 foot length of seven-sixteenths (7/16) inch static kernmantle rope;

(i) Four (4) large "D" locking carabiners, steel;

(j) One (1) figure-eight descender with ears; and

(k) Twelve (12) twenty (20) feet by one (1) inch tubular nylon webbing.]

Section 6. The minimum equipment for a rescue squad specializing in high angle rescue service shall be:

(1) Six (6) helmets with chin straps and designed for working at heights and meeting ANSI Z89.1-2014 or equivalent standard;

(2) Six (6) pairs of gloves, styled for rope rescue work;

(3) Six (6) flashlights designed for hands-free operation;

(4) Four (4) full body (Class III) harnesses designed for rope rescue work and meeting ANSI Z359.11 NFPA 1983, or equivalent;

(5) 400 feet of half-inch diameter rescue rope;

(6) 300 feet of webbing;

(7) Ten (10) sets of prusik or utility cord;

(8) Two (2) load release straps or web system configured for load release systems;

(9) Two (2) pick-off straps;

(10) Two (2) etrier, ladder, or multi-loop straps;

(11) Six (6) rope storage bags;

(12) Thirty (30) locking carabiners;

(13) Four (4) anchor plates;

(14) Six (6) rescue pulleys

(15) Four (4) friction devices;

(16) Six (6) rope grabs or ascenders;

(17) One (1) large knot passing pulley;

(18) One (1) victim seat or harness;

(19) One (1) litter or basket;

(20) One (1) litter harness;

(21) One (1) litter patient tie in system;

(22) Two (2) edge protectors; and

(23) One (1) radium load release hitch, or equivalent.[(4) New or replacement equipment:

(a) Four (4) rappelling helmets UIAA approved;

(b) Twelve (12) minimum of fifteen (15) feet by one (1) inch tubular nylon webbing;

- (c) Four (4) pairs of rappelling gloves;
- (d) Four (4) helmet head lamps;
- (e) Four (4) rappelling, climbing seat, or full-body harnesses;
- (f) Four (4) rugged waterproof flashlights with extra batteries and bulbs;
- (g) Two (2) minimum of 300 feet by one-half (1/2) inch static kernmantle rope;
- (h) Two (2) minimum of 200 feet by seven-sixteenths (7/16) inch static kernmantle rope;
- (i) Two (2) minimum of 300 feet by seven-sixteenths (7/16) inch static kernmantle rope;
- (j) Six (6) rope bags;
- (k) Four (4) rescue pulleys;
- (l) Two (2) brake bar rappel racks, six (6) bar type;
- (m) Ten (10) large "D" locking carabiners, steel;
- (n) Ten (10) large "D" offset locking carabiners, steel;
- (o) Twelve (12) mechanical ascenders;
- (p) Four (4) figure-eight descenders with ears;
- (q) One (1) SKED stretcher or equivalent;
- (r) Two (2) waterproofed first aid kits, twenty-four (24) unit industrial type or equivalent;
- (s) One (1) splint kit with half arm, half leg, full arm, full leg;
- (t) One (1) set assorted sizes of rigid or semirigid cervical collars;
- (u) One (1) Kendrick Extrication Device or Oregon spine splint or equivalent; and
- (v) Three (3) wool blankets or one (1) synthetic sleeping bag with vapor barrier.
- (2) Replacement equipment only:
  - (a) One (1) vehicle dedicated to high angle rescue;
  - (b) One (1) basket litter;
  - (c) One (1) 200 foot length of seven sixteenths (7/16) inch static kernmantle rope;
  - (d) Four (4) large "D" locking carabiners, steel;
  - (e) One (1) figure-eight descender with ears; and
  - (f) Four (4) fifteen (15) feet by one (1) inch tubular nylon webbing.

Section 7. The minimum equipment for a rescue squad specializing in swiftwater[each member of a search dog rescue squad specializing in a search for lost, trapped or missing persons] shall be:

- (1) All equipment listed in Section 3(4) through (23) of this administrative regulation;
- (2) Six (6) Personal Flotation Devices (PFD), Class V, with tethers;
- (3) Six (6) rescue or dive knives;
- (4) Six (6) whistles;
- (5) Six (6) vented helmets suitable for water rescue;
- (6) 400 feet of 7/16 inches polypropylene or nylon rope;
- (7) One (1), twelve (12) foot self-bailing, inflatable rescue raft or inflatable rescue boat, or equivalent;
- (8) Six (6), seventy-five (75) foot throw bags (in addition to those required by Section 3 of this administrative regulation);
- (9) Four (4) dry suits;
- (10) Four (4) paddles; and
- (11) 100 feet of messenger line or rope. [(1) Replacement equipment:
  - (a) One (1) rescue vest;
  - (b) One (1) pair of leather gloves;
  - (c) One (1) pair of boots, lug soles;
  - (d) One (1) fanny pack or equivalent;
  - (e) One (1) rescue helmet with headlamp;
  - (f) Three (3) one (1) quart canteens with belt;
  - (g) Three (3) flashlights with extra batteries;
  - (h) One (1) compass, two (2) degree increments.
  - (2) New or replacement equipment only: none.]

Section 8. The minimum equipment for a single-handler rescue squad utilizing dogs and specializing in a search for lost, trapped, or missing persons[search and rescue squad specializing in a search for lost, trapped or missing persons] shall be:

- (1) Three (3) flashlights with extra batteries;
- (2) One (1) GPS unit, capable of U.S. Geographic Service (USGS) data; and
- (3) Two (2) rolls, 100 feet each flagging or surveyor tape; and;
- (4) One (1) portable radio with two (2) batteries or battery packs and one (1) charger per radio (or equivalent multi-charger unit). This

requirement may be satisfied by the handler being accompanied by another individual with appropriate communications. [(1) New or replacement equipment:

- (a) One (1) vehicle dedicated to search and rescue;
- (b) One (1) minimum of two and five-tenths (2.5) KVA portable generator with lights;
- (c) One (1) mobile radio with antenna;
- (d) One (1) basket litter;
- (e) Laminated topographical maps of response area, 1:24000;
- (f) Twelve (12) two (2) way portable (hand-held) radios;
- (g) One (1) first aid kit, twenty-four (24) unit industrial type or equivalent; and
- (h) Twelve (12) rescue helmets with headlamps.
- (2) Replacement equipment only: none.]

Section 9. The core equipment for a rescue squad specializing in a search for lost, trapped, or missing persons shall be:

- (1) One (1) basket litter;
- (2) Topographical maps of primary response area, 1:24000m (may be electronic);
- (3) Two (2) full backboards;
- (4) One (1) basket litter;
- (5) 100 feet of one (1) inch diameter tubular nylon webbing;
- (6) One (1) first aid kit, twenty-four (24) unit industrial type or equivalent; and
- (7) Twelve (12) reflective or high-visibility vests or clothing.

Section 10. The core equipment for an equine rescue squad utilizing horses (equines) shall be:

- (1) All equipment listed in Section 9 of this administrative regulation;
- (2) Fifty (50) feet, 1,850-lb rated braided rope;
- (3) One (1) equine first aid kit;
- (4) Two (2) portable corrals;
- (5) Two (2) carabiners – locking;
- (6) Two (2) USTM or SEI certified equine rider helmets;
- (7) Two (2) equine tack mounted flashlights;
- (8) Two (2) equine care multi-purpose tools; and
- (9) Two (2) sets of reflective tack for identification.

Section 11. The core communications equipment established in this section shall be required for rescue squads, in addition to any other minimum equipment required for that rescue squad by any other section of this administrative regulation.

(1) A rescue squad that performs light duty rescue or vehicle crash extrication functions shall have:

- (a) One (1) base radio;
- (b) One (1) antenna for the base radio;
- (c) One (1) radio antenna tower or functional alternative structure for elevating the base radio antenna at least fifty (50) feet above ground level;
- (d) One (1) mobile radio with mobile antenna for the rescue squad's required vehicle, if the vehicle is a motor vehicle; and
- (e) Six (6) portable radios with two (2) batteries or battery packs and one (1) charger per radio (or equivalent multi-charger unit).
- (2) A rescue squad providing search and rescue functions for lost or missing persons (except a search team utilizing dogs covered by Section 8 of this administrative regulation and water rescue, covered by Sections 3, 4, and 7 of this administrative regulation), shall have:
  - (a) One (1) mobile radio with mobile antenna for the rescue squad's required vehicle, if the vehicle is a motor vehicle; and
  - (b) Six (6) portable radios with two (2) batteries or battery packs and one (1) charger per radio (or equivalent multi-charger unit).
- (3) All requirements for base and mobile radios and antennas established by this section shall include all required signal transmission line or coaxial cable, connectors, power supplies, and other ancillary items required to render the radio functional for voice communications.

(4) Any portable (hand-held) or mobile radio owned by another agency, or by a city or county, and assigned to the rescue squad for its exclusive use may be counted toward the requirement established by subsection (1)(c) and (f) of this section, regardless of if the rescue squad does not hold actual ownership of the radios.

(5) A rescue squad that performs light duty rescue or vehicle crash extrication functions shall not be required to have the equipment

required by subsection (1)(a) through (c) of this section if dispatch services for the rescue squad are provided by another agency or by a public safety dispatch center.

(6) Any rescue squad receiving rescue aid funds for the purchase of radio equipment shall, prior to expending the funds, provide the Division of Emergency Management with documentation verifying the completion of a written agreement or memorandum of understanding between the rescue squad and the Kentucky State Police, authorizing the rescue squad and its members to use the Kentucky Mutual Aid and Interoperability (KMAI) radio frequencies for mutual aid and multi-agency interoperability purposes.

(7) Any radio purchased with rescue aid funds shall comply with all standards established by the Kentucky Wireless Interoperability Executive Committee (KWIEC), or any lawful successor to that body, including a project review as required by KRS 42.738.

Section 12. Sections 2 through 11 of this administrative regulation, unless otherwise indicated, shall be the minimum for a rescue squad based upon the mission or missions included in the affiliation agreement, and shall not include equipment personally owned by a rescue squad member, including headgear, eyewear, clothing, footwear, handwear, personal packs, and lighting sources.

(1) In the case of equine teams and K9 teams, most, if not all, animal tack, gear, harnesses, as well as the animal itself, will be personally owned by the member.

(2) All rescue squads shall ensure the provision of any equipment required to ensure compliance with relevant standards under the Occupational Safety and Health Administration (OSHA), including high-visibility clothing and protective headgear, eyewear, clothing, footwear, and handwear, whether squad provided or personally owned, depending upon the mission.

**(3) Any trailer, as defined by KRS 186.650(1) and 189.010(19) shall include a standard size ball, and the ball, receiver slide, and pin, as well as the electric adapter, shall remain with the trailer continuously, including if not connected to a towing vehicle.**

Section 13. Unless otherwise listed in another section of this administrative regulation, the following minimum criteria shall apply to webbing, rescue ropes, carabiners, rescue pulleys, harnesses, and high angle rescue harnesses purchased after July 1, 2017 with rescue aid funds, and to any item purchased by rescue squads using funds from any source after July 1, 2017 if the item in question is used to meet the requirements of any section of this administrative regulation:

(1) All carabiners required by this administrative regulation that are not to be used for a lifeload shall have a rated strength along the long axis, with the gate closed and secured, of not less than twenty-seven (27) kiloNewtons (3,034 lbf). These items may also be called "T" rated under NFPA 1983, Selected Equipment Performance Requirements – Carabiners;

(2) All carabiners required by this administrative regulation that may be used for a rescue or lifeload shall have a rated strength along the long axis, with the gate closed and secured, of not less than forty (40) kiloNewtons (8,992 lbf). These items may also be called "G" rated under NFPA 1983, Selected Equipment Performance Requirements – Carabiners;

(3) All pulleys required by this administrative regulation that are listed or described as "rescue" pulleys but that are not also listed or described as "large" shall have a minimum rated strength of twenty-two (22) kiloNewtons (4,946 lbf);

(4) All pulleys required by this administrative regulation that are listed or described as "rescue" pulleys and that are also listed or described as "large" shall have a minimum rated strength of thirty-six (36) kiloNewtons (8,093 lbf);

(5) All mechanical ascenders required by this administrative regulation shall hold a test load of five (5) kiloNewtons (1,124 lbf) without causing permanent damage to the rope;

(6) All rope grabs required by this administrative regulation shall hold a test load of eleven (11) kiloNewtons (2,473 lbf) without causing permanent damage to the rope;

(7) Mechanical descenders, including figure 8 descenders and rappel racks, shall withstand a load of thirteen and five-tenths (13.5) kiloNewtons (3,34 lbf) without failure;

(8) Nylon webbing required by this administrative regulation shall be

one (1) inch or greater in diameter, with a minimum breaking strength of seventeen and eight-tenths (17.8) kiloNewtons (4,000 lbf);

(9) Rescue rope with a minimum required diameter of 7/16 inch required by this administrative regulation shall have a minimum breaking strength of twenty (20) kiloNewtons (4,496 lbf);

(10) Rescue rope with a minimum required diameter of one half (1/2) inch required by this administrative regulation shall have a minimum breaking strength of forty (40) kiloNewtons (8,992 lbf);

(11) Rescue rope required by this administrative regulation that is listed or described as "static" shall have a maximum elongation, if loaded at ten (10) percent of its rated minimum breaking strength, of ten (10) percent or less of its total length;

(12) Helmets required by this administrative regulation for use in high angle rescue service shall be designed and intended for climbing, rappelling, working at heights, or high angle rescue use and shall be certified or approved under the standards of the UIAA, NFPA, ANSI, or CE;

(13) Harnesses required by this administrative regulation shall be deemed by the manufacturer to be suitable for rappelling, climbing, working at heights, or high angle rescue and shall be certified or approved under the standards of the UIAA, NFPA, ANSI, or CE;

(14) Manufacturers' written or published specifications for the equipment established in subsections (1) through (13) of this section shall be sufficient to establish compliance with this section. A rescue squad shall not be required to conduct independent testing to verify the compliance of equipment where written or published specifications from the equipment manufacturer indicate that the equipment is compliant with this section;

(15) A rescue squad may request rescue aid funds to replace any equipment listed or referenced in subsections (1) through (13) of this section that has a maximum safe service life specified by the manufacturer, upon the expiration of the equipment's maximum service life, without need to demonstrate that the equipment is otherwise unserviceable. The equipment may be requested as new minimum equipment as established in this administrative regulation; and

(16) Any equipment replaced under the provisions of subsection (15) of this section shall be:

(a) Returned to the Division of Emergency Management for disposal or for use in nonlife safety training activities; or

(b) Retained by the rescue squad, with the written approval of the Director of the Division of Emergency Management, for use only in non-life safety training activities. Any item of equipment retained for training use under the provisions of this sub-section shall be clearly and permanently marked to indicate that it is for non-life safety training use only and shall not be used in any life safety application.

Section 14. If a rescue squad engages in more than one (1) specialized rescue squad activity or general rescue squad activity, the equipment listed for rescue squads specializing in water rescue and recovery, water rescue and recovery utilizing divers, high angle rescue service, cave rescue, or search for lost, trapped, or missing persons, shall not have to be duplicated in order to meet the requirements of this administrative regulation. The provisions of this section shall not apply to radio communications equipment required by Section 11 of this administrative regulation, which shall be required in addition to any other equipment required by other sections of this administrative regulation.

Section 15. The capacities and sizes of equipment, as well as the number of units of each item of equipment, established within this administrative regulation are minimum requirements. Unless specifically prohibited by the text of the applicable subsection, the requirement for any particular item of equipment may be met by an item of the same type having greater size, length, capacity, or capability than the stated minimum required by this administrative regulation.

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

(a) "Kentucky Mutual Aid and Interoperability (KMAI) radio frequencies", October 4, 2011; and

(b) "Mutual Aid and Interoperability Memorandum of Understanding for the Commonwealth of Kentucky", October 1, 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Military Affairs, Division of

Emergency Management, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~[When a rescue squad engages in more than one (1) specialized rescue squad activity or general rescue squad activity, the equipment listed as new or replacement equipment or replacement only equipment for rescue squads specializing in water rescue and recovery, water rescue and recovery utilizing divers, high angle rescue, cave rescue, or search for lost, trapped, or missing persons, shall not have to be duplicated in order to meet the requirements of this administrative regulation.]~~

STEVEN P. BULLARD, Director, Administrative Services

APPROVED BY AGENCY: November 22, 2017

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**DEPARTMENT OF MILITARY AFFAIRS  
Division of Emergency Management  
(As Amended at ARRS, February 12, 2018)**

**106 KAR 1:390. Search and rescue training requirements.**

RELATES TO: KRS 39F.040(3), 39F.050(3)(c), 39F.070(3)(c), 39F.120(8), 39F.200, 39F.210

STATUTORY AUTHORITY: KRS 39A.050(2)(m), 39A.070(3), 39F.200, 39F.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39F.200 and 39F.210 authorize the division to establish minimum training requirements for persons engaged in search and rescue activities. This administrative regulation establishes minimum training requirements for a general rescue squad, or a specialized rescue squad, and a local search and rescue coordinator.

Section 1. Definition~~[Definitions]~~. "Successfully complete" means to attend or participate in search and rescue training and acquire and submit to a local director a copy of an instructor-provided training completion certificate or record.

Section 2. Minimum training requirements for a local search and rescue coordinator, or a search dog handler, shall be to successfully complete:

- (1) A twenty (20) hour division offered~~[or approved]~~ search and rescue course or equivalent;
- (2) A twenty (20) hour division offered~~[or approved]~~ search management course; and
- (3) An incident command or incident management system (ICS or IMS) training course~~[approved by the division]~~ of at least eight (8) hours covering the eight (8) component elements of an incident command system or incident management system, to include practical application, and to include a search and rescue module.

Section 3. The minimum training requirements for a single-handler rescue squad utilizing dogs and specializing in a search for lost, trapped, or missing persons shall be:

- (1) An incident command training course to the level of ICS 200; and
- (2) A twenty (20) hour division offered search and rescue course or equivalent.

Section 4. Minimum training requirements for members of a rescue squad specializing in cave rescue shall be to successfully complete~~[the following]~~:

- (1) The National Cave Rescue Commission (NCRC) offered~~[and approved]~~ Cave Rescue Orientation Course or its equivalent~~[approved by the division]~~; and
- (2) A National Cave Rescue Commission offered~~[and approved]~~ Cave Operations and Management Seminar or its equivalent~~[approved by the division]~~ for squad members who manage response to cave rescues.

Section 5~~[4]~~. Minimum training requirements for members of a search and rescue squad specializing in search for lost, trapped, or missing persons shall be to successfully complete:

- (1) An incident command training course, to the level of ICS 200; and
- (2) A twenty (20) hour division offered search and rescue course or equivalent. This requirement shall apply to all rescue squads that utilize dogs, including a single-handler rescue squad as established in Section 3 of this administrative regulation~~[the requirements established in Section 2 of this administrative regulation].~~

Section 6~~[5]~~. Minimum training requirements for members of a rescue squad specializing in dive rescue and recovery shall be:

- (1) Certification in open water by one (1) of the following nationally recognized organizations or equivalents:
  - (a) International Diving Educators Association (IDEA);
  - (b) Multinational Diving Educators Association (MDEA);
  - (c) National Association of Underwater Instructors (NAUI);
  - (d) National Association of SCUBA Diving Schools (NASDS);
  - (e) National Association of SCUBA Instructors (NASI);
  - (f) Professional Association of Diving Instructors (PADI);
  - (g) Professional Diving Instructors Corporation (PDIC);
  - (h) SCUBA Schools International (SSI);
  - (i) United States Navy (USN);~~[-]~~
  - (j) YMCA National SCUBA Program (YMCA); or
  - (k) Dive Rescue International; ~~and~~~~[-]~~
- (2) Annually, a minimum of ten (10) hours underwater training in rescue diving techniques developed and administered by the individual organization specializing in water rescue utilizing divers.

Section 7~~[6]~~. A rescue squad specializing in urban search and rescue shall meet standards developed by the Federal Emergency Management Agency, Urban Search and Rescue Program, or equivalent~~[, approved by the division]~~.

Section 8~~[7]~~. The minimum training, testing, and certification requirements for~~[the]~~ search dog evaluators, search dogs, and handlers shall be:

- (1) The handler shall be at least eighteen (18) years of age;~~[-]~~
- (2) Annual testing of search dogs~~[shall]~~ include~~[but not be limited to]~~ the following:
  - (a) The dog shall demonstrate its ability to overcome obstacles;
  - (b) The dog shall not be trained in attack methods;
  - (c) The dog shall not show aggression to other dogs or individuals;
  - (d) The dog shall obey verbal or nonverbal commands by the handler;
  - (e) The dog shall give a recognizable found-victim indication or alert;
  - (f) The dog shall demonstrate its obedience by performing a long-sit or down;
  - (g) The dog shall be left in a sitting position and at the direction of the evaluator; the handler shall down his or her dog with a hand or voice signal;
  - (h) During an open terrain search (air scenting) the handler and dog shall be given a minimum of one (1) hour to locate one (1) subject in fifteen (15) to twenty-five (25) acres of a forested area~~[find a hidden subject]~~;
    1. The handler shall provide a search plan as well as a description of the dog's alert of finding the subject to the evaluators.
    2. The team shall pass all requirements.
    3. This test may be conducted day or night, depending on conditions; and
      - (i) During a hasty search (air scenting), the team shall have a maximum of fifteen (15) minutes to perform this test.
    - 1.~~[-]~~ The dog shall locate a victim within twenty (20) feet of a quarter-mile (1/4 mi.)~~[the]~~ trail.~~[-]~~
    2. The location of the subject shall be unknown to the handler.~~[-]~~
    3. The handler shall provide a description of the dog's alert of finding the subject to the evaluators.~~[-]~~
    4. The handler shall not leave the trail until the dog provides its alert.~~[-]~~
  - (3) Testing for tracking or trailing dogs~~[bloodhounds]~~ shall consist of at least the following:
    - (a) A trailing dog team shall successfully complete a four (4) hour



old, one (1) mile long trail and establish the correct direction of travel within the first fifty (50) yards.

1. The trail shall be in a contaminated area with more than two (2) turns with multiple cross tracks.~~;~~

2. The dog team shall be presented with a scent article such as a sock, shoe, hat, or jacket, in a clear plastic or paper bag located in a marked minimum four (4) foot square area. Both the square and the bag containing the scent article shall be identified so that both items can be matched.~~;~~

3. The trail layer shall have the matching identifying marking, material, or signage identifying the trail layer as the matching subject of the scent article bag that was presented to the dog team, ensuring that the dog team has located the correct subject.~~;~~

4. The dog team ~~shall~~~~will~~ have one (1) hour to complete this test;  
(b) Testing for tracking dogs shall consist of a minimum of three (3) to a maximum of five (5) of the following terrains:

1. Field;
2. Gravel;
3. Leaves;
4. Creek bed;
5. Dirt;
6. Concrete;
7. Woods;
8. Asphalt; and
9. High grass; and

(c) The track shall be a minimum of thirty (30) minutes and a maximum of one (1) hour old, with a minimum length of 700 yards and a maximum length of 900 yards.

1. There shall be one (1) scent article placed along the track and the dog shall locate the article.~~;~~

2. The tracking team shall be given a starting point by the evaluator.~~;~~

3. There shall be one (1) cross track laid. This person shall remain in the area of the actual track, but at a distance of 200 yards from the actual track-layer. This cross-track may be laid prior to, or after, the actual track.~~;~~

4. There shall be a forty-five (45) minute time limit to complete the track.~~;~~

5. The team shall successfully pass this certification by locating the actual track-layer, locating the scent article placed along trail, and staying within 10 (ten) feet of the track.~~;~~

6. GPS (Global Positioning System) shall be used to determine track accuracy and distance.~~;~~

7. If it is obvious to the evaluator the dog is not tracking, the evaluator may stop the test;~~three (3) scent trails shall be established, one (1) scent trail four (4) hours old, one (1) scent trail twelve (12) hours old, and one (1) scent trail twenty-four (24) hours old, identified by the evaluators at the time of the test;~~

(4) The following shall be the~~are~~ minimum testing requirements for search dog handlers:

- (a) The handler and dog shall be compatible;
- (b) The handler shall be able to recognize when his or her dog is alerting on human scent;
- (c) The handler shall inform the evaluators of the characteristics of the dog's alert; and
- (d) The handler shall demonstrate his or her ability to work and control ~~the~~~~their~~ dog.~~;~~

(5) Testing of search dogs shall be conducted annually between August 1 and November 30.~~;~~

(6) The organization, association, or handler shall submit a letter requesting to be tested to the Division of Emergency Management that contains~~the following~~:

- (a) ~~The~~Full name of the organization, association or handler requesting to be tested;
- (b) ~~The~~Address for correspondence with the organization, association, or handler requesting to be tested; and
- (c) ~~The~~Name of the individual who shall serve as the point of contact for the organization, association, or handler requesting to be tested.~~;~~

(7) If it is determined during the test by the search dog evaluator ~~that~~ a dog fails to alert on an obvious find or fails to meet the requirements as ~~established~~~~identified~~ in subsections (2) and (3) of this section, the handler and dog shall be given one (1) opportunity to retest ~~the~~~~their~~

dog during the same test date.~~;~~

(a) In the event of a retest, a different search dog evaluator shall be utilized for the retest.~~;~~

(b) Search dog evaluators shall not evaluate any dog or handler from their organization, association, or group.~~;~~

(c) If the dog or handler fails the retest, they may retest at the next annual testing date.~~;~~

(8) Evaluators utilized for the conduct of all search dog tests shall be appointed by the state search and rescue coordinator from a list of individuals supplied by the search dog associations, organizations, or groups headquartered in Kentucky or individual search dog handlers residing in Kentucky.

(a) A letter of recommendation for search dog evaluators from search dog organizations, associations, or groups, or individual search and rescue dog handlers for search dog evaluators shall be submitted annually to the search and rescue coordinator no later than 30 July.~~;~~

(b) A search dog test evaluator shall have at least a minimum of five (5) years' experience and have met all training requirements as ~~established~~~~identified~~ in Section 2 of this administrative regulation.~~;~~

(9) An individual, agency, organization, or association, public or private, who provides or who advertises to provide search dogs for any search and rescue mission shall comply with Section 2 of this administrative regulation and subsections (2) and (3) of this section.

(a) An individual, agency, organization, or association, public or private, who has not met the requirements of Section 2 of this administrative regulation and subsections (2) and (3) of this section shall be considered ~~an~~ "apprentice".~~;~~

(b) The decision to utilize any "apprentice" dog handler or dog on a search mission shall be at the discretion of the county search and rescue coordinator.~~;~~

1. If there is a state-certified dog handler on-scene, the county search and rescue coordinator shall consult with the state-certified dog handler prior to making any decision to utilize an apprentice dog or handler.~~;~~

2. If there is more than one (1) state-certified dog handler on-scene, the county search and rescue coordinator only needs to consult with one (1) certified dog handler; ~~and~~.

(10) The certification length for a search dog handler who successfully meets all requirements shall be valid for two (2) years. The certification length for a search dog that meets all requirements shall be valid for two (2) years.

Section 9[8]. Minimum training requirements for members of a rescue squad specializing in high angle rescue shall be to successfully complete~~the following~~:

(1) A basic rope rescue course as taught by the Kentucky Community Technical and College System, State Fire Rescue Training Program or equivalent~~as approved by the division~~;

(2) An intermediate rope rescue course as taught by the Kentucky Community Technical and College System, State Fire Rescue Training Program or equivalent~~as approved by the division~~, for those members responsible to perform extrication of both conscious and incapacitated patients, to establish and operate simple mechanical advantage systems, to control and direct the lowering of a packaged patient, to use ascenders to maintain mobility and control on rope, and to perform as a litter attendant and maintain mobility and control; ~~and~~

(3) An advanced rope rescue course as taught by the Kentucky Community Technical and College System, State Fire Rescue Training Program or equivalent~~as approved by the division~~, for those members responsible to establish complex mechanical advantage systems, to perform rescue operations in limited light conditions, to operate rappel or lowering systems while using self-contained breathing apparatus or supplied air systems such as may be used in hazardous atmospheres, to establish and operate highline systems, and to establish and operate tripod and high directional systems.

Section 10[9]. The role and training of rescue squad support personnel shall be the responsibility of the individual rescue squad and shall be identified in a locally-written guideline or procedure.

Section 11[10]. Level of medical training for each rescue squad member shall ~~be~~:

- (1) ~~B~~The responsibility of each rescue squad; and

(2) [Be]Identified in a locally-written guideline or procedure.

**Section 12. Material Incorporated by Reference.** (1) The following material is incorporated by reference:

(a) "Federal Emergency Management Agency (FEMA) National Urban Search & Rescue (US&R) Response System Rescue Field Operations Guide (US&R-23-FG)", September 15, 2006; and

(b) "Federal Emergency Management Agency (FEMA) National Urban Search & Rescue (US&R) Response System Field Operations Guide (US&R-2-FG)", September 25, 2003.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Military Affairs, Division of Emergency Management, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. BULLARD, Director, Administrative Services

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**GENERAL GOVERNMENT CABINET  
Board of Medical Licensure  
(As Amended at ARRS, February 12, 2018)**

**201 KAR 9:480. Fee schedule regarding genetic counselors.**

RELATES TO: KRS 311.695, 311.697, 311.699

STATUTORY AUTHORITY: KRS 311.699

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.699 requires[authorizes] the board to promulgate administrative regulations relating to the licensing and regulation of genetic counselors and to establish fees relating to the issuance and renewal of genetic counselor licenses. This administrative regulation establishes a schedule of fees for services rendered by the board.

**Section 1. Fee Schedule for Genetic Counselors.** (1) The fee for a temporary license or initial issuance of a regular license shall be \$150.

(2) The fee for renewal of a regular license shall be \$150.

(3) The fee for reinstatement of an inactive license shall be the current renewal fee, plus ten (10) dollars.

(4) The fee for issuance of a duplicate wallet card shall be five (5) dollars.

(5) The fee for issuance of a duplicate wall license shall be ten (10) dollars.

(6) The fee for verification of a state license to another licensing agency shall be (10) dollars.

RUSSELL L. TRAVIS, M.D., President

APPROVED BY AGENCY: December 4, 2017

FILED WITH LRC: December 5, 2017 at 11 a.m.

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](mailto:Leanne.Diakov@ky.gov).

**GENERAL GOVERNMENT  
Kentucky Board of Hairdressers and Cosmetologists  
(As Amended at ARRS, February 12, 2018)**

**201 KAR 12:030. Licensing, permits, and examinations.[License required.]**

RELATES TO: KRS 317A.020, 317A.050, 317A.062, 317A.100, 317B.025

STATUTORY AUTHORITY: KRS 317A.060, 317B.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 require the board to promulgate administrative regulations

governing licenses in cosmetology, nail technology, and esthetics, including the operation of schools and salons of cosmetology, nail technology, and esthetics. This administrative regulation establishes procedures for examinations and licensing[~~special~~—licensing requirements].

**Section 1. Fees.** License and permit fees are set forth in 201 KAR 12:260.

**Section 2. Reciprocal Licensing.** (1) A license issued by another state shall be considered comparable if the laws of that state require at a minimum:

(a) 1,500 hours of curriculum for cosmetology;

(b) 600 hours of curriculum for nail technology;

(c) 1,000 hours of curriculum for esthetics; or

(d) 1,000 hours of curriculum for[~~cosmetology~~] instructors.

(2) An out of state applicant who meets the requirements of KRS 317A.100(1) or 317B.040(1) may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:

(a) Two (2) or more years[years:] documentation of tax records corresponding to the out of state license to demonstrate work history;

(b) Certification of the out of state license from the issuing state board;

(c) Diploma or certified testing documents proving 12th grade equivalency education;and

(d) Payment of the applicable license and endorsement fees required by 201 KAR 12:260;

(e) A copy of applicant's government issued photo identification;

(f) If convicted of a prior felony;

1. A typed and signed letter of explanation from the applicant;

2. Judgment of sentence; and

3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and

(g) A two (2) inch by two (2) inch passport photo of the applicant taken within the past six (6) months.

(3) An out of state applicant who meets the requirements of KRS 317A.100(2) or (3) shall:

(a) Submit the documentation required by subsection (2)(a) through—](c) and (2)(e) through (g) of this section;

(b) Pay the applicable license and endorsement fees required by 201 KAR 12:260~~[and, if required by the board]~~; and

(c) If required by the board, pay the applicable examination fees established in 201 KAR 12:260.

(4) Active duty military family members shall apply for a reciprocal license by using the Military Transfer Application and including the following:

(a) Certification of a current license from the out of state licensing agency;

(b) A copy of the military sponsor's active duty orders listing the applicant as an accompanying family member;and

(c) Payment of a twenty-five (25) dollar license fee;

(d) Diploma or certified testing documents proving 12th grade equivalency education;

(e) A copy of applicant's government issued photo identification;

(f) If convicted of a prior felony;

1. A typed and signed letter of explanation from the applicant;

2. Judgment of sentence; and

3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and

(g) A two (2) inch by two (2) inch passport photo of the applicant taken within the past six (6) months.

(5) All certification of hours or a license issued by the board shall be requested using the Certification Request Form that includes a copy of the applicant's government issued photo identification, and payment of the fee as set forth in 201 KAR 12:260.

**Section 3. Threading Permit.** (1) Any person who engages in the practice of threading shall first obtain a threader permit from the board by completing the Threading Permit Application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Threading Permit



**Application:**

**(a) Payment of the fee required in subsection (1) of this section;**  
**(b) A copy of applicant's government issued photo identification;**

**(c) If convicted of a prior felony;**

**1. A typed and signed letter of explanation from the applicant;**  
**2. Judgment of sentence; and**  
**3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and**

**(d) A two (2) inch by two (2) inch passport photo of the applicant taken within the past six (6) months.**

Section 4. Examination Registration. (1) Applicants shall register with the board **and submit an Application for Examination** as follows:

**(a) A student[graduate] of a licensed cosmetology school shall[must] register with the board at least eight (8) months prior to graduation for the requested apprentice cosmetologist examination date;**

**(b) A nail technician student shall[graduate-must] register with the board at least seventy-five (75) days prior to graduation for the requested nail technician examination date; and**

**(c) An esthetician student shall[graduate-must] register with the board at least six (6) months prior to graduation for the requested esthetician examination date.**

**(2) A[No] person shall not take the board's examination unless the board has received a completed Application for Examination or Out of State Application for Examination at least ten (10) business days prior to the beginning examination date.**

**(3) An applicant shall submit the following with the Application for Examination:**

**(a) If convicted of a prior felony;**

**1. A typed and signed letter of explanation from the applicant;**  
**2. Judgment of sentence; and**  
**3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and**

**(b) A two (2) inch by two (2) inch passport photo of the applicant taken within the past six (6) months.**

**(4) Apprentice cosmetologists shall[must] complete the Affidavit of Apprenticeship included with the Application for Examination when applying to take the Cosmetology examination.**

**(5)[(4)] An applicant with curriculum hours obtained in another state shall include with the Out of State Application for Examination the following:**

**(a) 1. Certification of curriculum hours from the state licensing board or agency where the hours were obtained, if the state requires the reporting of curriculum hours; or**

**2. [(b)] Certification of the valid licensing status of the school attended from the state board or licensing authority and an official transcript certified by the school;**

**(b)[and (c)] Payment of the applicable license fees as set forth in 201 KAR 12:260;**

**(c) Diploma or certified testing documents proving 12th grade equivalency education;**

**(d) A copy of applicant's government issued photo identification;**

**(e) If convicted of a prior felony;**

**1. A typed and signed letter of explanation from the applicant;**  
**2. Judgment of sentence; and**  
**3. A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole; and**

**(f) A two (2) inch by two (2) inch passport photo of the applicant taken within the past six (6) months.**

**(6)[(5)] Examination applicants shall wear a full set of solid color medical scrubs and bring all instruments and supplies as listed on the board Web site[website] for the practical examination. White colored scrubs or other clothing is prohibited.**

Section 5. Examination Components. (1) The examination shall consist of a written test and a practical demonstration taken from the curriculum requirements specified in 201 KAR 12:082.

(2) The practical demonstration shall be performed on a:

**(a) Mannequin head and hand for the cosmetology practical examination;**

**(b) Mannequin head for the esthetician practical examination; or**

**(c) Mannequin hand for the nail technician practical examination.**

**(3) The applicant shall provide a mannequin head or hand as needed for an examination.**

Section 6. Grading. (1) A minimum passing grade of seventy (70) percent for both the written examination and the practical demonstration shall be required for the apprentice cosmetologist, nail technician, and esthetician examinations.

(2) A minimum passing grade of eighty (80) percent on the written examination and eighty-five (85) percent on the practical demonstration shall be required for all instructor examinations.

Section 7. Practice before Examination Prohibited. A student engaging in the practice of cosmetology, nail technology, or esthetics prior to the board examination shall be ineligible to take the examination for a period of one (1) year from the date of the unauthorized practice.

Section 8. License Application. (1) An applicant who passes the state board examination shall have ninety (90) days following the examination to apply for a license.

(2) Failure to apply for a license as required by subsection (1) of this section shall require payment of the appropriate restoration and licensing fees under 201 KAR 12:260 before a license may be issued.

(3) An applicant who fails to apply for a license within one (1) year of passing the examination **shall[must] retake the examination and pay the appropriate examination fee under 201 KAR 12:260.**

Section 9. Retaking Examinations. Any applicant who:

**(1) Fails the state board examination may retake the examination upon submitting a Examination Retake[Re-Take] Application with a two (2) inch by two (2) inch passport photo of the applicant taken within the past six (6) months, and paying the examination fee required by 201 KAR 12:260;**

**(2) Is caught cheating or impersonating another shall not be allowed to retake the examination for a minimum of one (1) year from the date of the original examination; and**

**(3) Fails to report for the examination on the date specified by the board shall submit a new Application for Examination[application] and pay the examination fee as required by 201 KAR 12:260 prior to being rescheduled for examination. The board may waive the examination fee for good cause shown. "Good cause" includes:**

**(a) An illness or medical condition of the applicant that prohibits the applicant from reporting to the examination; or**

**(b) A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting to the examination site.**

**(4) Documents and certificates submitted with an Application for Examination[application] are valid for one (1) year following the date of submission after which time applicants shall[must] submit updated documents and certificates with the Examination Retake[Re-Take] Application.**

Section 10. Duplicate Licenses and Restoration. (1) If a license is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The licensee shall submit a statement verifying the loss of the license using the Duplicate License Application **that includes a copy of a government issued photo identification**, and pay the duplicate license fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

**(2) To restore an expired license, a License Restoration Application shall[must] be submitted to the board along with a copy of a government issued photo identification, and payment of the restoration and license fees set forth in 201 KAR 12:260.**

Section 11. Salon and Facility Applications. (1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or threading facility **shall[must] submit the Salon Application or Threading Facility Application with required copies of state identification and driver's licenses, pay[and] the applicable fee set forth in 201 KAR 12:260, and be inspected by the board inspector a minimum of five (5) business days prior to opening for business.**

**(2) A new or relocating salon or threading facility shall comply with**

all applicable city, county, state zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a nursing home or assisted living facility if the salon or facility meets all requirements of this section.

(4) Any salon or facility located in a residence shall have a dedicated outside entrance separate from that of the residence. This subsection shall not apply to a nursing home or assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or facility shall not open for business prior to issuance of a license or permit.

(6) A change to the owner, manager, or location of a licensed salon or threading facility shall require a new Salon Application **or Threading Facility Application**, or Manager Change **Form[Application]** to be submitted to the board and payment of the license or change fee under 201 KAR 12:260.

Section 12. Cosmetology School Licenses. (1) Each person, firm, or corporation applying for a license to operate a school of cosmetology shall submit a Cosmetology School Application and the applicable fee set forth in 201 KAR 12:260.

(2) The Cosmetology School Application **shall[must]** be accompanied by:

(a) A proposed student contract listing all financial charges to enrolling students;

(b) **A proposed floor plan drawn to scale by a draftsman or architect;**

(c) **Proof of five (5) years of residency; and**

(d) **If an applicant is convicted of a prior felony:**

1. **A typed and signed letter of explanation from the applicant;**

2. **Judgment of sentence; and**

3. **A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.**

(3) **Each school shall[All schools must]** comply with city, county, and state zoning, building, and plumbing laws, administrative regulations and codes.

(4) An inspection of the school **prior to license issuance** shall be:

(a) Conducted by the board inspector and two (2) board members; **;** **or**

(b) The board inspector, one (1) board member, and the board administrator; **prior to issuance of the license**.

(5)(a) The inspection **shall[must]** be completed within twelve (12) months of the date that the school application is submitted unless the board extends the time period for good cause. **"Good cause" includes:**

1. **An illness or medical condition of the applicant that prohibits the applicant from completing the final preparations; or**

2. **A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from completing the final preparations.**

(b) Requests for an extension of time **shall[must]** be submitted in writing to the board and include the following:

1. **[(a)]** The reason for extension and the term of request; and

2. **[(b)]** Supportive documentation of the extension request.

(6) A license to operate a cosmetology school shall be valid only for the location and person, firm, or corporate owner named on the application. A cosmetology school license shall not be transferable from one (1) location to another or from one owner to another.

(7) The cosmetology school license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school **may[is authorized to]** operate educational programs beyond secondary education.

Section 13. Change in School Ownership or Management. (1) The owners, firm, or corporation operating a licensed cosmetology school shall submit to the board a new Cosmetology School Application or a Manager Change Form and payment of the applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership or changing school managers.

(2) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A, KRS Chapter 317B, and 201 KAR Chapter 12, and have the approval of the board before assuming operation of the school.

Section 14. Classification as School. Any person, establishment,

firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 shall be classified as a cosmetology school and shall comply with KRS Chapter 317A, Chapter 317B, and 201 KAR Chapter 12.

Section 15. Owner and Manager Student Prohibited. An owner, partner, stockholder, corporate officer, or a manager of a licensed cosmetology school shall not be enrolled as a student in the school.

Section 16. Board Member Disclosure. A board member shall disclose to the board a financial interest in a salon or school when submitting an application for a salon or school license.

Section 17. **Demonstration Permits. Professional services performed outside a licensed facility shall have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.**

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Out of State Transfer Application", October 2017;

(b) "Military Transfer Application", October 2017;

(c) "Certification Request Form " October 2017;

(d) "Threading Permit Application", October 2017;

(e) "Application for Examination", October 2017;

(f) "Out of State Application for Examination", October 2017;

(g) "Examination **Retake[Re-Take]** Application", October 2017;

(h) "Duplicate License Application", October 2017;

(i) "License Restoration Application", October 2017;

(j) "Salon Application", **February 2018[October 2017];**

(k) "Threading Facility Application", October 2017;

(l) "Manager Change Form", October 2017; **[and]**

(m) "Cosmetology School Application", October 2017; **and**

**(n) "Demonstration Permit Application", October 2017; are incorporated by reference].**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [An establishment or licensee of this board shall not employ an unlicensed person to perform or practice cosmetology, nail technology or esthetics.

Section 2.]

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: December 12, 2017

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

CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, email [Julie.Campbell@ky.gov](mailto:Julie.Campbell@ky.gov).

**GENERAL GOVERNMENT**  
**Kentucky Board of Hairdressers and Cosmetologists**  
**(As Amended at ARRS, February 12, 2018)**

201 KAR 12:041. Repeal of 201 KAR 12:020, 201 KAR 12:025, 201 KAR 12:031, 201 KAR 12:040, 201 KAR 12:045, 201 KAR 12:050, 201 KAR 12:055, 201 KAR 12:065, 201 KAR 12:070, 201 KAR 12:080; 201 KAR 12:083; ~~201 KAR 12:085, 201 KAR 12:088,~~ 201 KAR 12:101, 201 KAR 12:105, 201 KAR 12:110, ~~201 KAR 12:120,~~ 201 KAR 12:125, 201 KAR 12:130, ~~201 KAR 12:140,~~ 201 KAR 12:150, ~~201 KAR 12:180, 201 KAR 12:190,~~ 201 KAR 12:220, ~~201 KAR 12:230, 201 KAR 12:250,~~ and 201 KAR 12:270.

RELATES TO: KRS 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 provide for the board to promulgate administrative regulations governing the operation of any schools and salons of cosmetology, nail technology, and esthetics practices including but not limited to administrative regulations to protect the health and safety of the public.

## VOLUME 44, NUMBER 9 – MARCH 1, 2018

All matters repealed herein are addressed in 201 KAR 12:010; 12:030, 12:060, 12:082, 12:100, and 12:260.

Section 1. The following administrative regulations are hereby repealed:

- (1) 201 KAR 12:020. Examination;
  - (2) 201 KAR 12:025. Additional study after failing examination;
  - (3) 201 KAR 12:031. Replacement of license- duplicate license;
  - (4) 201 KAR 12:040. Apprentices; ratio to operators;
  - (5) 201 KAR 12:045. Apprentice, nail technician, esthetician, and instructor's licensing;
  - (6) 201 KAR 12:050. Reciprocity for valid license;
  - (7) 201 KAR 12:055. Instructor's license for out of state applicant;
  - (8) 201 KAR 12:065. New, relocated, and change of owner salons;
  - (9) 201 KAR 12:070. Requirements for esthetic salons;
  - (10) 201 KAR 12:080. Salon and school public identification;
  - (11) 201 KAR 12:083. Educational Requirements;
  - (12) ~~201 KAR 12:085. School Advertising;~~
  - ~~(13) 201 KAR 12:088. Esthetic course of instruction;~~
  - ~~(14) 201 KAR 12:101. Equipment sanitation;~~
  - ~~(13)(15) 201 KAR 12:105. School districts;~~
  - ~~(14)(16) 201 KAR 12:110. School license;~~
  - ~~(15)(17) 201 KAR 12:120. School faculty;~~
  - ~~(18) 201 KAR 12:125. Schools' student administrative regulations;~~
  - ~~(16)(19) 201 KAR 12:130. School fees for services;~~
  - ~~(17)(20) 201 KAR 12:140. School equipment;~~
  - ~~(24) 201 KAR 12:150. School records;~~
  - ~~(18)(22) 201 KAR 12:180. Hearing procedures;~~
  - ~~(23) 201 KAR 12:190. Investigations and complaints;~~
  - ~~(24) 201 KAR 12:220. Esthetic fee requirements; [(25) 201 KAR 12:230. Code of ethics;~~
  - ~~(26) 201 KAR 12:250. School equipment for esthetics course;]~~
- and
- ~~(19)(27) 201 KAR 12:270. Threading practice.~~

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: December 12, 2017

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

CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, email [julie.campbell@ky.gov](mailto:julie.campbell@ky.gov).

### GENERAL GOVERNMENT

#### Kentucky Board of Hairdressers and Cosmetologists (As Amended at ARRS, February 12, 2018)

#### 201 KAR 12:060. Inspections~~[Compliance]~~[Inspections].

RELATES TO: KRS[317A.050,] 317A.060,~~[317A.070,]~~  
317A.140,~~[317A.145,]~~ 317B.020,~~[317B.045, 317B.050, 317B.055]~~  
[317B.025]

STATUTORY AUTHORITY: KRS 317A.060, 317B.020  
NECESSITY, FUNCTION, AND CONFORMITY: KRS [317A.050,] 317A.060[,] and 317B.020 require the board to promulgate administrative regulations governing the operation of any schools and salons of cosmetology, nail technology, threading, and esthetics, and to protect the health and safety of the public. This administrative regulation establishes inspection and health and safety requirements for all schools and salons of cosmetology, nail technology, threading, and esthetics.~~[It also provides for inspection requirements, licensee ethical standards, and complaint processes and hearing procedures.]~~

Section 1. Public Display. (1)(a) Each~~[licensed facility,]~~ licensee or permit holder shall attach his or her picture to the license or permit~~[as required by this Chapter]~~ and place it in a conspicuous area in the salon or school.

(b) Each licensed facility's license shall be posted in a conspicuous area with the information required by this subsection.

(2) A conspicuous area shall be visible to the public and shall include:

- (a) The main entrance door or window of the premises; and
- (b) The workstation of the employee.

(3) A salon or school manager shall have the manager's license posted with a picture in a conspicuous area at all times.

(4) A school shall, at all times, display in a centralized conspicuous public place the student permits of all students enrolled.

(5) Each licensed salon, facility, or school shall post the most recent inspection report in a conspicuous area.

Section 2. Inspections. (1) Any board member, administrator, or inspector may enter any establishment licensed by this board or any place purported to be practicing cosmetology, nail technology, threading, or esthetics, during normal working hours or at any time when the establishment is open to the public, for the purpose of determining if an individual, salon, or school is complying with KRS Chapter 317A or 317B, and 201 KAR Chapter 12.

(2) A board member, administrator, or inspector may require the licensee or permittee to produce for inspection and copying books, papers, or records required by the board or pertaining to licensed activity.

(3) Each establishment licensed by the board shall be inspected a minimum of two (2) times per year.

(4) A salon or school shall schedule an inspection of the salon or school after an inspector twice attempts, but is unable, to inspect the salon or school.

(5) Failure of the salon or school owner or manager to schedule an inspection within thirty (30) days of two (2) failed inspection attempts shall constitute unprofessional conduct.

(6) The owner and manager of each establishment licensed by the board shall be responsible for compliance with KRS Chapters 317A and 317B, and 201 KAR Chapter 12.~~[Section 2.(1) Each licensee or permit holder shall attach his or her picture to the license or permit and place it in a conspicuous area in the salon or school.~~

(2) A conspicuous area shall be visible to the general public and shall include:

- (a) The main entrance door or window of the premises;
  - (b) The work station of the employee or independent contractor; or
  - (c) A public area within twenty (20) feet of the main entrance.
- ~~(3) A manager shall have the manager's license posted with a picture in a conspicuous area at all times.~~

~~(4) A salon or school shall post its license without a picture in a conspicuous area at all times.~~

Section 3.~~(1) Each salon or school shall post the most recent inspection report in a conspicuous area in the salon or school.~~

~~(2) A conspicuous area shall be visible to the general public and shall include:~~

- ~~(a) The main entrance door or window of the premises; or~~
- ~~(b) A public area within twenty (20) feet of the main entrance.~~

Section 4.~~(1) Each establishment licensed by this board shall be inspected a minimum of two (2) times per year.~~

~~(2) The owner and manager of each establishment licensed by the board shall be responsible for compliance with KRS Chapters 317A and 317B, and 201 KAR Chapter 12.]~~

Section 3.~~[5.] Unprofessional Conduct.~~~~[(4)] Unprofessional conduct under KRS 317A.140 includes the following:~~

~~(1)(a) Intentionally withholding information or lying [It shall be unprofessional conduct to withhold information or lie] to a board member or board employee [an inspector] who is conducting a lawful inspection or investigation of an alleged or potential violation of KRS Chapter 317A or 317B, or 201 KAR Chapter 12;~~

~~(2)(b) A [Section 6.(1) A salon or school shall schedule an inspection of the salon or school after an inspector twice attempts, but is unable, to inspect the salon or school.~~

~~(2) Failure of the owner or manager to schedule an inspection within thirty (30) days of two (2) attempts to inspect shall constitute unprofessional conduct.~~

Section 7. (1) It shall be unprofessional conduct for a]salon or school remaining [to remain] open to the public if [it is] not appropriately licensed by the board;

~~(3)(c) Providing[-~~

~~(2) It shall be unprofessional conduct for a person to provide]~~

cosmetology, nail technology, esthetic, or threading services unless appropriately licensed or permitted by the board under 201 KAR Chapter 12; or:]

(4)(d) Failure to comply with the lawful request of the board, or the board administrator, inspector, or agent for the following:

(a) [1.] Permit inspection of the licensed premises; or  
(b) [2.] Permit inspection of or the copying or production of books, papers, documents, or records of information or material pertaining to activity licensed by the board or related to the provisions of KRS Chapter 317A, Chapter 317B, or the administrative regulations promulgated by the board.

Section 4. [Demonstration Permits. Professional services performed outside a licensed facility must have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 5.] Signage. The main entrance to any establishment licensed by the board shall display a sign indicating a beauty salon, nail salon, esthetic salon or cosmetology school. The sign shall indicate the name of the salon or school and shall be clearly visible at the main entrance of the establishment. [Section 6. School Requirements. (1) A licensed school of cosmetology shall have all equipment and supplies needed to meet the curriculum outlined in 201 KAR 12:082.

(2) A licensed cosmetology school shall be physically separated from any other place of business.

(3) A licensed cosmetology school shall maintain, at a minimum, the following physical characteristics:

(a) At least thirty-six (36) square feet in the clinical area for each student involved on the floor of the clinical area at any one (1) time;

(b) At least eighteen (18) square feet in the mannequin area for each student involved on the floor of the mannequin area at any one (1) time; and

(c) A reasonable amount of area allotted for training of students in all areas other than those previously mentioned.

(4) All licensed cosmetology schools shall have a separate room for demonstration and study. This room shall have all necessary equipment to carry out the curriculum, a blackboard or smartboard, and classroom chairs or desks for the students' use.

(5) All licensed cosmetology schools shall maintain sufficient lavatory facilities for student enrollment.

(6) Booths or partitions in the student clinical area shall be low enough to permit observation of students while they are working.

(7) Each licensed cosmetology school shall furnish a supply or dispensing room for which each student shall obtain actual experience for a period of time as indicated by the course of instruction.

(8) The supply room shall contain additional supplies and products necessary to follow the educational curriculum as prescribed in 201 KAR 12:082 and meet the sanitation standards set forth in 201 KAR 12:100.

(9) A licensed cosmetology school shall not guarantee a student's work.

(10) Within ten (10) business days of the termination, employment, or other change in school faculty personnel, a licensed cosmetology school shall notify the board of the change.

(11) Licensed cosmetology schools shall, at all times, maintain a minimum faculty to student ratio of one (1) instructor for every twenty (20) cosmetology, nail technology, or esthetician students enrolled.

(12) The board may approve a licensed cosmetology school to offer an esthetics course if the school maintains the following minimum equipment and supplies:

(a) A private student changing area;

(b) A minimum of one (1) fully equipped facial machine in the esthetics area;

(c) One (1) sink in the clinic area with hot and cold running water;

(d) One (1) steamer for hot towels;

(e) Sharps container; and

(f) All necessary supplies and products to meet the educational

curriculum as prescribed in 201 KAR 12:082. All such supplies and products must also meet the sanitation standards set forth in 201 KAR 12:100.

Section 7. Code of Ethics. A licensee shall:

(1) Provide competent professional services to the consumer;

(2) Provide a clear explanation of the services offered and the cost of those services;

(3) Follow appropriate disinfection and sanitation requirements as established in KRS Chapter 317A and 317B and the administrative regulations promulgated thereunder;

(4) Follow proper health profile procedures before application of any product;

(5) Perform a thorough evaluation and consultation for each client to determine if the procedure or product is appropriate before application; and

(6) Discuss and outline realistic expectations with the client after the evaluation.

Section 8. Esthetic Restrictions. (1) An esthetician licensed by the board may not perform any of the activities listed in KRS 317B.015(1) unless under the immediate supervision of a licensed physician. "Immediate supervision" is defined as situations where a licensed physician is physically present in the same room and overseeing the activities of the esthetician at all times.

(2) Glycolic peels are limited as follows. A glycolic peel is defined as a cosmetic resurfacing exfoliating substance which includes cosmetic use of the following:

(a) Mixtures of thirty (30) percent alpha hydroxy acid (AHAs) which include glycolic and lactic acids with a pH of three (3.0) or higher;

(b) Zero percent beta hydroxy acid (BHAs which include salicylic acid with a pH of three (3.0) or higher);

(c) Trichloroacetic acid (TCA) with levels less than twenty (20) percent; and

(d) Jessner's solutions fourteen (14) percent salicylic acid, lactic acid, and two (2) percent resorcinol.

(3) Glycolic peels exclude all other chemical and mechanical exfoliation or peeling procedures and substances, including:

(a) Carboic acid (phenol); and

(b) Products listed above that exceed the stated maximum levels or combinations thereof.

(4) Other prohibited practices include the following:

(a) Lancets when used to penetrate the stratum corneum or remove hair or the use of lancets with blades two (2) millimeters or more;

(b) The use of all adulterated chemical exfoliating or peeling substances;

(c) The use of devices that penetrate beyond the stratum corneum of the epidermis; and

(d) The use of FDA Class II devices.

Section 9. Complaint and Disciplinary Process. (1) "Complaint" means any writing received by the board, which contains the name of the complainant and alleges a violation of KRS Chapter 317A, KRS Chapter 317B, or 201 KAR Chapter 12 by a licensee.

(2) Complaints against a person or establishment licensed by the board shall be submitted on the board's Complaint Form, signed by the person making the complaint, and describe with sufficient detail the alleged violation(s) of KRS Chapter 317A, 317B, or the administrative regulations promulgated by the board. The Complaint Form shall be made available on the board's website.

(3) The board may, at any time, on its own volition conduct an investigation or inspection and initiate a complaint against licensee for a violation of KRS Chapter 317A, Chapter 317B, or 201 KAR Chapter 12.

(4) A copy of the complaint shall be provided to the licensee along with a written request for the licensee's response to the complaint. The licensee shall have ten (10) days from the date of receipt to submit a written response. The board may forward a copy of the licensee's written response to the complainant with instructions to submit a written reply within seven (7) days of receipt of the response.



~~(5) The board shall review the complaint, the response, and any reply, and any other relevant information or material available and take action, as it deems necessary.~~

~~(6) Any board member who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint, which could influence an impartial decision, shall disqualify himself or herself from participating in the adjudication of the complaint.~~

~~(7) If, in the opinion of the board, it finds a violation of KRS Chapter 317A, Chapter 317B, or the administrative regulations promulgated by the board, but the violation is minor in nature, the board may issue a written admonishment to the licensee.~~

~~(a) A copy of the admonishment shall be placed in the board's permanent file of the licensee.~~

~~(b) The licensee shall have the right to file a written response to the admonishment within thirty (30) days of its receipt and may have it placed with the admonishment in the licensee's permanent file.~~

~~(8) The board may discipline an applicant, licensee, or permittee by fine, reprimand, refusal to issue or renew a license, or by suspending or revoking a license or permit, or imposing probationary conditions or any combination thereof. The board may impose discipline based upon the grounds set forth in KRS 317A.140 or violation of KRS Chapter 317A, Chapter 317B, or the administrative regulations promulgated by the board.~~

~~(9) If the board finds that grounds for discipline exist, it shall send written notice informing the applicant, licensee, or permittee of the following:~~

~~(a) The nature of the discipline to be imposed;~~

~~(b) The grounds upon which potential discipline is based;~~

~~(c) The right to request a hearing under KRS Chapter 13B;~~

~~(d) The right to be represented by counsel;~~

~~(e) The right to present witnesses on his or her behalf; and~~

~~(f) The right to cross-examine any opposing witnesses.~~

~~(10) Within twenty (20) days of receipt of the board's notice, an applicant, licensee, or permittee may request, in writing, a hearing before the board takes final action. Hearings shall be conducted in accordance with KRS Chapter 13B.~~

~~(11) At any time during the investigative or hearing processes, the board may enter into an agreed order of settlement or accept an assurance of voluntary compliance as resolution of a complaint.~~

~~(12) The board may resolve disciplinary matters through informal means including mediation.~~

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

(a) "Demonstration Permit Application", October 2017; and

(b) "Complaint Form", September 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: December 12, 2017

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

CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, email [Julie.Campbell@ky.gov](mailto:Julie.Campbell@ky.gov).

#### GENERAL GOVERNMENT

Kentucky Board of Hairdressers and Cosmetologists  
(As Amended at ARRS, February 12, 2018)

201 KAR 12:260. Fees[License fees, examination fees, renewal fees, restoration fees and miscellaneous fees].

RELATES TO: KRS 317A.050, 317A.062, 317B.020, 317B.025, 317B.030, 317B.040

STATUTORY AUTHORITY: KRS 317A.062, 317B.020 [317A.050,

317A.062]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.062 and 317B.020 require[requires] the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations, licenses, and renewal of licenses. This administrative regulation establishes fees relating to cosmetology, esthetics, and nail technology.

Section 1. The initial license fees shall be as follows:

- (1) Apprentice cosmetologist - twenty-five (25) dollars;
- (2) Cosmetologist - twenty-five (25) dollars;
- (3) Nail technician - twenty-five (25) dollars;
- (4) Esthetician - seventy-five (75) dollars;
- (5)[(4)] Apprentice instructor - thirty-five (35) dollars;
- (6)[(5)] Cosmetology instructor - fifty (50) dollars;
- (7) Esthetic instructor - \$100;
- (8)[(6)] Beauty salon - thirty-five (35) dollars;
- (9)[(7)] Nail salon - thirty-five (35) dollars;
- (10) Esthetic salon - \$125;
- (11) Esthetic independent contractor - \$125;
- (12)[(8)] Cosmetology school - \$1,500;
- (13)[(9)] Student enrollment permits - fifteen (15) dollars;
- (14)[(10)] School of cosmetology, transfer of ownership - \$1,500;
- (15)[(11)] School manager change - \$250;
- (16)[(12)] Threading facility permit - twenty-five (25) dollars;[and]
- (17) Threading [(13) Threader] permit - twenty (20) dollars; and
- (18) Out of state endorsement application fee - \$100.

Section 2. The annual renewal license fees shall be as follows:

- (1) Apprentice cosmetologist - twenty (20) dollars;
- (2) Cosmetologist - twenty (20) dollars;
- (3) Nail technician - twenty (20) dollars;
- (4) Esthetician - fifty (50) dollars;
- (5)[(4)] Apprentice instructor - twenty-five (25) dollars;
- (6)[(5)] Cosmetology instructor - thirty-five (35) dollars;
- (7) Esthetic instructor - seventy-five (75) dollars;
- (8)[(6)] Beauty salon - twenty-five (25) dollars;
- (9)[(7)] Nail salon - twenty-five (25) dollars;
- (10) Esthetic salon - seventy-five (75) dollars;[and]
- (11) Esthetic independent contractor - seventy five (75) dollars;[f]
- (12)[(8)] Cosmetology school - \$150;
- (13)[(9)] Threading facility permit - twenty-five (25) dollars; and
- (14) Threading [(10) Threader] permit - twenty (20) dollars.

Section 3. Applications for examination required by KRS Chapter 317A and 317B shall be accompanied by an examination fee as follows:

- (1) Apprentice cosmetologist - seventy-five (75) dollars;
- (2) Cosmetologist - seventy-five (75) dollars;
- (3) Nail technician - seventy-five (75) dollars;
- (4) Esthetician - \$125;
- (5)[(4)] Cosmetology instructor - \$100;
- (6) Esthetic instructor - \$125;
- (7)[(5)] Out-of-state cosmetologist - \$120; [and]
- (8) Out-of-state esthetician - \$175;
- (9)[(6)] Out-of-state cosmetology instructor - \$200; and
- (10) Out-of-state esthetic instructor - \$250.

Section 4. The fees for retaking an examination or any portion of an examination that an applicant has not successfully completed shall be as follows:

- (1) Apprentice cosmetologist - thirty-two (32) dollars;
- (2) Cosmetologist - thirty-two (32) dollars;
- (3) Nail technician - thirty-two (32) dollars;
- (4) Esthetician - \$125;
- (5)[(4)] Cosmetology instructor - fifty (50) dollars;
- (6) Esthetic instructor - \$125;
- (7)[(5)] Out-of-state cosmetologist - sixty (60) dollars; [and]
- (8) Out-of-state esthetician - \$175;
- (9)[(6)] Out-of-state cosmetology instructor - \$100; and
- (10) Out-of-state esthetic instructor - \$250.

Section 5. The fee for the restoration of an expired license where the period of expiration does not exceed five (5) years from date of

expiration, shall be as follows:

- (1) Apprentice cosmetologist - seventy-five (75) dollars;
- (2) Cosmetologist - seventy-five (75) dollars;
- (3) Nail technician - seventy-five (75) dollars;
- (4) Esthetician - \$125;
- (5)[(4)] Beauty salon - seventy-five (75) dollars;
- (6)[(6)] Nail salon - seventy-five (75) dollars; [and]
- (7) Esthetic salon - \$150;
- (8) Esthetic independent contractor - \$150;
- (9)[(6)] Cosmetology school - \$750;
- (10) Apprentice Instructor - seventy-five (75) dollars;
- (11) Cosmetology Instructor - \$100; and
- (12)[(11)] Esthetic instructor - \$150.

Section 6. Miscellaneous fees shall be as follows:

- (1) Demonstration permit[for a guest artist] - fifty (50) dollars;
  - (2) Certification of a license - twenty (20) dollars;
  - (3) Duplicate license - twenty-five (25) dollars;
  - (4) Beauty or nail salon owner, manager, or location change - thirty-five (35) dollars[dollars]; and
  - (5) Esthetics salon owner, manager, or location change - \$125
- [Reciprocity application—\$100; and
- (5) School manager change—\$250].

R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: December 12, 2017

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

CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, [Julie.Campbell@ky.gov](mailto:Julie.Campbell@ky.gov).

**GENERAL GOVERNMENT**  
**Board of Physical Therapy**  
**(As Amended at ARRS, February 12, 2018)**

**201 KAR 22:170. Physical Therapy Compact Commission.**

RELATES TO: KRS 327.300(12)

STATUTORY AUTHORITY: KRS 327.300(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.300(12)

requires the Board of Physical Therapy to review any rule adopted by the Physical Therapy Compact Commission within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. This administrative regulation incorporates by reference[sets forth] the rules and bylaws adopted by the Physical Therapy Compact Commission on November 5, 2017.

Section 1. The Kentucky Board of Physical Therapy shall comply with all bylaws, rules, and administrative regulations of the Physical Therapy Compact Commission, which includes the Physical Therapy Compact Commission Rules and Bylaws as of November 2017.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Physical Therapy Compact Commission Rules", November 2017; and

(b) "Physical Therapy Compact Commission Bylaws", November 2017.

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

(b) This material may be obtained on the Kentucky Board of Physical Therapy's Web site at <https://pt.ky.gov>.

(3) This material may also be obtained at:

(a) The Physical Therapy Compact Commission, 124 West Street South, Third Floor, Alexandria, Virginia, 22314; or

(b) <http://www.ptcompact.org>. [Definitions: (1) "Adverse action" means a publicly available disciplinary action taken against a

license or compact privilege by a licensing board. Adverse action does not include nondisciplinary remediation required by the licensing board.

(2) "Alternative program" means any nondisciplinary monitoring program intended to remediate the licensee that is not a matter of public record and to which a licensing board refers a licensee, or of which the licensing board is aware of the licensee's participation.

(3) "Applying for a license" means the individual has submitted an application for licensure to the licensing board or requested that the Federation of State Boards of Physical Therapy transfer the individual's National Physical Therapy Examination score to the licensing board.

(4) "Commission" means the Physical Therapy Compact Commission.

(5) "Compact" or "Physical Therapy Compact" means the Physical Therapy Licensure Compact.

(6) "Compact administrator" shall be synonymous with "executive director" referenced in Section 7.G. of the Compact.

(7) "Encumbrance" means any action taken by the licensing board that limits the practice or work of the physical therapist or physical therapist assistant. An encumbrance may be disciplinary or nondisciplinary in nature.

(8) "FSBPT ID" means the identification number assigned by the Federation of State Boards of Physical Therapy to all individuals in the Exam, Licensure, and Disciplinary Database.

(9) "Home state" means a person's true, fixed, and permanent home and is the place where the person intends to remain indefinitely, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

(10) "License" means the authorization from the state to practice as a physical therapist or to work as a physical therapist assistant. For purposes of the Compact, a certification for a physical therapist assistant is synonymous with "license."

(11) "Licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

(12) "Member state" means a state that has enacted the Compact.

(13) "Non-member state" means a state that has not enacted the Compact.

(14) "Party state" means any member state where the individual currently holds, or has ever held a physical therapist or physical therapist assistant license or compact privilege.

(15) "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

Section 2. Member State Participation. (1) Criminal background check:

(a) Member states shall have completed all required processes, requirements, and applications necessary to receive an originating agency identification (ORI) number, as required by the Compact.

1. States that were members of the Compact as of November 5, 2017, shall complete the requirements specified in paragraph (A) of this rule within six (6) months of the adoption of this rule.

2. States that join the Compact after November 5, 2017, shall complete the requirements specified in paragraph (A) of this rule within six (6) months of the effective date of the legislation to implement the Compact in that state.

(b) Results of the criminal background check shall be reviewed solely by the member state in accordance with state law and shall not be shared, unless otherwise permitted under state law, with individuals, other member states or the commission.

(2) Continuing competence requirements:

(a) Member states shall require continuing competence for renewal of a license for both the physical therapist and physical therapist assistant.

(b) Continuing education meets the requirements for continuing competence for renewal of a license.

(3) Compact privilege fee and expiration date. Any compact privilege held by the individual shall expire on the same date as the individual's home state license. The fee paid to the member state

for a compact privilege shall cover the period of time the individual has remaining on the home state license.

**Section 3. Compact privilege eligibility, adverse actions, and encumbrances.** (1) Home state license:

(a) Compact privilege holders may be audited at any time by the commission to verify compliance with home state residency requirements.

(b) An individual holding a temporary permit, temporary license, or temporary authorization to practice shall not be eligible for a Compact privilege.

(c) In addition to complying with reporting name and address change as required by the home state, compact privilege holders shall also notify the commission of a change of name and/or home address within thirty (30) business days of the change.

(2) Self-reporting of an encumbrance or adverse action on a license. A compact privilege holder shall report to the commission any encumbrance or adverse action placed upon any physical therapist or physical therapist assistant license held by the compact privilege holder in a non-member state within two (2) business days of the effective date.

(3) Eligibility for Compact privilege after an adverse action or encumbrance:

(a) An individual immediately loses any and all compact privilege(s) upon the effective date of either of the following actions taken by a licensing board:

1. Adverse action taken against a license or compact privilege; or

2. Encumbrance placed upon the individual's license or compact privilege.

(b) Following an adverse action or encumbrance, an individual regains eligibility for compact privilege(s):

1. Immediately after the removal of all nondisciplinary encumbrance(s), provided there are no current adverse actions against the license or compact privilege; or

2. Two (2) years from the effective date of the board order of the adverse action.

a. If the timeframe imposed by the licensing board is greater than two (2) years, the individual will not regain eligibility until the greater timeframe has elapsed; or

b. If the timeframe when all disciplinary encumbrances have passed and all fines are paid is greater than two (2) years, the individual will not regain eligibility until that timeframe has elapsed.

(c) The two (2) year waiting period is from the effective date of the most recent adverse action and restarts if subsequent adverse action is taken by a licensing board.

(d) If a remote state removes an individual's compact privilege in the remote state for a period of more than two years, the individual remains subject to the removal even if the individual does not renew the compact privilege.

(e) As used in Section 4.D. of the Compact, the word "removed" does not mean lapsed or voluntarily not renewed.

(4) Fee for compact privilege:

(a) The commission shall charge a fee for the purchase of each compact privilege. This fee shall be in addition to any state fee that the member board may charge.

(b) The commission's compact privilege fee shall be posted on the commission's Web site (<http://www.ptcompact.org>).

(c) The commission shall give thirty (30) days' notice before modifying its compact privilege fee by posting notice of the new fee on the commission's Web site.

(5) Expiration or termination of a compact privilege:

(a) All compact privileges shall expire on the actual expiration date of the home state license even if the home state allows practice beyond the license expiration date.

(b) Impact of changing the primary state of residence.

1. Moving to another member state.

a. The compact privilege holder shall hold an active license in the new home state prior to changing the primary state of residence or all current compact privileges will be terminated.

b. When a compact privilege holder obtains the license in the new home state and changes the primary state of residence, the expiration date of all current compact privileges will be updated to

match the expiration date of the new home state license.

2. Moving to a non-member state. If the compact privilege holder's new primary state of residence is a non-member state, all current compact privileges will be immediately terminated.

(6) Participation in an Alternative Program. Member state licensing boards shall add language to any alternative program agreements entered into with a licensee or compact privilege holder prohibiting practice or work in any other member states.

(7) Joint Investigations. When participating with other member states in joint investigations, the member state where the violation initially occurred will take the lead on any investigation.

(8) Jurisprudence. If a member state has a jurisprudence requirement in accordance with Section 4.A.7 of the Compact that may be completed after the issuance of the compact privilege, the deadline to complete the jurisprudence requirement is thirty (30) days.

(9) Impact of nonpayment on eligibility. If an individual fails to pay any applicable fees, including any state fee, the commission may:

a. Terminate the existing Compact privilege associated with the nonpayment; and

b. Prevent the individual from purchasing any additional Compact privileges until the nonpayment is remedied.

**Section 4. Active Duty Military Personnel or Their Spouses.** For the purposes of Section 5 of the Compact, the following definitions shall apply:

(1) "Home of record" means, for purposes of the Compact only, the military personnel's State of Legal Residence on record with the military.

(2) "Permanent Change of Station" or "PCS" means the state of the duty station noted in the active duty military personnel's PCS orders.

(3) "State of current residence" means the state in which the active duty military personnel or spouse is currently physically residing.

(4) The active duty military member or spouse of an individual who is active duty military may change the member state designated as the individual's home state by notifying the commission.

**Section 5. Physical Therapy Compact Commission.** (1) Ex-Officio, Non-Voting Members.

(a) For the purposes of the Compact, the American Physical Therapy Association (APTA) is the recognized physical therapy professional association.

(b) For the purposes of the Compact, the Federation of State Boards of Physical Therapy (FSBPT) is the recognized membership organization of the physical therapy licensing boards.

(c) A member of the board of directors of any of the following organizations shall be ineligible to serve as the delegate for a member state:

1. The American Physical Therapy Association;

2. The Federation of State Boards of Physical Therapy;

3. Any state chapter of the American Physical Therapy Association;

4. Any section of the American Physical Therapy Association; or

5. Any council of the American Physical Therapy Association; and

(2) Annual assessment for compact members.

(a) The annual assessment on each member state for participation in the Compact will be determined by vote annually at the annual meeting of the commission, and communicated to the member states. The fee will become effective on the first day of the fiscal year that starts immediately following the commission meeting.

(b) The commission may choose to have a zero dollar assessment.

(c) The annual assessment shall be paid by the member state within ninety (90) days from the start of the fiscal year.

(d) Moneys derived from a line of credit may be considered revenue when determining an annual assessment required from member states.

~~Section 6. Data System. (1) Required elements of the data system.~~

~~(a) The uniform data set shall be submitted on all individuals applying for, or currently holding, a physical therapist or physical therapist assistant license of any status, including expired status, in the member state. The required elements for all licenses shall be submitted in each data file submitted to the commission's data system.~~

~~(b) Each member state shall submit the following data elements to the commission's data system:~~

- ~~1. First name;~~
- ~~2. Middle name;~~
- ~~3. Last name;~~
- ~~4. Suffix, if applicable;~~
- ~~5. Birth date, including month, day, and year;~~
- ~~6. Unique identifier;~~
- ~~7. License number;~~
- ~~8. License type (PT or PTA);~~
- ~~9. Initial issue date;~~
- ~~10. Most recent renewal date;~~
- ~~11. Expiration date; and~~
- ~~12. License status, including expired statuses.~~

~~(c) The unique identifier required by Section 3.A.1. of the Compact is the individual's Social Security number.~~

~~1. The member state shall submit the data file identified in this Chapter within one (1) month of the effective date of the legislation to implement the Compact. The initial licensure data file(s) shall include the Social Security number for every licensee in each file.~~

~~2. Within twenty-four (24) months of the effective date of the legislation to implement the Compact, the FSBPT ID number shall be present for every licensee in each file, and may replace the Social Security number as the unique identifier.~~

~~3. Until the initial data file is submitted to the commission, the following shall apply:~~

- ~~a. Individuals whose home state is the member state shall be ineligible to apply for any compact privilege; and~~
- ~~b. Individuals in other member states will be unable to purchase a compact privilege in the member state.~~

~~4. Notwithstanding paragraph (C)(1) of this rule, commission staff may approve an alternate mechanism to comply with the initial licensure data file(s) requirement if the member state does not maintain the full, unmasked, Social Security number for licensees within the member state's database.~~

~~(2) Frequency of submission of required elements.~~

~~(a) Member states shall submit the data elements outlined in rule 6.1 to the commission at least one (1) time per week.~~

~~(b) The full extract of the data shall be provided in a file format and in a manner agreed to by the commission and the member state.~~

~~(3) Required Use of FSBPT Online Processing System. Member states shall use the FSBPT Online Processing System to report the following information:~~

~~(a) License number, initial issue date, and expiration date to new score reports and transfer score reports. In lieu of reporting this information via the FSBPT Online Processing System, a member state can meet the requirement of this paragraph if the data submitted in accordance with rules 6.1 and 6.2 contains the Social Security number and date of birth for all records.~~

~~(b) Completion of all required fields when reporting adverse actions.~~

~~(c) Any encumbrance not associated with an adverse action.~~

~~(4) Frequency of reporting adverse actions.~~

~~(a) Within two (2) business days of the effective date of the adverse action against a licensee or compact privilege holder, the licensing board shall, through the interface described in rule 6.3 at a minimum, report the following information and complete the following action:~~

- ~~1. Home address.~~
- ~~2. Date action became effective.~~
- ~~3. Select a save status of temporary.~~

~~(b) Within ten (10) business days of the effective date of the adverse action against a licensee or compact privilege holder, the licensing board shall, through the interface described in rule 6.3,~~

~~complete all required information and select the save status.~~

~~(c) Within two (2) business days of the effective date to void, update, revise, or correct an adverse action against a licensee or compact privilege holder, the licensing board shall report such decision to the commission through the interface described in rule 6.3.~~

~~(d) Within two (2) business days of the effective date to impose a nondisciplinary encumbrance on a license or licensee, the licensing board shall report such decision to the commission through the interface described in rule 6.3.~~

~~(5) Discrepancy with the commission data set. The licensee or compact privilege holder may request from the home state licensing board in writing a review of the data relating to the licensee in the commission's data system.~~

~~(a) In the event a licensee or compact privilege holder asserts that any data relating to the licensee or compact privilege holder is inaccurate, the burden of proof shall be upon the licensee or compact privilege holder to provide evidence that substantiates such claim.~~

~~(b) The licensing board shall verify and within ten (10) business days correct inaccurate data in the commission's data system.~~

~~(6) Compact termination and the data system.~~

~~(a) Upon the effective date of the termination of a state's membership in the Compact, the state will no longer receive information available only to member states.~~

~~(b) Any and all data provided prior to the effective date of the termination of the state's membership in the Compact will remain in the data system.~~

~~(7) Indicating availability of investigative information. A member state shall notify the commission that investigatory information is available to party states when a member state has determined probable cause exists that the allegations against the licensee may constitute a violation of that member's state statute or regulations.~~

~~(8) Public verification of Compact privilege. The public shall have access, via the commission's Web site, to information limited to the verification of compact privilege(s) held by individuals.~~

~~(9) Terms of use, privacy policy, and intellectual property rights.~~

~~(a) Subject to the terms of use and to the privacy policy posted at the time on the Web site of the Federation of State Boards of Physical Therapy (FSBPT), the following shall be binding upon the commission, the member states, and individuals purchasing or holding a Compact privilege.~~

~~(b) Submission and access to, and the use of, and other matters relating to:~~

- ~~1. The data elements outlined in rule 6.1;~~
- ~~2. Other information reported through the interface described in rule 6.3; and~~
- ~~3. The FSBPT's exam, licensure, and disciplinary database (eLDD) and online processing system (OPS).~~

~~(c) The Federation of State Boards of Physical Therapy owns all tangible and intangible property, intellectual and other proprietary rights, titles, and interests in and to the FSBPT OPS or ELDD. Neither the commission nor any member state shall have any rights, titles, or interests in or to the FSBPT OPS or ELDD.~~

~~Section 7. Rulemaking. (1) Adoption of rules; amendments.~~

~~(a) Proposed new rules and amendments to existing rules shall be referred to the Rules and Bylaws Committee as follows:~~

~~1. Any delegate may propose rules or rule amendments during the annual commission meeting. This proposal shall be made in the form of a motion and approved by a majority vote.~~

~~2. Standing committees of the commission or of the executive board may propose rules or rule amendments by majority vote of that committee.~~

~~3. The executive board may propose rules or rule amendments by majority vote.~~

~~(b) The Rules and Bylaws Committee shall prepare a draft of all proposed rules and provide the draft to the executive board for review and comments. The Rules and Bylaws Committee shall revise the draft based on feedback from the executive board.~~

~~1. The executive board shall ensure that all proposed rules comply with the statutory provisions of the Compact and do not conflict with any other existing commission rule.~~



2. If the executive board determines that the proposed rules should be recommended to the full commission, the proposed rules shall be posted on the commission's Web site. Any written comments shall be reviewed by the executive board. Based on the written comments, and at the direction of the executive board, the Rules and Bylaws Committee shall prepare a final draft of the proposed rule(s) or amendments for consideration by the commission.

(c) Prior to promulgation and adoption of a final rule by the commission, but not later than thirty (30) days prior to the meeting at which the vote is scheduled, the commission shall publish a Notice of Proposed Rule Making on its Web site and send the notice to all member states for publishing on the licensing board in the member state's Web site.

(d) The Notice of Proposed Rule Making shall include:

1. The place, time, and date of the meeting in which the rule will be considered;

2. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments; and

3. The name, position, physical and electronic mail address, and telephone number of the person to whom interested persons may respond with notice of their attendance and written comments.

(e) Every public hearing shall be conducted in a manner guaranteeing each person who wishes to comment a fair and reasonable opportunity to comment. No transcript of the public hearing is required, unless a written request for a transcript is made within thirty (30) days of the hearing, in which case the person or entity making the request shall pay for the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the commission from making a transcript or recording of the public hearing if it chooses to do so.

(f) Nothing in this rule shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this rule.

(g) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(h) The commission shall, by majority vote, take final action on the proposed rule and determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(i) Upon determination by the executive board or commission that an emergency exists, the commission may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule, no later than ninety (90) days after the effective date of the rule. An emergency rule is one that shall be made effective immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of federal or state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

(2) Publication of rules. A copy of the commission's current rules shall be published on its Web site.

Section 8. Oversight, Dispute Resolution, and Enforcement. (1) Definition of party state in dispute resolution process. As used in Chapter 8 of the rules, "party state" means a state that is party to a dispute.

(2) Dispute Resolution Process — Informal, Mediation and Arbitration.

(a) The delegate in each member state shall enforce the compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The commission supports collaborative efforts to resolve disputes or controversies between and among all member states. All affected parties are encouraged to communicate with each other directly and make every effort to resolve issues informally prior to application of paragraphs (B) and (C) of this rule.

1. Any member state may submit a written request to the

executive board for assistance in interpreting the law, rules, and policies of the Compact. The executive board may seek the assistance of the commission's legal counsel in interpreting the Compact. The executive board shall issue the commission interpretation of the Compact to all parties to the dispute.

2. A member state that is party to a dispute may request the submission of a matter in controversy to mediation. Mediation shall be conducted by a mediator appointed by the executive board from a list of mediators approved by the National Association of Certified Mediators, unless a mediator is otherwise agreed to by all parties to the dispute and pursuant to procedures customarily used in mediation proceedings.

(b) When disputes among party states are unresolved through informal attempts, the commission shall request assistance from the executive board.

1. It is the duty of the executive board to address disputes between or among the member states concerning the Compact when informal attempts between the member states to resolve disputes have been unsuccessful.

2. The executive board, on behalf of the commission, in the reasonable exercise of its discretion, has the authority to assist in the resolution of disputes between and among member states concerning the Compact. This rule defines the course of action the executive board may take when such disputes cannot be informally resolved and the matter is received by or referred to the executive board.

(c) Disputes between two (2) or more member states which cannot be resolved through informal resolution or through the executive board, may be referred to an arbitration panel.

(d) Informal resolution.

1. The delegate of the state disputing another member state's interpretation or application of the Compact shall contact the delegate of the member state with which the dispute has arisen. A written statement describing the situation should be provided and sufficient time allowed for response and opportunity for the other delegate to review and investigate the issues raised in the dispute.

2. If interpretation of the Compact is necessary, the delegate shall contact the executive board and request assistance in interpreting relevant provisions. This communication to the executive board should be made through the Compact administrator.

3. The delegate raising the concern shall document attempts to resolve the issues.

4. If all issues are resolved to the satisfaction of all party states involved, no further action is required.

(e) Mediation.

1. A state that is a party to a dispute may request, or the executive board may require, the submission of a matter in controversy to mediation.

2. If a member of the executive board is a party to the dispute, that individual shall recuse him or herself from participation in the matter.

3. Mediation shall be conducted by a mediator appointed by the executive board from a list of mediators approved by the National Association of Certified Mediators, or a mediator is otherwise agreed to by all parties to the dispute and pursuant to procedures customarily used in mediation proceedings.

4. If all issues are resolved through mediation to the satisfaction of all party states involved, no further action is required.

(f) Executive board resolution.

1. Member states shall report to the executive board, through the Compact administrator, issues pertaining to disputes concerning the interpretation or application of the Compact in a timely fashion.

2. If the executive board determines that the dispute arises from noncompliance with the Compact, the committee may, in its discretion, reclassify the dispute as a noncompliance case and will provide a written notice to all parties of the dispute citing the allegation(s) of noncompliance and follow the procedures in the bylaws and as provided in Section 10 of the Compact.

3. In the event there are factual and/or legal issues to be resolved, the states involved in the dispute shall provide written

responses regarding the factual and/or legal issues in dispute and the position of each party to the dispute on those issues to the executive board within thirty (30) days after receipt of the report referenced in paragraph (D) of this rule for distribution to the executive board.

4. Upon receipt of the party states' responses, the executive board shall develop a dispute resolution proposal or plan within sixty (60) days and submit the proposal or plan to the party states unless all parties agree that a longer period of time is needed to address the issues in dispute.

5. Any controversy or dispute not resolved in accordance with paragraphs (D) through (F) of this rule may result in dispute arbitration, as recommended by the executive board pursuant to paragraph (G) of this rule 15.4.

(g) Arbitration.

1. In the event of a dispute between states that cannot be resolved through informal means, and upon the recommendation by the executive board, the delegate of the initiating state(s) shall submit an arbitration request form to the Compact administrator with a copy to be sent by the initiating state to the other party state(s) involved.

2. Each state party to the dispute and the executive board shall submit a signed arbitration agreement form which shall include:

a. Consent that the decision of the majority of the arbitrators is final and binding;

b. The name of an appointee representing each state, unless more than two (2) states are parties, on an arbitration panel. In the event there are more than two (2) states that are parties to the dispute, the parties shall agree on an arbitrator selected by the state or states arguing either the affirmative or the negative of the issue in dispute so that only one (1) arbitrator is selected by the state or states on either side of the controversy. In the event an agreement cannot be reached, such selection shall be made by the executive board; and

c. The name of a third arbitration panel appointee mutually agreed upon and independent of all the states involved in the dispute.

3. The Compact administrator shall coordinate the arbitration process.

4. Pursuant to paragraph (G)(2)(b) of this rule, appointment of the arbitration panel shall be completed by the party states involved within thirty (30) days of the decision to appoint a panel.

5. All involved states shall agree on arbitration procedures, including a date and location for the arbitration to take place which shall be within forty-five (45) days of the appointment of the arbitration panel. In the event the parties cannot agree, the arbitration panel shall make these and other procedural decisions.

6. The panel shall render a decision within forty-five (45) days of the completion of the arbitration.

7. The panel shall forward its decision to the Compact administrator and chair of the commission and to each involved party state within seven (7) days of its decision.

8. The decision of the arbitration panel shall be final and binding.

9. In the event arbitration is necessary, and unless otherwise agreed by the parties, at the discretion of the arbitration panel, the prevailing party or parties may be entitled to recover the costs of such arbitration, including reasonable attorneys' fees, to the extent permitted by state law of the prevailing party state.

10. Arbitration award decisions may be enforced in a court of competent jurisdiction.

(3) Compliance and enforcement.

(a) The DELEGATE in each party state shall enforce the Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The commission supports voluntary, collaborative efforts to resolve compliance and enforcement issues in lieu of formal dispute resolution procedures or other legal enforcement action between and among all Compact party states. All affected parties are encouraged to communicate with each other directly and make every effort to resolve issues informally prior to application of paragraphs (E) through (G) of rule 8.2 and paragraphs (E) and (F) of this rule.

1. Any party state may submit a written request to the executive

board for assistance in interpreting the Compact. The executive board may seek the assistance of legal counsel in interpreting the Compact, particularly concerning compliance and enforcement. The executive board's interpretation of the Compact will be issued in writing to all parties to the dispute.

2. At the discretion of the executive board, appropriate technical assistance and training may be provided to any party state seeking to voluntarily address a compliance issue.

(b) When compliance or enforcement is unresolved through informal attempts, the delegate shall request assistance from the executive board.

1. It is the duty of the executive board to address alleged substantive or recurrent violations of the Compact when informal attempts to attain compliance have been unsuccessful.

2. The commission, in the reasonable exercise of its discretion, shall enforce the Compact.

(c) Compliance and enforcement issues that cannot be resolved through informal resolution or through the executive board shall be referred to an arbitration panel or other appropriate legal action as provided in Section 10. of the Compact at the discretion of the executive board.

(d) Informal resolution.

1. When an alleged violation of the Compact comes to the attention of the Compact administrator or, a written statement describing the situation should be provided, and sufficient time allowed for response and opportunity for other delegate(s) to review and investigate the issues raised in the dispute. The Compact administrator, on behalf of the executive board, shall contact the delegate of the state(s) alleged to be in noncompliance with the Compact and, when applicable, the delegate of the state alleging noncompliance with the provisions of the Compact.

2. If the party state alleged to be in noncompliance with the Compact requires assistance with interpretation of the Compact, the delegate of that state, or the state's legal representative may contact the executive board to request assistance in interpreting relevant Compact provisions and identifying steps to achieve compliance.

3. The executive board may consult with legal counsel and shall document efforts to resolve the issues.

4. If all issues are resolved to the satisfaction of the executive board and the state(s) involved, the Compact administrator shall prepare a written report to document the resolution, and no further action is required.

(e) Executive board resolution.

1. In the event that informal resolution of alleged noncompliance is not possible, the Compact administrator shall notify the executive board and furnish a report of all issues pertaining to noncompliance allegations, including details of informal resolution efforts, in a timely fashion.

2. If the executive board determines that a state is not in compliance with the Compact, the executive board shall provide a written notice to the state(s) citing the specific allegation(s) of noncompliance or default.

3. The state(s) shall provide a written response regarding the alleged default or noncompliance to the executive board within forty-five (45) days.

4. The executive board, Compact administrator, and legal counsel shall develop and propose a plan for voluntary resolution of the allegation(s) of default or noncompliance within sixty (60) days, which may include technical assistance and training, and submit such plan to the involved state(s) for approval unless all parties agree that a longer period of time is needed to address the default/noncompliance or related issues.

5. If the state alleged to be in noncompliance or default does not agree with the executive board's proposed plan for resolution, or if the state fails to cure the default or noncompliance after initially agreeing with the executive board to follow a remediation plan, the executive board may conduct an investigation to examine any evidence relevant to the allegation(s). Such evidence may include statements and/or testimony of witnesses, documents, and other information. An investigator may be appointed by the executive board to conduct the investigation.

6. The commission shall bear the expense of any investigation.

~~7. The state alleged to be in noncompliance or default will be informed by the executive board in writing if additional incidents of apparent noncompliance are discovered during the course of the investigation.~~

~~8. All information obtained during the investigation, and reports prepared by the commission, shall be confidential and not subject to public disclosure unless otherwise required by the laws of any state involved in the dispute.~~

~~9. The state alleged to be in noncompliance will be provided an opportunity to submit a written response to the preliminary findings within twenty (20) days, including documentary evidence, and to meet with the investigator, if any, at the expense of the commission.~~

~~10. Within forty-five (45) days after the conclusion of the investigation, the executive board or its investigator shall prepare a written report including a summary of factual findings. The report is provided to the state who is the subject of the investigation for review and comment, including the opportunity to provide corrections to the report, as appropriate. Any comments and or corrections are returned to the executive board, through the Compact administrator, within fourteen (14) days of issuance of the initial report.~~

~~11. After review of the response of the state alleged to be in noncompliance, the executive board shall determine, based on a preponderance of the evidence standard, violation(s), if any, of the Compact. If the executive board substantiates the allegations based on the evidence and legal authorities cited, the executive board shall schedule a conference, either in person or by telephonic or electronic means, with the noncompliant state's delegate, assistant attorney general (or other legal representative), and presiding officer of the state's licensing board (or designee) to determine if the violations may be remedied through training, technical assistance, or other voluntary means within forty-five (45) days, unless all parties agree that a longer period of time is needed to address the default/noncompliance.~~

~~12. Any compliance or enforcement issue pursuant to this section not resolved may result in formal dispute arbitration, or other appropriate enforcement action pursuant to Section 10. of the Compact, as determined by the executive board.~~

~~13. Any member(s) of the executive board whose state is involved in any compliance or enforcement issue shall be recused from consideration, discussion, or voting on any such case.~~

~~(f) Dispute arbitration.~~

~~1. In the event that a member state's Compact default/noncompliance cannot be resolved through the procedures described in Chapter 8 of the rules, the executive board may order arbitration before a three (3) member arbitration panel for determination of the default/noncompliance and enforcement of the Compact.~~

~~2. Each involved state shall submit a signed Arbitration Agreement form which shall include:~~

~~a. Consent that the decision of the majority of the arbitrators is final and binding;~~

~~b. The name of an appointee to the arbitration panel selected by the state(s) alleged to be in default/noncompliance;~~

~~c. The name of an appointee to the arbitration panel selected by the commission, or~~

~~d. A suggested arbitration panel appointee mutually agreed upon by all parties and independent of the involved state(s).~~

~~3. The Compact administrator shall coordinate the arbitration process.~~

~~4. Selection of the panel of arbitrators shall be completed, at the direction of the Compact administrator, within forty (40) days of the decision to appoint a panel.~~

~~5. All parties shall agree on a date for the arbitration to take place, as well as applicable deadlines and procedures for any necessary discovery. In the event no agreement can be reached, these and other procedural decisions shall be made by the arbitration panel.~~

~~6. The location of arbitration shall be the principal offices of the commission.~~

~~7. The panel shall render a decision within forty-five (45) days of the completion of the arbitration based upon the facts as stipulated, or proven by preponderance of the evidence at any hearing, and as required under the provisions of the Compact and~~

~~any other applicable statutes, regulations and or case law.~~

~~8. The panel shall forward its decision to the chair of the commission, via the Compact administrator, and to each involved party state within twenty-one (21) days of its decision.~~

~~9. The decision of the arbitration panel is final and binding.~~

~~10. Unless otherwise agreed by the parties, and at the discretion of the arbitration panel, the prevailing party or parties may be entitled to recover the costs of the arbitration, including reasonable attorneys' fees, if permitted by the laws of the prevailing state.~~

~~(4) Enforcement remedies against a defaulting state.~~

~~(a) Notwithstanding the provisions of paragraphs (D) through (G) of rule 8.2 and paragraphs (D) and (E) of rule 8.3, if the commission determines that any state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this Compact, or the provisions of the Bylaws or any duly promulgated rules, the commission may impose any or all of the following penalties:~~

~~1. Remedial training and technical assistance as directed by the commission;~~

~~2. Damages or costs in such amounts as are deemed to be reasonable as fixed by the commission;~~

~~3. Suspension of membership in the Compact; and~~

~~4. Termination of membership in the Compact.~~

~~a. Suspension and termination shall be imposed only after all other reasonable means of securing compliance under the Bylaws and rules have been exhausted.~~

~~b. Notice of suspension or notice of termination shall be sent by the commission in accordance with the bylaws.~~

~~(b) The grounds for default include failure of a member state to perform such obligations or responsibilities imposed upon it by this Compact, commission bylaws, or duly promulgated rules. The commission shall notify the defaulting state in writing of the penalty imposed by the commission on the defaulting state pending a cure of the default within a reasonable timeframe. The commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this Compact shall be terminated from the effective date of termination.~~

~~(c) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.~~

~~(d) The commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the commission and the defaulting state.~~

~~(e) Reinstatement following termination of any party state requires both a reenactment of the Compact by the defaulting state and the approval of the commission pursuant to the rules.~~

~~(5) Judicial enforcement. The commission may also, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the commission, in the United States District Court for the Eastern District of Virginia, to enforce compliance with the provisions of the Compact, its duly promulgated rules, and bylaws, against any member state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.]~~

LOUIS D. KELLY, General Counsel

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KENTUCKY LOTTERY CORPORATION  
(As Amended at ARRS, February 12, 2018)

202 KAR 3:030. Retailers[Retailer administrative regulation].

RELATES TO: KRS Chapter 154A[, **275.015**]

STATUTORY AUTHORITY: KRS 154A.050(1)(d), 154A.400(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 154A.400(1) requires the Kentucky Lottery Corporation to develop and maintain a statewide network of lottery retailers that will serve the public convenience to promote the sale of lottery products[tickets], while insuring the integrity of the lottery. To govern the selection of lottery retailers, KRS 154A.400(1)(b) requires the Board of Directors of the Kentucky Lottery Corporation to develop a list of objective criteria upon which the selection of lottery retailers shall be based. This administrative regulation lists the objective criteria upon which the selection of lottery retailers shall be based.

Section 1. Definitions. (1) "Applicant" means the individual or entity applying for a license to sell lottery products.

(2) "Board" means the Board of Directors of the KLC as established by KRS 154A.030(1).

(3)[(2)] "Cashing agent" means a retailer who has signed[executed] a "Retailer License Agreement Addendum for [Authorized] Cashing Agents" and who is authorized and required to cash lottery products[tickets] of a value authorized by the KLC, up to and including \$25,000, during KLC's business hours (8:00 a.m. EST[ET] to 5:00 p.m. EST[ET])[\$5,000].

(4) "Draw-based product" means:

(a) Any KLC ticket or product in which the player may determine if the player has won or lost after the drawing in which the prize was won; or

(b) Any other KLC ticket or product generated by the retailer terminal.

(5) "Draw-based retailer" means a retailer that sells one (1) or more draw-based products.

(6)[(3)] "Electronic display" means a light emitting diode display, television monitor, sign, or other electronic display provided by the KLC to its retailers for the display of winning numbers and other information regarding lottery games, and for the identification of a retailer as a retailer.

(4) "Instant validation terminal" means a terminal with a functionally integrated barcode reader which has the ability to validate instant tickets and pull tab tickets, but does not have the ability to sell on-line tickets.

(5) "Instant product" means any KLC ticket or product in which the player may determine instantly if the player[he] has won or lost[ticket] means a preprinted ticket containing play data under a coating or other covering, which when removed by the player reveals if the ticket is a winner].

(7)[(6)] "KLC" means the Kentucky Lottery Corporation.

(8)[(7)] "Licensing documents" means the:

(a) Application for Retailer License;

(b) Retailer License Agreement;

(c) Retailer License Agreement Addendum for [Authorized] Cashing Agents; and

(d) Retailer License Certificate["Retailer License Application", the "Retailer Relicensing Application", the "Retailer License Agreement", the "Retailer License Agreement Addendum for Authorized Cashing Agent", and the "Retailer License", all of which are incorporated by reference].

(9) "Lottery equipment and supplies" means all lottery devices[, and materials provided to retailers by the KLC or its vendors: terminals, monitors, ticket checkers, communication devices, advertising materials, play slips, play centers, vending machines, ticket stock, and ticket dispensers.

(10) "Lottery product" means any KLC draw-based product, instant product, or a coupon issued by the KLC for a draw-based or instant product sold or distributed at a retail outlet or directly by the KLC.

(11)[(8)] "Lottery coupon" means a printed document issued by the KLC or its vendors, by which value is transmitted from the KLC to a player in anticipation of a sale of KLC products.

(9) "Lottery equipment" means every instant validation terminal, on-line terminal, electronic display, vending machine, telecommunications device, wiring, instant or pull-tab ticket dispenser, play center, or

equipment now or in the future provided by the KLC or its vendors.

(10) "Lottery ticket" means an on-line, instant, or pull-tab ticket, and a ticket evidencing a chance to win in a future game sold by the KLC, whether now or hereafter offered by the KLC.

(11) "On-line terminal" means a terminal operated by a retailer, the KLC, or a player, which has the capability of accepting a quick-pick, playslip, and manually entered wager, and issuing an on-line ticket. A terminal may include a cash drawer or other KLC-supplied ancillary device or equipment.

(12) "On-line ticket" means a ticket for a lottery game generated by and sold through an on-line terminal. Instant tickets and pull-tab tickets are not included.

(13) "Owner" means:

(a) An individual or[A] sole proprietor[of a retailer or an applicant for a "Retailer License" which is a sole proprietorship];

(b) A [limited or general] partner [or joint venturer in a retailer or an applicant for a "Retailer License" which is a partnership or joint venture, including a registered limited partnership];

(c) A member of[, manager as defined in KRS 275.015, or officer of a retailer or an applicant for a "Retailer License" which is] a limited liability company;

(d) An officer[;]

(e) A director[;] or

(f) A shareholder offin a retailer, or an applicant for a "Retailer License" which is a corporation [or similar entity], except that, in the case of owners of equity securities[a person shall be deemed an owner] of a publicly-traded corporation,[retailer or an applicant for a "Retailer License" by reason of the person's stock ownership in the retailer or applicant for a "Retailer License"] only the names and addresses of those known to the corporation to own beneficially[if the person owns at least] five (5) percent [of the equity interest in the retailer] or more of the[such] securities.

(12) "Retailer" is defined by KRS 154A.010(7) and includes the following:[applicant for a "Retailer License"; or

(e) A trustee or beneficiary of a trust, an owner of an interest in an unincorporated association, or a person who otherwise holds a legal or beneficial interest in a retailer or applicant for a retailer license.

(f) "Owner" shall be interpreted as broadly as necessary to protect the security and integrity of the KLC and to ensure the integrity, reputation, and creditworthiness of its retailers and applicants for retailer licenses.

(14) "Person" means:

(a) An individual or sole proprietorship;

(b) A limited or general partnership, including a registered limited partnership;

(c)[A joint venture;

(d)] A limited liability company;

(d)[(e)] An association;

(f)] A corporation;

(e)[(g)] A trust;

(f)[(h)] An unincorporated organization; or

(i)] Other entity, business, or enterprise; or

(g) The owner of a retailer.

(13) "Retailer handbook" means the handbook made available to retailers by the KLC, which describes KLC's billing, ticket validation and ordering procedures, payments to retailers, lottery products, and the operation and maintenance of lottery equipment and supplies.

(14)[(15)] "Pull-tab ticket" means a ticket from which the player lifts off a surface tab to reveal if the ticket is a winner.

(16) "Retailer" is defined at KRS 154A.010(7).

(17) "Retailer License" means the ability to sell lottery products to the public and is identified through the issuance of a Retailer License Certificate[issued by the KLC and displayed by each retailer at its retail location].

(15)[(18)] "Retailer License Agreement" means the agreement executed by the retailer and the KLC, setting forth the terms and conditions under which the ["Retailer License"] is issued.[(19) "Retailer Manual" means the Retailer Manual distributed to retailers by the KLC, as may be amended, setting forth, among other things, detailed descriptions of the KLC's billing, ticket validation and ordering procedures, retailer commissions and bonuses, lottery games, the operation of lottery equipment, and a copy of the administrative regulations.

(20) "Vending machine" means a mechanical or electronic device which accepts cash, coin, or other method of payment and dispenses one (1) or more forms of lottery tickets, other than on-line tickets.]

Section 2. Conditions of Licensing. As a condition to be licensed to sell lottery products[tickets] and to act as a retailer, each applicant[person] shall be deemed to have agreed to the following[general] conditions:

(1) Compliance with law. To fully comply with applicable laws, rules and regulations of the United States, including [but not limited to] the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 et seq.), the Commonwealth of Kentucky and its political subdivisions, including KRS Chapter 154A and [the administrative regulations in] 202 KAR Chapter 3, and with all policies, procedures, rules, directives, and instructions of the KLC, including applicable[the] licensing documents and the Retailer Handbook[Manual], all as may be amended.

~~(2) Release and indemnification. To release, indemnify, hold harmless and forever defend the KLC, its officers, directors, employees and agents, and the Commonwealth of Kentucky, its elected officials, employees and agents, from and against all loss, claims, damages, expenses, costs (including court costs and costs and fees of attorneys of the indemnified party's choice) arising out of, resulting from or in any way connected to a retailer's sale of lottery tickets and related activities and all actions or omissions of the retailer, its owners, employees or agents, whether or not related to the sale of lottery tickets. In addition, without limiting the generality of the foregoing, to release those persons from any claims (including claims for lost revenue) that may arise out of an interruption, suspension, failure of or defects in the operation of the KLC's games, lottery equipment, or any other service or product supplied by the KLC, regardless of the reasons.~~

~~(3) Sale and cashing of lottery products[tickets].~~

(a) To offer for sale in a manner convenient and accessible to the public, and to actively promote the sale of, in a manner consistent with the directives of the KLC (including the display of KLC point-of-sale materials, signs ~~[and other signs]~~ or other displays), all lottery products[tickets] the retailer is authorized to sell, and to abide by all promotional guidelines promulgated by the KLC; ~~[throughout the retailer's business hours (to the extent that the retailer's business hours coincide with the KLC's hours of operation with respect to the sale of on-line tickets) and at a minimum during normal business hours.]~~

~~(b) To only use ticket stock issued to the specific retail outlet, unless otherwise authorized by the KLC;~~

~~(c) To cash valid winning lottery products sold or issued by retailer or by another retailer up to the limit set for the retailer by Sections 3(3) and 7 of this administrative regulation, or in an amount as otherwise authorized by the KLC in a manner consistent with the directives of the KLC[cash all valid lottery tickets of the type and dollar value the retailer is authorized to cash, in a manner consistent with the directives of the KLC, and to accept all valid lottery coupons issued by the KLC and give the bearer lottery tickets or merchandise in accordance with the terms of the lottery coupons,] throughout the retailer's business hours, by making a cash payment, or by issuing a check or money order;~~

~~(d) To neither charge nor ask for a fee, tip, tax, or anything of value for cashing a lottery product or for cashing a check or money order issued by retailer's retail outlet for payment of a prize;~~

~~(e) Upon request by a lottery player and when the lottery product is validated, to provide a lottery player with a copy of the validation slip for the lottery product presented; and~~

~~(f) To accept all valid coupons issued by the KLC and give the bearer of the coupons lottery products or merchandise in accordance with the terms of the lottery coupons[(to the extent that the retailer's business hours coincide with the KLC's hours of operation with respect to the cashing of on-line tickets) and at a minimum during normal business hours. A retailer shall not charge a fee for cashing a lottery ticket and shall not refuse to cash a valid lottery ticket sold by another retailer].~~

~~(3)[(4)] Training of retailer personnel. To require its employees[sales and accounting personnel] to attend all training sessions and review training materials offered by the KLC or its vendors, as needed, to effectively perform its responsibilities as a KLC retailer[and to review training materials and terminal-provided tutorials provided by the KLC or its vendors, so that personnel are able to sell lottery tickets, operate and maintain on-line terminals, instant validation terminals, vending~~

~~machines and electronic devices, and appropriately account for sales of lottery tickets].~~

~~(4)[(5)] Accounting records. To maintain for the prior and[at least one (1) year] current fiscal year (July 1 through June 30) current, [and] accurate, and detailed accounting records of every operation and transaction relating to the sale, cashing, or maintenance of lottery products in conformance with the[of lottery tickets. The records shall conform to the rules, instructions, and] directives of the KLC, and as otherwise required by law. The records shall be made available to KLC representatives or agents[ef the KLC], the Commonwealth of Kentucky's Auditor of Public Accounts, and[,] to[the extent required by law,] any other person as otherwise required by law. [upon request for inspection and audit. Notwithstanding the foregoing requirement of the retailer to maintain records, the records of the KLC shall be determinative with respect to a retailer's accounts and other financial dealings with the KLC, absent a showing of manifest error.~~

~~(6) Change in information. To promptly notify the KLC of a change in information previously given to the KLC, within the time frames established in a licensing document.~~

~~(7) Storage of unsold tickets. To store unsold lottery tickets and on-line ticket stock in a safe and secure place to minimize the risk of loss, theft, damage or destruction. The KLC may inspect, and require alteration or relocation of, the storage place.~~

~~(8) End dates. To adhere to the KLC's directives and policies on end dates and return dates for lottery tickets and games.~~

~~(9) Loss, destruction or theft of tickets. To promptly report to the Security Division of the KLC and to the appropriate local law enforcement agency a loss, destruction, or theft of lottery tickets, and to cooperate, and cause its employees to cooperate, fully with the investigations of the KLC's Security Division and law enforcement officials. The retailer shall be liable to the KLC for payment in full for all Lottery Tickets allegedly lost, destroyed or stolen after activation of the relevant pack of tickets.]~~

Section 3. Licensing[Process]. (1) In general.

(a) An applicant[and an owner of an applicant] for a["Retailer License"] shall complete, sign, and submit:

1. An application for Retailer License, including an acknowledgement that the KLC may conduct the criminal, financial, and other background investigations required by Section 5 of this administrative regulation at any time during any term of the Retailer License Agreement with or without notice to the retailer;

2. A Retailer License Agreement; and

3. If a cashing agent, a Retailer License Agreement Addendum for Cashing Agents[execute a "Retailer License Application" and other documents as may be required by the KLC. An applicant shall tender the licensing fees described in paragraph (b) of this subsection, which shall include a nonrefundable application fee in the amount of fifty (50) dollars].

(b) Upon submission of an application for[a] ["Retailer License[Application]"], an applicant shall tender a \$250 fee[the following licensing and related fees, as applicable], which shall be nonrefundable, except as provided in Section 5(5)(a)2/(2) and (b)3/(3) of this administrative regulation[after installation of the lottery equipment:

1. A \$100 licensing fee for a retailer selling instant or pull-tab tickets, but not on-line tickets;

2. A \$350 licensing fee for a retailer selling on-line tickets and instant or pull-tab tickets;

3. A \$250 licensing fee for an existing retailer selling instant or pull-tab tickets who will commence selling on-line tickets;

4. A fifty (50) dollars fee for a partial change in owners of an existing retailer; and

5. A \$100 licensing fee for a complete change in ownership of an existing retailer].

(c) There shall be a \$100 fee per new retail outlet for an existing chain retailer[Requirements for applicants for a "Retailer License" shall apply to an existing retailer who applies for a "Retailer License" for a new location, except the KLC may, in its sole discretion, temporarily license a retailer to sell lottery tickets at a new retail location for a period not to exceed sixty (60) days].

(d) Criminal, financial, and other background investigations shall[, financial investigations and inquiries to the Kentucky Revenue Cabinet will] be conducted in accordance with Section 5 of this administrative

regulation for[respect to] the applicant and each owner of the applicant. If the KLC determines that the applicant or an owner of the applicant does not meet the criteria established in KRS Chapter 154A and[or] in this administrative regulation for the issuance of a Retailer License[202 KAR Chapter 3], the applicant shall be notified in writing, and the ["]Retailer License["] shall be denied.

(e) [If the applicant is an existing retailer undergoing relicensing or seeking to open a new retail location, or is a related entity to an existing retailer, or shares one (1) or more owners with an existing retailer, and facts are disclosed which would cause the KLC to deny an application for licensing or relicensing if tendered by the other retailer, the KLC may:

1. Immediately revoke or suspend all existing retailer licenses of the retailer; or

2. Notify all the retailers that their licenses will be revoked within thirty (30) days if the conditions justifying revocation are not corrected.

e.] Upon satisfactory completion of the criminal, financial, and other background investigations pursuant to paragraph (d) of this subsection[and financial investigation and inquiry from the Kentucky Revenue Cabinet], the KLC may[shall]:

1. Sign[Execute] a ["]Retailer License Agreement["] with the successful applicant; and

2. Issue a ["]Retailer License Certificate for the successful applicant.

(f) Unless earlier terminated by the terms of the Retailer License Agreement in accordance with KRS Chapter 154A or Section 9 of this administrative regulation, the Retailer License Agreement shall be in effect for an initial one (1) year term from the date it is signed by the KLC. At the end of the initial one (1) year term, the Retailer License Agreement shall automatically renew for additional successive one (1) year terms, not to exceed four (4) years from the date the Retailer License Agreement was signed by the KLC. At the expiration of the four (4) years, unless the Retailer License Agreement was earlier terminated, the retailer shall seek relicensing pursuant to subsection (4) of this section[" and one (1) or more unique retailer numbers for each location, with each separate On-line and instant validation terminal to have its own retailer number].

(2) Special rules relating to chain retailers.[The KLC may treat] More than one (1) retail outlet[location] with identical owners may be treated as one (1) chain retailer. Each retail outlet[location] shall be issued a separate retailer number[or numbers] and a [unique"]Retailer License["]. The KLC may issue one (1) billing statement for all retail outlets[locations] or separate billing statements for each retail outlet[location]. If the chain retailer wishes to add a new retail outlet[location], the chain retailer shall[will] not be required to undergo a new background investigation.

(3) Special rules relating to cashing agents.

(a) The KLC may designate one (1) or more retailers as cashing agents. A cashing agent shall sign a Retailer License Agreement Addendum for [Authorized] Cashing Agents for cashing lottery products of a value up to an amount authorized by the KLC, not to exceed \$25,000. If internet is available and if the KLC determines internet is necessary and in the best interest of the KLC to complete the claim process, the retailer may be required to maintain internet access during KLC's business hours.

(b) All cashing agents shall:

1. During the KLC's business hours, cash validated winning lottery products by making a cash payment, or by issuing a check or money order;

2. Follow all KLC practices and procedures; and

3. Take all reasonable steps necessary to protect a player's private information, including address, telephone number, Social Security number, and birth date from public disclosure or any disclosure beyond that which is necessary for awarding the prize to the player. If any private information is disclosed, the KLC shall be immediately notified.

(c) The KLC may terminate a retailer's status as a cashing agent with or without revocation of the retailer's Retailer License.

(4) Relicensing.

(a) At least ninety (90) days prior to the expiration of the Retailer License Agreement as established in subsection (1)(f) of this section, each retailer shall seek relicensing by completing the application process in subsection (1) of this section, except the retailer shall not be required to tender the fees required by subsection (1)(b) and (c) of this section. If the retailer is a cashing agent, the retailer shall also complete the process in subsection (3) of this section.

(b) If a retailer continues to sell lottery products beyond the term of the Retailer License Agreement, the retailer shall continue to be liable to the KLC for all products sold.

(5) Change in Information. A retailer shall promptly notify the KLC of a change in information previously given to the KLC. For a complete or partial change in ownership, the retailer shall comply with Section 4 of this administrative regulation.

Section 4. Rules for Change in Ownership. (1) Special rules relating to transfer of ownership of existing retailers.[transfer of retail locations.]

(a) A ["]Retailer License["] shall not be sold, transferred, assigned, [hypothecated,] pledged, or otherwise conveyed.

(b) A[Unless waived in writing by the KLC, a] retailer shall give thirty (30) days prior written notice to the KLC of its intent to vacate or convey its retail outlet[location] or business, change its location, or change the form of the business of the retailer. Retailer acknowledges that a complete change in ownership shall be accomplished by tendering to the KLC:

1. An application for Retailer License;

2. A Retailer License Agreement;

3. If a cashing agent, a Retailer License Agreement Addendum for Cashing Agents;

4. The fees required by Section 3(1)(b) and (c) of this administrative regulation; and

5. Proof of conveyance documentation acceptable to the KLC.

(c) The KLC may,[-The acquiring person, if it desires to be licensed as a retailer, shall apply with the KLC] for a period not to exceed sixty (60) days, temporarily license an owner or applicant who has acquired the retail outlet or business of an existing retailer, so that the sale of lottery products will not be interrupted during the application process. The temporary licensing of an owner or applicant to sell lottery products shall not limit the KLC's right to exercise its discretion regarding issuance of a ["]Retailer License to the owner or applicant["]. If the retail outlet[location] or business of a retailer is conveyed and the sale of lottery products[tickets] continues without issuance of a temporary or new ["]Retailer License["] to the acquiring owner[person], the conveying retailer and the acquiring owner[person] shall be jointly and severally liable for all debts and other obligations incurred to the KLC prior to and after the conveyance, and shall remain liable for all debts and other obligations until paid[-performed, and a new "Retailer License" is issued for the acquiring person].

(d) In addition to other grounds for denial of a Retailer License or termination of a Retailer License Agreement, the[(-The] KLC may deny issuance of a Retailer License to an owner or applicant[-in its sole discretion, temporarily, for a period not to exceed sixty (60) days, license a person] acquiring or seeking to acquire the retail outlet[location] or business of an existing retailer, so that the sale of lottery tickets will not be interrupted during the KLC's performance of background investigations. The temporary licensing of a person to sell lottery tickets shall not limit the KLC's right to exercise its discretion regarding issuance of a "Retailer License" to the person, and the KLC in its sole discretion may hold the conveying retailer and the acquiring person jointly and severally liable for all debts and other obligations incurred to the KLC prior to the issuance of the new "Retailer License".

(d) In addition to other grounds for denial of a "Retailer License", the KLC may, in its sole discretion, deny issuance of a "Retailer License" to a person acquiring or seeking to acquire the retail location] or business of a retailer, until all debts and other obligations of the conveying retailer [or the person or any owner of the person,] to the KLC are paid [and performed] in full.

(2) Special rules relating to a partial change in ownership of a retailer.

(a) To the extent possible, retailers shall provide the KLC with thirty (30) days prior written notice of any partial change in owners, and in any event, shall provide the KLC with written notice within fifteen (15) days after any partial change in owners. Failure to do so may result in termination of the retailer's Retailer License. Written notice of a partial change shall be accomplished by tendering to the KLC a new application for Retailer License[Application] and a fee in the amount of fifty (50) dollars.

(b) The KLC shall conduct background and financial investigations of and make inquiries of the Kentucky Revenue Cabinet regarding a new owner of retailers in accordance with Section 5 of this administrative



regulation. (4) Special rules relating to partial changes in ownership.

(a) To the extent possible, retailers shall provide the KLC with thirty (30) days prior written notice of any partial change in owners, and in any event shall provide the KLC with written notice within fifteen (15) days after any partial change in owners. Failure to do so may, in the KLC's sole discretion, result in termination of the retailer's "Retailer License". Written notice of a change shall be effected by tendering to the KLC a new "Retailer License Application" and a fee in the amount of fifty (50) dollars.

(b) The KLC shall conduct background and financial investigations of and make inquiries of the Kentucky Revenue Cabinet regarding a new owner of retailers.

(c) If the KLC's background and credit investigations and inquiries with the Kentucky Revenue Cabinet are not satisfactory, the KLC may revoke or temporarily suspend the retailer's retail license, or permit the retailer a period of time, not to exceed thirty (30) days, to remove the person as owner or to correct the situation resulting in the an unsatisfactory background check.

(5) Special rules relating to licensing for the sale of specific lottery tickets.

(a) The KLC shall not grant a "Retailer License" permitting the applicant to sell on-line tickets if the applicant has been denied a license to sell instant or pull-tab tickets, unless the reasons for the denial have been corrected by the applicant to the satisfaction of the KLC.

(b) Unless specifically permitted in writing by the KLC, a retailer shall not sell on-line tickets unless it also sells instant tickets. Failure to actively sell instant tickets shall be grounds for termination of the retailer's retail license.

(6) Special rules relating to cashing agents. The KLC may designate one (1) or more retailers as cashing agents. A cashing agent shall execute a "Retailer License Agreement Addendum for Cashing Agent" and shall follow the procedures established by the KLC for cashing tickets of a value from \$601 to \$5,000, inclusive. The KLC may, in its sole discretion, terminate a retailer's status as a cashing agent with or without revocation of the retailer's "Retailer License".

(7) Renewal and relicensing.

(a) The KLC shall relicense all retailers with the new licensing forms established in conjunction with the adoption of this administrative regulation.

(b) Thereafter, the KLC shall provide continuous renewal of all retailer licenses, renewing one-eighth (1/8) of retailer licenses each calendar quarter, with the ultimate goal of renewing every retailer license not longer than once every two (2) years.

(c) To be relicensed and to receive a renewal of a "Retailer License," each retailer shall:

1. Complete, execute, and submit the "Retailer License Application" or the "Retailer Relicensing Application";
2. Complete, execute, and submit new licensing documents; and
3. Successfully pass new background and financial investigations and inquiries with the Kentucky Revenue Cabinet.

Section 5.4. Requirements and selection criteria for applicants, retailers, and owners[Retailers or Owners]. (1) Criminal and other background investigations. The KLC may[shall, with the assistance of the Kentucky State Police and, in its sole discretion, with the assistance of any other available sources,] investigate, at any time and during any license term, the criminal and other background history of, and existence of any statutory or regulatory violations by, an applicant, an owner, a[prospective retailer, a] retailer seeking relicensing, a retailer seeking licensing due to a complete change in ownership, or a retailer reporting a partial change in ownership[or a regularly scheduled relicensing, or an owner].

(a) The KLC may, unless required by statute,[shall] deny the application of an applicant,[a prospective retailer] and suspend or revoke the license of an[a] existing retailer[if]:

1. For any reason established in KRS 154A.400 for denying the issuance of a Retailer License;
2. For any reason established in KRS 154A.410(1) for terminating an existing Retailer License Agreement;
3. If the applicant, owner, or retailer[(a) A person, or an owner thereof,] has been convicted of[in] any offense that[jurisdiction of a:

1. Felony, if ten (10) years have not passed since the satisfactory completion by the person of the sentence imposed by the court for the

offense;

2. Gambling-related offense, if ten (10) years have not passed since the satisfactory completion by the person of the sentence imposed by the court for the offense;

3. Offense under KRS Chapter 154A, any other statute governing the KLC, or any related administrative regulations; or

4. Offense which, in the sole judgment of the KLC, relates to or may adversely impact the security or integrity of, or public confidence in, the KLC or its retailers. The KLC[KLC's determination] shall consider[include consideration of]:

a. The physical and fiscal security of the KLC and its retailers and the integrity of the KLC's games;

b. Public perception of and public confidence in the KLC and its retailers; and

c. Other relevant factors[;].

4. If an applicant, owner[(b) Person], or retailer[an owner thereof,] has been found by[violated] the Chief Financial Officer or his designee[provisions of KRS Chapter 154A or any other statute governing the KLC or any related administrative regulations, if ten (10) years has not passed since the last date that the violation existed; or

(c) A person, or an owner thereof, or a retailer or applicant for a "Retailer License" with respect] to have[which any person or owner was an owner or related entity, has] made a statement of material fact to the KLC while the person was serving as a previous owner or related entity, and the person knew or should have known that the statement was false or untrue in any respect, unless at least ten (10) years have passed since the statement was made;

5. If an applicant, owner, or retailer has been found by the Chief Financial Officer or his designee to have provided false or misleading information, or failed to provide material information the failure of which to provide is false or misleading, to the KLC or to a law enforcement agency with respect to obtaining or retaining a Retailer License;

6. If an applicant, owner, or retailer provides products, services, or entertainment that may have an adverse effect upon the credibility, integrity, and reputation of the KLC;

7. If an applicant, owner, or retailer sells products, services, or entertainment that constitutes products or services deceptively similar to or in competition with the KLC's products or services; or

8. If an applicant, owner, or retailer does not demonstrate the ability to sell and continue to sell an acceptable level of lottery products.

(b) The KLC may permit the applicant or retailer a period of time, not to exceed thirty (30) days, to remove the person as owner or to correct the situation resulting in an unsatisfactory criminal, financial, or other background check.

(c) If an existing retailer is requesting a relicensing, seeking to open a new retail outlet, or is an entity related to an existing retailer, or who shares one (1) or more owners with an existing retailer, and facts are disclosed that would cause the KLC to deny an application for licensing or a relicensing if tendered by the existing retailer, the KLC may:

1. Immediately revoke or suspend all existing Retailer Licenses of the retailer in accordance with KRS Chapter 154A; or

2. Notify all the retailers that their licenses will be revoked within thirty (30) days if the conditions justifying revocation are not corrected.

(2) Financial investigations.

(a) The KLC shall conduct a financial investigation of each applicant[person and each owner] applying for a ["Retailer License"], and of each retailer under consideration for licensing[relicensing] due to a change of ownership[or a routinely scheduled relicensing]. In addition to information available from other sources, the KLC shall maintain, and shall review during each financial investigation, a database regarding existing, suspended, and canceled retailers and their owners. The KLC may consider in its determination regarding the financial responsibility of an applicant or retailer undergoing relicensing, the connection of the owner[person, whether as owner] or related entity[, with any retailer whose ["Retailer License"] was suspended or canceled due to a default in its obligations to the KLC.

(b) If, as a result of financial investigation of the applicant or retailer[person] and its owners, the KLC determines that a prospective or existing retailer poses a financial risk, the KLC may:

1. Deny the application or revoke the Retailer License[license];

2. License a prospective Retailer to, or permit an existing retailer to, sell instant tickets or pull-tab tickets only upon the condition that payment is made for tickets upon the delivery thereof] in accordance



with KRS 154A.410(2)[good funds (COD)]; or

2.[3.] License an applicant[a prospective retailer] or permit an existing retailer to retain its Retailer License[license] upon receipt of the letters of credit, bonds, personal guaranty agreements[guarantees] or other security or assurances of payment as the KLC may[~~in its sole discretion~~] deem satisfactory, in an amount based upon actual or potential sales.

(3) Kentucky Department of Revenue inquiries[Cabinet inquires].

(a) Except as provided in Section 4(1)(c) of this administrative regulation, a ["Retailer License"] shall not be issued to an applicant[a person] which is not, or has an owner which is not, and a[ne] retailer shall not be permitted to retain a ["Retailer License"] which is not, or has an owner which is not, current in the payment of taxes, interest and penalties owed to, and current in filing of applicable tax returns with, the Commonwealth of Kentucky[and all political subdivisions thereof, including, without limitation, any political subdivisions in which lottery tickets are being or are proposed to be sold, exclusive of items under formal appeal pursuant to applicable statutes].

(b) A ["Retailer License"] shall not be issued to an applicant[a person] which has not previously been issued a federal employment tax identification number, or if the applicant is an individual, a Social Security number, and, if applicable, a Kentucky sales tax license number. The KLC shall confirm with the Kentucky Department of Revenue[Cabinet] that an applicant for a ["Retailer License"], and an existing retailer seeking[~~in the event of a~~] relicensing, complies with[~~the provisions of~~] this paragraph. The KLC shall rely upon information received from the Kentucky Department of Revenue[Cabinet]. The KLC may[~~in its sole discretion~~], permit an existing retailer a period of time[~~not to exceed thirty (30) days~~] within which to meet or cause the owner in question to meet its obligations with the Kentucky Department of Revenue[Cabinet] prior to revocation of the retailer's ["Retailer License"] or prior to final denial of issuance of[~~renewal of~~] a relicensing of the ["Retailer License"].

(4) Kentucky Secretary of State Inquiries. An applicant shall be registered and in good standing with the Kentucky Secretary of State if the applicant is a corporation or limited liability company.

(5) Selection criteria.[3]

(a) In order to sell draw-based products, an applicant shall meet the following criteria:

1. Whether, based on historic traffic patterns in the geographic area of the proposed retail outlet, the applicant is likely to have sales equal to or in excess of \$100 per week in draw-based product; and[3]

2. If the KLC determines that the applicant is not likely to have the expected draw-based product sales, the KLC may deny the applicant's application for a Retailer License and refund any license fee previously paid by the applicant.

(b) In order to sell instant products, an applicant shall meet the following criteria:

1. Whether, based on historic traffic patterns in the geographic area of the proposed retail outlet, the applicant is likely to have sales equal to or in excess of \$300 per week in draw-based and instant products;

2. Whether the applicant will agree to and has the physical space to carry a minimum of six (6) unique instant products at its retail outlet at all times; and

3. If the KLC determines that the applicant is not likely to have the expected draw-based and instant product sales, the KLC may deny the applicant's application for a Retailer License and refund any license fee previously paid by the applicant.

(c) Retailers shall sell both draw-based products and instant products unless specifically authorized by the KLC to sell one (1) or more draw-based products only based on the retailer's type of business.

(6) Storage of unsold products. A retailer shall store unsold lottery products and ticket stock in a safe and secure place to minimize the risk of loss, theft, damage, or destruction. The KLC may inspect, and require alteration or relocation of, the storage place.

(7) Reasonable access to lottery products, equipment, and supplies. A retailer shall provide the KLC with reasonable access to lottery products, equipment, and supplies upon reasonable notice.

(8) Game end dates. A retailer shall adhere to the KLC's directives and policies on game end dates and return dates for lottery products. A retailer shall adhere to the KLC's directives on return of unsold lottery products upon the announcement of game end dates.

(9) Loss, destruction, or theft of lottery products, equipment, or

supplies.

(a) A retailer shall promptly report to the Security Division of the KLC and to the appropriate local law enforcement agency, a loss, destruction, or theft of lottery products, equipment, or supplies and cooperate, and cause its employees to cooperate, fully with the investigations of the KLC's Security Division and law enforcement officials.[3]

(b) The retailer shall be liable to the KLC for payment in full for all lottery products allegedly lost, destroyed, or stolen after activation of the relevant pack of products.[3 and]

(c) Retailers shall receive reimbursement for activated products stolen during a robbery or burglary, if the Security Division and law enforcement each receive accurate game, pack, and ticket number ranges in a timely manner, followed-up by a copy of the police offense report submitted to the Security Division within ten (10) business days.

(10) Security Inspection and Investigations. The KLC Security Division may inspect the retail outlet to ensure that lottery products, equipment, and supplies are maintained in an environment that will minimize the risk of loss, theft, damage, or destruction. The KLC may require alteration of the environment or relocation of lottery products, equipment, or supplies if a security risk is evident. The retailer shall cooperate, and cause its employees to cooperate, fully with all investigations of the KLC's Security Division and law enforcement officials.[Relationship with KLC vendors, officers or directors. A person shall not be licensed as a KLC retailer, and a retailer shall not be permitted to maintain its "Retailer License", if the person or an owner of the person:

(a) Is a vendor, as defined at KRS 154A.010, of major lottery-specific procurement items to the KLC, or is an officer, director, employee or agent of a vendor; or

(b) Resides in the same household as an officer or director of the KLC;

(5) Miscellaneous requirements. A person shall not be licensed as a KLC retailer, and a retailer shall not be permitted to maintain its "Retailer License" if the person or an owner of the person:

(a) Has provided false or misleading information, or failed to provide information the failure to provide which is materially misleading, to the KLC or to a law enforcement agency with respect to obtaining or retaining a "Retailer License";

(b) Provides products, services, or entertainment that, in the sole discretion of the KLC, may have an adverse effect upon the credibility, integrity, and reputation of the KLC;

(c) Sells products, services, or entertainment that, in the sole discretion of the KLC, constitutes lottery products or services deceptively similar to or in competition with the KLC's products or services; or

(d) Does not demonstrate, in the sole discretion of the KLC, the ability to sell and continue to sell an acceptable level of lottery tickets.

(6) Additional requirements.

(a) The KLC may promulgate administrative regulations to:

1. Revise or add requirements for the licensing of new Retailers, the relicensing of existing retailers, and the ability of retailers to retain retailer licenses; and

2. Amend the licensing documents, the "Retailer License Agreement," and the Retailer Manual.

(b) The KLC may, in a document not in 202 KAR Chapter 3, amend that document unilaterally.

(c) The KLC may deny retailer licenses to a prospective retailer, deny relicensing to an existing retailer, and revoke the retailer licenses of a retailer based upon the failure to meet additional or revised requirements established by KLC or by administrative regulation.]

Section 6. Lottery equipment and supplies[5. Terminals and Other Equipment].

(1) Criteria for allocation of lottery equipment and supplies[Allocation].

(a)[One (1) or more instant validation terminals (for retailers licensed to sell only instant tickets or pull-tab tickets) or on-line terminals (for retailers licensed to sell on-line tickets) may be installed by the KLC at the retailer's retail location. At the request of the retailer, the KLC may install vending machines and other lottery equipment at a retail location.] Installation and retention of lottery equipment and supplies at a retail outlet[location] shall be determined by[~~in the sole discretion of~~] the KLC, based upon the following criteria, as appropriate:

1. The probable future or actual historic sales at the retail

outlet[location] relative to the[

a. Initial and ongoing maintenance and] installation costs of any lottery equipment and supplies and ongoing communications [telecommunications] charges associated with any lottery equipment and supplies;

2. The retailer's and the retailer's owners' and related entities' history with the KLC;

3. The number of games carried by the retailer; and

4. The retailer's retail outlet, including business, location, size, and hours[and

b. Probable sales generated by the Lottery Equipment at another retail location;

2. The incremental costs associated with the installation of the Lottery Equipment under the KLC's agreements with its on-line ticket vendor, vendors of instant and pull-tab tickets, and other applicable vendors; and

3. The geographic distribution of retailers and various types of lottery equipment].

(b) In calculating the probable future or actual historic sales, the KLC shall[may] consider[information it deems appropriate, to include one (1) or more of the following sets of data]:

1. Actual historic sales of the lottery products sought to be sold by similarly situated retailers; and

2. Total actual historic sales by the retailer in question[of instant or pull-tab tickets (in the case of a retailer seeking to become licensed to sell on-line tickets or seeking installation of lottery equipment, vending machines or additional instant validation terminals); and

3. Actual historic sales by the retailer in question of on-line tickets (in the case of a retailer seeking installation of additional on-line terminals).

(c) The KLC may also consider factors including:

1. The retailer's and the retailer's owners' and related entities' history with the KLC;

2. The retailer's participation in promotional activities including the display of point-of-sale promotional materials;

3. The number of games carried by the retailer; and

4. The retailer's store hours].

(c)[(d)] The KLC may establish initial fees and periodic charges with respect to installation or maintenance of lottery equipment and supplies.

(2) Title, placement, and removal of lottery[te] equipment and supplies.

(a) Lottery equipment and supplies provided to retailers are[is] and shall remain the property of the KLC or its vendors, and shall not be or become property of a retailer or person claiming an interest in lottery equipment and supplies through a retailer including, without limitation, the holder of any[a consensual, judgment, landlord's, or mechanic's] lien.

(b) Before placement of lottery equipment and supplies within a retailer's retail outlet[location], the retailer shall obtain KLC approval of the proposed location for the lottery equipment and supplies. The retailer shall not move, modify, or alter the equipment or supplies.

(c) The KLC shall have the right to enter a then-present or former retail outlet[location], during normal business hours, or at any other time with the consent of the holder of any interest in the real property on which the retail outlet[location] is situated, to remove lottery products,[property belonging to the KLC, including, without limitation, lottery] equipment, and supplies[lottery tickets, on-line ticket stock, signs, and point-of-sale materials, with or without revocation of the "Retailer License" and termination of the "Retailer License Agreement" applicable to the retail location].

Section 7.[6-] Prize Payments. (1) Prize payments up to and including \$600. During its business hours, a retailer shall [upon presentation of a winning KLC ticket which properly validates,] pay the nonminor holder of a validated winning lottery product[the ticket] the amount of the prize to which the winner is entitled, up to and including the sum of \$600, by making a cash payment, or by issuing a check or money order.

(2) Prize payments up to \$25,000[\$5,000]. The KLC may[shall] establish a network of cashing agents. During the KLC's business hours, authorized cashing agents shall[agent retailers which shall, upon presentation of a winning KLC ticket which properly validates,] pay the nonminor holder of a validated winning lottery product[the ticket] the amount of the prize to which the winner is entitled, up to and including any sum that the KLC has authorized the cashing agent to pay, not to

exceed the sum of \$25,000, by making a cash payment, or by issuing a check or money order[\$5,000].

Section 8. Retailer Accounting[7. Ticket Purchases, Deposit of Funds and Payments]. (1) Lottery product[ticket] purchases, billings, and payment. The KLC shall make available [promulgate and distribute] to all retailers detailed accounting procedures regarding purchases of and billings for lottery products[tickets], which procedures shall be deemed to be a part of the ["]Retailer License Agreement["]. The KLC may[, in its sole discretion,] establish payment terms with individual retailers to address situations unique to those retailers. All proceeds from the sale of lottery products[tickets] shall be deposited not later than the close of the next banking day after the date of their collection by the retailer and shall be held in an account designated, in writing, by the retailer to the KLC in the application for["] Retailer License[Application]" or ["Retailer Relicensing Application"]. The account shall be in an institution insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation, or their successors. All proceeds of the sale of lottery products[tickets], net of credits for compensation due to retailers and for prizes paid by retailers, are the property of the KLC and shall be held by retailers in trust and in a fiduciary capacity for the benefit of the KLC.

(2) Credits. Retailers' accounts with the KLC shall[will] be credited by the KLC in accordance with its retailer compensation policies, as established by the KLC pursuant to KRS 154A.050(1)(d)8.

(3) Delinquent accounts. In addition to all other rights and remedies available to the KLC at law or in equity, including the rights and remedies provided in KRS Chapter 154A, the KLC shall have the following rights and remedies:

(a) The right to set off against and recoup from sums due by the KLC to a delinquent retailer or owner any sums due the KLC by the delinquent retailer or owner, or by any other retailer in which the delinquent retailer or[an] owner[thereof] is an owner;

(b) The right to request the Commonwealth of Kentucky to set off against and recoup from sums due any delinquent retailer, owner [thereof], or other retailer which is in part owned by an owner of the delinquent retailer by the Kentucky Department of Revenue[Cabinet], any sums due to the KLC by the delinquent retailer;

(c) The right to require payment of all sums due the KLC[, in the KLC's sole discretion,] by a retailer prior to issuance of a ["]Retailer License["] to a new retailer at the same retail outlet[location]; and

(d) The right to write off a retailer's obligations to the KLC, without releasing any retailer from its obligations for repayment of sums owed the KLC, and reimburse its operating accounts in the amount of the write-off from a segregated account that may[shall] be established from all licensing fees received by the KLC, including any additional sums authorized for that purpose by the board. The board may increase or reduce the amount held in the segregated account.

Section 9.[8-] Termination or Suspension. (1) Termination for cause. Unless required by statute, the KLC may terminate or suspend a retailer's Retailer License and[In addition to any other bases for termination or suspension established in this administrative regulation, KRS Chapter 154A, and the"]Retailer License Agreement[", the KLC may, in its sole discretion, terminate or suspend a retailer's "Retailer License" and "Retailer License Agreement"] at any time, for good cause, upon a finding that[by the Senior Vice President of Finance and Administration that the retailer or an owner of the retailer]:

(a) The retailer or an owner has committed any act or omission established in KRS 154A.410(1) for termination of a Retailer License Agreement;

(b) The retailer or an owner has committed any act or omission that would prevent the issuance of a Retailer License for any reason in this administrative regulation;

(c) The retailer or an owner has committed a material breach of any provision of its Retailer License Agreement with the KLC;

(d) The retailer or an owner has provided false or misleading information in obtaining or attempting to obtain a Retailer License and Retailer License Agreement;

(e) The retailer or an owner been convicted of, or has entered a plea of guilty or nolo contendere, regardless of adjudication, to an offense punishable as a felony, or to any gambling-related offense, unless the time established in KRS 154A.400(1)(b)(3) has expired;

(f) The retailer or an owner has outstanding tax delinquencies owed to the federal government or any taxing authority within the Commonwealth of Kentucky;

(g) The retailer or an owner has jeopardized the integrity, security or efficient operation of the KLC;

(h) The ownership or location of the business has changed without providing prior notice to the KLC as provided in this administrative regulation;

(i) The retailer has failed to accurately account for lottery tickets, revenues, or prizes as required by the KLC;

(j) The retailer has failed to remit or is delinquent in remitting money owed to the KLC;

(k) The retailer or owner has committed any fraud, deceit, or misrepresentation to the KLC or to any individual purchasing a lottery ticket or tickets from retailer;

(l) The retailer has sold a lottery ticket or paid a prize to any person under eighteen (18) years of age;

(m) The retailer has sold a lottery ticket at any place other than the place authorized in its Retailer License;

(n) If required by statute, the retailer has not prominently displayed its Retailer License Certificate at the approved sales location;

(o) The retailer has not prominently displayed and maintained ticket displays/dispensers and points-of sale materials provided by the Lottery;

(p) The retailer has not made point-of-sale information for lottery products accessible to the public;

(q) The retailer has sold tickets at a price other than established by the KLC;

(r) The retailer or an owner has committed a material violation of any rule or administrative regulation promulgated by the KLC;

(s) The retailer has violated any directive or instruction issued by the KLC;

(t) The retailer or an owner has committed a material violation of KRS Chapter 154A;

(u) The retailer's reputation is no longer consistent with the protection of the public interest;

(v) The retailer has materially changed any factor considered by the KLC in selecting the retailer;

(w) The retailer or an owner has engaged in conduct prejudicial to public confidence in the lottery;

(x) The retailer has charged a fee or tip to redeem a lottery ticket or has required a customer to purchase another item in order to purchase a lottery ticket;

(y) The retailer has paid a prize valued greater than the retailer is authorized to cash by the KLC, or the retailer has refused to cash a winning lottery prize, properly validated, up to the amount authorized by the KLC; or

(z) The retailer has insufficient sales of lottery products, [Is in default or has violated any of the terms and conditions of its "Retailer License Agreement";

(b) Has violated or is in violation of any provision of 202-KAR Chapter 3 or KRS Chapter 154A;

(c) Failed or fails to meet the requirements and minimum standards for granting a "Retailer License" as established in 202-KAR Chapter 3, KRS Chapter 154A, or the licensing documents;

(d) Has provided false or misleading information, or has failed to provide information the failure of which to provide is false or misleading, to the KLC or to a law enforcement agency with respect to obtaining or retaining a "Retailer License";

(e) Provides or has provided a product, service, or entertainment that, in the sole opinion of the KLC, may have an adverse effect upon the credibility, integrity and reputation of the KLC;

(f) Sells, and continues to sell after written notice by the KLC to cease and desist the sale, a product, service, or entertainment that, in the sole opinion of the KLC, constitutes a product or service deceptively similar to or in competition with a KLC product or service;

(g) In the case of a retailer, sells its business, or, in the case of an owner, sells all or a sufficient part of its interest in the retailer, that the buyer meets the definition of an owner;

(h) Has not, in the sole judgment of the KLC, maintained an acceptable level of sales of lottery tickets; or

(i) Poses a situation that causes the President of the KLC to determine that the action is necessary in order to ensure the integrity, security, honesty, or fairness of the operation of the KLC or any of its

games.]

(2) Termination without cause. The KLC may terminate a retailer's Retailer["Retail"] License[""] and ["Retailer License Agreement[""] without cause, upon thirty (30) days prior written notice.

(3) Termination by retailer. A retailer may terminate its Retailer["Retail"] License[""] and ["Retailer License Agreement[""] upon thirty (30) days prior written notice. The KLC may, at its option, elect to terminate the retailer's ["Retailer License[""] and ["Retailer License Agreement[""] prior to the end of the thirty (30) day period.

(4) Effect of termination or suspension. If a retailer possesses multiple retail outlets, suspension or termination of one (1) outlet is grounds for suspension or termination of the others. Every obligation of a retailer to the KLC shall survive termination or suspension of the ["Retailer License[""] and ["Retailer License Agreement[""]. Upon termination of a "Retailer License" and ["Retailer License Agreement["", the retailer]. Upon termination or suspension of a Retailer License and Retailer License Agreement, the retailer shall immediately pay to the KLC all sums owed to the KLC and shall surrender to the KLC the retailer's ["Retailer License[""] **Certificate** and all lottery products, equipment and supplies[other property of the KLC or its vendors, including, without limitation, all lottery tickets, on-line ticket stock, point of sale materials, signs, and other property provided to the retailer by or on behalf of the KLC].

(5) Other remedies. In addition to the remedies of termination or suspension, the KLC may avail itself of any other remedies available to it at law or in equity, including, without limitation, injunctive relief.

Section 10.[9.] Retailer Remedies. (1) Right to protest. An applicant for a ["Retailer License[""] or a retailer aggrieved in connection with an action taken by the KLC pursuant to KRS Chapter 154A[154A.400] or this administrative regulation[202-KAR Chapter 3] may protest, in writing, to the president of the KLC. The protest shall be submitted within thirty (30) calendar days after the aggrieved applicant or retailer[person] knows or should have known of the facts giving rise to the protest. An applicant or retailer[A person] shall be deemed to have knowledge of the facts giving rise to the protest within thirty (30) days of the KLC's issuance of a written notification to the retailer or applicant for a ["Retailer License[""] regarding the action or decision of the KLC.

(2) Effect of protest. If a timely protest is filed under this section and the action protested is the termination of a ["Retailer License[""] the ["Retailer License[""] shall be temporarily suspended rather than terminated until all administrative and judicial remedies have been exhausted. In all other circumstances, the KLC's action or decision shall stand unless and until reversed or revised as a result of the protest.

(3) Action by President and Right to Appeal. The decision of the president shall be promptly issued in writing and shall be immediately furnished to the protesting person by hand-delivery, telecopier (with a hard copy sent by certified mail, return receipt requested,)[or-by] certified mail[.] (return receipt requested), or by appropriate electronic means. A notice shall be deemed received on the date hand-delivered or sent by telecopier,[or] three (3) business days after deposit of the notice in the United States Mail, postage prepaid, if sent by certified mail, return receipt requested and upon receipt, if sent electronically. The decision shall recite the grounds relied upon[on] by the president in reaching the decision and shall inform the protesting party of its further appellate rights under subsections (4) and (5) of this section. The president's decision shall be final and conclusive, unless within ten (10) calendar days from the date of receipt of the decision, the protesting party delivers a written appeal to the board, by hand, by telecopier (with a hard copy sent by certified mail, return receipt requested) or by certified mail, return receipt requested, all pursuant to KRS Chapter 154[154A.090]. The address is: Board of Directors, Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202, Telecopier No. (502) 560-1532.

(4) Board appeal.

(a) After[Upon] receipt of an appeal, the board shall[ promptly] schedule a hearing for the protesting party[person] which shall be scheduled[held] as soon as practicable; and

1. The hearing shall be conducted in accordance with KRS Chapter 13B; or

2. The chairman of the board may determine that the hearing will be conducted by a hearing officer. The chairman shall determine whether the hearing officer will conduct the hearing in the presence of a quorum of the board, who renders a decision without the recommended order of

~~the hearing officer, or whether the hearing officer will conduct the hearing outside of the presence of the board and will complete and submit to the board a written recommended order, which shall include findings of fact, conclusions of law, and recommended disposition, as provided in KRS 13B.110. The[after receipt of the appeal. The board may hold the hearing at the next regularly scheduled board meeting. The protesting person and the president shall have the right to be represented by counsel before the board and, in addition, shall have the following rights relative to the hearing:~~

- ~~1. To submit written memoranda as to relevant facts or applicable law, if submitted at least ten (10) calendar days before the hearing;~~
- ~~2. To call and examine witnesses;~~
- ~~3. To cross-examine witnesses called by the opposing party; and~~
- ~~4. To introduce evidence.~~

~~(b) The parties shall exchange a list of witnesses they intend to call at the hearing, a summary description of the evidence to be presented by each, and the documents proposed to be presented at the hearing, at least five (5) business days prior to the dates set for hearing.~~

~~(c) The board may consider and grant motions by either party for extensions of time, for the right to file responsive memoranda, and to call additional witnesses after receiving the opposing party's list of witnesses.~~

~~(d) The protesting person shall have the burden of proving, by a preponderance of the evidence, that the president's decision was clearly erroneous, arbitrary and capricious, procured by fraud, or was a result of misconduct of the president or another employee of the KLC.~~

~~(e) An accurate transcript of the hearing shall be kept, and the protesting person shall have the right to obtain a copy of the transcript upon payment of reasonable charges associated with the preparation of the transcript.~~

~~(f) The chairman of the board shall act as the presiding officer at the hearing, unless the chairman appoints another board member or an independent hearing officer specifically for that purpose. The presiding officer shall act to maintain decorum and shall determine the order of procedure during the hearing, making all rulings on matters of law, evidence, and procedure.~~

~~(g) Admissibility of evidence shall be determined by the presiding officer.~~

~~(h) A decision of the board shall be made by a majority of the board members present at the meeting in which the appeal is decided.~~

~~(b) The board shall issue its decision on the appeal within thirty (30) calendar days following the hearing and shall provide copies of the decision to the president, the protesting person and their respective counsel via certified mail, return receipt requested. Proof of receipt shall be made a part of the administrative record.~~

~~(i) The decision of the board shall be final unless the decision is appealed as provided by subsection (5) of this section and other applicable law.~~

~~(5) Access to state courts. A person aggrieved by a decision of the board under this section may appeal the decision, within thirty (30) calendar days of its date of issuance, to a court of competent jurisdiction, in accordance with KRS Chapter 154A[154A.090].~~

~~Section 11.[40:] Sales of Lottery Products[Tickets] by KLC. Nothing in 202 KAR Chapter 3, licensing documents[a retailer licensing document], or any other document shall limit the right of the KLC to sell lottery products[tickets] directly to the public, in person, electronically, by mail, by subscription, or otherwise.~~

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

- ~~(a) "Application for Retailer License"[Application], 12/8/17[11/16/01];~~
- ~~(b) ["Retailer Relicensing Application, 11/16/01";~~
- ~~(c) "Retailer License Agreement", 12/8/17[11/16/01];~~
- ~~(c)[(d)] "Retailer License Agreement Addendum for [Authorized] Cashing Agents"[Agent], 12/8/17[11/16/01]; and~~
- ~~(d)[(e)] "Retailer License Certificate", 12/8/17[11/16/01].~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law[upon reasonable notice], at the Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, Monday through Friday, 8:00 a.m. through 5:00 p.m. EST/ET.~~

TOM DELACENSERIE, President and CEO

APPROVED BY AGENCY: December 12, 2017

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

CONTACT PERSON: Mary Harville, Senior Vice President and General Counsel, Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, phone: (502) 560-1576; fax: (502) 560-1532, email [mary.harville@kylottery.com](mailto:mary.harville@kylottery.com).

**TOURISM, ARTS AND HERITAGE CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, February 12, 2018)**

**301 KAR 2:195. Falconry, raptor take, and raptor propagation.**

RELATES TO: KRS 150.010, 150.180, 150.183, 150.290, 150.305, 150.320, 150.330, 150.360

STATUTORY AUTHORITY: KRS 150.025(1), 150.280(1), 50 C.F.R. Parts 13, 17, 21, 22

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing open seasons for the taking of wildlife, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area. KRS 150.280(1) requires the department to promulgate administrative regulations establishing procedures for propagating and holding of protected wildlife. 50 C.F.R. Parts 13, 17, 21, and 22 establish requirements for permitting, taking, possessing, and selling of raptors and endangered and threatened species. This administrative regulation establishes permitting, taking, possessing, and reporting requirements for people engaged in falconry and raptor propagation.

Section 1. Definitions. (1) "Adult[raptor]" means a raptor that is at least one (1) year old.

(2) "Captive-bred raptor" means a raptor, or the eggs thereof, hatched in captivity from parents in captivity.

(3) "Eyas" means a young raptor that is still in the nest and not capable of flight.

(4) "Falconry" means caring for and training wild or captive-bred raptors for the pursuit of wild game.

(5) "Hack" means the temporary release of a raptor held for falconry to the wild so that it can survive on its own.

(6)[(5)] "Hybrid raptor" means an offspring produced by two (2) distinct raptor species.

(7)[(6)] "Imprinted" means a raptor that has been hand-raised by a human in isolation from the sight of other raptors from two (2) weeks of age through fledging.

(8)[(7)] "Native raptor" means a raptor species which has historically existed or currently exists in the wild in Kentucky without introduction by humans.

(9)[(8)] "Passage bird" means a raptor less than one (1) year of age that is capable of sustained flight and is no longer dependent on parental care.

(10)[(9)] "Wild raptor" means a raptor that was originally taken from the wild.

Section 2. Federal requirements. Except as established in Sections 3 through 11 of this administrative regulation, a person shall be in compliance with the federal requirements established in 50 C.F.R. Parts:

- (1) 13;
- (2) 17;
- (3) 21; and
- (4) 22.

Section 3. Permits and Licenses. (1) A person shall be required to obtain and possess a valid falconry permit to take or possess a raptor for use in falconry.

(2) A raptor obtained with a valid falconry permit shall not be used or kept for purposes other than falconry.

(3) A person with a valid state or federal falconry permit:

(a) May take wildlife pursuant to applicable statewide requirements if the falconer:

1. Has a valid Kentucky hunting license; or
2. Is hunting license exempt pursuant to KRS 150.170; and

(b) Shall not be required to obtain a wildlife transportation permit pursuant to 301 KAR 2:081 and 2:082 if the person:

1. Is importing or transporting a legally held falconry raptor into Kentucky; or

2. Is transporting a legally held falconry raptor into and through Kentucky to a destination outside of Kentucky.

Section 4. Falconry Permit Requirements, Classes of Permits, and Apprentice Sponsors. (1) To obtain a falconry permit of any class, a person shall:

(a) Complete a Kentucky Falconry Permit Application form provided by the Department; and

(b) Submit to the department:

1. The completed application;

2. The appropriate fee as established in 301 KAR 3:022; and

3. A completed Raptor Facilities and Equipment Inspection Report form signed by a state conservation officer.

(2) An apprentice falconry permit applicant shall:

(a) Be at least twelve (12) years old;

(b) Obtain a sponsor who holds a valid Kentucky general or master falconry permit pursuant to subsection (12)(40) of this section;

(c) If under eighteen (18) years old, have a parent or legal guardian co-sign the application;

(d) Contact the department to schedule a time to take a written exam[examination] administered by the department; [and]

(e) Provide photo identification prior to taking the exam;

(f) Complete the written exam within ninety (90) minutes;

(g) Only take the written exam one (1) time in a given day; and

(h) Pass the written examination by scoring a minimum of eighty (80) percent.

(3) An applicant shall not take more than three (3) exams in any twelve (12) month period.

(4) A person shall submit an application within twelve (12) months of passing the falconry exam, or the application shall be invalid.

(5) An apprentice class falconry permit holder shall:

(a) Only possess one (1) of the following wild or captive-bred raptors at any given time:

1. American kestrel (*Falco sparverius*);

2. Red-tailed hawk (*Buteo jamaicensis*);

3. Red-shouldered hawk (*Buteo lineatus*); or

4. Harris's/Harris'] hawk (*Parabuteo unicinctus*);[and]

(b) Not possess a raptor:

1. Taken from the wild as a nestling; or

2. That is imprinted on humans; and

(c) Only take a wild raptor under the direct supervision of the permit holder's sponsor.

(6)(4) A general class falconry permit applicant shall:

(a) Be at least sixteen (16) years old;

(b) If under eighteen (18) years old, have a parent or legal guardian co-sign the application;

(c) Have practiced falconry at the apprentice level for at least two (2) years; and

(d) Have complied with all previous year reporting requirements, if applicable, pursuant to Section 7 of this administrative regulation.

(7)(5) A first time general class permit applicant shall:

(a)[also] Submit to the department a completed Kentucky Apprentice Falconer Activity Report;

(b) Practice[

(a) ~~Signed document from a general or master class falconry permit holder stating that the permit applicant has:~~

1. ~~Practiced~~ falconry with a wild raptor at the apprentice level for at least two (2) years; and

(c) Maintain, train, and hunt[2. ~~Maintained, trained, and hunted~~] with a raptor for an average of six (6) months per year with at least four (4) months in each year[;

(b) ~~Summary of the species held as an apprentice; and~~

(c) ~~The length of time the apprentice held each bird~~].

(8)(6) A general class falconry permit holder shall:

(a) Be allowed to possess the following:

1. A raptor obtained from the wild;

2. A hybrid raptor; or

3. A captive-bred raptor; and

(b) Not possess more than three (3) of the following raptors at any

given time:

1. Great horned owl (*Bubo virginianus*); or

2. Any member of the Order Falconiformes, except for the following species which shall not be possessed:

a. Golden eagle (*Aquila chrysaetos*);

b. Bald eagle (*Haliaeetus leucocephalus*);

c. White-tailed eagle (*Haliaeetus albicilla*); or

d. Stellar's sea eagle (*Haliaeetus pelagicus*).

(9)(7) A master class falconry permit applicant shall:

(a) Have held a valid general class falconry permit for at least five (5) years; and

(b) Have complied with all previous year reporting requirements, pursuant to Section 7 of this administrative regulation.

(10)(8) A first time master class permit applicant shall submit to the department a completed Kentucky General Falconer Upgrade Report, signed by the applicant and one (1) reference who is a permitted master or general class falconer,[signed letter] attesting that the applicant has practiced falconry;

(a) At the general class permit level for at least five (5) years; and

(b) For an average of four (4) months a year, in at least four (4) out of the last five (5) years.

(11)(9) A master class falconry permit holder:

(a) Shall not possess more than five (5) of the following wild raptors at any given time:

1. Great horned owl; and

2. Any member of the Order Falconiformes except a bald eagle;

(b) Shall obtain prior approval from the department pursuant to the requirements of 50 C.F.R. 21 and 22 to possess any of the following raptors:

1. Golden eagle;

2. White-tailed eagle; or

3. Stellar's sea eagle; and

(c) May possess any number of captive-bred raptors of the species allowed in paragraph (a) and (b) of this subsection.

(12)(40) An apprentice sponsor shall:

(a) Not have more than three (3) apprentices at any given time;

(b) Be at least eighteen (18) years old;

(c) Possess a valid Kentucky general or master class falconry permit;

(d) Have held a general class falconry permit for a minimum of two (2) years; and

(e) Submit a signed letter to the department:

1. Attesting that the sponsor will assist the apprentice in:

a. Learning about the husbandry and training of raptors held for falconry;

b. Learning relevant wildlife laws and regulations; [and]

c. Deciding which species of raptor is most appropriate for the apprentice to possess;

d. Providing direct supervision to the apprentice while trapping wild raptors; and

e. Evaluating the apprentice's facility and bird a minimum of one (1) time every twelve (12) months; and

2. Containing the sponsor's:

a. Name;

b. Falconry permit number;

c. Address; and

d. Telephone number.

(13)(44) A sponsor who is withdrawing sponsorship of an apprentice shall:

(a) Notify the department in writing within five (5) days of withdrawing the sponsorship; and

(b) Provide the apprentice with a signed and dated document stating the length of time that the apprentice practiced falconry under the sponsor's guidance.

(14)(12) An apprentice who loses sponsorship shall obtain a new sponsor within thirty (30) days from the sponsor's notification of withdrawal.

(15)(13) A new sponsor shall be in compliance with the requirements established in subsection (7) of this section.

(16)(14) If an apprentice fails to obtain a new sponsor within thirty (30) days, the department shall:

(a) Revoke the apprentice's falconry permit; and

(b) Confiscate any raptor in the apprentice's possession if the apprentice does not transfer ownership of the raptor to another licensed falconer.

~~(17)~~~~(15)~~ A non-resident falconer who moves to Kentucky to establish residency shall apply for the appropriate Kentucky falconry permit within thirty (30) days after moving.

~~(18)~~~~(16)~~ A resident falconry applicant who is a new resident of the United States shall obtain the appropriate Kentucky falconry permit by:

- (a) Meeting the application requirements established in subsection (1) of this section;
- (b) Contacting the department to schedule a time to take a written examination administered by the department;
- (c) Passing the written examination by scoring a minimum of eighty (80) percent; and
- (d) Providing to the department written documentation of previous falconry experience including:

- 1. The number of years the applicant has practiced falconry;
- 2. The raptor species used in falconry; and
- 3. The game species taken with falconry.

~~(19)~~~~(17)~~ A person who held a valid Kentucky falconry permit within the last five (5) years, but has allowed the permit to lapse, may apply for reinstatement at the class level previously held by:

- (a) Complying with the application requirements established in subsection (1) of this section; and
- (b) Providing the department with proof of previous certification at that class level.

~~(20)~~ An apprentice or general falconer~~(18)~~ A person whose Kentucky falconry permit has lapsed for a period greater than five (5) years may apply for reinstatement at the class level previously held by:

- (a) Complying with the application requirements established in subsection (1) of this section;
- (b) Complying with the examination requirements established in subsection (2) of this section; and
- (c) Providing the department with proof of previous certification at that class level.

(21) A master class permittee whose Kentucky falconry permit has lapsed for a period greater than five (5) years will be reinstated at the general class level, provided he satisfies the application requirements in subsection (1) of this section.

(a) A person formerly permitted at the master class level, and reinstated at the general class level shall actively practice falconry for an average of four (4) months a year, in at least two (2) out of the last three (3) years prior to upgrading to a master class permit.

(b) A person applying for master class reinstatement shall:

- 1. Submit to the department a Kentucky General Falconer Upgrade Report;
- 2. Have complied with all previous years' reporting requirements, as established in Section 7; and
- 3. Provide the department with proof of previous certification at the master class level.

~~(22)~~~~(19)~~ A falconry permit holder shall not be required to pay the permit fee established in 301 KAR 3:022 if the permit holder's current permit has not yet expired and the permit holder is applying for:

- (a) An upgrade to the next falconry class; or
- (b) A facility relocation.

Section 5. Facility, Equipment, and Care Requirements. (1) A falconry permit holder shall comply with all federal requirements established in 50 C.F.R. Part 21 for the permit holder's:

- (a) Facility;
- (b) Equipment; and
- (c) Treatment and care for possessed raptors.

(2) A permittee shall keep all:

- (a) Raptors in humane and healthy condition; and
- (b) Facilities and equipment in serviceable, safe, and sanitary condition, as established in 50 C.F.R. Part 21.

(3) A falconry permit holder who is relocating a raptor facility shall:

- (a) Notify the department within five (5) business days of relocation; and
- (b) Have a relocated raptor facility inspected and approved by a department conservation officer within thirty (30) days of relocation.

~~(4)~~~~(3)~~ A department conservation officer shall only inspect a raptor facility:

- (a) In the presence of the permit holder;
- (b) On a weekday; and
- (c) Between 8 a.m. and 8~~4:30~~ p.m. local~~[Eastern]~~ time.

Section 6. Banding, Tagging, and Telemetry Requirements. (1) A falconry permit holder shall comply with federal banding, tagging, and telemetry requirements established in 50 C.F.R. Part 21.

(2) A falconry permit holder who is required by federal regulations to band a raptor shall:

- (a) Contact the department to request leg bands at least fifteen (15) days prior to obtaining a raptor; and
- (b) Only use U.S. Fish and Wildlife Service leg bands that are issued by the department.

(3) A falconry permit holder shall attach at least two (2) radio transmitters to a hybrid raptor if the permit holder is flying it untethered in the wild.

Section 7. Raptor Take and Release, Recordkeeping, and Reporting Requirements. (1) Unless exempted by KRS 150.170, a Kentucky falconry permit holder shall have in possession a valid Kentucky hunting license when taking a raptor from the wild.

(2) When taking a raptor from the wild, a nonresident shall have in possession:

- (a) A valid Kentucky nonresident hunting license;
- (b) A valid falconry permit or equivalent from the nonresident's home state; and
- (c) An approved Kentucky Nonresident Raptor Take Form.

(3) To obtain a Kentucky Nonresident Raptor Take Form, a person shall:

- (a) Print a copy of the form from the department's Web site at [fw.ky.gov](http://fw.ky.gov); or
- (b) Contact the department at 800-858-1549 and request a mailed copy.

(4) A person shall submit to the department a completed and signed Kentucky Nonresident Raptor Take Form at least fifteen (15) working days prior to the requested take date.

(5) A falconry permit holder shall be responsible for complying with all applicable federal requirements if taking raptors on federal land.

(6) A falconry permit holder who is a nonresident shall only take one (1) legal raptor in Kentucky per calendar year.

(7) An approved Kentucky Nonresident Raptor Take Form shall only be issued to a person whose state of residence allows a Kentucky resident to legally take a raptor from that state.

(8) A nonresident falconer who takes a raptor in Kentucky shall submit to the department a completed and signed Falconry Take Location Report within five (5) days of taking a bird.

(9) A licensed falconer shall comply with all raptor take requirements established in 50 C.F.R. 21 in addition to the requirements established in this section.

(10) A resident falconry permit holder shall not take more than two (2) raptors from the wild in any calendar year.

(11) An eyas shall only be taken:

- (a) By a general or master class falconry permit holder; and
- (b) From January 1 through July 31.

(12) A person shall not take more than one (1) sharp-shinned hawk (*Accipiter striatus*) eyas per calendar year.

(13) There shall be an annual maximum quota for sharp-shinned hawk eyases of:

- (a) Ten (10) for Kentucky residents; and
- (b) Five (5) for nonresidents.

(14) Prior to taking a sharp-shinned hawk eyas, a person shall be responsible for calling the department at 800-858-1549 to check if the sharp-shinned hawk eyas annual quota has been reached.

(15) A person shall not take a sharp-shinned hawk eyas from a nest unless there are at least three (3) eyases in the nest.

(16) Each person who takes a sharp-shinned hawk eyas shall submit to the department the Falconry Take Location Report within five (5) days of possession.

(17) Any permit class falconer may take a passage bird if it is a species the falconer is allowed to possess as established in Section 4 of this administrative regulation.

(18) The allowable period of take for:

- (a) A passage bird, other than a great horned owl, shall be September 1 through January 31;
- (b) An adult or passage bird great horned owl shall be September 1 through October 31; and
- (c) An adult American kestrel shall only be taken from September 1



through January 31.

(19) An adult American kestrel or adult great horned owl shall only be taken by a:

- (a) General class permit holder; or
- (b) Master class permit holder.

(20) A person shall not take a peregrine falcon (*Falco peregrinus*) from the wild in Kentucky.

(21) A person shall not release the following raptors into the wild:

- (a) A non-native raptor;
- (b) A hybrid raptor; or
- (c) A captive-bred, native raptor.

(22) Prior to releasing a raptor into the wild, a person shall remove all leg bands from the bird.

(23) A falconry permit holder shall complete and submit to the department a federal form 3-186A or enter the required information in the federal database at <http://permits.fws.gov/186A> within five (5) days if a raptor is:

- (a) Acquired;
- (b) Transferred;
- (c) Released;
- (d) Lost;
- (e) Rebanded;
- (f) Microchipped;
- (g) Stolen; or
- (h) Dead.

(24) A falconer shall retain copies of each submitted 3-186A form or the electronically submitted data for a minimum of five (5) years following a raptor's:

- (a) Transfer;
- (b) Release;
- (c) Loss; or
- (d) Death.

Section 8. Transfer of Ownership and Propagation. (1) A falconry permit holder may transfer ownership of a wild-caught raptor pursuant to 50 C.F.R. Part 21, but shall not engage in the following activities with wild-caught raptors:

- (a) Selling;
- (b) Purchasing;
- (c) Trading; or
- (d) Bartering.

(2) A falconry permit holder may transfer a wild-caught raptor to a person who possesses a valid federal raptor propagation permit if:

(a)1. The raptor has been used in falconry for at least one (1) year for the following species:

- a. Sharp-shinned hawk;
- b. Cooper's hawk (*Accipiter cooperii*);
- c. Merlin (*Falco columbarius*); or
- d. American kestrel; or

2. The raptor has been used in falconry for at least two (2) years for all other legal species of raptor; and

(b) The person receiving the transferred bird possesses a valid state captive wildlife permit.

(3) A person who legally possesses a captive-bred raptor may engage in the activities listed in subsection (1)(a) through (d) of this section if:

(a)1. The transferred bird is marked with a metal leg band; or

2. The transferred bird is implanted with a microchip pursuant to 50 C.F.R. Part 21; and

(b) The person in receipt of the bird possesses:

- 1. The appropriate class falconry permit; or
- 2. A valid federal raptor propagation permit.

(4) A person shall not breed or propagate a native raptor without first obtaining:

(a) A federal raptor propagation permit, pursuant to 50 C.F.R. Part 21; and

and

(b) The appropriate Kentucky captive wildlife permit, pursuant to 301 KAR 2:081.

(5) A person who is propagating a native raptor shall submit to the department copies of all the following materials required by 50 CFR Part 21:

- (a) The raptor propagation application;
- (b) Propagation records; and
- (c) Propagation reports.

(6) The materials required in subsection (5) of this section shall be

submitted to the department by the same dates required in 50 C.F.R. Part 21.

Section 9. Other Activities. (1) A falconry permit holder may use a raptor for conservation education programs, pursuant to 50 C.F.R. Part 21.

(2) A falconry permit holder who is in compliance with the permit requirements for Special Purpose Abatement, pursuant to 50 C.F.R. Part 21, may receive payment for nuisance wildlife control work if the permit holder also possesses a valid Kentucky Commercial Nuisance Wildlife Control permit, pursuant to 301 KAR 3:120.

(3) A person may assist a permitted wildlife rehabilitator, as established in 301 KAR 2:075, in conditioning raptors for subsequent release into the wild if the person is:

(a) A general or master class falconry permit holder; and

(b) Working with a species the falconry permit holder is allowed to possess.

(4) A general or master class permit holder may hack a raptor, previously used for falconry, if the permit holder is in compliance with 50 C.F.R. 21 and contacts the department to provide[and provides] the [following] information established in paragraph (a) through (d) of this subsection.[:]

- (a) The hack site location;
- (b) The species of raptor;
- (c) The origin of the raptor; and
- (d) The planned hacking dates.

Section 10. Revocation of Permits and Appeal Procedure. (1) The department shall revoke the permit, deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit for a period of one (1) year[the falconry permit] of a person who:

(a) Violates any provision of KRS Chapter 150;

(b) Violates any department regulation;

(c) Violates any federal statute or regulation related to hunting, fishing, or wildlife; or

(d) Falsifies a falconry permit application.[Convicted of a violation of this administrative regulation for a period of one (1) year];

(2) A person whose permit is denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B[if the person's falconry permit is:

(a) Denied; or

(b) Revoked].

(3) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than ten (10) days after notification of the denial or revocation.

(4) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(5) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

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

(a) "Kentucky Falconry Permit Application", 2018[January–2013] edition;

(b) "Raptor Facilities and Equipment Inspection Report",[January] 2013 edition;

(c) "Falconry Take Location Report",[January] 2013 edition; [and]

(d) "Kentucky Nonresident Raptor Take Form",[January] 2013 edition;

(e) "Kentucky Apprentice Falconer Activity Report", 2018 edition; and

(f) "Kentucky General Falconer Upgrade Report", 2018 edition.

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

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 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](mailto:fwpubliccomments@ky.gov).



GENERAL GOVERNMENT  
Department of Agriculture  
Office of Agricultural Marketing  
(As Amended at ARRS, February 12, 2018)

302 KAR 50:020. Policies and procedures for growers.

RELATES TO: KRS Chapter 217B, 260.850-260.869, 7 U.S.C. 5940, 21 U.S.C. Chapter 9

STATUTORY AUTHORITY: KRS 260.862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations ~~[to prescribe rules]~~ for any industrial hemp research pilot program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in an industrial hemp research pilot program by cultivating, handling, processing, or marketing industrial hemp. This administrative regulation establishes procedures and ~~requirements[requirement]~~ for licensing persons who wish to grow or cultivate industrial hemp as a participant in the department's industrial hemp research pilot program.

Section 1. Definitions. (1) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the industrial hemp pilot program.

(2) "Brokering" means engaging or participating in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers.

(3) "Cannabis":

~~(a) Means all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and~~

~~(b) Does not mean "[Cannabis does not include] publicly marketable hemp product" [products], as defined by/in] this administrative regulation.~~

(4) "CBD" means cannabidiol.

~~(5) "Certified seed" means seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of a state, territory, or possession to officially certify seed and that has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.~~

~~(6) "Commissioner" is defined by KRS 260.850(1)[means the Commissioner of the Department of Agriculture]. [(6) "Certified seed" means seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.]~~

(7) "Commonwealth" means the Commonwealth of Kentucky.

(8) "DEA" means the United States Drug Enforcement Administration.

(9) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value ~~is[may]~~ also ~~[be]~~ calculated using a conversion formula that sums delta-9-THC and ~~eighty-seven and seven tenths (87.7)~~ percent of THC-acid.

(10) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).

(11) "Department" or "KDA" ~~is defined by KRS 260.850(3)[means the Kentucky Department of Agriculture].~~

(12) "Grower licensing agreement" means a document executed by a person and the department authorizing the person to grow, handle, and store hemp at one ~~(1)~~ or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 ~~through[-]~~ 260.863, and this administrative regulation.

(13) "GPS" means Global Positioning System.

(14) "Handling" is defined by KRS 260.850(4).

(15) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(16) "Hemp product" or "industrial hemp product" is defined by KRS 260.850(6).

(17) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency or drug

suppression unit.

(18) "Licensed grower" means a person authorized in the Commonwealth by the department to grow, handle, store, and market hemp under the terms established in a grower licensing agreement, KRS 260.850 ~~through[-]~~ 260.859, and this administrative regulation.

(19) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a processor licensing agreement, KRS 260.850 ~~through[-]~~ 260.859, and 302 KAR 50:030.

(20) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which ~~can[may]~~ include a field name or building name.

(21) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.

(22) "Person" means an individual or business entity.

(23) "Pesticide" means any substance or mixture of substances intended to:

~~(a) Prevent, destroy, control, repel, attract, or mitigate any pest;~~

~~(b)[intended-to] Be used as a plant regulator, defoliant, or desiccant; or~~

~~(c)[intended-to] Be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.~~

(24) "Plot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.

(25) "ppm" means parts per million.

(26) "Post-harvest sample" means a sample taken from the harvested hemp from a particular plot's harvest in accordance with the procedures as ~~established[defined]~~ in 302 KAR 50:050. ~~[;] The entire plot's harvest is[shall-be] in the same form (for example[e.g.], intact-plant, flowers, ground materials, etc.), homogenous, and not mixed with nonhemp materials or hemp from another plot.~~

(27) "Pre-harvest sample" means a composite, representative portion from plants in a hemp plot collected in accordance with the procedures as established in 302 KAR 50:050.

(28) "Prohibited variety" means a variety or strain of cannabis excluded from the department's program.

(29) "Processing" is defined by KRS 260.850(9).

(30) "Processor licensing agreement" means a document executed by a person and the department authorizing the person to process, handle, and store hemp at one (1) or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 ~~through[-]~~ 260.869, and 302 KAR 50:030.

(31) "Program" means the department's Industrial Hemp Research Pilot Program.

(32) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(33) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:

~~(a) 1. The product does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent; and~~

~~2. Does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9-THC above zero and three-tenths (0.3) percent);~~

~~(b) The product is CBD that was derived from hemp, as defined by/in] this administrative regulation; or~~

~~(c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.~~

(34) "Secondary pre-harvest sample" means a pre-harvest sample that is taken:

~~(a) In a given plot after the first pre-harvest sample is taken; and~~

~~(b) On a different day than the initial pre-harvest sample.~~

(35) "Seed source" means the origin of the seed or propagules as determined by the department.

(36) "Signing authority" means an officer or agent of the organization with ~~[the] written authorization[power]~~ to commit the legal entity to a binding agreement.

(37) "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment.

(38) "University" means an accredited institution of higher learning

located in the Commonwealth.

(39) "Variety" means a subdivision of a species that is:

(a)[,] Uniform, in the sense that the variations in essential and distinctive characteristics are describable;

(b)[and] Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(c) Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, or other characteristics from all other publicly known varieties; uniform in the sense that the variations in essential and distinctive characteristics are describable; and stable in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties].

(40) "Variety of concern" means any variety of hemp in the department's program that tests above 3,000[3000] ppm or 0.3000 percent delta-9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could[may] be subject to restrictions and additional testing.

(41) "Volunteer cannabis[hemp] plant" means any cannabis plant that:

(a) Grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop; and

(b) Is not intentionally planted.

Section 2. [Who Must Apply for] Grower License Application[Licensing Agreement]. (1) Any person who wishes to grow hemp at any location in the Commonwealth shall submit to the department annually a completed Grower License Application [apply for a grower licensing agreement], incorporated by reference as part of the Grower Licensing Application Packet in 302 KAR 50:080, from the department].

(2) A person who does not hold a license from the department shall not:

(a) Grow, cultivate, handle, or[store,] process; or

(b)[,] broker, store, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the Commonwealth.

(3) A person under the age of eighteen (18) years of age shall not apply for or hold a grower license.

(4)[a][Section 3. Application for Grower Licensing Agreement -- Deadlines and Fees. (1) A person interested in holding a grower license shall complete a Grower License Application form, incorporated by reference in 302 KAR 50:080, annually.

(2)] Completed Grower License Application forms shall be postmarked or received by the department by the end of the application period established[specified] in the application.

(b) Completed Grower License Application forms shall be delivered to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(c)[(3)] The department shall deny any Grower License Application that fails to meet the deadline established in the application.

(5)[(4)] Each applicant shall pay a grower application fee in the amount established[specified] in 302 KAR 50:060.

(6)[(5)] Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees directly to the Kentucky State Police or other law enforcement agency designated by the department.

(7)[(6)] The department shall[may] deny any Grower License Application that is received without the application fee established[specified] in 302 KAR 50:060.

(8) With[Section 4. Application for Grower Licensing Agreement -- Required Components. (1)] the Grower License Application form the applicant shall [require applicants to] submit, at a minimum[, the following information and documents]:

(a) Full name, Kentucky residential address, telephone number, and email address, if an email address is available;

(b) If the applicant represents a business entity, the full name of the business, the principal Kentucky business location address, the full

name of the applicant who will have signing authority on behalf of the entity, title, and email address if an email address is available, of the person;

(c) Research plan, including the proposed acreage or greenhouse or indoor square footage to be planted;

(d) A statement of previous farming experience;

(e) Planned source of seeds or propagules;

(f) Street address; location ID; and GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, or stored;

(g) Maps depicting each site where hemp will be grown, handled, or stored, with appropriate designations for entrances, field boundaries, and specific locations corresponding to the GPS coordinates; and

(h) Marketing plan summary.

(9)[(2) The department may deny] Any Grower License Application that is missing required information shall be subject to denial.

Section 3.[5.] Criminal Background Check. (1) Each licensed grower or applicant shall undergo and pay for an annual criminal background check as required by KRS 260.862(2)(d).

(2) A licensed grower or applicant shall [(a) Submit a criminal background check request to the Kentucky State Police or other law enforcement agency designated by the department;

(b) Submit payment for the background check fee directly to the Kentucky State Police or other law enforcement agency designated by the department;

(c)] following completion of the background check, ensure delivery of the report to the department not more than fourteen (14) days after the application deadline.

(3) The department shall not accept a report from a criminal background check that occurred prior to October 1 of the application year.

(4) Failure to submit the background check by the deadline stated in subsection (2)[(c)] of this section shall be grounds for license denial[cause for denial of application].

(5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check on the signing authority.

Section 4.[6.] Application for Grower Licensing Agreement;[--] Criteria and Procedure for Evaluation. (1) The department shall apply the [following] criteria established in paragraphs (a) through (m) of this subsection in evaluating an application for the grower license.[Licensing Agreement:]

(a) In accordance with Section 2[4] of this administrative regulation, the applicant shall submit[submitted] a complete application with all required components and attachments.

(b) For an applicant who has been a program participant[applicants who have been program participants] previously, the applicant shall comply[complied] with the responsibility to submit [the following reports]:

1. Field Planting Report[Reports] and Greenhouse/Indoor Planting Report, incorporated by reference in 302 KAR 50:080;

2. Harvest/Destruction Report[Reports], incorporated by reference in 302 KAR 50:080;

3. Production reports, incorporated by reference in 302 KAR 50:080; and

4. Any other reports deemed necessary by the department to which the applicant has agreed.

(c) The applicant shall demonstrate[has] farming experience [, as demonstrated] by:

1. Filing an IRS Schedule F federal tax form at least once in the past three (3) years;

2. Providing the applicant's farm serial number (FSN) issued by the USDA Farm Service Agency;

3. Attesting to at least one (1) year of full-time farm work; or

4. Holding a bachelor's degree in agriculture from an accredited university.

(d) The applicant's growing sites, handling sites, storage sites, and primary residence shall be[are] located in the Commonwealth of Kentucky.

(e) The applicant shall affirm that the applicant resides[will reside] in Kentucky at the primary residence listed on the Grower License

Application form from May 1 to September 30.

(f) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant shall[does] not have:

1. A felony conviction; or[and]

2. A drug-related misdemeanor conviction or violation.

(g) The research plan shall be[is] compliant with state and federal law.

(h) The applicant shall have[has] a seed or propagule acquisition plan.

(i) The applicant shall have[has] a marketing plan that is compliant with state and federal law.

(j) In the past, including those times when the applicant was not a participant in the department's program, the applicant shall have demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

(k) The applicant shall not be[is-not] delinquent in making any required reports or payments to the department in connection with the applicant's participation in the program or other programs within the department.

(l) The applicant shall[does] not have any unpaid fines or civil penalties owed to the department.

(m) The applicant shall not have and shall not make[has-not made] any false statements or representations to a representative of the department or a law enforcement agency.

(2) The department shall conditionally approve an application for a grower licensing agreement if[when] the application satisfies the criteria established in this administrative regulation.

(3) The department may approve an applicant to grow an acreage or square footage that is equal to, greater than, or less than the acreage or square footage stated in the application.

(4) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the department's program until the applicant and the department have executed a grower licensing agreement following the applicant's attendance at the department's mandatory orientation session as required by Section 8[10] of this administrative regulation.

Section 5[7] Land Use Restrictions for Licensed Growers. (1) A licensed grower shall not plant or grow any cannabis that is not hemp.

(2) A licensed grower shall not plant or grow hemp or other cannabis on any site not listed in the grower licensing agreement.

(3) A licensed grower shall not grow hemp or other cannabis in or adjacent to any structure that is used for residential purposes.

(4) A licensed grower shall not handle or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes.

(5) Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the department.

(6) A licensed grower shall not plant hemp or other cannabis plants in an outdoor growing location of less than one-quarter acre and 1,000 plants unless prior approval is received in writing from the department.

(7) A licensed grower shall not grow hemp or other cannabis in any outdoor field or site that is located within 1,000 feet of a school or a public recreational area.

(8) An applicant or licensed grower shall not include any property on his or her application or Site Modification Request, incorporated by reference in 302 KAR 50:080, to grow or cultivate hemp that is not owned or completely controlled by the applicant or licensed grower.

(9) A licensed grower shall not grow, handle, or store hemp or other cannabis on property owned by, leased from, or previously submitted in a license application by any person who is ineligible or was terminated, or denied admission to the program for one (1) or both of the following reasons:

(a) Failure to obtain an acceptable criminal background check; or

(b) Failure to comply with an order from a representative of the department.

(10) Licensed growers with plots of one (1) acre or less are required to post signage at the plot location. The signage shall include the following information:

(a) The statement, "Kentucky Department of Agriculture Industrial

Hemp Research Pilot Program";

(b) License holder's name;

(c) License holder's license number; and

(d) The department's telephone number.

Section 6[8] Administrative Appeal from Denial of Application. (1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.

(2) An appealing applicant shall mail a hearing request letter to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp research projects in Kentucky.

(4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines established[set-forth] in this administrative regulation.

(5) The members of the administrative panel shall apply the same standards established in this administrative regulation to determine if the department's action in denying the application was arbitrary or capricious.

(6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.

(7) An appealing applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

Section 7[9] Grower Licensing Agreements. (1) An applicant shall not be a participant in the department's program until the conditionally approved applicant and the department have executed a grower licensing agreement following the applicant's attendance at the department's mandatory orientation session.

(2) The grower licensing agreement shall establish the terms and conditions governing participation in the department's program.

(3) The terms and conditions established in the grower licensing agreement shall include, at a minimum, the following requirements for licensed growers:

(a) Acknowledge[Acknowledgement] that licensed growers shall act[are-acting] as agents of the department and shall comply with instructions from representatives of the department and law enforcement agencies;

(b) Agree[Agreement] to pay a licensing fee in the amount established[specified] in 302 KAR 50:060;

(c) Consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located, or licensed to be located, by representatives of the Department and law enforcement agencies, with or without cause, with or without advance notice;

(d) Consent to forfeiture and destruction, without compensation, of:

1. Material found to have a measured delta-9-THC content in excess of zero and three-tenths (0.3) percent on a dry weight basis;

2. Plants located in an area that is not licensed by the department; and

3. Plants not [properly] accounted for in required reporting to the department;

(e) Agree to apply for registration of all growing, handling, and storage locations, including GPS coordinates, and receive department approval for those locations prior to having hemp on those premises;

(f) Acknowledge[Acknowledgement] that licensed growers shall submit a Site Modification Request Form, the appropriate fees based on the requested changes, and obtain prior written approval from a representative of the department before implementing any change to the licensed sites stated in the grower licensing agreement, and that growing site changes shall be[are] subject to a site modification surcharge in the amount established[specified] in 302 KAR 50:060 for a new set of GPS coordinates;

(g) Acknowledge[Acknowledgement] that hemp shall not be

grown, handled, or stored in any location other than the location listed in the grower licensing agreement;

(h) Agree[Agreement] not to interplant hemp with any other crop without express written permission from the department;

(i) Acknowledge[Acknowledgment] that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with Section 18[20] of this administrative regulation;

(j) Acknowledge[Acknowledgment] that licensed growers shall comply with restrictions established by the department limiting the movement of hemp plants and plant parts;

(k) Acknowledge[Acknowledgment] that the risk of financial or other loss shall be/is borne solely by the licensed grower;

(l) Agree[Agreement] that any time hemp is in transit, a copy of the grower licensing agreement shall be available for inspection upon the request of a representative of the department or a law enforcement agency;

(m) Agree that[Agreement to], upon request from a representative of the department or a law enforcement agency, a licensed grower shall immediately produce a copy of his or her grower licensing agreement for inspection;

(n) Agree[Agreement] to submit Planting Reports, Harvest/Destruction Reports, and Production Reports, and other reports required by the department to which the grower has agreed, on or before the deadlines established[set forth] in this administrative regulation;

(o) Agree to scout and monitor unregistered fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for three (3) years past the last date of planting reported to the department;

(p) Agree[Agreement] not to employ or rent land to cultivate hemp from any person who was terminated or denied admission to the program for one (1) or both of the following reasons:

1. Failure to obtain an acceptable criminal background check; or
2. Failure to comply with an order from a representative of the department;[.]

(q) Agree[Agreement] that land used for the cultivation or storage of hemp shall not be owned by or leased from any person who was terminated, or denied admission to the program for one (1) or both of the following reasons:

1. Failure to obtain an acceptable criminal background check; or
2. Failure to comply with an order from a representative of the department;[.]

(r) Agree[Agreement] to notify the department of any interaction[interfraction] with law enforcement immediately by phone and follow-up in writing within three (3) calendar days of the occurrence; and

(s) Agree[Agreement] to notify the department of any theft of cannabis materials, whether growing or not.

(4) Failure to agree or comply with terms and conditions established in the grower licensing agreement or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the grower licensing agreement and expulsion from the department's program.

(5) A person who has been expelled from the program shall not be eligible to reapply to the program for a period of five (5) years from the date of expulsion.

(6) Failure to agree and sign the grower licensing agreement shall[will] terminate conditional approval and a licensing agreement shall not be executed.

Section 8[10] Mandatory Orientation Session. (1) Conditionally approved applicants shall attend a mandatory orientation session at a location designated by the department.

(2) The department shall require in-person attendance.

(a) The department shall not permit any person to attend a mandatory orientation session telephonically or by video.

(b) The department shall not allow any person to attend in lieu of the conditionally approved applicant.

Section 9[11] Licensing Fees;[--] Participation Fee, Secondary Pre-Harvest Sample Fee, Post-Harvest Retest Fee. (1) Participation fee.

(a) The licensed grower shall pay a participation fee.

(b) The participation fee for each growing address shall be in the amount established[specified] in 302 KAR 50:060.

(c) Participation fees shall be paid in full prior to the execution of the grower licensing agreement with a check or money order payable to the Kentucky State Treasurer.

(2) Secondary Pre-Harvest Sample fee.

(a) If a licensed grower fails to complete the harvest within fifteen (15) days after the department collects the pre-harvest sample, the licensed grower shall submit a new Harvest/Destruction Report and may be required to pay a secondary pre-harvest sample fee.

(b) If three (3) or more harvests are taken from the same plot, the licensed grower may be required to pay a secondary pre-harvest sample fee.

(c) The secondary pre-harvest sample fee shall be paid to the department with a check or money order payable to the Kentucky State Treasurer within fifteen (15) days of invoice by the department. The secondary pre-harvest sample fee shall be as established[is specified] in 302 KAR 50:060.

(d) If the licensed grower fails to pay the secondary pre-harvest sample fee within fifteen (15) days of invoice, the lack of payment shall be considered a violation of the grower licensing agreement.

(e) The licensed grower shall not harvest the remaining crop until the department collects a secondary pre-harvest sample if one is required as established in paragraph (a) or (b) of this subsection.

(3) Post-harvest retest fee.

(a) The department shall[may] order post-harvest THC testing of a plot if[when] the results of an initial THC test on the pre-harvest sample indicate a delta-9-THC concentration in the pre-harvest sample in excess of what is permitted by the department, pursuant to 302 KAR 50:050.

(b) A licensed grower shall pay the post-harvest retest fee if[when] post-harvest testing is ordered by a representative of the department.

(c) The post-harvest retest fee shall be as established[is specified] in 302 KAR 50:060.

(d) The fee shall be paid prior to the department collecting the post-harvest sample.

(e) If a licensed grower fails to request a retest or to pay a post-harvest retest fee within fifteen (15) days of notification of pre-harvest results on a floral material harvest from the department, then the pre-harvest sample or secondary pre-harvest test result shall stand, and the department shall destroy or seize, without compensation, all hemp or other cannabis from the[this] plot.

Section 10[12] Site Modifications and Site Modification Surcharge Fees. (1) A licensed grower who elects to grow hemp in a new growing location or store or handle at a site other than the sites specified by the GPS coordinates listed in the grower licensing agreement shall submit a Site Modification Request Form, incorporated by reference in 302 KAR 50:080, and obtain written approval from a representative of the department, prior to planting or storing at the proposed location.

(2) Any request for a new growing location shall comply with the land use restrictions established in Section 5[7] of this administrative regulation.

(3) The land or growing structure being requested shall not be owned by or leased from any person who was terminated, or denied admission to the program for one (1) or both of the following reasons:

- (a) Failure to obtain an acceptable criminal background check; or
- (b) Failure to comply with an order from a representative of the department.

(4) The department shall charge a site modification surcharge fee for each new growing location, be it an individual field or greenhouse or indoor structure, where hemp will be planted. The amount of the site modification surcharge fee shall be as established[specified] in 302 KAR 50:060.

(5) The department shall not approve a site modification request for a new growing location until the department has received the site modification surcharge fee. Surcharge fees shall be submitted to the department with a check or money order payable to the Kentucky State Treasurer.

(6) The department shall not assess a site modification surcharge for changes to storage-only locations.

Section 11[13] Seed Acquisition From a Source Within the Commonwealth. (1) A department pre-approval shall not be required for a transfer of hemp seed or propagules of any variety listed on the

department's published summary of varieties list, excluding prohibited varieties, between Kentucky licensed growers and/or licensed processors or handlers within the Commonwealth of Kentucky.

(2) A licensed grower or licensed processor or handler shall not buy, sell, possess, or transfer seeds or propagules to or from any person in the Commonwealth without first verifying that the person is licensed by the department.

(3) A licensed grower or licensed processor or handler shall obtain written approval from the department to change the name of any variety in the department's program.

(4) A licensed grower shall provide the name of his or her seed or propagule source on the Field Planting Report form or Greenhouse Planting Report form.

(5) Upon request from a representative of the department, a licensed grower or licensed processor or handler shall provide a distribution list showing locations where and to whom hemp seeds or propagules were distributed.

Section 12.[14.] Seed Acquisition from a Source in a U.S. Territory, Tribal Land, or State other than the Commonwealth of Kentucky. (1) A person shall not acquire seeds or propagules from a source in a U.S. territory, tribal land, or state other than the Commonwealth of Kentucky without first:

(a) Submitting a complete Domestic Seed/Propagule Request form, incorporated by reference in 302 KAR 50:080, [form] and all required attachments; and

(b) Obtaining written approval of the Domestic Seed/Propagule Request from a representative of the department.

(2) The department shall not approve a Domestic Seed/Propagule Request unless the licensed grower affirms in writing that the requested seed acquisition plan shall/will not infringe on the intellectual property rights of any person.

(3) A person submitting a Domestic Seed/Propagule Request form shall submit to the department documentation showing that mature plants grown from that seed variety or strain have a floral material delta-9-THC content of not more than 3,000 ppm [three-tenths (0.30) percent] on a dry weight basis from an independent third-party laboratory.

(4) A person submitting a Domestic Seed/Propagule Request form shall submit to the department documentation verifying the seed or propagule [seed/propagule] source as a current legal hemp operation in the state of origin.

(5) A person acquiring seeds or propagules from a source outside the Commonwealth shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.

(6) Upon request from a representative of the department, a licensed grower or licensed processor shall provide a distribution list showing locations where and to whom the hemp seeds were distributed following inventory at the department's facility.

Section 13.[15.] Seed Acquisition from a Source Outside the United States. (1) A person seeking to obtain seeds from an international source shall submit a complete International Seed Request form, incorporated by reference in 302 KAR 50:080, to the department.

(a) If approved, the department shall request the DEA Permit to Import under the department's DEA registration.

(b) A person shall not acquire seeds from a source outside the United States unless the department first obtains a Permit to Import from the DEA.

(2) A person shall not acquire propagules other than seeds from outside the United States.

(3) The department shall not approve an International Seed Request form for any purpose other than seeds for planting in Kentucky. All licensed growers intending to plant the requested seed shall be listed on the request form.

(4) The department shall not approve an International Seed Request form unless the licensed grower affirms in writing that the licensed grower's planned activities shall/will not infringe on the intellectual property rights of any person.

(5) A person submitting an International Seed Request form shall submit to the department documentation showing that mature plants

grown from that seed variety have a floral material delta-9-THC content of not more than 3,000 ppm [three-tenths (0.30) percent] on a dry weight basis.

(6) A person acquiring seeds or propagules from a source outside the United States shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.

(7) Upon request from a representative of the department, a licensed grower shall provide a distribution list showing locations where and to whom the imported hemp seeds were distributed following inventory at the department's facility.

Section 14.[16.] Seeds of Wild, Landrace, or Unknown Origin. (1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.

(2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the department or its designee.

(3) Any licensed grower or licensed processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without advance written permission from the department shall/may be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

Section 15.[17.] Planting Reports for Outdoor Plantings. (1) A licensed grower shall submit to the department a complete and current Field Planting Report, within fifteen (15) days after every planting, including replanting, of seeds or propagules in an outdoor location.

(2) Each Field Planting Report shall identify the:

(a) Correct variety name as designated upon approval of the acquisition request or as approved by the department;

(b) [, the] Field location ID as listed in the grower licensing agreement; [,] and

(c) [the] Primary intended use of the harvest for each planting.

(3) A licensed grower who does not plant hemp in an approved outdoor site listed in the grower license agreement shall submit a Field Planting Report, on or before July 31, stating that hemp has not and shall/will not be planted at that site.

Section 16.[18.] Planting Reports for Indoor Plantings. (1) A licensed grower shall submit to the department a complete and current Greenhouse/Indoor Planting Report within fifteen (15) days after establishing plants at an indoor location.

(2) Each Greenhouse/Indoor Planting Report shall identify the:

(a) Correct hemp variety name as designated in the Domestic Seed/Propagule Request form or International Seed Request form and approved by the department;

(b) [, the] Greenhouse or indoor growing location ID as listed in the grower licensing agreement; [,] and

(c) [the] Primary intended use for the harvest of each planting.

(3) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports for each location ID to the department. Greenhouse/Indoor Planting Reports shall be due no later than March 31, June 30, September 30, and December 31.

Section 17.[19.] Site Access for Representatives of the Department and Law Enforcement Agencies. (1) The department shall provide information about approved growing, handling, and storage site locations to representatives of the Kentucky State Police, DEA, and other law enforcement agencies whose representatives request registered site information, including GPS coordinates.

(2) Licensed growers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the grower licensing agreement.

(3) A licensed grower, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials

are located and any premises listed in the grower licensing agreement with or without cause and with or without advanced notice.

Section **18.[20.]** Pesticide Use. (1) A licensed grower who uses a pesticide on hemp shall be certified to apply pesticides by the department pursuant to KRS Chapter 217B.

(2) A licensed grower who is certified to apply pesticides by the department pursuant to KRS Chapter 217B shall not use, or be eligible to use, a Category 10 license to apply pesticides to hemp in violation of the product label.

(3) A licensed grower shall not use any pesticide in violation of the product label.

(4) A licensed grower who uses a pesticide on a site where hemp will be planted shall comply with the longest of any planting restriction interval on the product label prior to planting the hemp.

(5) The department may perform pesticide testing on a random basis or **if/when** representatives of the Department have reason to believe that a pesticide may have been applied to hemp in violation of the product label.

(6) Hemp seeds, plants, and materials bearing pesticide residue in violation of the label shall be subject to forfeiture or destruction without compensation.

Section **19.[21.]** Responsibility of a Licensed Grower Prior to Harvest of Hemp Plots. (1) The department may collect samples of any cannabis material prior to harvest at any time.

(2) A licensed grower shall submit a complete and current Harvest/Destruction Report form to the department at least fifteen (15) days prior to the intended harvest date or intended destruction of a failed crop.

(3) The department's receipt of a Harvest/Destruction Report shall trigger a sample collection by the department.

(4) During the department's scheduled sample collection, the grower or an authorized representative shall be present at the growing site.

(5) Representatives of the department shall be provided with complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants; and all locations listed in the grower licensing agreement.

(6) The licensed grower shall harvest the crop not more than fifteen (15) days following the date of sample collection by the department, unless specifically authorized in writing by the department.

(7) If the licensed grower fails to complete harvest within fifteen (15) days, the department may order a secondary pre-harvest sample of the plot, and the licensed grower shall be assessed a secondary pre-harvest sample fee per plot in the amount **established[specified]** in 302 KAR 50:060 prior to the department collecting the sample.

(8) Harvested materials from varieties of concern shall not be commingled with other harvests without prior written permission from the department.

(9) Floral materials harvested for phytocannabinoid **extraction[extraction]** shall not be moved outside the Commonwealth or beyond a processor, nor commingled, nor extracted, until the department releases the material in writing.

(10) A licensed grower who fails to submit a Harvest/Destruction Report or who does submit a Harvest/Destruction Report and proceeds to harvest a crop prior to a sample being collected by the department shall be subject to revocation of his or her license.

Section **20.[22.]** Collection of Samples;[--] THC Testing;[--] Post-Testing Actions. (1) The hemp to be selected for sampling shall be determined by a representative of the department.

(2) The department shall collect and retain samples from each plot in accordance with the procedures established in 302 KAR 50:050, Section 2.

(3) UK DRS shall receive, prepare, and release hemp samples in accordance with the procedures established in 302 KAR 50:050, Section 3.

(4) UK DRS shall measure THC concentration of each hemp sample in accordance with the procedures established in 302 KAR 50:050, Section 4.

(5) The department shall undertake post-testing actions in

accordance with the procedures established in 302 KAR 50:050, Section 5.

(6) All samples **shall** become the property of the department and **shall not be returnable[are non-returnable]**. Compensation shall not be owed by the department.

(7) If UK DRS is not able to provide THC testing services required by the department, the department may identify and contract with a third party lab to perform THC testing services.

Section **21.[23.]** Restrictions on Sale or Transfer. (1) A licensed grower shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the Commonwealth who does not hold a license issued by the department.

(2) A licensed grower shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth (but within the United States) who is not authorized by a university or state department of agriculture under the authority of 7 U.S.C. 5940 and the laws of that state. The licensed grower shall ensure that the sale or transfer is lawful in other states.

(3) The department shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of **zero and** three-tenths (0.3) percent, and other marketable hemp products to members of the general public, both within and outside the Commonwealth, **if[provided that]** the marketable hemp product's delta-9-THC level is not more than **zero and** three-tenths (0.3) percent.

(4) A licensed grower selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall retain testing data or results for at least three (3) years demonstrating that the extract's delta-9-THC level is not more than **zero and** three-tenths (0.3) percent.

(5) A licensed grower may transfer up to one (1) pound of hemp per transfer to testing laboratories, both within and outside the Commonwealth, for the purpose of measuring THC, CBD, or other phytocannabinoid profile levels. The licensed grower shall ensure compliance with laws **in[with]** other states.

(6) Licensed growers shall comply with the federal Food Drug and Cosmetic Act, **21 U.S.C. Chapter 9**, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

(7) A licensed grower shall not knowingly permit hemp to be sold to or used by any person involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.

Section **22.[24.]** Other Prohibited Activities. (1) A licensed grower shall not plant or grow hemp on any site not listed in the grower licensing agreement.

(2) A licensed grower shall not transport live hemp plants, viable seeds, leaf materials, or floral materials to unapproved locations including trade shows, county fairs, educational or other events, or any other address not listed on the licensed grower's current grower licensing agreement or within another research program.

(3) A licensed grower shall not allow unsupervised public access to hemp plots, including activities such as a hemp maze.

(4) A person shall not ship or transport, or allow to be shipped or transported, live hemp plants, cuttings for planting, or viable seeds from a variety that is currently designated by the department as a prohibited variety or variety of concern to any location outside the Commonwealth of Kentucky.

(5) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a delta-9-THC concentration in excess of **zero and** three-tenths (0.3) percent.

Section **23.[25.]** Other Required Reports. (1) A licensed grower shall submit a completed Production Report **Form** annually.

(2) A licensed grower's failure to submit an accurate and complete report that is required by the department before the deadline **established[specified]** by the department shall constitute grounds for the department to terminate the grower licensing agreement and deny future applications for licensure.

Section **24.[26.]** Information Submitted to the Department Subject to



Open Records Act. (1) Except as established[provided] in subsection (2) of this section, information and documents generated or obtained by the department in connection with the program shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through[-] 61.884.

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone, and email addresses shall be shielded by the department to the maximum extent permitted by law.

Section 25.[27.] Immediate License Suspension. (1) The department shall immediately suspend a license, without an opportunity for a hearing, if the licensed person pleads guilty to, or is convicted of, any felony or drug-related misdemeanor or violation in accordance with KRS 260.864.

(2) The department shall immediately suspend a license, without an opportunity for a hearing, if the licensed person or his or her agent admits to having:

(a) Violated any provision of KRS 260.850 through[te] 260.869 or an administrative regulation promulgated under the authority of KRS 260.850 through[te] 260.869;

(b) Made any false statement to the department or its representative; or

(c) Failed to comply with any instruction or order from the department, a representative of the department, of Kentucky State Police, or any law enforcement officer.

Section 26.[28.] Temporary License Suspension Procedures. (1) The department shall notify a licensed grower in writing that the grower licensing agreement has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed grower has:

(a) Engaged in conduct violating a provision of this administrative regulation, KRS 260.850 through[-] 260.869, or the grower licensing agreement;

(b) Made a false statement to a representative of the department or a law enforcement agency;

(c) Been found to be growing or in possession of cannabis with a measured delta-9-THC concentration at or above 30,000 ppm [3 percent]; or

(d) Failed to comply with an order from a representative of the department or a law enforcement agency.

(2) A person whose grower licensing agreement has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time when the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.

(3) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed grower's premises and perform an inventory of all cannabis, hemp, and hemp products that are in the licensed grower's possession.

(4) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.

Section 27.[29.] License Revocation Hearings and Consequences of Revocation. (1) The department shall notify a person whose grower licensing agreement has been temporarily suspended of the date when the person's license revocation hearing will occur at a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three (3) person administrative panel in accordance with KRS 260.864.

(3) License revocation hearings shall be open to the public.

(4) A person whose grower licensing agreement has been temporarily suspended shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the grower licensing agreement.

(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the grower licensing agreement.

(6) A person whose grower licensing agreement has been temporarily suspended shall be allowed an opportunity to present

information and arguments against revoking the grower licensing agreement.

(7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed grower has committed any of the acts listed in Section 26.[28.](1) of this administrative regulation or violated any provision of the grower licensing agreement, then the grower licensing agreement shall be revoked effective immediately.

(9) If a majority of the members of the administrative panel vote against revoking the grower licensing agreement, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.

(10) If a majority of the members of the administrative panel vote in favor of revoking the grower licensing agreement, then a representative of the department or a law enforcement agency shall destroy or confiscate all cannabis, hemp, and hemp products that are in the person's possession.

(11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.

(12) A person whose grower licensing agreement has been revoked shall be barred from participation in the program in any capacity for a minimum period of five (5) years.

Section 28.[31.] Monetary Civil Penalties. (1) If the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of this administrative regulation, KRS 260.850 through[-] 260.869, or the grower licensing agreement, then the department shall assess a monetary civil penalty not to exceed \$2,500 per violation.

(2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.

(3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appealing person shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appealing person shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.

(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

(11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty, or reverse the assessed monetary civil penalty.

(12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).



GENERAL GOVERNMENT  
Department of Agriculture  
Office of Agricultural Marketing  
(As Amended at ARRS, February 12, 2018)

302 KAR 50:030. Policies and procedures for processors and handlers.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940, 21 U.S.C. Chapter 9

STATUTORY AUTHORITY: KRS 260.862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations ~~[to prescribe rules]~~ for the industrial hemp research pilot program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in an industrial hemp research pilot program by cultivating, handling, processing, or marketing industrial hemp. This administrative regulation ~~establishes~~sets forth rules and procedures for licensing persons who wish to process and handle industrial hemp as a participant in the department's industrial hemp research pilot program.

Section 1. Definitions. (1) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the industrial hemp pilot program.

(2) "Brokering" means engaging or participating in the marketing of industrial hemp by acting as an intermediary or negotiator between prospective buyers and sellers.

(3) "Cannabis":

(a) Means all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and  
(b) Does not mean "[f. Cannabis does not include] publicly marketable hemp product" [products], as defined by/in this administrative regulation.

(4) "CBD" means cannabidiol.

(5) "Certified seed" means seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of a state, territory, or possession to officially certify seed and that has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.

(6) "Commissioner" is defined by KRS 260.850(1)[means the Commissioner of the Department of Agriculture].

~~[(6) "Certified seed" means seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.]~~

(7) "Commonwealth" means the Commonwealth of Kentucky.

(8) "DEA" means the United States Drug Enforcement Administration.

(9) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is/may also [be] calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7)[87.7] percent of THC-acid.

(10) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis).

(11) "Department" or "KDA" is defined by KRS 260.850(3)[means the Kentucky Department of Agriculture].

(12) "Grower licensing agreement" means a document executed by a person and the department authorizing the person to grow, handle, and store hemp at one (1) or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 through[-] 260.863, and 302 KAR 50:020.

(13) "GPS" means Global Positioning System.

(14) "Handling" is defined by/in KRS 260.850(4).

(15) "Hemp" or "industrial hemp" is defined by/in KRS 260.850(5).

(16) "Hemp product" or "industrial hemp product" is defined by KRS 260.850(6)[means a product derived from, or made by processing, hemp plants or plant parts].

(17) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency, or drug

suppression unit.

(18) "Licensed grower" means a person authorized in the commonwealth by the department to grow, handle, store, and market hemp under the terms established in a grower licensing agreement, KRS 260.850 through[-] 260.859, and 302 KAR 50:020.

(19) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a processor licensing agreement, KRS 260.850 through[-] 260.859, and this administrative regulation.

(20) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can/may include a field name or building name.

(21) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.

(22) "Person" means an individual or business entity.

(23) "Pesticide" means any substance or mixture of substances intended to:

(a) Prevent, destroy, control, repel, attract, or mitigate any pest;

(b)[intended to] Be used as a plant regulator, defoliant, or desiccant; or

(c)[intended to] Be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.

(24) "Plot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.

(25) "ppm" means parts per million.

(26) "Post-harvest sample" means a sample taken from the harvested hemp from a particular plot's harvest in accordance with the procedures as established/defined in 302 KAR 50:050.[f.] The entire plot's harvest is/shall be in the same form (for example, intact-plant, flowers, ground materials, etc.), homogenous, and not mixed with nonhemp materials or hemp from another plot.

(27) "Pre-harvest sample" means a composite, representative portion from plants in a hemp plot collected in accordance with the procedures as established in 302 KAR 50:050.

(28) "Prohibited variety" means a variety or strain of cannabis excluded from the department's program.

(29) "Processing" is defined by KRS 260.850(9).

(30) "Processor licensing agreement" means a document executed by a person and the department authorizing the person to process, handle, and store hemp at one (1) or more specified locations in the Commonwealth under the terms established in the document, KRS 260.850 through[-] 260.869, and this administrative regulation.

(31) "Program" means the department's Industrial Hemp Research Pilot Program.

(32) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(33) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:

(a)1. The product does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent; and

2. Does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9 THC above zero and three-tenths (0.3) percent);

(b) The product is CBD that was derived from hemp, as defined by/in this administrative regulation; or

(c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.

(34) "Secondary pre-harvest sample" means a pre-harvest sample that is taken:

(a) In a given plot after the first pre-harvest sample is taken; and

(b) On a different day than the initial pre-harvest sample.

(35) "Seed source" means the origin of the seed or propagules as determined by the department.

(36) "Signing authority" means an officer or agent of the organization with [the] written authorization/power to commit the legal entity to a binding agreement.

(37) "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment.

(38) "University" means an accredited institution of higher learning

located in the Commonwealth.

(39) "Variety" means a subdivision of a species that is:

(a)[,] Uniform, in the sense that the variations in essential and distinctive characteristics are describable;

(b) Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(c)[and stable;] Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties; uniform in the sense that the variations in essential and distinctive characteristics are describable; and stable in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.]

(40)[(39)] "Variety of concern" means any variety of hemp in the department's program that tests above 3,000[3000] ppm or 0.3000 percent delta-9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could[may] be subject to restrictions and additional testing.

(41)[(40)] "Volunteer cannabis[hemp] plant" means any cannabis plant that:

- (a) Grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop; and
- (b) Are not intentionally planted.

Section 2. [Who Shall Apply for a] Processor or[.] Handler License Application[Licensing Agreement]. (1) Any person who wishes to engage in the processing, handling, brokering, or marketing of hemp that does not fall within the definition of a "publicly marketable hemp product" at any location in the Commonwealth shall submit to the department annually a complete[apply for a] Processor/Handler License Application[Licensing Agreement], incorporated by reference as part of the Processor/Handler License Application Packet in 302 KAR 50:080 [, from the department].

(2) Any person who does not hold a license from the department shall not:

(a) Grow, cultivate, handle, or[store,] process hemp or other cannabis; or

(b)[,] Broker[, or] market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the commonwealth.

(3) A[No] person under the age of eighteen (18) years of age shall not apply for or hold a processor or[.] handler license.

(4)[a][Section 3. Application for Processor/Handler Licensing Agreement -- Deadlines and Fees. (1) A person interested in holding a Processor/Handler License shall complete a Processor/Handler License Application form incorporated by reference in 302 KAR 50:080.

(2)] Completed Processor/Handler License Application forms shall be postmarked or received by the department by the end of the application period established[specified] in the application.

(b) Completed Processor/Handler License Application forms shall be delivered to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(c)[(3)] The department shall deny any Processor/Handler License Application that is not received by the deadline established[set forth] in the application.

(5)[(4)] The department shall require each applicant to pay a processor or[.] handler application fee in the amount established[specified] in 302 KAR 50:060.

(6)[(5)] Application fees shall not cover or include the cost of criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees directly to the Kentucky State Police or other law enforcement agency designated by the department.

(7)[(6)] The department may deny any Processor/Handler License Application that is received without the application fee established[specified] in 302 KAR 50:060.

(8) With[Section 4. Application for Processor/Handler Licensing Agreement -- Required Components. (1)] the Processor/Handler

License Application form, the applicant shall [require applicants to] submit, at a minimum[, the following information and documents]:

(a) Full name, mailing address, telephone number, and email address, if an email address is available;

(b) If the applicant represents a business entity, the full name of the business, the principal Kentucky business location address, the full name of the applicant who will have signing authority on behalf of the entity, title, and email address if an email address is available, of the person;

(c) Research plan;

(d) Planned source of hemp; and

(e) Maps and the street address, location ID, and GPS coordinates for each building or site where hemp will be processed, handled, or stored.

(9)[(2) The department may deny] Any Processor/Handler License Application that is missing required information shall be grounds for license denial.

Section 3.[5.] Criminal Background Check. (1) Each licensed processor/handler or applicant shall undergo and pay for an annual criminal background check.

(2) Each person who is required to undergo an annual criminal background check as required by KRS 260.862(2)(d) shall:

(a) Submit a criminal background check request to the Kentucky State Police or other law enforcement agency designated by the department;

(b) Submit payment for the background check fee directly to the Kentucky State Police or other law enforcement agency designated by the department;

(c)] following completion of the background check, ensure delivery of the report to the department not more than fourteen (14) days following the date the application was received by the department.

(3) The department shall not accept a report from a criminal background check that occurred prior to October 1 of the application year.

(4) Failure to submit the background check by the deadline stated in subsection (2)[(c)] shall be grounds for license denial[cause for denial of application].

(5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check on the signing authority.

Section 4.[6.] Application for Processor or[.] Handler Licensing: [Agreement --] Criteria and Procedure for Evaluation. (1) The department shall apply the [following] criteria established in paragraphs (a) through (n) of this subsection in evaluating applications for a processor or[.] handler licensing agreement:

(a) In accordance with Section 2[4] of this administrative regulation, the applicant shall submit[submitted] a complete application with all required components and attachments.

(b) An applicant who has been a program participant[For applicants who have been program participants] previously, the applicant shall comply[complied] with the responsibility to submit any reports required by 302 KAR Chapter 50[the department].

(c) All involved business entities shall be[are] registered and in good standing with the Kentucky Secretary of State.

(d) The applicant's processing sites, handling sites, and storage sites, shall be[are] located in the Commonwealth of Kentucky.

(e) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant shall not have[has]:

1. A felony conviction; or[No felony convictions; and]

2. A[No] drug-related misdemeanor conviction or violation [convictions or violations].

(f) The research plan shall be[is] compliant with state and federal law.

(g) The applicant's planned activities shall[require licensure to] remain compliant with state law and KDA policy.

(h) The applicant shall have[has] a hemp acquisition plan.

(i) The applicant shall have[has] a marketing plan that is compliant with state and federal law.

(j) The applicant shall have[has] adequate facilities, or plans to acquire adequate facilities sufficiently soon enough, to complete the[their] research plan.

(k) In the past, including those times when the applicant was not a

participant in the department's program, the applicant shall have demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

(l) The applicant shall not be/is not delinquent in making any required reports or payments to the department in connection with the applicant's participation in the program or other programs within the department.

(m) The applicant shall/does not have any unpaid fines or civil penalties owed to the department.

(n) The applicant shall not have made and shall not make/has not made any false statements or representations to a representative of the department or a law enforcement agency.

(2) The department shall conditionally approve an application for a processor or/ handler licensing agreement if/when the application satisfies the criteria established/set forth in this administrative regulation.

(3) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A/No person shall not be a participant in the department's program until the applicant and the department have executed a processor or/ handler licensing agreement following the applicant's attendance at the department's mandatory orientation session.

Section 5.7.1 Land Use Restrictions for Licensed Processors or/ Handlers. (1) A licensed processor or/ handler shall not process or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes.

(2) A licensed processor or/ handler shall not process hemp or other cannabis in a site that is located within 1,000 feet of a school or a public recreational area.

(3) A licensed processor or/ handler shall not apply to process, handle, or store hemp on any property that/which is not owned or completely controlled by the applicant or licensed processor.

(4) A licensed processor or/ handler shall not process, handle, or store hemp on property owned by, leased from, or previously submitted in an application by any person who is ineligible or was terminated ; or denied admission to the program for one (1) or both of the following reasons:

(a) Failure to obtain an acceptable criminal background check, or

(b) Failure to comply with an order from a representative of the department.

Section 6.8.1 Administrative Appeal from Denial of Application. (1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.

(2) An appealing applicant shall mail a hearing request letter to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp research projects in Kentucky.

(4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines established/set forth in this administrative regulation.

(5) The members of the administrative panel shall apply the same standards set forth in this regulation to determine if the department's action in denying the application was arbitrary or capricious.

(6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.

(7) An appealing applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appealing applicant shall be allowed an opportunity to present arguments for reversing the department's denial of the application.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the department's denial of the application.

(10) The three (3) members of the administrative panel shall rule on

the appeal by a majority vote.

Section 7.9.1 Processor or/ Handler Licensing Agreements. (1) An applicant shall not be a participant in the department's program until the conditionally approved applicant and the department have executed a processor or/ handler licensing agreement following the applicant's attendance at the department's mandatory orientation session.

(2) The processor or/ handler licensing agreement shall establish [set forth] the terms and conditions governing participation in the department's program.

(3) The terms and conditions established/set forth in the processor or/ handler licensing agreement shall include, at a minimum, the following requirements for licensed processor or/ handler:

(a) Acknowledge/Acknowledgement that licensed processors or handlers [processor/handler] are acting as agents of the department and shall comply with instructions from representatives of the department and law enforcement agencies;

(b) Agree/Agreement to pay a licensing fee in the amount established/specified in 302 KAR 50:060;

(c) Consent to entry onto, and inspection of, all premises where hemp or other cannabis materials are located, or licensed to be located, by representatives of the department and law enforcement agencies, with or without cause, with or without advance notice;

(d) Consent to forfeiture and destruction, without compensation, of:

1. Material found to have a measured delta-9-THC content in excess of zero and three-tenths (0.3) percent on a dry weight basis;

2. Material located in an area that is not licensed by the department;

or

3. Material not properly accounted for in required reporting to the department;

(e) Acknowledge/Acknowledgement that no hemp shall be processed, handled, or stored in any location other than the location listed in the processor or/ handler licensing agreement;

(f) Acknowledge/Acknowledgement that licensed processors or handlers [processor/handler] shall comply with restrictions established/set forth by the department limiting the movement of hemp plants and plant parts;

(g) Acknowledge/Acknowledgement that the risk of financial or other loss shall be/is borne solely by the licensed processor or/ handler;

(h) Agree/Agreement that any time the hemp is in transit, a copy of the processor or handler/handler's licensing agreement shall be available for inspection upon the request of a representative of the department or a law enforcement agency;

(i) Agree/Agreement to immediately produce a copy of the processor or/ handler licensing agreement for inspection upon request from a representative of the department or a law enforcement agency; and

(j) Agree/Agreement to submit reports required by the department on or before the deadlines established/set by the department;

(k) Agree/Agreement to notify the department of any interaction/interfraction with law enforcement immediately by phone and follow-up in writing within three (3) calendar days of the occurrence; and

(l) Agree/Agreement to notify the department of any theft of cannabis materials.

(4) Failure to agree or comply with terms and conditions established/set forth in the processor or/ handler licensing agreement or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the license and expulsion from the department's program.

(5) A person who has been expelled from the program is not eligible to reapply to the program for a period of five (5) years from the date of expulsion.

(6) Failure to agree and sign the processor or/ handler licensing agreement shall/will terminate conditional approval and no licensing agreement shall be executed.

(7) A multi-year licensed processor or/ handler shall:

(a) Submit to the department an annual criminal background check for the signing authority of record;

(b) Attend a mandatory, annual program orientation session hosted by the department;

(c) Pay annual fees in the amount established/specified in 302

KAR 50:060;

(d) Update all registered addresses, location IDs, and GPS coordinates with the department; and

(e) Agree to comply with the department's program policies as established in 302 KAR Chapter 50.

Section 8.[10.] Mandatory Orientation Session. (1) Conditionally approved applicants and multi-year licensed processor or/f handler shall attend an annual mandatory orientation session at a location designated by the department.

(2) The department shall require in-person attendance.

(a) The department shall not permit any person to attend a mandatory orientation session telephonically or by video.

(b) The department shall not allow any person to attend in lieu of the conditionally approved applicant or licensed processor or/f handler.

Section 9.[11.] Processor or/f Handler Licensing Fee. (1) The licensed processor or/f handler fee for processing one (1) or more fiber harvests shall be/is required-in the amount established[specified] in 302 KAR 50:060.

(2) The licensing fee for processing one (1) or more grain harvests shall be/is required-in the amount established[specified] in 302 KAR 50:060.

(3) The Licensing fee for processing floral material (for example, CBD) shall be/is required-in the amount established[specified] in 302 KAR 50:060.

(4) A licensed processor or/f handler that processes more than one (1) crop type (for example, fiber, grain, and CBD) shall pay the licensing fee that is required for each crop type that is applicable.

(5) A handler that does not engage in processing (for example, a seed cleaner, or laboratory) shall be/is subject to a licensing fee in the amount established[specified] in 302 KAR 50:060.

(6) The licensed processor or/f handler fee shall be paid annually in full prior to the execution of the processor or/f handler licensing agreement with a check or money order payable to the Kentucky State Treasurer.

Section 10.[12.] Seed Acquisition from a Source within the Commonwealth. (1) A[No] department pre-approval shall not be required for a transfer of hemp seed or propagules of any variety listed on the department's [published] Summary of Varieties list, published at kyagr.com, excluding prohibited varieties, between Kentucky licensed growers and licensed processor or/f handler within the Commonwealth of Kentucky.

(2) A licensed grower or licensed processor or/f handler shall not buy, sell, possess, or transfer hemp seeds or propagules to or from any person in the Commonwealth without first verifying that the person is licensed by the department.

(3) A licensed grower or licensed processor or/f handler shall obtain written approval from the department to change the name of any variety in the department's program.

(4) Upon request from a representative of the department, a licensed grower or licensed processor or/f handler shall provide a distribution list showing locations where and to whom hemp seeds or propagules were distributed.

Section 11.[13.] Seed Acquisition from a Source in a U.S. territory, Tribal Land, or State Other than the Commonwealth of Kentucky. (1) A[No] person shall not acquire seeds or propagules from a source in a U.S. territory, tribal land, or state other than the Commonwealth of Kentucky without first:

(a) Submitting a complete Domestic Seed/Propagule Request form and all required attachments, and

(b) Obtaining written approval of the Domestic Seed/Propagule Request from a representative of the department.

(2) The department shall not approve a Domestic Seed/Propagule Request unless the Domestic Seed/Propagule Request form states[affirms] in writing that the requested seed acquisition plan shall[will] not infringe on the intellectual property rights of any person.

(3) A person submitting a Domestic Seed/Propagule Request form shall submit to the department THC test results showing that floral material sampled from mature plants grown from that seed or propagule variety or strain has a delta-9-THC content of not more than 3,000

ppm[three-tenths (0.3) percent] on a dry weight basis from an independent third-party laboratory.

(4) A person submitting a Domestic Seed/Propagule Request form shall submit to the department documentation verifying the seed or propagule source as a current legal hemp operation in the state of origin.

(5) A person acquiring seeds or propagules from a source outside the Commonwealth shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.

(6) Upon request from a representative of the department, a Domestic Seed/Propagule Request form shall provide a distribution list showing locations where and to whom the hemp seeds were distributed following inventory at the department's facility.

Section 12.[14.] Seed Acquisition From a Source Outside the United States. (1) A person seeking to obtain seeds from an international source shall submit a complete International Seed Request form, incorporated by reference in 302 KAR 50:080, to the department.

(a) If approved, the department shall request the DEA Permit to Import under the department's DEA registration.

(b) A[No] person shall not acquire seeds from a source outside the United States unless the Department first obtains a permit to import from the DEA.

(2) A[No] person shall not acquire propagules other than seeds from outside the United States.

(3) The department shall not approve an International Seed Request form for any purpose other than seeds for planting in Kentucky. All licensed growers intending to plant the requested seed shall be listed on the request form.

(4) The department shall not approve an International Seed Request form unless the licensed processor affirms in writing that the licensed processor's planned activities shall[will] not infringe on the intellectual property rights of any person.

(5) A person submitting an International Seed Request form shall submit to the department documentation showing that mature plants grown from that seed variety have a floral material delta-9 THC content of not more than 3,000 ppm[three-tenths (0.3) percent] on a dry weight basis.

(6) A person acquiring seeds or propagules from a source outside the United States shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.

(7) Upon request from a representative of the department, a licensed processor or/f handler shall provide a distribution list showing locations where and to whom the imported hemp seeds were distributed following inventory at the department's facility.

Section 13.[15.] Seeds of Wild, Landrace, or Unknown Origin. (1) A[No] person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.

(2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the[such] seeds or propagules by the department or its designee.

(3) Any licensed grower or licensed processor or/f handler found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without permission from the department shall[may] be subject to suspension or revocation of their license and forfeiture without compensation of their materials.

Section 14.[16.] Site Access for Representatives of the Department and Law Enforcement Agencies. (1) The department shall provide information about approved growing, handling, processing, and storage site locations to representatives of the Kentucky State Police, DEA, and other law enforcement agencies whose representatives request registered site location information, including GPS coordinates.

(2) Licensed processors or/f handler shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the processor or handler licensing agreement.

(3) A licensed processor or handler, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the processor or handler licensing agreement, with or without cause, and with or without advance notice.

Section 15.[17.] Collection and Retention of Cannabis Samples. (1) The department shall have the authority to collect and retain samples of hemp or other cannabis, and products derived from all hemp or cannabis in the possession of a licensed processor or handler.

(2) All samples collected by the department shall become the property of the department and shall be nonreturnable. [No] Compensation shall not be owed by the department.

(3) The material to be collected for sampling shall be determined by the department inspector.

Section 16.[18.] Restrictions on Sale or Transfer. (1) A licensed processor or handler shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the Commonwealth who does not hold a license issued by the department.

(2) A licensed processor or handler shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth (but within the United States) who is not authorized by a university or state department of agriculture under the authority of 7 U.S.C. 5940 and the laws of that state. The licensed processor or handler shall be responsible for insuring that such sale or transfer is lawful in other states.

(3) The department shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of zero and three-tenths (0.3) percent), and other marketable hemp products to members of the general public, both within and outside the Commonwealth, if provided that the product's delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(4) A licensed processor or handler selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall conduct and retain testing data or results for at least three (3) years demonstrating that the product's delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(5) The department shall permit a licensed processor or handler to transfer up to one (1) pound of hemp per transfer to testing laboratories, both within and outside the Commonwealth, for the purpose of measuring THC, CBD or other phytocannabinoid profile levels. It shall be the responsibility of the licensed processor or handler to ensure compliance with laws with other states.

(6) A licensed processor or handler shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

(7) A licensed processor or handler shall not knowingly permit hemp to be sold to or used by any person involved in the manufacture of an item named on the prohibited products list in 302 KAR 50:070.

Section 17.[19.] Other Prohibited Activities. (1) A licensed processor or handler shall not process or store hemp on any site not listed in the processor or handler licensing agreement.

(2) A person shall not ship or transport, or allow to be shipped or transported, live hemp plants, cuttings for planting, or viable seeds from a variety that is currently designated by the department as a prohibited variety or variety of concern to any location outside the Commonwealth of Kentucky.

(3) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

(4) A licensed processor or handler shall not transport live hemp plants, viable seeds, leaf materials, or floral materials to unapproved locations including trade shows, county fairs, educational or other events, or any other address not listed on the licensed processor or handler current processor or handler licensing agreement or within another research program.

(5) A licensed processor or handler shall not allow unsupervised public access to hemp plots, including [, but not limited to,] activities such as a hemp maze.

(6) A [No] person shall not possess live hemp or other cannabis plants without a grower licensing agreement.

Section 18.[20.] Required Reports. (1) A licensed processor or handler shall submit a completed Production Report annually.

(2) A licensed processor or handler failure to submit an accurate and complete report that is required by subsection (1) of this administrative regulation on or before the deadline established by the department shall constitute grounds for the department to terminate the processor or handler licensing agreement and deny future applications for licensure.

Section 19.[21.] Information Submitted to Department Subject to Open Records Act. (1) Except as provided in subsection (2) of this section, information and documents generated or obtained by the department in connection with the program shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone, and email addresses shall be shielded by the department to the maximum extent permitted by law.

Section 20.[22.] Immediate License Suspension. (1) The department shall immediately revoke a license, without an opportunity for a hearing, if the licensed person pleads guilty to, or is convicted of, any felony or drug-related misdemeanor or violation.

(2) The department shall immediately revoke a license, without an opportunity for a hearing, if the licensed person or his or her agent admits to having:

(a) Violated any provision of KRS 260.850 through 260.869 or 302 KAR Chapter 50 ~~an administrative regulation promulgated under the authority of KRS 260.850 to 260.869~~;

(b) Made any false statement to the department or its representative; or

(c) Failed to comply with any instruction or order from the department, a representative of the Kentucky State Police, or any law enforcement officer.

Section 21.[23.] Temporary License Suspension Procedures. (1) The department shall notify a licensed processor or handler in writing that the processor or handler licensing agreement has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed processor or handler has:

(a) Engaged in conduct violating a provision of this administrative regulation, KRS 260.850 through 260.869, or the processor or handler licensing agreement;

(b) Made a false statement to a representative of the department or a law enforcement agency;

(c) Been found to be in possession of cannabis with a measured delta-9-THC concentration at or above 30,000 ppm (3 percent); or

(d) Failed to comply with an order from a representative of the department or a law enforcement agency.

(2) A person whose processor or handler licensing agreement has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time when the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.

(3) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed processor or handler's handler premises and perform an inventory of all cannabis, hemp, and hemp products that are in the licensed processor or handler's handler possession.

(4) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.

Section ~~22.24.~~ License Revocation Hearings and Consequences of Revocation. (1) The department shall notify a person whose processor ~~or~~ handler licensing agreement has been temporarily suspended of the date when the person's license revocation hearing will occur at a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(3) License revocation hearings shall be open to the public.

(4) A person whose processor ~~or~~ handler licensing agreement has been temporarily suspended shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the processor ~~or~~ handler licensing agreement.

(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the processor ~~or~~ handler licensing agreement.

(6) A person whose processor ~~or~~ handler licensing agreement has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the processor ~~or~~ handler licensing agreement.

(7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed processor ~~or~~ handler has committed any of the acts listed in Section ~~21(1)23(4)~~ of this administrative regulation or violated any provision of the processor ~~or~~ handler licensing agreement, then the processor ~~or~~ handler licensing agreement shall be revoked effective immediately.

(9) If a majority of the members of the administrative panel vote against revoking the processor ~~or~~ handler licensing agreement, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.

(10) If a majority of the members of the administrative panel vote in favor of revoking the processor ~~or~~ handler licensing agreement, then a representative of the department or a law enforcement agency shall have authority to destroy or confiscate all cannabis, hemp, and hemp products that are in the person's possession.

(11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.

(12) A person whose processor ~~or~~ handler licensing agreement has been revoked shall be barred from participation in the hemp research pilot program in any capacity for a minimum period of five (5) years.

Section ~~23.25.~~ Monetary Civil Penalties. (1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of this ~~administrative~~ regulation, KRS 260.850 ~~through~~ 260.869, or the processor ~~or~~ handler licensing agreement, then the department shall assess a monetary civil penalty not to exceed \$2,500 per violation.

(2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.

(3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Industrial Hemp Research Pilot Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appealing person shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appealing person shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.

(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

(11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty, or reverse the assessed monetary civil penalty.

(12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

**GENERAL GOVERNMENT  
Department of Agriculture  
Office of Agricultural Marketing  
(As Amended at ARRS, February 12, 2018)**

**302 KAR 50:040. Affiliated universities and colleges.**

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: KRS 260.862(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(d) authorizes the department to promulgate administrative regulations ~~to prescribe rules~~ for a university's participation in, or affiliation with, any industrial hemp research pilot program in the Commonwealth of Kentucky. This administrative regulation establishes procedures and requirements for eligible universities and colleges with faculty or staff members who wish to affiliate with the department's industrial hemp research pilot program for the purpose of conducting academic research projects.

Section 1. Definitions. (1) "Cannabis":

~~(a)~~ Means all parts of the cannabis plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; ~~and (b) Does not mean "[Cannabis does not include] publicly marketable hemp product [products], as defined by [in] this administrative regulation.~~

(2) "Commonwealth" means the Commonwealth of Kentucky.

(3) "DEA" means the United States Drug Enforcement Administration.

(4) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value ~~is [may]~~ also ~~[be]~~ calculated using a conversion formula that sums delta-9-THC and ~~eighty-seven and seven tenths (87.7) percent~~ THC-acid.

(5) "Department" ~~is defined by KRS 260.850(3)[means the Kentucky Department of Agriculture].~~

(6) "GPS" means Global Positioning System.

(7) "Handling" is defined ~~by [in]~~ KRS 260.850(4).

(8) "Hemp" or "industrial hemp" is defined ~~by [in]~~ KRS 260.850(5).

(9) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency or drug suppression unit.

(10) "Location ID" means the unique identifier established for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which ~~can [may]~~ include a field name or building name.

(11) "Plot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.

(12) "Processing" is defined ~~by [in]~~ KRS 260.850(9).



(13) "Program" means the department's Industrial Hemp Research Pilot Program.

(14) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(15) "Seed source" means the origin of the seed or propagules as determined by the department.

Section 2. Eligible Institutions of Higher Education. (1) To be eligible to affiliate with the department's program, an institution of higher education shall:

(a) Be accredited by, and in good standing with, a regional or national higher education accreditation agency;

(b) Confer academic degrees at the associate, bachelor, master, or doctoral level; and

(c) Have a principal campus or office that is located at a site within the Commonwealth of Kentucky.

(2) An institution of higher education shall not conduct hemp research under the authority of the department's program at a campus or other site that is located outside the Commonwealth of Kentucky.

Section 3. Affiliation with Department Required. (1) An authorized representative of an eligible institution of higher education with faculty, administration, or staff members who wish to conduct academic research projects involving hemp under the auspices of the department's program shall complete and submit a University/College Affiliation Application, incorporated by reference as part of the University/College Affiliation Application Packet in 302 KAR 50:080, annually.

(2) An/No institution of higher education shall not authorize its faculty, administration, or staff members, or any sponsored student, to conduct academic research involving hemp without first completing and submitting a University/College Affiliation Application.

(3) The department shall accept annual University/College Affiliation Applications at any time during a program year.

(4) Upon request from the department, a letter from a faculty department chair or other appropriate academic authority shall be submitted/provided in support of a University/College Affiliation Application.

(5) Following receipt of a University/College Affiliation Application form from an authorized representative of an eligible institution of higher education, the department shall issue a university or/ college affiliation confirmation letter [authorizing-that-person] to grow, cultivate, and process hemp in accordance with:

(a) [In accordance with] The institution's research plan;

(b) [In accordance with] State and federal law; and

(c) [In accordance with] This administrative regulation.

Section 4. Affiliation Application Form:[-] Required Components. A University/College Affiliation Application form shall contain, at a minimum [the following information]:

(1) The full name of each person authorized by the institute of higher education who shall/will be responsible for overseeing the academic research project;

(2) The full name of each person who will be involved in growing, processing, or handling hemp;

(3) An academic research plan summary;

(4) The full name of the landowner, street address and GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, processed, or stored; and

(5) Maps depicting each site where hemp will be grown, handled, processed, or stored, with appropriate designations for entrances, field boundaries, and specific locations corresponding to GPS coordinates.

Section 5. Restrictions on Affiliated Projects. (1) An institution of higher education with a project affiliated with the department's program shall not involve any person who is ineligible or was terminated, or denied admission to the program for one (1) or both of the following reasons:

(a) Failure to obtain an acceptable criminal background check; or

(b) Failure to comply with an order from a representative of the department.

(2) An institution of higher education with a project affiliated with the department's program shall not grow, handle, process, or store hemp on property owned by or leased from any person who is ineligible or was terminated, or denied admission to the program for one (1) or both of the

following reasons:

(a) Failure to obtain an acceptable criminal background check; or

(b) Failure to comply with an order from a representative of the department.

Section 6. No Fees:[-] Sampling and THC Testing Services Available at Cost. (1) The department shall not assess fees on affiliated institutions of higher education except as established/provided in subsection (2) of this section.

(2) If a representative of an affiliated institution of higher education requests assistance from the department in collecting samples from hemp plants or testing the THC concentration, then the department shall collect a nonrefundable service charge in an amount sufficient to pay for staff time and other expenses incurred in visiting the site, collecting the samples, and testing the samples.

Section 7. Seed Acquisition. (1) An institution of higher education shall not acquire hemp seeds or propagules from a source outside the Commonwealth of Kentucky except as established/provided in subsection (2) of this section.

(2) A representative of an affiliated institution of higher education shall obtain hemp seeds or propagules from a source outside the Commonwealth by submitting a Seed/Propagule Request form and obtaining written approval from a representative of the department.

(3) A person submitting a Seed/Propagule Request form shall submit to the department documentation showing that the mature plants grown from that seed or propagule variety have a floral material decarboxylated delta-9 THC content of not more than 3,000 ppm/three-tenths (0.30) percent on a dry weight basis.

(4) A person acquiring seeds or propagules from a source outside the Commonwealth shall arrange for the seeds or propagules to arrive at the department's facility at 105 Corporate Drive, Frankfort, Kentucky 40601, for inventory and distribution.

(5) Upon request from a representative of the department, a representative of an affiliated institution of higher education shall provide a distribution list showing the locations where and to whom the hemp seeds were distributed following inventory at the department's facility.

(6) A Seed/Propagule Request shall not be required for the acquisition of seeds or propagules from a source inside the Commonwealth of Kentucky.

Section 8. Site Access for Representatives of the Department and Law Enforcement Agencies. (1) The department shall provide information about approved growing, handling processing, and storage site locations to representatives of the Kentucky State Police, DEA, and other law enforcement agencies whose representatives request registered site information, including GPS coordinates.

(2) Representatives of affiliated institutions of higher education who are participating in hemp research shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the university or/ college affiliation confirmation letter.

(3) A representative of an affiliated institution of higher education shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the university or/ college affiliation confirmation letter with or without cause and with or without advanced notice.

Section 9. Academic Research Project Summary to be Submitted to the Department. Following the completion of an academic research project conducted under the auspices of the department's program, the person responsible for overseeing the research project shall submit to the department a summary of the research's objectives and findings. The results of research that is proprietary in nature need not be reported to the department.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 15, 2017

FILED WITH LRC: December 15, 2017 at noon

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GENERAL GOVERNMENT  
Department of Agriculture  
Office of Agricultural Marketing  
(As Amended at ARRS, February 12, 2018)

302 KAR 50:050. THC sampling and testing; post-testing actions.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: KRS 260.862, 250.355

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations ~~[to prescribe rules]~~ for any industrial hemp research pilot program in the Commonwealth of Kentucky. KRS 260.862(1)(e) authorizes the department to prescribe sampling and testing procedures to ensure that industrial hemp and industrial hemp products cultivated, handled, processed, or marketed ~~pursuant to/under the authority of~~ KRS 260.862 do not exceed the concentration levels defined in 7 U.S.C. 5940 ~~[as it currently exists or as it may be subsequently amended]~~. KRS 250.355 requires the director of the Agricultural Experiment Station or his or her designee to receive samples and test industrial hemp plants, plant parts, and materials grown or located within the Commonwealth in order to determine ~~if/whether~~ the industrial hemp plants, plant parts, and materials are in compliance with the provisions of KRS 260.850 ~~through/to~~ 260.869 and 302 Chapter 50. This administrative regulation establishes the procedures and requirements ~~for/of the~~ sampling, ~~and~~ testing, and post-testing ~~actions~~.

Section 1. Definitions. (1) "Department" is defined by KRS 260.850(3)[means the Kentucky Department of Agriculture].

(2) "UK DRS" means the University of Kentucky Division of Regulatory Services.

Section 2. ~~Department/Department's~~ Procedures ~~[for Collecting and Retaining Hemp Samples]~~. (1) The department shall collect and handle hemp samples in accordance with the department SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), ~~[December 14, 2017 edition,]~~ Sections II through VII.

~~(2)[Section 3. UK DRS's Procedures for Receiving, Preparing, and Releasing Hemp Samples. (1)]~~ UK DRS shall receive, prepare, and release hemp samples in accordance with the UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples) ~~[, August 1, 2017 edition]~~.

~~(3)[Section 4. UK DRS's Procedures for Measuring THC Content. (1)]~~ UK DRS shall measure delta-9-THC content in accordance with the UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection) ~~[, August 1, 2017 edition]~~.

~~(4)[Section 5. Department's Procedures for Post-Testing Actions. (1)]~~ Following the delivery of THC testing results from UK DRS, the department shall undertake post-testing actions in accordance with the department SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), ~~[December 14, 2017 edition,]~~ Section IX.

Section 3.[6.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), December 14, 2017 edition;

(b) UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection), August 1, 2017 edition; and

(c) SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples), August 1, 2017 edition.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at [www.kyagr.com](http://www.kyagr.com).

RYAN F. QUARLES, Commissioner

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GENERAL GOVERNMENT  
Department of Agriculture  
Office of Agricultural Marketing  
(As Amended at ARRS, February 12, 2018)

302 KAR 50:060. Fees and forms.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: KRS 260.862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations ~~[to prescribe rules]~~ for any industrial hemp research pilot program in the Commonwealth of Kentucky. KRS 260.862(1)(g) authorizes the department ~~[authority]~~ to establish a schedule of nonrefundable fees. This administrative regulation establishes a schedule of fees for the department's industrial hemp research pilot program.

Section 1. Schedule of Fees for Growers. (1) The definitions for this ~~section/subsection~~ shall be the same definitions ~~established[that appear]~~ in 302 KAR 50:020, Section 1.

(2) The fees ~~established in this section[set forth in this subsection]~~ shall be nonrefundable.

(3) The Grower License Application fee shall be \$100 for each application.

(4) The annual grower participation fee shall be \$400 for each growing address.

(5) The secondary pre-harvest sample fee shall be \$250 for each sample.

(6) The post-harvest retest fee shall be \$250 for each sample.

(7) The site modification surcharge fee shall be \$750 for each GPS coordinate location change for each growing site after the grower licensing agreement has been executed.

Section 2. Schedule of Fees for Processors ~~or/~~ Handlers. (1) The definitions for this ~~section/subsection~~ shall be the same definitions ~~established[that appear]~~ in 302 KAR 50:030, Section 1[(Policies and Procedures for Processors and Handlers)].

(2) The fees established in this ~~section/subsection~~ shall be nonrefundable.

(3) The Processor/Handler License Application fee shall be \$100 per application.

(4) The annual participation fee for processing the grain component of hemp shall be \$500.

(5) The annual participation fee for processing the fiber component of hemp shall be \$500.

(6) The annual participation fee for processing the floral material component of hemp (such as CBD) shall be \$3,000.

(7) The annual participation fee for a handler (such as a seed cleaner or laboratory) shall be \$500.

(8) A processor for more than one (1) component (grain, fiber, or floral material) shall pay the annual participation fee for each component. (For example, a person who processes hemp for fiber, grain, and CBD shall pay a participation fee of \$4,000.)

(9) The site modification surcharge fee shall be \$750 for each GPS coordinate location change for each processing site after the processor ~~or/~~ handler licensing agreement has been executed.

RYAN F. QUARLES, Commissioner

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CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of Agricultural Marketing**  
**(As Amended at ARRS, February 12, 2018)**

**302 KAR 50:070. Prohibited products.**

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940  
 STATUTORY AUTHORITY: KRS 260.862  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations [to prescribe rules] for any industrial hemp research pilot program in the Commonwealth of Kentucky. This administrative regulation establishes classes or categories of industrial hemp products that are prohibited[eligible] for sale, transfer, or distribution to members of the public.

Section 1. Products Not to be Sold to Members of the Public. (1) The following hemp-derived products shall not be manufactured:

- (a) Hemp cigarettes;
- (b) Hemp cigars;
- (c) Chew, dip, or other smokeless material consisting of hemp leaf material or hemp floral material; and
- (d) Hemp leaf material or floral material teas.

(2) The following hemp-derived products shall not be marketed, sold, or distributed to any person in Kentucky who does not hold a license from the department, or any person outside the Commonwealth (but within the United States) who is not authorized by an institution of higher education, or state department of agriculture pursuant to[under the authority of] 7 U.S.C. 5940 and the laws of that state:

- (a) Whole hemp buds;
- (b) Ground hemp floral material;
- (c) Ground hemp leaf material; and
- (d) Any hemp product with a delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

(3) If the department finds that it is more likely than not that a person has manufactured, marketed, sold, or distributed a hemp-derived product in violation of this administrative regulation, the department shall assess a civil monetary penalty against that person of not less than \$100 and not more than \$1,000 per violation, in addition to possible termination of the grower licensing agreement or processor or[ ] handler licensing agreement.

RYAN F. QUARLES, Commissioner  
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**GENERAL GOVERNMENT**  
**Department of Agriculture**  
**Office of Agricultural Marketing**  
**(As Amended at ARRS, February 12, 2018)**

**302 KAR 50:080. Materials incorporated by reference.**

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940  
 STATUTORY AUTHORITY: 260.850-260.869  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations [to prescribe rules] for any industrial hemp research pilot program in the Commonwealth of Kentucky. This administrative regulation establishes material incorporated by reference for 302 KAR Chapter 50, except[incorporates the materials and forms used in the program, other than] 302 KAR 50:050.

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

- (a) "Grower License Application Packer", 2018[2017];
- (b) "Field Planting Report", 2018[2017];

- (c) "Greenhouse/Indoor Planting Report", 2018[2017];
- (d) "Harvest/Destruction Report", 2018[2017];
- (e) "Grower Production Report Form[Grower]", 2017;
- (f) "Process/Handler Production Report and Annual License Renewal[Processor/Handler]", 2017;
- (g) "Site Modification Request Form", 2018[2017];
- (h) "Domestic Seed/Propagule Request Requirements", 2018[2017];
- (i) "International Seed Request Requirements", 2018[2017];
- (j) "Processor/Handler License Application", 2018; and
- (k) "University/College Affiliation Application", 2018[2017].

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at [www.kyagr.com](http://www.kyagr.com).

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**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(As Amended at Education Assessment and Accountability Review Subcommittee, February 26, 2018)**

**703 KAR 5:270. Kentucky's Accountability System.**

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 20 U.S.C. 6311

STATUTORY AUTHORITY: KRS 158.6453, 158.6455  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement. This administrative regulation establishes the statewide system of accountability, and meets requirements set forth in the federal Every Student Succeeds Act of 2015 at 20 U.S.C. 6311.

Section 1. Definitions. (1) "Achievement gap closure" means a combined measure of reducing the performance difference between student demographic groups to each other and to proficiency for each of the tested areas.

(2) "Behavior events" are student infractions involving drugs, weapons, harassment including bullying, alcohol, tobacco, assault first degree, other assault or violence, and state resolutions not reported.

(3) "Career counselor" or "career coach" means an individual who advises middle and high school students on academic and career opportunities, as well as the post-secondary education and training plans necessary to achieve such careers.

(4) "Catch up" means individual student performance below proficient grows enough to achieve proficiency or to be on track to become proficient.

(4) (5) "Chronic absenteeism" means a student who misses ten (10) percent or more of his/her enrolled academic year.

(5) (6) "Comparison student group" means the student demographic group being contrasted to the reference group.

(6) (7) "Consolidated student groups" means a non-duplicated aggregation of student groups [too small to be publically reported individually] that includes: African American, Hispanic, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two or more races, students with disabilities who have an individual education program (IEP), and English learners.

~~(7)(8)~~ "English learners" in the indicators of growth and transition readiness means students currently identified on an English language proficiency exam. For all other areas, it means students currently identified and those who continue to be monitored means students currently identified in the area of growth on an English language proficiency exam. For all other areas, it includes students currently identified and those who continue to be monitored].

~~(8)(9)~~ "Essential skills" means the foundational abilities that include attendance, positive dispositions, and communication needed to successfully complete academic, workplace, or military responsibilities as demonstrated through a variety of co-curricular learning and leadership experiences.

~~(9)(10)~~ "Federal student group designation" means [includes] targeted [target] support and improvement, and comprehensive support and improvement as provided in KRS 160.346.

~~(10)(11)~~ "Federally defined student demographic groups" include White, African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two or more races, free/reduced-price meal eligible, students with disabilities who have an IEP, and English learners.

~~(11)(12)~~ "Full academic year" means 100 or more instructional days of student enrollment within the school year.

~~(12)(13)~~ "Graduation rate" means the percentage of students who enter high school and receive a diploma based on their cohort in four (4) and five (5) years, adjusting for transfers in and out, émigrés, and deceased students.

~~(13)(14)~~ "Growth" means a student's continuous improvement toward proficiency or above.

~~(14)(15)~~ "Indicator" means a component of the accountability system that provides specific information on the school or district.

~~(15)(16)(15)~~ "Individual education program" or "IEP" means an individual education program as defined in 707 KAR 1:002.

~~(16)(17)(16)~~ "Keep up" means individual student performance at or above proficient that grows at a rate to maintain proficiency or above.

~~(17)(18)(17)~~ "Less than catch up" means individual student performance below proficient and not on track to become proficient.

~~(18)(19)(18)~~ "Local education agency" or "LEA" for the purposes of this administrative regulation shall mean a local school district as provided in KRS 161.010 and KRS 161.020 or a charter school board of directors as provided in KRS 161.1590. ~~[(20)(19)]~~ "Locally determined measure" means a LEA objective for students or schools to achieve that is specific, measurable, achievable, relevant, and time bound.

~~(19)(21)(20)~~ "Move up" means individual student performance at proficient that grows at a rate to be on track to become distinguished.

~~(20)(22)(21)~~ "Opportunity and access" means equitable availability to research-based student experiences and school factors that impact student success.

~~(21)(23)(22)~~ "Practical significance" means a measure of the differences between student groups has real meaning.

~~(22)(24)(23)~~ "Proficiency indicator" means the measure of academic status or performance for reading [writing] and mathematics on state assessments.

~~(23)(25)(24)~~ "Proficient" or "proficiency" means reaching the desired level of knowledge and skills as measured on academic assessments.

~~(24)(26)(25)~~ "Rating" means the process of inclusion of an indicator in the formal overall rating of the school or district.

~~(25)(27)(26)~~ "Reference group" means a student demographic group to which another group is contrasted to provide a benchmark for performance.

~~(26)(28)(27)~~ "Separate academic indicator for science, [and] social studies, and writing" means the measure of academic status or performance for science, [and] social studies, and writing on state assessments.

~~(27)(29)(28)~~ "Transition readiness" means the attainment of the necessary knowledge, skills, and dispositions to successfully transition to the next level.

~~(28)(30)(29)~~ "Value table" means a set of numbers that are used to attribute scores to different performance levels.

~~(29)(31)(30)~~ "Work ethic certification" means a process by which a student demonstrates [is assessed based upon his/her

~~demonstration of~~ essential skills and workplace readiness.

~~(30)(32)(31)~~ "Writing" means the content area that includes on-demand writing, and editing and mechanics.

Section 2. Kentucky's accountability system that is used to classify schools and LEAs shall include the indicators of: proficiency; [and] separate academic indicator for science, [and] social studies, and writing, growth; [and] transition readiness; [and] achievement gap closure; [and] opportunity and access; [and] and graduation rate.

(1) The proficiency indicator shall be measured by student performance on state tests in reading [writing] and mathematics.

(2) A separate academic indicator shall be measured by student performance on state tests in science, [and] social studies, and writing.

(3) The growth indicator shall be calculated at the elementary and middle school levels. The growth indicator shall be measured [by awarding credit as follows]:

(a) Based on a growth value table [The percentage of students who meet or are on track to meet their annual personal target for improvement based on an individual student trajectory toward proficiency] in reading and mathematics; and

(b) Progress toward achieving English proficiency by English learners.

(4) The achievement gap closure indicator shall be measured [by awarding credit] as follows:

(a) Reducing the gap in performance between the following comparison groups and reference group in the combined content areas of reading [writing], mathematics, science, [and] social studies, and writing:

1. African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, White, and two (2) or more races compared to the reference group, which shall be the highest of these;

2. Free/reduced-price meal eligible students compared to non-free/reduced-price meal eligible students;

3. Students with disabilities who have an IEP compared to students without IEPs; and

4. English learners compared to non-English learners.

(b) Reducing the gap to proficiency for the combined content areas of reading [writing], mathematics, science, [and] social studies, and writing by the following groups: White, African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, free/reduced-price meal eligible, students with disabilities who have an IEP, English learners, and a consolidated student group.

(5) The opportunity and access indicator shall be measured [by awarding credit] for rich curricula, equitable access, and school quality, and whole child supports, as follows:

(a) Elementary schools that provide all students opportunities and access to:

1. Rich curricula annually including:

- a. Visual and performing arts;
- b. Health and physical education;
- c. Science; and
- d. Social studies.

2. School quality as measured by a lack of student chronic absenteeism, behavior events, and physical restraint and seclusion.

3. Equitable access by federally defined student demographic groups in proportion to the school population to gifted and talented services excluding the primary talent pool [in grades four (4) and five (5)]. ~~[4. Whole child supports]~~ [as the school determines] [by selecting two (2) of the following:

~~a. School-based counselor or mental health services provider; or~~

~~b. School nurse; or~~

~~c. Library media specialist;~~

~~d. Family resource/youth services center; or~~

~~e.] Teachers with specialist certification and delivering instruction in visual art, music, dance, theatre, media arts, physical education, health, or [and] world languages.]~~

(b) Middle schools that provide all students opportunities and access to:

1. Rich curricula annually including:

- a. Visual and performing arts;

- b. Health and physical education;
- c. Science;
- d. Social studies; and
- e. Career exploration including career and technical education courses, other courses that focus on essential skills and co-curricular learning and leadership experiences.

2. School quality as indicated by a lack of student chronic absenteeism, behavior events, and physical restraint and seclusion.

3. Equitable access of federally defined student demographic groups in proportion to the school population to gifted and talented services. ~~[4. Whole child supports][as determined by the school][by selecting two (2) of the following:~~

~~a. School-based counselor or mental health services provider;~~

~~or~~

~~b. School nurse; or~~

~~c. [Library media specialist;~~

~~d. Family resource/youth services center;~~

~~e.] [Teachers with specialist certification and delivering instruction in visual arts, music, dance, theatre, media arts, physical education, health, or][and] [world languages; or d. Career][f. Access to a] [counselor or career coach.]~~

(c) High schools that provide all students with opportunities and access to:

1. Rich curricula including:

a. Visual and performing arts;

b. Health and physical education;

c. Cultural studies or world language;

d. Career and technical education (CTE), including specialized career pathways in state and regional high demand sectors as approved by Kentucky's Workforce Innovation Board; and

e. Essential skills demonstrated as part of a work ethic certification.

2. School quality as indicated by a lack of student chronic absenteeism, behavior events, and restraint and seclusion.

3. Equitable access of federally defined student demographic groups to the following advanced coursework: advanced placement, international baccalaureate, Cambridge Advanced International, and dual credit. ~~[4. Whole child supports][as determined by the school][by selecting two (2) of the following:~~

~~a. School-based counselor or mental health services provider;~~

~~or~~

~~b. School nurse; or~~

~~c. [Library media specialist;~~

~~d. Family resource/youth services center;~~

~~e.] [Teachers with specialist certification and delivering instruction in visual arts, music, dance, theatre, media arts, physical education, health, or][and] [world languages; or d. Career][f. Access to a] [counselor or career coach.]~~

~~5. Within opportunity and access, the locally determined indicator shall be included in the accountability rating of each LEA. Each LEA shall propose to the department the targeted goal or objective that is specific, measurable, achievable, relevant, and time bound. Through discussion and deliberation, the LEA and the department shall enter into an agreement on the goals or objectives of the locally determined indicator.]~~

(6) The transition readiness indicator shall be measured ~~[by awarding credit]~~ for students meeting the following criteria:

(a) At the elementary and middle school level, students meet or exceed the benchmark on a composite score that combines student performance on state-required assessments for reading ~~[writing]~~, mathematics, science, ~~[and]~~ social studies, ~~and writing~~. A composite score shall include the most recent content area assessment by grade level available for each school. Students participating in the alternate assessment program will have criteria based on alternate assessment requirements.

(b) At the high school level, students:

1. Earn a regular or alternative high school diploma; and

2. Achieve academic readiness or ~~[i.]~~ career readiness, ~~[i.]~~ or military readiness, as follows:

a. A school shall receive credit for each student demonstrating academic readiness by:

(i) Scoring at or above the benchmark score as determined by the Council on Postsecondary Education (CPE) on the college admissions examination; or

(ii) Completing six (6) or more hours of Kentucky Department of Education ~~[department]~~ approved dual credit and receiving a ~~a~~ course grade of B or higher in each course; or

(iii) Completing two (2) or more advanced placement (AP) courses and receiving a score of three (3) or higher on each ~~[the]~~ AP assessment; or

(iv) Receiving a score of five (5) or higher on two (2) examinations for international baccalaureate courses; or

(v) Scoring at or above the benchmark on two (2) or more Cambridge Advanced International examinations ~~[i.]~~; or

(vi) Completing a combination of academic readiness indicators listed above.

(vii) Demonstration of academic readiness listed in paragraph 6 (b) 2a of this section shall include one (1) quantitative reasoning or natural sciences and one (1) written or oral communication, or arts and humanities, or social and behavioral sciences learning outcomes.

b. A school shall receive credit for each student demonstrating career readiness by:

~~(i) [i.]~~ Scoring at or above the benchmark on industry certifications as approved by the Kentucky Workforce Innovation Board on an annual basis; or

~~(ii) [i.]~~ Scoring at or above the benchmark on the career and technical education end-of-program assessment ~~[Kentucky Occupational Skill Standards Assessment (KOSSA) as appropriate]~~ for articulated credit; or ~~[and]~~

~~(iii) [iii.]~~ Completing six (6) or more hours of Kentucky Department of Education ~~[department]~~ approved CTE dual credit, and receiving a ~~a~~ course grade of B or higher in each course; or

~~(iv) [iv.]~~ Completing two (2) credits in a career and technical education program of study and was enrolled in a third credit in a CTE program of study; or

~~v.]~~ Completing a Kentucky Department of Education ~~[department]~~ approved or labor cabinet-approved apprenticeship; or

~~(v) [v.]~~ Completing a Kentucky Department of Education ~~[department]~~ approved alternate process to verify exceptional work experience.

c. ~~[A school shall receive credit for each student demonstrating military readiness by:~~

~~i. Scoring at or above the department-approved benchmark of the Armed Forces Quality Test (AFQT) on the Armed Services Vocational Aptitude Battery (ASVAB); and~~

~~ii. Enlisting in a branch of military service; or~~

~~iii. Completing two (2) certificates of training and was enrolled in the third credit within a Junior Reserve Officer Training Corps (JROTC) program.~~

d. ~~[For students who qualify as English learners in high school: Meeting criteria for English language proficiency to be English language ready.~~

~~d. [e.]~~ Students participating in the alternate assessment program shall meet criteria based on academic or career alternate assessment requirements. ~~[and employability skills]~~

(7) The graduation rate indicator shall be measured for each high school using the four (4)-year and extended five (5)-year cohort rate. The graduation rate shall be reported for all students and student groups.

Section 3. Classification of Schools and LEAs ~~[districts]~~ in the State Accountability System. (1) Data shall be included in the overall rating for schools and LEAs for the following indicators:

(a) Proficiency (reading ~~[writing]~~ and mathematics);

~~(b) Separate academic indicator (science, [and] social studies, and writing);~~

(c) Growth (elementary and middle school);

(d) Transition readiness;

(e) Achievement gap closure;

(f) Opportunity and access (school quality/student success); and

(g) Graduation rate (high school).

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the overall rating of each school and LEA. This data shall include students with disabilities with IEPs who participate in the alternate assessment program.

(3) Data in the overall rating shall be attributed to grade level spans for schools and LEA as established in this subsection.

(a) Elementary schools shall include data from: proficiency;; separate academic indicator for science,and social studies, and writing; growth;; achievement gap closure;; transition readiness;; opportunity and access;; and federal student group designation.

(b) Middle schools shall include data from: proficiency;; separate academic indicator for science,and social studies, and writing; growth;; achievement gap closure;; transition readiness;; opportunity and access;; and federal student group designation.

(c) High schools shall include data from: proficiency;; separate academic indicator for science,and social studies, and writing; growth;; achievement gap closure;; transition readiness;; graduation rate;; opportunity and access;; and federal student group designation.

(d) LEAs shall include data from: school proficiency;; separate academic indicator for science,and social studies, and writing; growth;; achievement gap closure;; transition readiness;; graduation rate;; and opportunity and access;; including a locally determined measure.

(e) Within opportunity and access, the locally determined measure shall be included in the accountability rating of each LEA. Each LEA shall propose to the department the targeted goal or objective that is specific, measurable, achievable, relevant, and time bound. Through discussion and deliberation, the LEA and the department shall enter into an agreement on the goals or objectives of the locally determined measure.

Section 4. Calculations for Reporting Categories. (1) Proficiency for reading/writing and mathematics shall be rated equally in elementary, middle and high schools and LEAs[in districts] by awarding points as described in paragraph 2(b)(e) of this section.

(2) The separate academic indicator for science,and social studies, and writing shall be ratedequally in elementary, middle and high schools and in LEAs[for science and social studies] by awarding points as described in paragraph 2(b)(e) of this section. The highest proportion shall be attributed to science and social studies.

(a) [For proficiency and the separate academic indicator, weights shall be equal across content areas.

(b) For any[if data is not available for the] content area (reading/writing), mathematics, science,and social studies, and writing where data are not available, the data of the remaining content areas[weight] shall be redistributed proportionally across proficiency and separate academic indicator.

(b)(e) The following chart shall be used to calculate the points for proficiency and the separate academic indicator:

| Proficiency Levels | Points Awarded for Each Percent of Students |
|--------------------|---|
| Novice             | 0   |
| Apprentice         | .5  |
| Proficient         | 1   |
| Distinguished      | 1.25  |

(3) The achievement gap closure indicator that includes gap to group and gap to proficiency shall be calculated as established in this subsection.

(a) School achievement gap closure between student demographic comparison groups and reference groups shall be determined by:

1. Determining the student demographic groups to be included in this subsection, which shall include the following student demographic groups that have at least ten (10) students: African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White.

a. Comparing[Reference group compared to] African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White to a reference group. The reference group shall be the highest performing racial/ethnic student group that has at least ten (10) students and constitutes at least ten (10) percent of the students enrolled in the school;

b. Free/reduced-price meal eligible students compared to non-free/reduced-price meal eligible students;

c. Students with disabilities who have an IEP compared to students without IEPs; and

d. English learners compared to non-English learner students.

2. Combining scores for each tested content area assessment using

points in accordance with paragraph 2(b)(e) of Section 4 of this administrative regulation for each student demographic group.

3. Using a statistical analysis for each pair of comparison-reference groups, the department shall determine if a significant gap has been sufficiently reduced between the comparison group and reference group and is both statistically and practically significant. If so, the gap closure for the student demographic group will be considered "significant" and the school will receive one (1) gap closure point. If the gap between groups is not significantly reduced, the gap will be considered "not significant" and the school will receive zero gap closure points.

(b) School achievement gap closure between student demographic groups and proficiency shall be determined as follows:

1. Determine which student demographic groups have at least ten (10) students that are to be included in this subsection. Student demographic groups included in the subsection shall include:

- White;
- African American;
- Hispanic or Latino;
- Asian;
- Native Hawaiian or other Pacific Islander;
- American Indian or Alaska Native;
- Two (2) or more races/ethnicities;
- Students in poverty based on eligibility for free/reduced-price meals;
- Students with disabilities who have an IEP;
- English learners; and
- A consolidated student group.

2. Combining scores for all content area assessments into an index using points in accordance with paragraph 2(b)(e) of Section 4 of this administrative regulation for each student demographic group.

3. Compare the index[percent proficient and above] to the current year's annual target developed by the Kentucky Department of Education for each student demographic group in the combined content areas of reading/writing, mathematics, science,and social studies, and writing.

4. If the current year index[percent proficient] is equal to or greater than the current year's annual target for each student demographic group in the combined content areas of reading/writing, mathematics, science,and social studies, and writing, the student demographic group gap shall be considered "reduced" and the school shall[will] receive two (2) gap closure points.

5. If the current year index[percent proficient] is equal to or greater than the current year's annual target for each student demographic group in the combined content areas of reading/writing, mathematics, science,and social studies, and writing minus a sufficient percentage point, the student demographic group gap is considered "partially reduced" and the school shall receive one (1) gap closure point.

6. If the current year index[percent proficient] is less than the current year's annual target for each student demographic group in the combined content areas of reading/writing, mathematics, science,and social studies, and writing minus a sufficient percentage point, the student demographic group gap is considered "not reduced" and the school shall receive zero gap closure points.

(c) Sum the total achievement gap closure points across all student demographic groups and divide by the number of student demographic groups for gap to group and gap to proficiency.

(d) Based on total achievement gap closure points, the Kentucky Department of Education shall conduct a standards setting process involving Kentucky educators and advised by technical experts shall place the school and LEA into categories of very low, low, medium, high, or very high.

(e) Each student demographic group shall have a minimum of ten (10) students per content area in the school or LEA in order to include[report] gap data in accountability.

(f) In calculating the achievement gap closure indicator, the reduction of achievement gap between student demographic groups shall be weighted thirty-three (33) percent and the reduction of the gap to proficiency shall be weighted sixty-seven (67) percent.

(4) Growth shall be rated for elementary and middle schools as established in this subsection.

(a) Novice and apprentice performance levels for growth calculations shall be subdivided into novice high, novice low; and apprentice high, apprentice low.



# VOLUME 44, NUMBER 9 – MARCH 1, 2018

(b) Based on prior and current year performance, points for student performance level shall be assigned from a growth value table based on a projection of student performance ~~[from a growth value table]~~ and reported using the following terms: less than catch up, catch up, keep up, and move up.

(c) The school calculation for mathematics shall be the sum of the total points from the growth value table for all students~~[each student]~~

| WIDA ACCESS score previous year | WIDA ACCESS score current year    |       |      |      |      |                                 |                                |                                  |
|---------------------------------|-----------------------------------|-------|------|------|------|---------------------------------|--------------------------------|----------------------------------|
|                                 | 1                                 | 1.5   | 2.0  | 2.5  | 3.0  | 3.5                             | 4.0                            | 4.5                              |
| 4.0                             | <del>-1.5</del><br><u>[-1.25]</u> | -1.25 | -1.0 | -.75 | -.50 | -.25                            | 0                              | <del>.25</del><br><u>[.45]</u>   |
| 3.5                             | <del>1.25</del><br><u>[-1.0]</u>  | -1.0  | -.75 | -.50 | -.25 | 0                               | .25                            | <del>.5</del><br><u>[-.25]</u>   |
| 3.0                             | -1.0                              | -.75  | -.50 | -.25 | 0    | .25                             | .50                            | <del>.75</del><br><u>[-.5]</u>   |
| 2.5                             | -.75                              | -.50  | -.25 | 0    | .25  | .50                             | .75                            | <del>1.0</del><br><u>[-.75]</u>  |
| 2.0                             | -.50                              | -.25  | 0    | .25  | .50  | .75                             | 1.0                            | <del>1.25</del><br><u>[-1.0]</u> |
| 1.5                             | -.25                              | 0     | .25  | .50  | .75  | 1.0                             | 1.25                           | <del>1.5</del><br><u>[-1.25]</u> |
| 1.0                             | 0                                 | .25   | .50  | .75  | 1.0  | <del>1.25</del><br><u>[1.0]</u> | <del>1.5</del><br><u>[1.0]</u> | <del>1.5</del><br><u>[1.25]</u>  |

divided by the total number of scores.

(d) The values in the growth value table below shall be used in calculating growth in this subsection.

| Growth Value Table |           |           |            |           |            |               |
|--------------------|-----------|-----------|------------|-----------|------------|---------------|
| Projected          | Novice    |           | Apprentice |           | Proficient | Distinguished |
| Current            | Low       | High      | Low        | High      |            |               |
| Distinguished      | -1.50 (L) | -1.25 (L) | -1.00 (L)  | -0.75 (L) | 0.00 (K)   | 0.25 (K)      |
| Proficient         | -1.00 (L) | -0.75 (L) | -0.50 (L)  | -0.25 (L) | 0.25 (K)   | 0.50 (M)      |
| Apprentice High    | -0.75 (L) | -0.50 (L) | -0.25 (L)  | 0 (L)     | 0.25 (C)   | 0.75 (M)      |
| Apprentice Low     | -0.50 (L) | -0.25 (L) | 0 (L)      | 0.25 (L)  | 0.50 (C)   | 1.00 (M)      |
| Novice High        | -0.25 (L) | 0 (L)     | 0.25 (L)   | 0.50 (C)  | 0.75 (C)   | 1.25 (M)      |
| Novice Low         | 0 (L)     | 0.25 (L)  | 0.50 (C)   | 0.75 (C)  | 1.00 (C)   | 1.50 (M)      |

Less than Catch Up (L)

Moving Up (M)

Catching Up (C)

Keeping Up (K)

(e) The school calculation for reading shall be the sum of the total points for all students~~[each student]~~ from the growth value table plus growth for English language proficiency as described in Section 4(4)(g) of this administrative regulation divided by the total number of scores.

(f) Progress toward achieving English proficiency by English learners shall be calculated as follows:

1. Individual growth shall be compared to prior year performance on an English proficiency exam.

2. The exit benchmark and English learner growth value table created~~[A standards setting process shall be conducted]~~ involving Kentucky educators and advised by technical experts shall be utilized~~[to determine exit criteria and a value table shall be generated]~~

3. Points for each English learner based on the English learner growth value table shall be summed.

a. Depending on further analysis, Kentucky may modify the value table and its use to reflect factors that may impact English learners' progress toward language proficiency, including age upon entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling.

b. The values in the growth value table below shall be used in calculating growth in this subsection.

4. Total points for English learners shall be added to the sum of the reading growth points for all~~[non-English learner]~~ students in reading as described in Section 4(4)(g) of this administrative regulation.

(g) For an overall school growth score, an average of reading scores that includes growth for English learners on an English proficiency exam and mathematics growth scores shall be calculated.

(5) The opportunity and access indicator shall be rated for elementary, middle,~~[and]~~ high schools, and LEAs as established in this subsection.

(a) Opportunity and access school calculation shall sum the total number of points for the categories for rich curricula, equitable access, and school quality~~[, and whole child supports]~~ based on data collected from Kentucky's student information system and other statewide systems for individual students.

(b) The Kentucky Board of Education shall approve the measures of opportunity and access including the accumulation of credit.

(c) A standard setting process shall be conducted involving Kentucky educators and advised by technical experts to determine very low to very high performance levels within opportunity and access.

(6) Transition readiness shall be rated as established by this subsection.

(a) A transition readiness percentage shall be calculated by dividing the number of high school graduates who have met measures of transition readiness plus the number of English learners who have achieved English language proficiency by the total number of graduates plus the number of graduates who have received English language services during high school. Credit for students obtaining an industry-recognized certification, licensure, or credential in specialized career pathways in state and regional high demand sectors as approved by Kentucky's Workforce Innovation Board is one and one-quarter (1.25) points. Credit for students obtaining all other readiness indicators is one (1.0) point.

(b) A transition readiness percentage shall be calculated for elementary and middle schools by dividing the number of students who have met a benchmark on a composite score that combines student performance on state-required tests in reading~~[/writing]~~, mathematics, science,~~[and]~~ social studies, and writing for transition readiness by the total number of accountable students.

(7) Graduation rate is the percentage of students completing the requirements for a Kentucky high school diploma compared to the cohort of students beginning in grade nine. Kentucky shall include a four (4) year cohort rate and an extended five (5) year cohort rate. Each rate shall be weighted equally.

(8) The overall rating shall be assigned as follows:

(a) The indicators for each school and LEA~~[district]~~ as identified in Section 3 of this administrative regulation shall contribute to the overall rating of schools and LEAs.

(b) Indicators identified in Section 3 shall have a rating of very low, low, medium, high, or very high by school and LEA level.

(9) An overall rating based upon performance on the set of indicators for elementary and middle schools, high schools, and LEAs shall be assigned during a standards setting process. The tables below illustrate some of the combinations of performance for each star rating:

(a) Overall ratings shall be reported using a five (5) star rating system to communicate performance of schools, LEAs, and the state with one (1) star being the lowest rating and five (5) stars being the highest rating.

(b) Each star rating reflects a combination of school performance on indicators. The range of performance in the tables elementary/middle schools, high schools and LEAs as shown below indicate the upper bound and the lower bound of performance described as very low, low, medium, high, and very high.

**VOLUME 44, NUMBER 9 – MARCH 1, 2018**

| Elementary/Middle Schools |   |   |  |                         |                      |   |                                   |  |
|---------------------------|---|---|--|-------------------------|----------------------|---|-----------------------------------|--|
| Overall Rating            | Proficiency (Reading <b>[Writing]</b> & Mathematics)  | Separate Academic Indicator (Science, <b>[&amp;]</b> Social Studies, <b>and Writing</b> ) | Growth (including English Language Learners) | Achievement Gap Closure | Opportunity & Access | Transition Readiness (Composite scores at grades 5 and 8) | Federal Student Group Designation | Notes  |
|                           | Note: Standard setting will confirm level of indicator performance necessary for the Star ratings.    |   |  |                         |                      |   |                                   | Can receive no higher than a 3-Star rating if Achievement Gap Closure is "Low (L)," "Very Low (VL)" or if identified for Targeted Support and Improvement (TSI). |
| 5 Stars                   | Very High<br>High   | Very High<br>High   | Very High<br>Low                             | Very High<br>High       | Very High<br>High    | Very High<br>High   | No designation                    |  |
| 4 Stars                   | Any 5-star combination except Achievement Gap Closure is Medium                                       |   |  |                         |                      |   | No designation                    | *Schools identified for Comprehensive Support and Improvement (CSI) are classified with a 1 Star rating.   |
|                           | One Medium, four High<br><br>Three Medium, two High   |   |  |                         |                      | High<br><br>Medium  |                                   |  |
| 3 Stars                   | Any 4- or 5-Star combination except Achievement Gap Closure is Low<br>Or Any 4- or 5-Star combination |   |  |                         |                      |   | No designation<br>TSI             |  |
|                           | Four Medium, one High<br><br>Four Medium, one Low   |   |  |                         |                      | High<br>Medium<br><br>High Low                            | No designation<br>or TSI          |  |
| 2 Stars                   | Three Medium, two Low<br><br>One Medium, four Low   |   |  |                         |                      | Medium<br>Low   | No designation<br>or TSI          |  |
| 1 Star                    | Six Low or Very Low<br>Or bottom 5%*  |   |  |                         |                      |   | <b>CSI or</b> TSI                 |  |

| High Schools   |   |   |   |                         |                        |                                |                                   |  |
|----------------|---|---|---|-------------------------|------------------------|--------------------------------|-----------------------------------|--|
| Overall Rating | Proficiency (Reading <b>[Writing]</b> & Mathematics)  | Separate Academic Indicator (Science, <b>[&amp;]</b> Social Studies, <b>&amp; Writing</b> ) | Other Academic Indicator Transition Readiness (including English Language Learners) | Achievement Gap Closure | Opportunity & Access   | Graduation Rate                | Federal Student Group Designation | Notes  |
|                | Note: Standard setting will confirm level of indicator performance necessary for the Star ratings.    |   |   |                         |                        |                                |                                   | Can receive no higher than a 3-Star rating if Achievement Gap Closure is "Low (L)," "Very Low (VL)" or if identified for Targeted Support and Improvement (TSI). |
| 5 Stars        | Very High<br>High   | Very High<br>High   | Very High<br>High   | Very High<br>High       | Very High<br>Very High | Very High<br>Very High         | No designation                    |  |
| 4 Stars        | Any 5-star combination except Achievement Gap Closure is Medium                                       |   |   |                         |                        |                                | No designation                    | *Schools identified for Comprehensive Support and Improvement (CSI) are classified with a 1 Star rating.   |
|                | One Medium, four High<br><br>Three Medium, two High   |   |   |                         |                        | High<br>Medium                 | No designation                    |  |
| 3 Stars        | Any 4- or 5-Star combination except Achievement Gap Closure is Low<br>Or Any 4- or 5-Star combination |   |   |                         |                        |                                | No designation<br>TSI             |  |
|                | Four Medium, one High<br><br>Four Medium, one Low   |   |   |                         |                        | High<br>Medium<br><br>High Low | No designation<br>or TSI          |  |
| 2 Stars        | Three Medium, two Low<br><br>One Medium, four Low   |   |   |                         |                        | Medium Low                     | No designation<br>or TSI          |  |
| 1 Star         | Six Low or Very Low<br>Or bottom 5%*  |   |   |                         |                        |                                | <b>CSI or</b> TSI                 |  |



**VOLUME 44, NUMBER 9 – MARCH 1, 2018**

| LEA            |  |  |  |                         |                      |  |                                       |   |
|----------------|--|--|--|-------------------------|----------------------|--|---------------------------------------|---|
| Overall Rating | Proficiency (Reading <u>[Writing]</u> & Mathematics)   | Separate Academic Indicator (Science, <u>[&amp;]</u> Social Studies, <u>&amp;</u> <u>Writing</u> ) | Growth (including English Language Learners) | Achievement Gap Closure | Opportunity & Access | Transition Readiness (Composite at grades 5 and 8, High school includes English language learners) | Graduation Rate (4 and 5 year cohort) | Notes   |
|                | Note: Standard setting will confirm level of indicator performance necessary for the Star ratings. |  |  |                         |                      |  |                                       | Can receive no higher than a 3-Star rating if Achievement Gap Closure is "Low (L)," "Very Low (VL)" or there is a significant number of schools identified as CSI or TSI. |
| 5 Stars        | Very High  | Very High  | Very High                                    | Very High               | Very High            | Very High  | Very High                             |   |
|                | High   | High   | Low  | High                    | Very High            | High   | High                                  |   |
| 4 Stars        | Any 5-star combination except Achievement Gap Closure is Medium                                    |  |  |                         |                      |  | High Medium                           |   |
|                | One Medium, five High  |  |  |                         |                      |  |                                       |   |
|                | Three Medium, three High   |  |  |                         |                      |  |                                       |   |
| 3 Stars        | Any 4- or 5-Star combination except Achievement Gap Closure is Low Or Any 4- or 5-Star combination |  |  |                         |                      |  | High Medium                           |   |
|                | Five Medium, one High  |  |  |                         |                      |  |                                       |   |
|                | Five Medium, one Low   |  |  |                         |                      |  |                                       |   |
| 2 Stars        | Four Medium, two Low   |  |  |                         |                      |  | Medium Low                            |   |
|                | Two Medium, four Low   |  |  |                         |                      |  |                                       |   |
| 1 Star         | Six Low or Very Low  |  |  |                         |                      |  | Low                                   |   |

(c) The relationship between each category and the approximate weight of proficiency, a separate academic indicator for science, ~~[and]~~ social studies, ~~and writing~~, achievement gap closure, growth, transition readiness, opportunity and access, and graduation rate shall be included in the overall rating.

(d) The **individual indicators and the** overall rating shall be developed through a standard setting process involving Kentucky educators and advised by technical experts. During the standard setting process, the approximate weights in the following table shall be considered. The proposed ranges in the table indicate the relative emphasis between indicators. The ranges are set to guide Kentucky educators to determine the combination of performance from very high to very low within the indicator during standard setting.

| Overall Accountability Weights |  |   |  |                         |                      |   |                                       |
|--------------------------------|--|---|--|-------------------------|----------------------|---|---------------------------------------|
|                                | Proficiency (Reading <del>[Writing]</del> and Mathematics) | Separate Academic Indicator (Science, <del>[and]</del> Social Studies, <del>and Writing</del> ) | Growth (including English Language Learners) | Achievement Gap Closure | Opportunity & Access | Transition Readiness (Composite at grades 5 & 8) (High school includes English language learners) | Graduation Rate (4 and 5 year cohort) |
| Elementary/ Middle Schools     | 15-25  | 15-25   | 20-30  | 15-25                   | 10-20                | 5-10  | ---                                   |
| High Schools                   | 10-20  | <b>10-40[10-20]</b>   | ---  | <b>10-25[15-25]</b>     | 10-20                | <b>15-30[20-30]</b>   | 5-15                                  |
| Districts                      | 10-20  | 10-20   | 10-20  | 10-20                   | 10-20                | 10-20   | 5-15                                  |

(e) A school shall receive a federal student group designation for statistically significant achievement gaps or low-performing students ~~and shall [Schools or LEAs with statistically significant achievement gaps may]~~ not be rated above three stars.

**(f) Schools and LEAs shall not be rated above three (3) stars if they:**

**1. Have an achievement gap closure indicator of low (L) or very low (VL), or**

**2. Are identified for targeted support and improvement (TSI), or**

**3. Have statistically significant achievement gaps.**

~~**(g)(f) [Using the pool of schools identified in the lowest star ratings,]**~~ Kentucky will ~~**identify[rank]**~~ schools to determine bottom five (5) percent and ten (10) percent based on the indicators of ~~**the 5-star system[proficiency, separate academic indicator for science and social studies, and growth at elementary and middle and the indicators of proficiency, separate academic indicator for science and social studies, and transition readiness at high school].**~~

~~**(h)(g)**~~ If data cannot be calculated for an indicator, the weights shall be redistributed ~~**proportionally[using an equal proportion]**~~ to ~~**remaining**~~ indicators that shall be reported for the school or LEA.

(10) School accountability indicators shall be assigned as follows:

(a) Students enrolled for a full academic year shall be included in the calculations for proficiency, a separate academic indicator for science, ~~[and]~~ social studies, ~~and writing~~, achievement gap closure, growth, and transition readiness for a school and LEA.

(b) Opportunity and access calculations shall be based on the students' enrollment.

(c) Graduation rate calculations shall be based on the students' final enrollment.

(d) Student demographic groups shall have a minimum of ten (10) students to be included in school rating calculations.

(e) In accordance with KRS 158.6455, schools and districts shall be placed into one (1) of five (5) star ratings established by a standards-setting process utilizing results from the first operational administration of assessments in 2018-19. The process shall:

## VOLUME 44, NUMBER 9 – MARCH 1, 2018

1. Be advised by the National Technical Advisory Panel on Assessment and Accountability; the School Curriculum, Assessment and Accountability Council; and the Office of Education Accountability; and

2. Use accepted technical procedures and involve Kentucky school and district administrators and teachers.

Section 5. Public reporting requirements. (1) The Kentucky Department of Education shall report disaggregated data for each indicator of the state assessment and accountability system.

(2) Progress on long-term and interim goals shall be reported publicly as required by the federal Every Student Succeeds Act. Goals shall be developed for every student group, including all students, for academic achievement in each content area of reading[~~writing~~], mathematics, science, social studies, and writing, and the content areas combined; graduation rate based on four (4) year and five (5) year adjusted cohorts; and progress on English proficiency for English learners.

(3) The goal for academic achievement operationalizes both the improvement of proficient and distinguished performance for all students and each student group and the reduction of gaps in student group performance by fifty (50) percent by 2030. Each student group of ten (10) or more students shall be compared to the reference group of the highest performing student group that is at least ten (10) percent of the student population.

(4) Goals for graduation rate shall be generated for a four (4) year adjusted cohort to ninety-five (95) percent for all students and an extended five (5) year cohort to ninety-six (96) percent for all students. The goal for progress on English language proficiency shall be based on the percent of students making progress toward attainment of the English language.

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.

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 Kentucky Department of Education (As Amended at ARRS, February 12, 2018)

#### 704 KAR 3:540. Uniform academic course codes.

RELATES TO: KRS 156.070, 156.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) gives the Kentucky Board of Education the management and control of the common schools. KRS 156.160[~~(4)~~] requires the Kentucky Board of Education to promulgate administrative regulations for the courses of study[~~that are~~] administered in the common schools. This administrative regulation establishes a uniform system of coding academic courses in schools and districts through the student information system. A uniform course code is required to create accurate data regarding courses offered that is utilized by schools, districts, the Department of Education, the Education[~~Educational~~] Professional Standards Board, and the Office of Education Accountability.

Section 1. Maintenance of Uniform Academic Course Codes. The Kentucky Department of Education shall maintain a system for uniform academic course codes and all course codes, course titles,

and course descriptions shall be identified. The Kentucky Department of Education shall annually review uniform academic course codes to identify courses for revision, addition, and deletion. The Commissioner of Education shall annually approve any changes to uniform academic course codes and shall publish and distribute updated course information to all districts no later than January 31 of each year.

Section 2. Uniform Academic Course Code Requirements. (1) Local districts and schools shall use the uniform academic course codes, distributed by the Commissioner of Education annually,[~~listed and described in the Academic Course Code List,~~] to classify all courses offered in each school when reporting to the Kentucky Department of Education.

(2) Reporting to the Kentucky Department of Education shall include the listing and linking of uniform academic courses[~~if the listing of academic courses is required~~].

Section 3[2]. District and School Course Descriptions. The linking of local district and school codes to the uniform academic course codes shall be performed annually by district and school staff using the student information system.

Section 4[3]. Annual District and School Audits. The Kentucky Department of Education shall annually audit and report the use or misuse of uniform academic course codes by districts and schools. [Section 4. Incorporation by Reference. (1) "Academic Course Code List", April 2010, is incorporated by reference.

(2) ~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Teaching and Learning, 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 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.  
MARY GWEN WHEELER, Chairperson

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, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (As Amended at ARRS, February 12, 2018)

#### 704 KAR 7:090. Homeless Children and Youth Education Program.

RELATES TO: KRS 156.035, 156.029, 42 U.S.C. 11432

STATUTORY AUTHORITY: KRS 156.160[~~156.035~~], 156.070

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with the McKinney-Vento[~~Stewart-B. McKinney~~] Homeless Assistance Act as amended under the Every Student Succeeds Act of 2015 [~~Amendments of 1990~~], the Kentucky Department of Education, when applying to the U.S. Department of Education for participation in programs for homeless children and unaccompanied youth under the Act, shall submit an approvable plan and satisfactory assurances that all requirements of the law set forth in 42 U.S.C. Section 11432 shall be met. This administrative regulation implements the Kentucky Board of[~~State Board for Elementary and Secondary~~] Education's duties pursuant to KRS 156.029 and 156.035 [~~duties~~] to develop education policy, to implement acts of Congress appropriating and apportioning

funds to the state and to provide for the proper implementation of federal law in accordance with the state's current plan. This administrative regulation establishes[sets forth] criteria regarding residency policies, the provision of a free, appropriate public education to homeless children and unaccompanied youth, provides informal procedures for resolution of disputes regarding educational placement of homeless children and unaccompanied youth, provides grants to local educational agencies for the enrollment, retention, and educational success of homeless children and unaccompanied [homeless] youth, and provides for an annual count of homeless children and unaccompanied[homeless] youth.

Section 1. Definitions. (1) "Homeless child", "homeless children", "[homeless youth]", and "homeless student" means a child or children who are between the ages of birth[five (5)] and twenty-one (21) years inclusive and who lack a fixed, regular, and adequate nighttime residence. The term includes children and youth who are:

(a) Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason[Living with their families in hotels, motels, public or private shelters or other temporary living arrangements due to the lack of a fixed, regular and adequate residence];

(b) Are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations[Residing in special care homes such as runaway shelters or spouse abuse centers due to the lack of a fixed, regular and adequate residence];

(c) Are living in emergency or transitional shelters[Placed by parents under the care of relatives or nonrelatives due to the homeless situation of the family or due to their impoverished condition which may cause the family members to live separately from one another];

(d) Are abandoned in hospitals[Sleeping in a public or private place not ordinarily used as a regular sleeping accommodation for human beings];

(e) Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings[Sick or abandoned children staying in hospitals, who would otherwise be released if they have a place to go];

(f) Are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and[Living in campgrounds or similar temporary sites because they lack living accommodations that are fixed, regular and adequate. Those living in campgrounds on a long-term basis in adequate accommodations shall not be considered homeless; or]

(g) Migratory children who qualify as homeless because they are living in circumstances described above[Runaway or throwaway youth who have been "thrown out" of their home environment and who are living in a shelter, on the street, or who move from one friend's house to another in a cycle of transiency].

(2) "Free, appropriate public education" means the educational programs and services that are provided the children of a resident of a state, and that are consistent with state school attendance laws. These [it includes] educational programs and services, for which the child meets the eligibility criteria, may include:

(a) Magnet schools;

(b) Charter schools;

(c) Compensatory education programs for the disadvantaged;

(d) Educational programs for the handicapped and students with limited English proficiency;

(e) Programs in vocational education;

(f) Programs for the gifted and talented;

(g) School meals programs;

(h) Extended school programs;

(i) Preschool programs; and

(j) Programs developed by the family resource and youth services centers[, such as magnet schools, charter schools, compensatory education programs for the disadvantaged, and

educational programs for the handicapped and for students with limited English proficiency; programs in vocational education; programs for the gifted and talented; school meals programs; extended school programs; preschool programs; and programs developed by the family resource and youth services centers].

(3) "School of origin" means[shall mean] the school that the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled. Consistent with McKinney-Vento as reauthorized by ESSA, this shall include preschool and designated receiving schools at the grade level for all feeder schools when a student completes the final grade level served by the school of origin.

(4) "Unaccompanied youth" means[shall mean] a youth that meets the definitions of unaccompanied youth and homeless included in the McKinney-Vento Homeless Assistance Act.

Section 2. Criteria for Program Implementation. Homeless children or unaccompanied[homeless] youth who reside within the boundaries of a local school district shall be provided a free, appropriate public education. Programs for homeless children and unaccompanied youth shall be provided in a timely fashion and shall be ensured by the following actions:

(1) Each local district shall designate a person in the district to be a homeless child education liaison[coordinator and] shall submit the name of the person to the Kentucky Department of Education, and shall allocate sufficient time to the homeless child education liaison to perform the required responsibilities. The homeless liaison's[coordinator's] responsibilities shall be to:

(a) Obtain all necessary records, including birth certificates and immunization records, of each homeless student and unaccompanied youth identified as living within the boundaries of the school district and immediately[, as expeditiously as legally possible,] place the student in appropriate programs. In cases where records are not readily available, the liaison[coordinator] shall contact the school district(s) of last attendance for verbal confirmation of essential information. The liaison[coordinator] shall assist the homeless student or unaccompanied youth to obtain essential records which are not in existence[in order that enrollment shall not be delayed or denied];

(b) Receive and resolve any requests for resolution of disputes related to the educational placement of homeless students or unaccompanied youth within the district. The liaison[coordinator] shall provide the necessary information to the Department of Education for final resolution whenever such a request is received and is not resolved;

(c) Assist the homeless student or unaccompanied youth to obtain the appropriate program and services, including transportation and referrals to medical, dental, mental, and other appropriate services;

(d) Develop procedures to ensure that homeless student or unaccompanied youth records are readily available upon request by a new receiving school district[and]

(e) Develop a relationship[liaison] with known homeless service providers and state agencies in the community to identify and enroll homeless students or unaccompanied youth living there [-];

(f) Review local data indicating the prevalence of homelessness in the community and assess needs of local homeless children and unaccompanied youth with LEA administrators based on the review of data;

(g) Ensure school personnel providing McKinney-Vento services receive professional development and other support related to addressing the challenges of homelessness and supporting homeless children and unaccompanied youth;

(h) Ensure unaccompanied youth are enrolled and receive support to accrue credits and access higher education; and

(i) Receive annual department-approved [department approved] training[, to cover at least the following topic areas:

1. The rights and services provided for homeless children and unaccompanied youth;

2. Identification of homeless children and unaccompanied youth;

3. The state dispute resolution process, data utilization, monitoring, and reporting requirements under this regulation; and

4. Best practices to serve homeless children and unaccompanied youth.

(2) Each local district shall designate a person in the district to be a foster care liaison, shall submit the name of the person to the Kentucky Department of Education, and shall allocate sufficient time to the foster care liaison to perform required responsibilities. The foster care liaison may also be the homeless education liaison. The foster care liaison's responsibilities shall be to ensure that:

(a) A child in foster care remains in his or her school of origin, unless it is determined that remaining in the school of origin is not in that child's best interest;

(b) If it is not in the child's best interest to stay in his or her school of origin, the child is immediately enrolled in the new school even if the child is unable to produce records normally required for enrollment; and

(c) That the new (enrolling) school immediately contacts the school of origin to obtain relevant academic and other records.

Section 3. Residency. The school district of residence shall be the district in which the homeless student or unaccompanied youth physically resides with his or her parent or legal custodian, unless by reason of marriage, emancipation, or basic physical necessity the child resides elsewhere. The school district of residence shall ensure that:

(1) The homeless student or unaccompanied youth is enrolled in the school attendance area in which he or she is physically located or that the homeless student's or unaccompanied youth's education is continued in the school of origin for the remainder of the academic year, or in any case in which the family becomes homeless between academic years, for the following academic year; or enroll the child or youth in any school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend, whichever is in the best interest of the homeless student or unaccompanied youth.

(2) In determining the best interests of the child or youth for purposes of making a school assignment under Section 3(1) of this administrative regulation, consideration shall be given to a request made by the parent or unaccompanied youth regarding school selection.

(3) A homeless student or unaccompanied youth shall not be denied enrollment in the school district of residence due to the absence of a parent or a court-appointed guardian or custodian. Such a homeless student or unaccompanied youth shall be enrolled and provided educational services until such time that the school district can substantiate that the enrollment is contrary to Section 1(2) of this administrative regulation.

(4) In the absence of a parent, and a court-appointed custodian or guardian, any medical, dental, and other health services may be rendered to a homeless student or unaccompanied youth who is a minor of any age when, in the judgment of the school principal or other professional that the risk to the minor's health is of such a nature that treatment should be given without delay and the requirements of consent would result in delay or denial of treatment as stated in KRS 214.185(3)(4).

(5) Homeless children or unaccompanied youth shall not include any individual imprisoned or otherwise detained by act of Congress or a state law. Nor shall a child be classified as "homeless" to circumvent state law and administrative regulations which:

(a) Prohibit the attempted enrollment of nonresident students for the express purposes of obtaining school accommodations and services without the payment of tuition to the nonresident school district or for the purpose of obtaining specific programs not available in the school of residence; or

(b) Regulate interschool athletic recruiting by the Kentucky High School Athletic Association.

(6) School district policy shall not delay or deny the immediate [timely] provision of educational placement and appropriate services to the homeless student or unaccompanied youth, including policies related to guardianship issues.

Section 4. Resolution of Disputes. Disputes arising between or among the school district of residency; another school district; and the parent, [homeless] youth, or person in parental relationship to the homeless student or unaccompanied youth regarding the school district in which the child shall attend school or the educational placement of the homeless student or unaccompanied youth shall be resolved through the following procedures:

(1) The local district homeless child education liaison shall ensure immediate enrollment and the provision of services to the homeless child or unaccompanied youth throughout the dispute resolution process.

(2) All concerns regarding the education of a homeless child or unaccompanied youth shall be referred to the local district liaison. If a complaint arises regarding services or placement of a homeless child or unaccompanied youth the school district's homeless child education liaison shall inform the homeless student or unaccompanied youth of his or her rights under the McKinney-Vento Act and this administrative regulation.

(3) The local district liaison shall make a determination within a reasonable number of days as to the complaint. The liaison will document this and all subsequent communications, determinations, and ~~evidence~~[evidences]. A copy of that determination shall be presented to the complainant. If the complaint is not resolved, the complainant will be advised by the local district liaison of the opportunity to present a written request for mediation. The local district liaison shall assist the representative to complete a written request for mediation, including an indication of the specific point at issue.

(4) The mediation shall be scheduled within a reasonable number of days of the written request and shall be convenient to the needs of the homeless student or unaccompanied youth. The district liaison, the district(s) representative(s), and the child's representative shall be present. The local district homeless liaison shall facilitate the mediation.

(5) During the ~~mediation~~[hearing], the school district(s) shall discuss considerations that led to the placement decision and the specific point in issue determined previously. The mediation may also include discussion of the ability of the school district to provide continuity in educational programs, the need of the homeless student or unaccompanied youth for special instructional programs, the amount of time and arrangements required to transport the student to the original school district, the age of the homeless student or unaccompanied youth and the school placement of siblings, and the time remaining until the end of the semester or the end of the school year. Documentation regarding those proceedings must be provided with any appeal to the state homeless coordinator.

(6) Where an agreement cannot be reached ~~[among]~~ by the parties, either party may request review by the state homeless coordinator. Upon written request, the state coordinator shall make a determination and communicate with the involved parties to discuss available alternatives and seek to resolve the dispute. Any party requesting review by the state coordinator must provide reasoning for the review including specific questions of law ~~[and]~~for fact.

(7) Where such a request for the assistance of the state coordinator is made, the school district of residence shall provide sufficient information as required, including:

(a) A description of the situation that prompted the complaint;

(b) The name(s) and age(s) of the child or children involved;

(c) The name(s) of the involved school district personnel and the school district or districts involved; and

(d) Copies of any documentation used up to that point including reasoning for district decisions, appropriate evidence to substantiate reasoning, and other evidence the district sees relevant.

(e) All information is subject to the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g).

(8) The state coordinator shall collect appropriate evidence, review such evidence, and provide an initial decision. Parties may request that the state coordinator's decision be reviewed by a three (3) member panel convened by the state coordinator within the Department of Education. The three (3) member panel shall review

the state coordinator's decision and either adopt the decision or reject it. If rejected, the panel shall provide an alternative finding with appropriate reasoning. The panel's decision is a final decision and not appealable. A final decision will be rendered within a reasonable number of days after receiving a complaint.

(9) Students must be immediately enrolled in the school in which enrollment is being sought in the case of a dispute, including unaccompanied youth. Enrollment must continue until the final resolution of the dispute, including all available appeals.

(10) Unaccompanied youth have the right to receive such written notice, as well as parents or guardians accompanying their children. Written explanation is required of decisions made by the school, LEA, or SEA and must be in an understandable form. The school district's homeless child education coordinator shall inform the representative of the homeless student of the right to an informal hearing with the school district(s) when a dispute arises about the placement of the homeless student. The coordinator shall assist the representative to complete a written request for the hearing which shall be based on a placement that was initiated, or declined to be initiated, by the school district not more than two (2) school weeks prior to the request.

(2) The informal hearing shall be scheduled within two (2) days of the written request and shall be convenient to the needs of the representative of the homeless student.

(3) During the hearing, the school district(s) shall discuss any considerations that led to the placement decision which may include the ability of the school district to provide continuity in educational programs, the need of the homeless student for special instructional programs, the amount of time and arrangements required to transport the student to the original school district, the age of the homeless student and the school placement of siblings, and the time remaining until the end of the semester or the end of the school year.

(4) In cases where an agreement cannot be reached among all involved parties, either party may request the assistance of the state homeless children education coordinator. Upon written request, the coordinator shall meet with the involved parties to discuss available alternatives and seek to resolve the dispute.

(5) In cases of such a request for the assistance of the state coordinator, the school district of residence shall inform the Kentucky Department of Education and shall provide sufficient information as required.

(6) The placement and services for the homeless student shall be continued pending the resolution of the dispute by the Department of Education.]

Section 5. Annual Count. The Department of Education shall annually conduct a count of all homeless children and unaccompanied youth in the state as follows:

(1) Local school districts shall utilize the state student information system for the collection of data regarding homeless children and unaccompanied youth [Survey instruments shall be distributed to local school districts, related social agencies, and appropriate service providers no later than October 1 of each year].

(2) Local school districts [social agencies, and service providers] shall report [take] an unduplicated count by school of homeless children and unaccompanied youth via the state student information system [and shall return the completed forms] to the Department of Education according to the time lines provided.

(3) The Department of Education shall develop procedures as required to ensure that the homeless child count is accurate and verifiable.

Section 6. Local Education Agency Grants for the Education of Homeless Children and Unaccompanied Youth. The Kentucky Department of Education shall make grants to local education agencies (LEA) when such funds become available through a competitive application process. Grants shall [will] be awarded to LEAs based upon the review and rating of their applications. (1) Not less than fifty (50) percent of amounts provided under a grant to local districts shall be used to provide primary services of tutoring, remedial education services, or other education services to homeless children or unaccompanied youth [homeless youths].

(2) Not less than thirty-five (35) nor more than fifty (50) percent

of amounts provided to local districts shall be used for related activities including expedited evaluations, professional development for school personnel, referrals for medical, dental, mental and other health services, transportation, before- and after-school care, and school supplies.

(3) A local district that desires to receive a grant shall submit an application to the Kentucky Department of Education. Each application shall include:

(a) The number of homeless children and unaccompanied youth enrolled in preschool, elementary and secondary school, the needs of such children, and the ability of the district to meet these needs;

(b) A description of the services and programs for which assistance is sought and the problems sought to be addressed through the provision of such services and programs (i.e., enrollment, retention, and educational success);

(c) An assurance that assistance under the grant shall supplement and not supplant funds used before the award of the grant for purposes of providing services to homeless children and unaccompanied youth [homeless];

(d) A description of policies and procedures that the district shall implement to ensure that activities carried out by the district shall not isolate or stigmatize homeless children and unaccompanied youth [homeless youths];

(e) A description of coordination with other local and state agencies that serve homeless children and unaccompanied youth [homeless youths]; and

(f) Other criteria the Kentucky Department of Education deems appropriate. [Section 7. The "Special Amendment to School Data Form for Homeless Children/Youth" dated July 1992, and the "Homeless Children and Youth Education Program Educational and Related Services for Homeless Students Grant Application", dated May, 1993, are hereby adopted and incorporated by reference. These documents may be inspected, copied, and obtained from the Department of Education, 1715 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.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 [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

**DEPARTMENT OF WORKPLACE STANDARDS**  
**Division of Occupational Health and Safety Compliance**  
**Division of Occupation Safety and Health**  
**Education and Training**  
**(As Amended at ARRS, February 12, 2018)**

**803 KAR 2:505 Cranes and derricks in construction.**

RELATES TO: KRS 338.015, 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. This administrative regulation establishes [contains] the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(2) [(4)] "Employee" is defined by KRS 338.015(2).

(3) [(5)] "Employer" is defined by KRS 338.015(1).

(4) [(6)] "Established federal standard" is defined by KRS 338.015(10).



VOLUME 44, NUMBER 9 – MARCH 1, 2018

~~(5) [(7)]~~ "National consensus standard" is defined by KRS 338.015(9).

~~(6) [(8)]~~ "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

~~(7) [(9)]~~ "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

~~(8) [(10)]~~ "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as established[modified] by the definitions~~[established]~~ in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with the following established federal standards[federal regulations] published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1400-1926.1441, effective July 1, 2017~~[July 1, 2014]~~; and

(2) The amendments to 29 C.F.R. 1926.1427 published in the November 9, 2017 Federal Register, Volume 82, Number 216.~~[(2) The amendments to 29 C.F.R. 1926.1427 published in the September 26, 2014 Federal Register, Volume 79, Number 187.]~~

Section 3. (1) 29 C.F.R. 1926.1423(e)(1)(iii) shall be replaced with/is amended to read as follows: "On horizontal lattice booms where the fall distance is ten (10) feet or more."

(2) 29 C.F.R. 1926.1423(f) shall be replaced with/is amended to read as follows: "For assembly – disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking – working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck."

(3) 29 C.F.R. 1926.1423(h)(2) shall be replaced with/is amended to read as follows: "For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking – working surface with an unprotected side or edge more than ten (10) feet above a lower level."

DERRICK RAMSEY, Chairman

APPROVED BY AGENCY: December 4, 2017

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

CONTACT PERSON: Mike Pettit, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-4069, fax (502) 564-1682, email [Mike.Pettit@ky.gov](mailto:Mike.Pettit@ky.gov).

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(As Amended at ARRS, February 12, 2018)**

**811 KAR 1:215. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.**

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802, 230.990

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.770(1) establishes the Kentucky standardbred development fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund.

KRS 230.802(2)(b) requires[authorizes] the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions. (1) "Commission" means the Kentucky Horse Racing Commission.

(2) "Consolation" means the race following a series of preliminary legs for the next preferred horses, as set forth in section 8 of this administrative regulation, which did not qualify for the finals of each racing division of the Kentucky Sire Stakes program.

(3) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sire[Sires] Stakes Program.

(4) [(3)] "Kentucky-bred" means, for the purposes of this administrative regulation, a standardbred horse that is:

(a) Foaled out of a standardbred mare that is registered with the commission and is a resident of Kentucky as provided in this administrative regulation; or

(b) Sired by a standardbred stallion that meets the requirements of this administrative regulation.

(5) [(4)] "Kentucky Sire[Sires] Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year old Kentucky-bred fillies and colts, both trotting and pacing, and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders' Incentive Fund.

(6) [(5)] "Kentucky Standardbred Breeders' Incentive Fund" or "KSBIF" means the trust and revolving fund as established[set-out] in KRS 230.802.

(7) [(6)] "Kentucky Standardbred Development Fund" or "KSDF" means the trust and revolving fund as established[set-out] in KRS 230.770.

(8) [(7)] "Stallion residing in Kentucky" means a stallion physically located and standing in Kentucky for 180 days of the calendar year in which the stallion is registered that does not service mares in any other state, jurisdiction, or country outside of Kentucky during the calendar year in which the stallion is registered.

(9) [(8)] "USTA" means the United States Trotting Association.

Section 2. Domicile Requirements. (1) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion for breeding purposes and to have his progeny eligible for the KSDF or KSBIF shall register the stallion with the commission by December 31st of the year of conception of the horse sought to be eligible. Standardbred stallions not residing in Kentucky are not required[do not need] to register with the commission.

(2) All standardbred stallions shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency whether residing in Kentucky or not.

(3) [(a)] A standardbred stallion shall be registered by completion and submission of[on] the KSDF/KSBIF Stallion Certificate of Eligibility Form, KHRC 215-2~~[12/16]~~. [(b) A standardbred stallion that satisfies the provisions of this section shall be considered a registered stallion for purposes of this administrative regulation.]

(4) [(3)] An owner, lessee, manager, or syndicate manager of a standardbred mare who desires to use the mare for breeding purposes and to have her progeny eligible for the KSDF or KSBIF shall register the mare by December 31st of the year of conception of the horse sought to be eligible.

(a) ~~[Beginning January 1, 2017, in]~~ In order to be eligible for registration, the mare shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall have resided in Kentucky for a

## VOLUME 44, NUMBER 9 – MARCH 1, 2018

period of not less than 180 days in the calendar year of conception of the horse sought to be eligible. If a horse is conceived by embryo/[ovum transplant (ET), both the donor mare and recipient mare shall be registered during the year of conception, and the recipient mare shall reside in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(b) The mare shall be registered on the KSDF/KSBIF Mare Certificate of Eligibility Form, KHRC 215-3[~~12/17~~12/16].

(c) A standardbred mare that satisfies the provisions of this section shall be considered a registered mare for purposes of this administrative regulation.

(5)[(4)] Registrations shall[must][shall] be[physically] received by the commission by the close of business or postmarked on the deadline established in this section in order to be eligible.

(6)[(5)] An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBIF shall be responsible for:

(a) The registrations and records of the farm where the stallion stands or the mare resides; and

(b) Complying with all applicable[the] requirements of this administrative regulation.

Section 3. Eligibility. (1) In order to qualify for the Kentucky Sire Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred and maintain eligibility for the KSDF and KSBIF.

(2)(a) Except as provided by paragraph (b) of this subsection, only a foal that is the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo/[ovum transplant (ET)], shall be eligible for harness racing in Kentucky.

(b) Natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare shall also be eligible.

(3) Any future offspring of foals ineligible for racing under this section shall be ineligible for harness racing in Kentucky.

Section 4. Disputes. (1) If the commission determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion or mare contains false or misleading information, or that an owner, lessee, stallion manager, manager, or syndicate manager of a registered stallion or registered mare has failed to furnish information[the commission has requested] relating to the registration or renewal of a stallion or mare, the commission shall:

(a) Temporarily suspend or deny the registration of the stallion or mare; and

(b) Summon the person who committed a violation listed in this subsection, and any person who has knowledge relating to the violation, to appear before the commission at a hearing pursuant to 811 KAR 1:105.

(2) After the hearing, the commission shall determine whether the violation was willful.

(a) If the commission finds the violation was willful, the commission shall do one (1) or more of the following[~~based on the degree of seriousness of the willful violation~~]:

1. Deny the registration;
2. Suspend the registration;
3. Revoke the registration; or

4. Bar the owner, lessee, stallion manager, manager, or syndicate manager who willfully committed the violation from further registering stallions or mares to the KSDF and KSBIF.

(b) If the commission finds the violation was not willful, the commission shall rescind the temporary denial, suspension, or revocation of the registration.

(3) If a person summoned by the commission fails to respond to the summons, the commission:

(a) Shall suspend or deny the registration;

(b) Shall notify the person in writing of the action taken by the commission; and

(c) May bar the owner, lessee, stallion manager, manager, or syndicate manager who committed the violation from further registering stallions or mares to the KSDF and KSBIF, based on the degree of seriousness of the violation.

Section 5. Rules of Racing. Kentucky ~~Sire~~[Sires] Stakes races in which any part of the purse is provided by the KSDF or KSBIF, the requirements for which races are established in Sections 6 through 24 of this administrative regulation, shall be subject to 811 KAR Chapter 1.

Section 6. Distance. Each race shall be a one (1) mile dash.

Section 7. Post Positions. Post positions for the final, consolation and all preliminary legs shall be an open draw with two (2) horses drawn for the final and consolation races[race] that are designated as "also eligibles" under Section 8(6) of this administrative regulation.

Section 8. Eligibility for the Final and Consolation Races. Beginning with the 2018 Kentucky Sire Stakes races, consolation races may be eligible for funding.

(1) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final or consolation.

(a) All horses earning points may enter in the final with the top eight (8) point earners, if the horses raced on a half mile track or five-eighths (5/8) mile track or top ten (10) point earners if the horses raced on a **one (1)** mile track, who are declared eligible.

(b) On a half mile track or five-eighths (5/8) mile track, the top eight (8) point earners are not eligible for the consolation. On a **one (1)** mile track, the top ten (10) point earners are not eligible for the consolation.

(c) A horse that is eligible to race in the final shall only be eligible to race in the final, unless the horse is qualified as an also eligible.

(d) A horse that that is eligible to race in the consolation shall only be eligible to race in the consolation, unless qualified in the final as an also eligible.

(e) A horse that scratches from the final shall not race in the consolation.

(f) A horse that has qualified for the final or consolation, shall remain eligible for the final or consolation.

(g) At least seven (7) eligible horses **shall[must]** be declared for a consolation race to be contested.

(h) **A/No** horse that is automatically eligible to race in the final race shall **not** start in the consolation race.

(2) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements set forth in subsection (1) of this section and toward determining tiebreaker status as set forth in subsection (5)(b) of this section.

(3) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements set forth in subsection (1) of this section.

(4) A horse, in order to start in the final or consolation, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(5)(a) If the number of horses eligible and declared into any final or consolation event exceeds the maximum number specified by the KSDF or KSBIF or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;
2. 2nd place - twenty-five (25) points;
3. 3rd place - twelve (12) points;
4. 4th place - eight (8) points;
5. 5th place - five (5) points;
6. 6th place and all other starters - one (1) point; and

7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to paragraph (a) of this subsection, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final or consolation is not declared, the horse with the next highest point total, pursuant to



paragraph (a) of this subsection, that is declared shall be eligible for the final or consolation.

(6) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (5) of this section, that are declared into the final or consolation, but do not qualify for the final or consolation, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final or consolation shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final or consolation as a replacement after the official scratch time deadline that is in effect at the host track.

Section 9. Final Order of Finish. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

Section 10. Detention. All starters shall be subject to the detention policy of the racetrack.

Section 11. Number of Starters. (1) There shall not be more than:

(a) Ten (10) starters in each final race on a one (1) mile track; and

(b) Eight (8) horses on a ~~[one]~~ half ~~[(1/2)]~~ or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

Section 12. Declaration Fees. (1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of \$500. If a preliminary leg splits into two (2) or more divisions, the declaration fee shall be \$500 per division. For each horse declared to race in the final or consolation, there shall be a declaration fee of one (1) percent of the total purse.

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the KSDF and KSBIF shall consist of money from:

(a) Nominating fees;

(b) Sustaining fees;

(c) Declaration fees; and

(d) Added money from the Commonwealth of Kentucky.

(4)(a) Distribution of revenue for Kentucky ~~Sire~~Sires Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel appointed by the Chairman of the commission and consisting of one (1) representative from each of the following:

1. The commission, who shall serve as the chairman of the panel;

2. The Kentucky Harness Horseman's Association;

3. The host racetrack;

4. The commission recognized Standardbred Breeders Association organized in Kentucky; and

5. A participant in the fund that is nominated by the chairman of the commission from a group of up to four (4) nominees recommended by each of the above four (4) members having one (1) nomination each.

(b) Each member of the panel shall serve from July 1 through June 30 of the following year and shall be a resident of Kentucky.

(c) The final determination regarding distribution of revenue shall be made by the commission.

Section 13. Divisions of Preliminary Legs. (1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

1. Twelve (12) horses or less entered - one (1) division race.

2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.

3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.

4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.

5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.

6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.

(b) One-half (1/2) and five-eighths (5/8) mile track:

1. Nine (9) to ten (10) horses entered - one (1) division.

2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.

3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.

4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.

5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.

6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.

(c) If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 14. Gait. (1) Gait shall be specified by the owner of the horse on or before the first two (2) year old payment.

(2) Change of gait:

(a) May be made at the time of declaration at the track; and

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 15. Divisions. A race shall be raced in separate divisions as follows:

(1) Colt, ~~[1]~~ gelding, ~~[1]~~ ridgeling divisions; and

(2) Filly divisions.

Section 16. Purse Distributions. (1) The purses awarded for all races shall be distributed on the following percentage basis~~[as follows]~~:

(a) Five (5) starters – fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b) Four (4) starters – fifty (50) percent, twenty-five (25) ~~percent~~percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund~~fifteen (15) percent, and ten (10) percent~~;

(c) Three (3) starters – fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) ~~percent reverts back to the fund~~percent reverts back to the fund~~sixty (60) percent, thirty (30) percent, and ten (10) percent~~;

(d) Two (2) starters – fifty (50) percent, and twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund~~sixty-five (65) percent, and thirty-five (35) percent~~; and

(e) One (1) starter – fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund~~four (40) percent~~.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

(3) In addition to the purses set forth in subsection (1) of this section, \$25,000 shall be awarded in each division of the finals to the owner of the stallion or stallions residing in Kentucky that sired the first, second, or third place finisher, as follows:

(a) First place: \$15,000;

(b) Second place: \$7,500; and

(c) Third place: \$2,500.

Section 17. Cancellations. (1) If circumstances prevent the racing of an event, and the race is not drawn, all funds that have

## VOLUME 44, NUMBER 9 – MARCH 1, 2018

been allocated to the division in each of the preliminary legs or the final shall be refunded and pro-rated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 22 of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section 12(4) of this administrative regulation.

Section 18. Qualifying. (1) Any horse declared into a Kentucky Sire/Sires Stakes race shall:

(a) Show at least one (1) charted race line with no breaks within forty-five (45) ~~thirty (30)~~ days prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. On a track larger than five-eighths (5/8) of a mile:

a. A two (2) year old trotter shall have been timed in 2:06~~8~~ or faster;

b. A two (2) year old pacer shall have been timed in 2:04~~6~~ or faster;

c. A three (3) year old trotter shall have been timed in 2:02~~4~~ or faster; and

d. A three (3) year old pacer shall have been timed in 2:00~~2~~ or faster.

2. On a five-eighths (5/8) mile track:

a. A two (2) year old trotter shall have been timed in 2:07~~9~~ or faster;

b. A two (2) year old pacer shall have been timed in 2:05~~7~~ or faster;

c. A three (3) year old trotter shall have been timed in 2:03~~5~~ or faster; and

d. A three (3) year old pacer shall have been timed in 2:01~~3~~ or faster.

3. On a one~~one-half~~ mile track:

a. A two (2) year old trotter shall have been timed in 2:08~~10~~ or faster;

b. A two (2) year old pacer shall have been timed in 2:06~~8~~ or faster;

c. A three (3) year old trotter shall have been timed in 2:04~~6~~ or faster; and

d. A three (3) year old pacer shall have been timed in 2:02~~4~~ or faster.

(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

Section 19. Purse Allocations. (1) At a scheduled meeting of the commission, the commission shall:

(a) shall Establish the distribution of funds for stakes races for the upcoming year; and

(b) shall Authorize expenditures at a time it designates.

(2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 20. Promotions. The KSDF or KSBIF shall provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund.

Section 21. Nomination Fees. (1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year. The KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form, KHRC 215-11, ~~12/16~~, shall be filed with the commission along with the nomination and sustaining fees.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible to the KSDF and KSBIF as a three (3) year old.

(3). Nomination and sustaining payments shall be made to the KSDF and KSBIF in U.S. funds by a money order or a check

drawn on a U.S. bank account.

Section 22. Nomination Schedule. (1) Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.

(2) For yearlings sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, the nomination fee shall be forty (40) dollars per yearling. For yearlings sired by a standardbred stallion not residing in Kentucky, the nomination fee shall be eighty (80) dollars per yearling.

(3) Nominated horses shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall be properly identified to the satisfaction of the commission at the time of the nomination. Identification shall be determined by the official registration maintained by the USTA, Standardbred Canada, or other appropriate international harness racing governing agency.

(4) If a horse is not nominated during its yearling year, the horse may be nominated prior to March 15 of its two (2) year old year if:

(a) For horses sired by a standardbred stallion residing in Kentucky and registered with the KSDF and KSBIF, a nomination fee of \$500 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section; or

(b) For horses sired by a standardbred stallion not residing in Kentucky, a nomination fee of \$600 is made by March 15 of the horse's two (2) year old year, along with the sustaining payment required by subsection (5)(a) of this section.

(5) Sustaining payments shall be as follows:

| (a) TWO (2) YEAR OLD PAYMENTS   |       |
|---|-------|
| March 15  | \$300 |
| April 15  | \$300 |
| May 15  | \$300 |
| March 15 payment shall be mandatory to make entry eligible as a three (3) year old. |       |

| (b) THREE (3) YEAR OLD PAYMENTS |       |
|---------------------------------|-------|
| February 15                     | \$300 |
| March 15                        | \$300 |
| April 15                        | \$300 |

Section 23. Early Closing Events. The commission, during any given year, may provide for separate early closing events for Kentucky-bred horses.

Section 24. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 215-1, 12/16;

(b) "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 215-2, 12/16; and

(c) "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 215-3, 12/17~~12/16~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov>.

FRANKLIN S. KLING, JR., Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 14, 2017 at 3 p.m.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

**PUBLIC PROTECTION CABINET  
Kentucky Horse Racing Commission  
(As Amended at ARRS, February 12, 2018)**

**811 KAR 1:220. Harness racing at county fairs.**

RELATES TO: KRS 230.215, 230.260, 230.280, 230.290, 230.310, 230.398

STATUTORY AUTHORITY: KRS 230.215, 230.260, 230.398

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.398 authorizes the commission to promulgate administrative regulations governing the conduct of county fair races. This [amendment to the existing] administrative regulation establishes/updates and clarifies the [establishes] conditions, races, purses, and payments in races conducted at county fairs in which funds for purses are provided by the commission, and regulates eligibility for participation in harness racing at county fairs.

Section 1. [Definitions. (1) "Individual" means a natural person, at least eighteen (18) years of age, but does not include any corporation, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

(2) "Individual or Person domiciled in Kentucky" means:

(a) An individual who has his permanent residence in Kentucky; or

(b) A person organized under the laws of Kentucky or registered to do business in Kentucky with the Kentucky Secretary of State. (3) "Person" means any corporation, whether organized for profit or not, partnership, limited liability company, trust, estate, association, joint venture, or any other group or combination acting as a unit.

Section 2. Domicile. (1) The commission shall determine all questions of domicile.

(2) In determining questions of domicile, the commission shall weigh:

(a) The eligibility factors set forth in Section 3 of this administrative regulation; and

(b) Factors which indicate domicile and intent, including:

1. The amount of time the individual spends in Kentucky each year as compared to the amount of time spent elsewhere;

2. Whether the individual or person owns real estate in Kentucky;

3. Whether the individual is registered to vote in Kentucky;

4. Whether the person is organized under Kentucky law;

5. The permanent residence of the individual or principal place of business of the person, as indicated by the records of the commission and the United States Trotting Association; and

6. Whether the individual has a Kentucky automobile driver's license.

Section 3. Eligibility. A horse is eligible to participate in a two (2) or three (3) year old stakes race at a county fair if:

(1) ~~The~~ (a) Beginning January 1, 2017, the horse is a three (3) year old sired by a stallion that was registered with the Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund as defined in 811 KAR 1:215 at the time of conception;

(b) Beginning January 1, 2017, the horse is a three (3) year old whose dam was partially or wholly owned by an individual or person domiciled in Kentucky at the time of conception;

(c) Beginning January 1, 2017, the horse is a three (3) year old that is owned by an individual or person domiciled in Kentucky;

(d) Beginning January 1, 2017, the horse is a two (2) year old that is "Kentucky-bred" as defined in 811 KAR 1:215; or

(e) Beginning January 1, 2018 and thereafter, the horse is a two (2) year old or a three (3) year old that is "Kentucky-bred" as defined in 811 KAR 1:215;

(2) All owners of the participating horse are current members of the Kentucky Colt Racing Association, Inc.;

(3) All owners of the participating horse hold a current license with the commission; and

(4) The trainer and driver of the participating horse hold current licenses with the commission.

Section 2[4]. Track Requirements. (1) A fair shall have a safe and adequate track, and the entire track, including start and finish lines, shall be visible to judges and spectators.

(2) The track shall be inspected and approved by a representative of the commission.

(3) A track shall have a hub rail or pylons approved by the commission.

(4)(a) A fair shall have safe and adequate stalls for participating horses.

(b) If permanent stalls are not available, tents or other tie-in type stalls may be used.

(c) Except as provided by paragraph (d) of this subsection, a county fair shall not charge stall rent for horses racing at the fair.

(d) A county fair may charge stall rent if the fair is held on state-owned property.

Section 3[5]. Fair Fees. (1) The Kentucky Colt Racing Association fees shall be as follows:

(a) A nomination fee of fifty (50) dollars per horse due on or before February 15 of each racing year;

(b) A sustaining fee of \$200 per horse due on or before April 15 of each racing year;

(c) A starting fee of fifty (50) dollars per horse, per fair, due at the time of entry for the fair; and

(d) A twenty-five (25) dollar fee per horse for starting in an overnight race, due at the time of entry for the fair.

(2) A \$200 payment shall be due at the time of entry for a horse eligible for the fair finals.

Section 4[6]. Officials. (1) The Kentucky Colt Racing Association shall submit to the commission, at least sixty (60) days prior to the opening of a race meeting, a written list of racing officials and applicable employees.

(2) At a county fair, there shall be at least one (1) presiding judge approved by the commission in the judges' stand. In addition, at a meeting in which races are charted, the association member shall provide both a licensed charter and licensed clerk of the course.

(3) A fair shall use licensed United States Trotting Association judges to preside over the racing.

(4) The judges shall review the ownership of any horse that is entered in order to ensure the horse's eligibility to race.

(5) The judges may determine the validity for racing purposes of any lease, transfer, or agreement pertaining to ownership of a horse and may call for adequate evidence of ownership at any time.

(6) The judges may declare a horse ineligible to race if the ownership or control of the horse is in question.

(7) Officials shall be paid by the Kentucky Colt Racing Association.

Section 5[7]. Starter. A fair shall use a licensed starter with adequate equipment.

Section 6[8]. Use of Entry Fees. (1) The entry fees established in Section 3(1)(c) and (d)[5(4)(e) and (d)] of this administrative regulation shall be retained by each fair as compensation for conducting its harness racing program and in reimbursement of the expenses incurred.

(2) A fair shall, upon request, make a full accounting of the entry fees to the commission.

Section 7[9]. Application for a License and Approval for Purse Distributions. (1) The Kentucky Colt Association on behalf of a fair shall apply to the commission for a license to conduct a harness racing event. A request for pari-mutuel wagering shall be included

## VOLUME 44, NUMBER 9 – MARCH 1, 2018

~~at the time of application and for approval of funds by December 15 of the year prior to the year of the event. At the time of application, the request for pari-mutuel wagering shall be included.~~

(2) Distribution of revenue for the Kentucky County Fairs shall be reviewed annually, not later than December 15 of each calendar year, by the advisory panel established in 811 KAR 1:215.

Section 8[10]. Changes in Racing Program. A fair shall have the right to change the order of its program and to postpone or cancel an event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, entry fees shall be refunded.

Section 9[44]. Early Closers. (1) An early closing event, and all divisions of that event, shall race a single heat at a distance of one (1) mile and shall be contested for a purse approved by the commission on an annual basis.

(2) An early closing race shall be contested regardless of the number of entries. However, a fair may cancel an overnight race with less than five (5) entries.

Section 10[42]. Number of Starters and Purse Distributions~~[Division of Races]~~. There shall be no more than two (2) trailers in any race at a county fair.

(1) On a one (1)-mile track, there shall be ten (10) horses on the gate and the race shall split on eleven (11) horses.~~[If a two (2)-year-old race is divided into divisions, each division shall race for the entire amount of the advertised purse for the race].~~

(2) On a half-one-half (1/2) mile track or five-eighths (5/8) mile track, there shall be five (5) horses on the gate with two (2) trailers and the race shall split on eight (8) horses.~~[If a three (3)-year-old race is divided into divisions, each division shall race for a purse of \$2,500].~~

(3)~~[Beginning January 1, 2018 and thereafter, if a race is divided into divisions, each division shall race for the entire amount of the advertised purse for the race.~~

(4) The purse for each race shall be divided as follows:

(a) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b) Four (4) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund~~[fifteen (15) percent, and ten (10) percent];~~

(c) Three (3) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) percent reverts back to the fund~~[fifty-five (55) percent, thirty (30) percent, and fifteen (15) percent];~~

(d) Two (2) starters - fifty (50) percent, twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund~~[sixty-five (65) percent and thirty-five (35) percent];~~ and

(e) One (1) starter - fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund~~[40 percent].~~

Section 11[43]. Points Distribution. (1) Points shall be awarded in an early closing race, and any division of an early closing race, as follows:

(a) First place finisher - fifty (50) points;

(b) Second place finisher - twenty-five (25) points;

(c) Third place finisher - twelve (12) points;

(d) Fourth place finisher - eight (8) points;

(e) Fifth place finisher - five (5) points; and

(f) Each starter that finishes out of the money - one (1) point.

(2) If two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for that position and one-half (1/2) of the points awarded for the next lower position. The same procedure shall be used for the allocation of points if there is a dead-heat of three (3) or more horses.

(3) A horse that is declared in and then is the subject of a judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision shall be final.

~~(4) [A horse that starts in a Kentucky Sires Stake race within three (3) days of a scheduled county fair race of the same class shall be awarded a county fair start and one (1) point.~~

(5) If there is a tie among two (2) or more horses with the same number of points, the tie shall be resolved in favor of the horse with the higher earnings in the early closing fair events in which the horses have competed.

~~(5) [(6)] If any division of a race is rained out before the completion of all other divisions of that race, the points for distribution set forth in this section [811 KAR 1:220, Section 11] [43], shall not apply and instead, one (1) point shall be awarded to each horse entered in each division of that race that was rained out.~~

Section 12[44]. Entry Limitation. A horse shall not be allowed to compete in more than one (1) race at any fair.~~[Section 15. Change in Ownership. In order for a three (3)-year-old horse, for whom the nomination fee has been paid, to remain eligible to race at a county fair during the calendar year of 2017 after there has been a transfer of ownership, the following payments shall be required:~~

~~(1) \$300 the first time ownership is transferred from the owner at the time of nomination; and~~

~~(2) An additional \$600 thereafter if the same horse is again transferred.]~~

Section 13[46]. Drug Testing. (1) The winning horse at a fair race and any other horse or horses as selected by the judges may be subjected to a drug test as set forth in 811 KAR 1:090 and 811 KAR 1:260.

(2) A fair shall provide two (2) enclosed stalls and bedding to be used by the commission veterinarian for drug testing.

(3) The stalls required by subsection (2) of this section shall be located as close to the race track as possible.

(4) The stalls shall be positioned to allow the track announcer to be heard.

Section 14[47]. Coggins Test. A current negative Coggins test shall be required for each horse racing at a fair.

Section 15[48]. Drivers. A driver shall wear full colors, white pants, a safety vest that meets the standards set forth in 811 KAR 1:075, Section 21, and a safety helmet that meets the standards set forth in 811 KAR 1:075, Section 20, if on the track less than one (1) hour before the start of a fair racing program.

Section 16[49]. Trophies. A fair shall provide a trophy or blanket to the winner of a race. If a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.

Section 17[20]. Early Deadlines. The deadline for entries at a fair shall be set by the Kentucky Colt Racing Association at its annual October meeting preceding the racing year.

Section 18[24]. Programs. A county fair track holding races for purses shall provide a printed program available to the public containing the following information for:

(1) Non pari-mutuel tracks:

(a) Horse's name and sex;

(b) Color and age of horse;

(c) Sire and dam of horse;

(d) Owner's name;

(e) Driver's name and colors;

(f) Trainer's name; and

(g) Summary of starts in purse races, earnings, and the best win time for the current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race; and

(2) Pari-mutuel tracks:

(a) All of the program information required by subsection (1) of this section;

(b) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:

1. Date of race;

2. Location of race;

3. Size of track if other than a one (1) half (1/2) mile track;

4. Symbol for free-legged pacers;
5. Track condition;
6. Type of race;
7. Distance;
8. The fractional times of the leading horse including race times;
9. Post position;
10. Position of the one-quarter (1/4) marker, the one-half (1/2) marker, and the three-quarters (3/4) marker;
11. Stretch with lengths behind leader;
12. Finish with lengths behind leader;
13. Individual time of the horse;
14. Closing dollar odds;
15. Name of the driver;
16. Names of the horses that placed first, second, and third by the judges; and
17. Standard symbols for breaks and park-outs, if applicable;
- (c) Indicate drivers racing with a provisional license; and
- (d) Indicate pacers that are racing without hobbles.

Section 19[22]. Payments. Nomination and sustaining payments shall be made to the Kentucky Colt Racing Association. Entry fees shall be paid to the fair for which the entry is taken.

Section 20[23]. Violations. A person or association that violates a provision of this administrative regulation shall have committed a Category 1 violation and shall be subject to the penalties set forth in 811 KAR 1:095.

FRANKLIN S. KLING, JR., Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: December 12, 2017

FILED WITH LRC: December 14, 2017 at 3 p.m.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email [John.Forgy@ky.gov](mailto:John.Forgy@ky.gov).

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Care**  
**(As Amended at ARRS, February 12, 2018)**

**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. 147, Part 1, G.9(3)], 2016 Ky. Acts ch. 149, Part 1, G.9(7), 7 C.F.R. Part 1463, 20 C.F.R. Parts 676-678, 34 C.F.R. Part 361, Part 463[652-660-674], 45 C.F.R. Part 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, 5501, 29 U.S.C. 723(a)(5), 34 U.S.C. 20102(c), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, [9902(2)], 9857-9858q, 9902(2)[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(5)[(4)][1(3)].

(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)[(50)]; 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 member of a limited liability corporation (LLC);
- The head of an organization;
- An owner of a corporation;
- A member of a partnership;
- An owner of a business;
- An individual provider; or
- 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:

- Child;
- Stepchild;
- Grandchild;
- Great-grandchild;
- Niece;
- Nephew;
- Sibling;
- Child in legal custody; or
- 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:

- The natural parent, adoptive parent, or stepparent; or
- 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:

- Defined by 7 U.S.C. 2012; and
- Governed by 921 KAR Chapter 3.

(31) "~~Teen~~**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:

- The following is received at the cabinet or its designee's office:
  - ~~[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~~
  - ~~Effective April 1, 2017,] A signed DCC-90, Subsidized Child Care Assistance Application Summary; [1-04/17,] or~~
  - Submission in accordance with 921 KAR 2:040, Section 1(6); or
- The agency is contacted, if the person:
  - Has a physical or mental disability; and
  - 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:

- Assisted by another individual of choice in the application process; and
- 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:

- Deaf; or
- 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:

- Furnish verification of:
  - Income;
  - Technical eligibility; and
  - Employment; and
- 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:

- Render a decision on each application; and
- ~~[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 [:

- ~~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~~
- ~~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:

- Assistance until approval of the application for benefits; or
- Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

- Resident of Kentucky; and
- U.S. citizen or qualified alien;

(b) Is under age:

- Thirteen (13) at the time of application or recertification; or
- Nineteen (19) at the time of application or recertification and is:

- Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a health professional;
- Under court supervision; or
- Identified as a priority by federal statute, regulation, or funding source; and
- Has a current immunization certificate showing that the child is immunized, unless:
  - There is an exception pursuant to KRS 214.036; or
  - The child is attending a:
    - Licensed child-care center;
    - Certified child-care home;
    - Public school;
    - Head Start; or
    - 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;

## VOLUME 44, NUMBER 9 – MARCH 1, 2018

(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, ~~and 5501~~;

(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, ~~and 5501~~;

(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 ~~34[42]~~ U.S.C. ~~20102(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 ~~[Work Investment]~~ Act ~~(WIA)~~ pursuant to 20 C.F.R. ~~Parts 676-678 or 34 C.F.R. Part 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[:

(i) 2.167; or

(ii) ~~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:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period;

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and

c. 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:

1. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

2. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

# VOLUME 44, NUMBER 9 – MARCH 1, 2018

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. 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);
2. 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
3. Profit shall be determined by:
  - a. Rounding the total gross income to the nearest dollar;
  - b. Rounding the total amount of allowable expenses to the nearest dollar;
  - c. 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
  - d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.
- (e) 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. 9858c(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:

1. Full day;
2. Part day;
3. Licensed;
4. Certified;
5. Registered;
6. Infant/Toddler;
7. Preschool child; and
8. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care;
4. Council on Accreditation; or
5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or
2. 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:

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or

2. 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:

- (a) Three (3) children receiving CCAP per day; or
- (b) Six (6) children receiving CCAP per day, if those children are:

1. A part of a sibling group; and
2. 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            |
| 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            |

**VOLUME 44, NUMBER 9 – MARCH 1, 2018**

|       |          |      |      |      |      |      |      |      |
|-------|----------|------|------|------|------|------|------|------|
| 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;



**VOLUME 44, NUMBER 9 – MARCH 1, 2018**

(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[14(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];~~

(c) ~~"DCC-90P, CCAP Job Search Documentation", 10/17;~~

(d) ~~"DCC-90.1, Intent to Apply for Child Care Assistance", 11/09;~~

(e) ~~"DCC-91, Client Rights and Responsibilities Sheet", 04/13;~~

(f) ~~"DCC-94, Child Care Service Agreement and Certificate", 11/09;~~

(g) ~~"DCC-94, Child Care Service Agreement and Certificate", 10/17[04/17];~~

(h) ~~"DCC-94.1, CHILD CARE Approval/Change Notice", 10/17[04/17];~~

(i) ~~"DCC-94B, Licensed or Certified Provider Agreement Form", 10/14;~~

(j) ~~"DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;~~

(k) ~~"DCC-94C, Provider Notification Letter", 10/17[04/17];~~

(l) ~~"DCC-94E, Child Care Daily Attendance Record", 7/13;~~

(m) ~~"DCC-97, Provider Billing Form", 04/13;~~

(n) ~~"DCC-105, Child Care Assistance Program Notice of Action", 11/09;~~

(o) ~~"DCC-105, Child Care Denial/Discontinuance Notice", 10/17[04/17]; and~~

(p) ~~"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](mailto:Laura.Begin@ky.gov).



ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(Amended After Comments)

**16 KAR 2:010. Kentucky professional and provisional teacher certificates[teaching certificates].**

RELATES TO: KRS[458.6451, 160.380,] 161.020, 161.028(1), 161.030

STATUTORY AUTHORITY: KRS 161.028(1)(a),[(b),(f)], 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) requires the Education Professional Standards Board (EPSB) to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires the board to set standards for programs for the preparation of teachers and other professional school personnel. KRS 161.028(1)(f) requires the board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the[Education Professional Standards] board pursuant to[under] 16 KAR 5:010 for a specific certification[er which has been approved for certification by the state education agency of another state].

(2)"Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 6:010.

(3)] "Base certificate" means a professional certificate that allows a teacher[stand-alone license] to teach[which encompasses authorization to teach] introductory and interdisciplinary courses in related fields.

(3)[(4)] "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.

(5)] "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope[and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments, and experience as outlined in Section 5 of this administrative regulation].

(4)[(6)] "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(5) "Restricted base certificate" means a certificate that allows a teacher to teach in a specific limited content area.[(7) "Kentucky teacher standards" means the standards established in 16 KAR 1:010 that identify what a Kentucky teacher shall know and be able to do.

(8) "Major" means an academic area of concentration consisting of at least thirty (30) hours of coursework.

(9) "Professional teaching certificate" means the document issued to:

(a) An individual upon successful completion of the beginning teacher internship; or

(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(11)"Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area that can be taught under this limited certificate.]

(6)[(42)] "Statement of eligibility" means a candidate has met the requirements necessary to receive a provisional certificate[the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments].

Section 2. Types of Certificates Issued. (1) Provisional

certificate:

(a) Conditional certificate;

(b) Provisional internship certificate-one (1) year certificate;

(c) Temporary provisional certificate;

(d) Probationary provisional certificate;

(e) Proficiency provisional certificate;

(f) Occupation-based career and technical education

provisional certificate;

(g) One (1) year provisional alternative certificate;

(h) Adjunct certificate;

(i) Emergency certificate;

(j) Temporary certificate for Instructional Leadership:

1. In-state; and

2. Out-of-state;

(k) Temporary certificate; and

(l) Provisional certificate for "other school professionals".

(2) Professional certificate.

(a) Initial certificate-four (4) year certificate;

(b) Initial certificate- five (5) year certificate;

(c) Renewal certificate - five (5) year certificate;

(d) Occupation-based career and technical education

professional certificate; and

(e) Professional certificate for "other school professionals".

(3) Junior Reserve Officer Training Corps (JROTC) Certificate.

(4) Additional Certification:

(a) Certificate extension; and

(b) Certificate endorsement.

(5) Substitute teaching certificate.

(a) Certified substitute certificate; and

(b) Emergency substitute certificate.

(6) All other existing certificates shall remain valid and the terms for renewal shall be determined by the laws and regulations in effect at the time the certificate was issued pursuant to KRS 161.020.

Section 3. Certificate Issuance. (1) Prior to the issuance of a certificate or statement of eligibility, the applicant shall disclose certain background information as outlined in Section 8[7] of this administrative regulation. If the applicant answers "yes" to any of the questions set forth in Section 8[7](1)(a)-(f), the EPSB may still issue a certificate or statement of eligibility for that applicant, but the board shall retain final authority to deny a request for certification or statement of eligibility if the board so chooses.

(2) The EPSB shall issue a statement of eligibility to a teacher candidate who:

(a) Has successfully completed a traditional initial preparation program that resulted in the issuance of a bachelor's degree or higher with either:

1. A cumulative grade point average of 2.75 on a 4.0 scale; or

2. A grade point average of 3.0 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework.

3. Grade point average (GPA) shall be calculated by beginning with the most recent course completed and proceeding backward for two (2) semesters in the order the grades fall on the transcript to accumulate the last thirty (30) hours completed for determining the GPA.

4. If it is necessary to go back further than two (2) semesters then the courses in the third semester shall be chosen based on the highest grades earned during that third semester;

(b) Earns a passing score on all assessments required for the certification sought as set forth in 16 KAR Chapter 6.

(3) All certificates issued shall either be a base or restricted base certificate in accordance with Section 4 of this administrative regulation.

(4) Provisional Certificates.

(a) Conditional Certificate.

1. The EPSB may issue a conditional certificate to a teacher candidate unable to earn a passing score on all assessments required for the certification sought pursuant to KRS 161.030(3)(b).

if the teacher candidate meets the requirements of 16 KAR 2:180.

2. A teacher candidate with only a conditional certificate is not eligible to participate in the Kentucky Teacher Internship Program (KTIP).

(b) Provisional Internship Certificate. The EPSB shall issue a provisional internship certificate to a teacher candidate who has completed a traditional preparation program upon confirmation of employment in an assignment for the grade level and content area identified on an unexpired statement of eligibility for the duration of the KTIP.

(c) Temporary Provisional Certificate.

1. The EPSB shall issue a temporary provisional certificate in accordance with KRS 161.048 with a grade level and content area recommended by the institution that will be valid for employment in the area of certification sought.

2. The certificate shall be issued at the appropriate rank in accordance with the requirements established in 16 KAR 8:020.

3. Prior to issuance of the certificate, in accordance with chapter 9 of this title the:

a. Teacher candidate shall submit to the EPSB an official transcript from each college or university attended; and

b. The institution shall submit to the EPSB a mentoring collaboration agreement with the district if the teacher candidate is seeking certification through the enrollment of a university-based alternative certification program.

4. The EPSB shall renew the temporary provisional certificate yearly upon the recommendation of the institution. The institution shall base its recommendation pursuant to KRS 161.048 and chapter 9 of this title.

5. A teacher candidate shall be eligible for KTIP upon completion of all program requirements and after successfully passing all applicable assessments in accordance with 16 KAR 6:010.

(d) Probationary Provisional Certificate.

1. A probationary provisional certificate shall be initiated by the school district to fill an area of need.

2. The EPSB shall issue a probationary provisional certificate in accordance with 16 KAR 2:110, 16 KAR 2:130, 16 KAR 2:140, 16 KAR 2:150, 16 KAR 2:160, 16 KAR 2:170, 16 KAR 2:200, 16 KAR 3:030, or 16 KAR 3:040.

(e) Proficiency Provisional Certificate.

1. The EPSB shall issue a proficiency provisional certificate in accordance with a grade level and content area recommended by the university that will be valid for employment in the area of certification sought.

2. The certificate shall be issued at the appropriate rank in accordance with the requirements established in 16 KAR 8:020.

3. Prior to issuance of the certificate, in accordance with 16 KAR 5:030 the:

a. Teacher candidate shall submit to the EPSB an official transcript from each college or university attended; and

b. College or university shall submit to the EPSB an educator learning plan (ELP); and

c. Candidate shall have a written offer of employment in the content area in which certification is being sought.

4. The EPSB shall renew the proficiency provisional certificate yearly upon the recommendation of the college or university. The college or university shall base its recommendation on the ELP in accordance with 16 KAR 5:030.

(f) Occupation-based Career and Technical Education Provisional Certificate. The EPSB shall issue an occupation-based career and technical education provisional certificate following the completion of the appropriate requirements set forth in 16 KAR 2:020.

(g) One (1) year Provisional Alternative Certificate. The EPSB shall issue a one (1) year provisional alternative certificate to a teacher candidate who is enrolled in a local school district training program following the completion of the appropriate requirements set forth in 16 KAR 9:050, 16 KAR 9:060, and 16 KAR 9:070.

(h) Adjunct Certificate. The EPSB shall issue an adjunct instructor certificate following completion of the appropriate requirements set forth in 16 KAR 9:020.

(i) Emergency Certificate. The EPSB shall issue an emergency

certificate in accordance with 16 KAR 2:120.

(j) Temporary Certificate for Instructional Leadership.

1. In-state. The EPSB shall issue a temporary certificate for instructional leadership pursuant to KRS 161.027(6) and 16 KAR 6:030, Section 8.

2. Out-of-state. The EPSB shall issue a temporary certificate for institutional leadership pursuant to KRS 161.027(6).

(k) Temporary Certificate.

1. The EPSB shall issue a temporary certificate to out-of-state teachers with less than two (2) years of experience pursuant to KRS 161.030(3)(c).

2. A temporary certificate may be issued for a period up to six (6) months, not to exceed the end of the semester in which the temporary certificate is issued, during which the teacher must successfully pass all required assessments pursuant to 16 KAR 6:010.

(l) Provisional Certificate for "Other School Professionals". The EPSB shall issue a provisional certificate for "other school professionals" in accordance with 16 KAR 2:060, 16 KAR 2:080, 16 KAR 2:090, or 16 KAR 3:060.

(5) Professional Certificates.

(a) Initial Four (4) Year Certificate. The EPSB shall issue an initial four (4) year certificate to a teacher candidate who has successfully completed KTIP while holding a provisional internship certificate issued by the EPSB unless otherwise waived under KRS 161.030 based on preparation and experience completed outside of Kentucky.

(b) Initial Five (5) Year Certificate.

1. The EPSB shall issue an initial five (5) year certificate to a teacher candidate who has successfully completed KTIP while holding a temporary provisional certificate issued by the EPSB; or

2. To a teacher candidate based on preparation and experience completed outside of Kentucky pursuant to KRS 161.030.

(c) Renewal Five (5) Year Certificate.

1. The first five (5) year renewal shall require:

a. Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

b. Completion of the required components of the continuing education option for initial certificate renewal as established in 16 KAR 8:030.

2. The second five (5) year renewal shall require:

a. Completion of the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

b. Successful completion of the continuing education option as established in 16 KAR 8:030.

3. Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.

(d) Occupation-based Career and Technical Education Professional Certificate. The EPSB shall issue an occupation-based career and technical education professional certificate in accordance with 16 KAR 2:020.

(e) Professional certificate for "Other School Professionals". The EPSB shall issue a professional certificate for other school professionals in accordance with 16 KAR 2:060, 16 KAR 2:070, 16 KAR 2:090, or 16 KAR 3:060.

(6) Junior Reserve Officer Training Corps (JROTC) Certificate. The EPSB shall issue a JROTC certificate in accordance with 16 KAR 2:100.

(7) Certificate Extensions and Endorsements.

(a) A certificate extension may be issued to a certified teacher for any base or restricted base certificate offered in Section 4(1) through (4) of this administrative regulation and shall require:

1. An unexpired base or restricted base certificate, including a statement of eligibility;

2. Successful completion of the applicable assessments; and

3. Recommendation from an approved preparation program upon the demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or

proficiency evaluation.

(b) A certificate endorsement may be issued for any area listed in Section 4(5) of this administrative regulation and shall require:

1. An unexpired base or restricted base certificate, including statement of eligibility;
2. Successful completion of the applicable assessments; and
3. Recommendation from an approved program of preparation upon the demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or proficiency evaluation.

(8) Substitute Certificates. The EPSB shall issue a certified substitute teaching certificate or an emergency substitute certificate in accordance with 16 KAR 2:030 and 16 KAR 2:120 Section 2. [Certificate Issuance. (1)(a) Until December 31, 2014, a statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has submitted a completed TC-1 application form and has successfully completed:

- 1.a. At least a bachelor's degree with:
  - (i) A cumulative grade point average of 2.50 on a 4.0 scale; or
  - (ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

b. As required by Section 4(2)(g)6 of this administrative regulation, a master's degree with:

- (i) A cumulative grade point average of 2.50 on a 4.0 scale; or
- (ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

2. An approved program of preparation; and

3. The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(b) Beginning January 1, 2015, a statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has submitted a completed CA-1 application form and has successfully completed:

- 1.a. At least a bachelor's degree with:
  - (i) A cumulative grade point average of 2.50 on a 4.0 scale; or
  - (ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or

b. As required by Section 4(2)(g)6 of this administrative regulation, a master's degree with:

- (i) A cumulative grade point average of 2.50 on a 4.0 scale; or
- (ii) A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

2. An approved program of preparation;

3. The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made; and

4. A national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Professional Teaching Certificate Renewal. (1) The renewal shall require completion of a fifth-year approved program of preparation which is consistent with:

(a) The Kentucky teacher standards established in 16 KAR 1:010; or

(b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation in KAR Title 16.

(2) The first five (5) year renewal shall require:

(a) Completion of a minimum of fifteen (15) semester hours of

graduate credit applicable to the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Completion of the required components of the continuing education option for initial certificate renewal as established in 16 KAR 8:030.

(3) The second five (5) year renewal shall require:

(a) Completion of the fifth-year approved program of preparation established in 16 KAR 8:020 by September 1 of the year of expiration of the certificate; or

(b) Successful completion of the continuing education option as established in 16 KAR 8:030.

(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.]

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:

(a) The Kentucky teacher standards established in 16 KAR 1:010;

(b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and

(c) The goals for the schools of the Commonwealth specified in KRS 158.6451 and the student academic expectations established in 703 KAR 4:060.

(2) A base certificate shall be issued specifying one (1) or more of the following grade levels[level] and specialization authorizations:

(a) Interdisciplinary early childhood education[.] birth to primary, established in 16 KAR 2:040; and

(b) Elementary school: primary through grade 5 to include preparation in the academic disciplines taught in the elementary school.

1. The elementary certificate shall be valid for teaching grade 6 if grade 6 is taught in a self-contained classroom or in a school organization in which grade 6 is housed with grade 5 in the same building.

2. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.

(c) 1. Middle school option 1: grades 5 through 9 with the equivalent of one (1) major to be selected from:

- a. English and communications;
- b. Mathematics;
- c. Science; or
- d. Social studies; or

2. Middle school option 2: grades 5 through 9 with two (2) middle school teaching fields to be selected from:

- a. English and communications;
- b. Mathematics;
- c. Science; or
- d. Social studies;

(d) Secondary school shall be valid for teaching students in: grades 8 through 12 with one (1) or more of the following majors:

1. English;
2. Mathematics;
3. Social studies;
4. Biology;
5. Chemistry;
6. Physics; or
7. Earth science;

(e) Grades 5 through 12 with one (1) or more of the following majors:

1. Agriculture;
2. Business and marketing education;
3. Family and consumer science;
4. Industrial education; or
5. Engineering and technology;

(f) All grade levels with one (1) or more of the following specialties:

1. Art;
2. A foreign language;

3. Health;
4. Physical education;
5. Integrated music;
6. Vocal music;
7. Instrumental music; or
8. School media librarian; or

(g) Grades primary through 12 for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following disabilities:

1. Learning and behavior disorders;
2. Moderate and severe disabilities;
3. Hearing impaired;
4. Hearing impaired with sign proficiency;
5. Visually impaired;

6. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 2; or

7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 3.

(3)(a) The grades 5 through 9 mathematics certificate issued under subsection (2)(c)1.b. or 2.b. of this section shall be valid for teaching Algebra I grades 10 and 11.

(b) A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under subsection (2) or (4) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field established in subsection (2)(c) of this section.

(4) A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

- (a) Psychology, grades 8-12;
- (b) Sociology, grades 8 through 12;
- (c) Journalism, grades 8 through 12;
- (d) Speech/media communications, grades 8-12;
- (e) Theater, primary through grade 12;
- (f) Dance, primary through grade 12;
- (g) Computer information systems, primary through grade 12;

or

- (h) English as a second language, primary through grade 12.

(5) An endorsement to a certificate identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:

- (a) Computer science, grades 8-12;
- (b) English as a second language, primary through grade 12;
- (c) Gifted education, primary through grade 12;
- (d) Driver education, grades 8-12;
- (e) Literacy specialist, primary through grade 12;
- (f) Reading, primary through grade 12;
- (g) Instructional computer technology, primary through grade

12;

- (h) Teacher Leader, all grades;
- (i) Other instructional services - school safety, primary through grade 12;
- (j) Other instructional services - environmental education, primary through grade 12;
- (k) Other instructional services - elementary mathematics specialist, primary through grade 5; or

(l) Learning and behavior disorders, grades 8 through 12. This endorsement shall be issued:

1. Following completion of the requirements of Section 5(2) of this administrative regulation; and
2. Only to candidates with preparation and certification for a base or restricted base certificate for the secondary grades 8-12;

or

- (m) American Sign Language, primary through grade 12.

Section 5. Certification through Proficiency Evaluation. (1) Proficiency evaluations shall be conducted in accordance with 16 KAR 5:030 by a Kentucky college or university with an approved educator preparation program.

(2) The EPSB may issue a proficiency provisional certificate to an individual[a certified teacher] upon request pursuant to this section as long as the individual[certified teacher] meets the requirements set forth in Section 3 of this administrative regulation or any certificate area offered in Section 4 of this administrative regulation in accordance with 16 KAR 5:030.(3)(a) A certified teacher may also obtain a certificate endorsement and a certificate extension by a proficiency evaluation performed by a Kentucky college or university in accordance with 16 KAR 5:030.

(b) The EPSB shall issue the proficiency provisional certificate and the professional certificate for the certificate endorsement and the certificate extension upon request as long as the certified teacher meets the requirements set forth in Section 3 of this administrative regulation.]

Section 6. Additional Certification. (1)(a) A certified teacher may add a certificate endorsement or extension if the teacher meets the requirements established in paragraph (c) of this subsection.

(b) Apply for a certificate endorsement or extension.

(c) A certificate extension or certificate endorsement shall be issued if an educator:

1. Holds a valid Kentucky professional teaching certificate;

2. Submits proof that the educator has:

a. Current employment in a certified position;

b. A bona fide offer of employment in a certified position in a Kentucky public school; or

c. Approval of the local district superintendent;

3. Successfully completed the applicable content assessments; and

4. Has either:

a. A major in the area of certification being sought; or

b. A combination of education, experience, professional development, awards, and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points in Sections 3 and 4 within application form CA-HQ.

(i) Points shall be granted only for experience, professional development, awards, or achievements earned relative to the specific content area, student population taught, and grade range served.

(ii) Coursework shall be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.

(iii) Successful completion of the appropriate content assessment or assessments for the certificate area being added shall count for forty-five (45) points.

(2) If a teacher currently holds a professional certificate in the secondary grades 8-12, and applies for a certificate extension or endorsement in the same content area for middle school grades 5-9, the teacher shall not be required to complete the content assessment.

(3) A certificate extension or endorsement issued under the requirements established in subsection (3)(c) of this section shall be permitted in the areas of English, mathematics, sciences, foreign languages, or social studies. Health and physical education areas shall be added only if the teacher holds the correlative certificate.

(4)(a) A certified teacher may also obtain a certificate endorsement and a certificate extension by a proficiency evaluation performed by a Kentucky college or university in accordance with 16 KAR 5:030.

(b) The EPSB shall issue the proficiency provisional certificate and the professional certificate for the certificate endorsement and the certificate extension upon request as long as the certified teacher meets the requirements set forth in Section 3 of this administrative regulation. [Additional

Certification. (1) A certificate extension may be issued for any base or restricted base certificate area offered in Section 4(2) or (4) of this administrative regulation and shall require:

- (a) A valid base or restricted base certificate, including a statement of eligibility;
- (b) Successful completion of the applicable assessments; and
- (c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(2) A certificate endorsement may be issued for any area listed in Section 4(5) of this administrative regulation and shall require:

- (a) A valid base or restricted base certificate, including a statement of eligibility;
- (b) Successful completion of the applicable assessments; and
- (c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified via coursework, field experience, portfolio, or other proficiency evaluation.

(3)(a) A professionally-certified teacher may add a certificate endorsement or extension if the teacher meets the requirements established in paragraph (c) of this subsection.

(b)1. Until December 31, 2014, an application for a certificate endorsement or extension shall be made on a Form TC-HQ.

2. Beginning January 1, 2015, an application for a certificate endorsement or extension shall be made on a Form CA-HQ.

(c) A certificate extension or certificate endorsement shall be issued if an educator:

- 1. Holds a valid Kentucky professional teaching certificate;
- 2. Submits proof that the educator has:
  - a. Current employment in a certified position;
  - b. A bona fide offer of employment in a certified position in a Kentucky public school; or
  - c. Approval of the local district superintendent;
- 3. Successfully completed the applicable content assessments; and
- 4. Has either:
  - a. A declared major in the area of certification being sought; or
  - b. A combination of education, experience, professional development, awards, and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points on the index contained within the application forms TC-HQ or CA-HQ.

(i) Points shall be granted only for experience, professional development, awards, or achievements earned relative to the specific content area, student population taught, and grade range served.

(ii) Coursework shall be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.

(iii) Successful completion of the appropriate content assessment or assessments for the certificate area being added shall count for forty-five (45) points.

(4) If a teacher currently holds a professional certificate in the secondary grades 8-12, and applies for a certificate extension or endorsement in the same content area for middle school grades 5-8, the teacher shall not be required to complete the content assessment.

(5) A certificate extension or endorsement issued under the requirements established in subsection (3)(c) of this section shall be permitted in the areas of English, mathematics, sciences, foreign languages, or social studies. Health and physical education areas shall be added only if the teacher holds the correlative certificate.]

Section 7[6]. A candidate pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 8[7]. Disclosure of Background Information. (1) Teachers and teacher candidates shall disclose certain background information to the EPSB whenever those teachers and teacher candidates apply for the issuance and renewal of the provisional

certificate and the professional certificate by answering the following questions:

(a) Have you ever had a professional certificate, license, credential, or any document issued for practice denied, suspended, revoked, or voluntarily surrendered? If you have had a professional certificate, license, credential, or any other document issued for practice initially denied by a licensing body, but later issued, you shall answer "yes."

(b) Have you ever been suspended or discharged from any employment or military service because of allegations of misconduct?

(c) Have you ever resigned, entered into a settlement agreement, or otherwise left employment as a result of allegations of misconduct?

(d) Is any action now pending against you for alleged misconduct in any school district, court, or before any educator licensing agency?

(e) Have you ever been convicted of or entered a guilty plea, an "Alford" plea, or a plea of nolo contendere (no contest) to a felony or misdemeanor, even if adjudication of the sentence was withheld in Kentucky or any other state? Minor traffic violations should not be reported. Convictions for driving while intoxicated (DWI) or driving under the influence of alcohol or other drugs (DUI) shall be reported.

(f) Do you have any criminal charges pending against you?

(g) If you answered affirmatively to any of the questions in this Section, has the EPSB previously reviewed the information?

(2) The EPSB shall provide teachers and teacher candidates with the opportunity to submit a narrative to the board to consider before the board approves the request for issuance or renewal of a provisional certificate or a professional certificate. The teacher or teacher candidate may include in his or her narrative any dates, locations, school systems, court records, or any other information the teacher or teacher candidate would like the board to consider.

[(1) Until December 31, 2014, application for certification or additional certification shall be made on Form TC-1 and shall be accompanied by the fees required by 16 KAR 4:040.

(2) Beginning January 1, 2015, application for certification or additional certification shall be made on Form CA-1 and shall be accompanied by the fees required by 16 KAR 4:040.]

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

**(a) "Form CA-HQ", 02/18**

[Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Form CA-1", 03-14;
- (b) "Form CA-HQ", 03-14;
- (c) "Form TC-1", 10/05; and
- (d) "Form TC-HQ", 10/2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

ROB AKERS, Board Chair

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 13, 2018 at 4 p.m.

CONTACT PERSON: Lauren Graves, Executive Staff Advisor, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email [Lauren.Graves@ky.gov](mailto:Lauren.Graves@ky.gov).

## **REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Persons: Cassie Trueblood, Phone 502-564-4606, email [Cassie.Trueblood@ky.gov](mailto:Cassie.Trueblood@ky.gov), and Lauren Graves

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation implements the Kentucky certification requirements for teachers as set forth in KRS 161.030. This administrative regulation also identifies the types of Kentucky professional and provisional teacher certificates available as well as the content areas associated with each certification. It also sets forth the different procedures that may be used to obtain a Kentucky teaching certificate.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to provide notice to applicants, educator preparation providers, and administrators of Kentucky public school districts of the types of certificates issued by the Education Professional Standards Board (EPSB) as well as the content areas associated with each certificate. It also provides notice to applicants, educator preparation providers, and administrators of Kentucky public school districts of the different procedures that may be used to obtain a Kentucky teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 provides that no person shall be eligible to hold the position of a teacher for which a certificate may be issued, or receive a salary for services rendered in the position, unless he or she holds a certificate of legal qualifications for the position. KRS 161.028 provides the EPSB with the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 provides that the EPSB alone has the authority to certify all teachers in public schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation implements the Kentucky certification requirements for teachers as set forth in KRS 161.030. This administrative regulation also identifies the types of Kentucky professional and provisional teacher certificates available as well as the content areas associated with each certification. It also sets forth the different procedures that may be used to obtain a Kentucky teaching certificate.

(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 has been brought forward primarily to remove certification barriers by adding additional processes and procedures for certification (proficiency evaluations by educator preparation providers and competency evaluation by the EPSB). This amendment also includes a new section regarding certification types and requirements. This amendment includes additions and revisions to the existing regulation as a result of recent 2017 Regular Legislative Session (SB17). This amendment updates terms used. This amendment removes references to application forms. This amendment adds a section regarding background disclosure questions. This amendment removes the background check requirement.

(b) The necessity of the amendment to this administrative regulation: This amendment has been brought forward primarily to remove certification barriers by adding additional processes and procedures for certification (proficiency evaluations by educator preparation providers and competency evaluation by the EPSB). This amendment also includes additions and revisions to the existing regulation as a result of recent 2017 Regular Legislative Session (SB17) and updates existing language.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.020 require that teachers hold legal qualifications for their respective positions to be issued upon completion of programs prescribed by the EPSB. KRS 161.030 sets forth basic requirements for certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides information relating to new and existing processes and procedures for certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will potentially impact teacher candidate seeking a certificate to teach for the first time, teachers who already have a teaching certificate, all Kentucky public school, and approved providers of educator preparation programs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There should be little, if any, additional action needed from the regulated entities identified in question (3) to

comply with the implementation of this new regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be little, if any, cost associated the implementation of this new regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Teaching quality is the most important school-based factor in determining student success and we must ensure that all Kentucky teachers enter their classroom prepared to excel. Compliance with this regulation will help Kentucky public schools fill positions that have been difficult to fill with new teachers and also with experienced teachers.

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

(a) Initially: There will be no cost to the EPSB to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the EPSB to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds appropriated by the General Assembly to the Education Professional Standards Board.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The EPSB does not anticipate an additional fee or funding increase.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly nor does it indirectly increase fees.

(9) TIERING: Is tiering applied? No, tiering will not apply because all applicants for certification are required to meet the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Education Professional Standards Board, Kentucky institutions of higher education with approved preparation programs, Kentucky public school, and applicants for certification.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.030 provides that the certification of all public school teachers in Kentucky is vested in the EPSB. KRS 161.028(1)(a) requires that the EPSB establish requirements for obtaining and maintaining a teaching certificate.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:



EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Education Professional Standards Board  
(Amended After Comments)

16 KAR 5:030. Proficiency evaluation.

RELATES TO: KRS 161.020, [161.025,] 161.030  
STATUTORY AUTHORITY: KRS [156.070,]161.030  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020,[161.025,]and 161.030 require that educators[teachers] and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation[~~prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board of Education~~]. The traditional[and formal] means of recognizing competency and proficiency for educator[teacher] preparation is by earning academic[in terms of standard college credits and the teacher certification requirements are generally stated in terms of college] credits. This administrative regulation provides an alternate [a] means for recognizing competency and proficiency[that might have been attained in some manner] other than academic credit[~~for educators already holding initial certification~~][college preparation].

Section 1. Definitions. (1) "Approved program of preparation" means a program approved by the Education Professional Standards Board (EPSB) under 16 KAR 5:010 for a specific certification.

(2) "Comparable experience" means professional activity of equivalent quality requiring similar skills and knowledge.

(3) "Educator preparation provider" or "EPP" [~~for purposes of this regulation~~] means a Kentucky-based college or university that offers educator preparation programs approved by the Board.

(4) "Proficiency evaluation" means the process by which an EPP may evaluate an educator who currently holds a valid Kentucky professional certificate in accordance with 16 KAR 2:010 seeking another certification area, endorsement, or extension to recognize competency and proficiency[A state accredited teacher education institution may evaluate and accept competency for teacher certification purposes for any of the specific curriculum requirements when the teacher candidate can demonstrate proficiency by reason of previous education, unusual experience, or proficiency examination at a level comparable to the usual requirements in that curriculum area].

Section 2. (1) An EPP shall be required to meet the following requirements before conducting proficiency evaluations:

(a) The EPP shall provide notice to the EPSB of its intent to conduct proficiency evaluations; and

(b) The EPP shall provide to the EPSB a plan for approval that sets forth the process by which the EPP shall conduct proficiency evaluations. The evaluation must assess a candidate's attainment of the applicable educational program standards.

(2) Failure to satisfy the requirements of this administrative regulation may result in the following action:

(a) The board may take action against the EPP's state accreditation; and

(b) The board may notify the Council of Postsecondary Education that the EPP has not met the requirements of KRS 164.097.

Section 3. Educators holding a valid Kentucky certificate seeking another certification area shall not be required to meet the admission requirements in 16 KAR 5:020(1)(2)(b) and 16 KAR 5:020(1)(3)(b).

Section 4. The EPP shall only conduct proficiency evaluations for the EPP's existing programs approved by the board.

Section 5. When conducting a proficiency evaluation, the EPP may assess proficiency by considering any of the following factors:

- (1) Previous education;
- (2) Comparable experience; or

(3) Proficiency assessment at a level comparable to the usual requirements in the content area in which the educator is seeking certification.

Section 6. Initial Certification for teacher candidates. (1) An EPP may evaluate and accept competency for initial teacher certification purposes for any of the specific curriculum requirements when the teacher candidate can demonstrate proficiency by reason of previous education, unusual experience, or proficiency examination at a level comparable to the usual requirements in that curriculum area.

(2) The teacher candidate shall be required to:

(a) Satisfy the applicable admission requirements set forth in 16 KAR 5:020; and

(b) Meet the internship requirements set forth in 16 KAR 7:010 or 16 KAR 7:020.

(3) The EPP shall be required to report to EPSB in accordance with the requirements of 16 KAR 5:020 the candidates for whom the EPP completed a proficiency evaluation.

(4) The teacher candidate may demonstrate proficiency of the requirements set forth in 16 KAR 5:040 by reason of previous experience.

(5) The EPP shall be responsible for recommending that the EPSB issue certification.

(6) The EPSB shall issue certificate for teacher candidates in accordance with the requirements of 16 KAR 2:010.

Section 7[6]. Additional Certification for Certified Educators. (1) After completing the proficiency evaluation, the EPP shall:

(a) Prepare an educator learning plan (ELP) for the certified educator outlining all necessary requirements to complete a program for additional content area or grade range along with a timeline for completion not to exceed two (2) years; and

(b) Recommend that the EPSB issue a one (1) year provisional certificate in accordance with 16 KAR 2:010.

(2) Upon successful completion of the ELP, the EPP shall recommend that the EPSB issue the educator a professional certificate, a certificate endorsement, or a certificate extension in the additional area in accordance with 16 KAR 2:010, Section 4.

Section 8[7]. (1) The EPSB shall issue a certificate endorsement or extension in accordance with the process set forth in 16 KAR 2:010, Section 3, upon receipt of the educator's request for certification; proof that the educator has successfully achieved a passing score on any required assessment; and recommendation of the EPP.

(2) The EPSB shall not require an educator to complete Kentucky Teacher Internship Program (KTIP) for the issuance of an endorsement or an extension if the certified educator previously completed KTIP for initial certification.

Section 9[8]. Recency. (1) The certified educator seeking another certification shall submit a request for certification no later than five (5) years after successfully completing all requirements set forth in the ELP; or

(2) Within twelve (12) months after the EPP discontinues the educator preparation program identified in the ELP, whichever occurs first.

ROB AKERS, Board Chair

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 13, 2018 at 4 p.m.

CONTACT PERSON: Lauren Graves, Executive Staff Advisor,  
100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, [Lauren.Graves@ky.gov](mailto:Lauren.Graves@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Cassie Trueblood, phone (502) 564-4606, email [Cassie.Trueblood@ky.gov](mailto:Cassie.Trueblood@ky.gov), or Lauren Graves

(1) Provide a brief summary of

(a) What this administrative regulation does: This

administrative regulation establishes an alternate process by which an educator preparation provider may recognize the competency and proficiency of a certified educator based on something other than college credit to recommend certification in another area.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that there is a means by which a certified educator can establish proficiency and competency based on that certified teacher's teaching experience or past college coursework.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 and 161.030 require that educators and other professional school personnel hold certificates of legal qualifications for their respective positions. KRS 161.028 provides the EPSB with the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate; and KRS 161.028 also provides the EPSB with the authority and responsibility to set standards for and approve programs for the preparation of teachers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the process by which an educator preparation provider must comply in order to recognize the competency and proficiency of a current educator through a means other than just completing college courses.

(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 update a regulation originally promulgated, in part, based on statutes that have been long since repealed (KRS 156.070 and KRS 161.025). This amendment will provide a process for currently certified educators. This amendment will provide the means by which the EPSB will exercise oversight authority over the proficiency evaluation process used by educator preparation providers. This amendment will provide consequences to those educator preparation providers that fail to abide by the requirements of this regulation. This amendment will provide an expedited process for currently certified educators to obtain certificate endorsements or certificate extensions. This amendment will allow currently certified educators to teach additional content areas or age ranges while taking the coursework needed for the additional areas. This amendment will provide school districts with a greater pool of candidates to fill areas of teacher shortages.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because the regulation is based, in part, on statutes that have long since been repealed. This amendment is necessary to provide current educators a means by which they can establish proficiency and competence for skills they previously developed outside of college coursework. This amendment is necessary to help school districts fill local teaching shortages. This amendment is necessary to set forth the process by which the EPSB will exercise authority over educator preparation providers and their use of this regulation. This amendment is necessary to set forth the consequences for non-compliance by educator preparation programs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, KRS 161.020 and 161.030 require that educators and other professional school personnel hold certificates of legal qualifications for their respective positions. KRS 161.028 provides the EPSB with the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate; and KRS 161.028 also provides the EPSB with the authority and responsibility to set standards for and approve programs for the preparation of teachers.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets forth the process by which an educator preparation provider must comply in order to recognize the competency and proficiency of a current educator through a means other than just completing college courses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: This administrative regulation will impact the Education Professional Standards Board and all educator preparation programs. This administrative regulation will also impact currently certified teachers that choose to request proficiency evaluations from an accredited educator preparation provider, and all Kentucky public schools.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An educator preparation provider that would like to do proficiency evaluations will need to: 1) notify the EPSB of its plans to conduct proficiency evaluations; 2) provide the EPSB with a copy of the procedure it will use to conduct the proficiency evaluations; 3) work with currently certified educators to create a plan for obtaining a certification; and 4) recommend currently certified educators for certification. The EPSB will need to receive, review, and approve proficiency evaluation plans. There are no additional requirements placed on currently certified educators, and school districts by this regulation. This regulation is removing barriers to certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost should be minimal to educator preparation providers. Some educator preparation providers charge currently certified educators to do proficiency evaluations. There will be a cost to currently certified educators, but the EPSB has no control over what an educator preparation provider charges for proficiency evaluations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Currently certified educators will be able to obtain certificate endorsements and certificate extensions while teaching in the area in which they are seeking the certificate endorsement or the certificate extension.

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

(a) Initially: The EPSB does not anticipate there being any cost associated with the initial implementation of this regulation.

(b) On a continuing basis: The EPSB does not anticipate there being any continuing cost associated with the implementation of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds appropriated by the General Assembly to the Education Professional Standards Board.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The EPSB does not anticipate a need for an additional fee or funding increase.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly nor does it indirectly increase fees collected by the EPSB.

(9) TIERING: Is tiering applied? No, tiering will not apply because all educator preparation providers are required to meet the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Education Professional Standards Board, educator preparation providers, currently certified educators, and Kentucky public school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020 and 161.030 require that educators and other professional school personnel hold certificates of legal qualifications for their respective positions. KRS 161.028 provides

the EPSB with the authority and responsibility to establish standards and requirements for obtaining and maintaining a teaching certificate; and KRS 161.028 also provides the EPSB with the authority and responsibility to set standards for and approve programs for the preparation of teachers.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The EPSB does not anticipate that this regulation will result in revenue for state or local government in the first year.

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

(c) How much will it cost to administer this program for the first year? The EPSB does not anticipate that there will be any additional cost to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? The EPSB does not anticipate that there will be any additional cost to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

### Kentucky Board of Emergency Medical Services (Amended After Comments)

#### 202 KAR 7:545. License classifications.

RELATES TO: KRS 311A.030, 311A.190

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the ambulance services and medical first response agencies. KRS 311A.030 requires the board to promulgate administrative regulations to establish requirements for various classes of ambulance and emergency medical service agencies. This administrative regulation establishes requirements for each class of ambulance service and medical first response agencies.

Section 1. License Classifications. (1) License classifications for ambulance providers shall include:

(a) A Class I ground ambulance agency operating at the Advanced Life Support (ALS), Basic Life Support (BLS), or Adult Critical Care Transport level to provide emergency and nonemergency care and transportation;

(b) A Class II ground ambulance agency operating at the BLS level only to provide nonemergency care and transportation;

(c) A Class III ground ambulance agency operating at the ALS level to provide critical care, specialty care, emergency or nonemergency care, and transportation between health care facilities. Based on the Certificate of Need and scope of care policy, a Class III ground ambulance agency shall be designated as one (1) or more of the following types:

1. A Class III Adult Critical Care agency providing critical care transport services to patients ages twelve (12) and above;

2. A Class III Pediatric Specialty Care agency providing specialty care transport services to patients under the age of twenty-one (21)~~twelve (12)]~~; or

3. A Class III Neonatal Specialty Care agency providing specialty care transport services to patients less than twenty-nine (29) days of age;

(d) A Class IV ground ambulance agency operating at the ALS or BLS level to provide emergency and nonemergency care and transportation for restricted locations, such as industrial sites or other sites that do not provide services outside the designated geographic service area;

(e) A Class VI agency providing medical first response without patient transport at the BLS or ALS level.

1. Each BLS First Response agency shall be licensed separately as a Class VI BLS agency unless a mutual aid agreement is executed with a licensed Class I ambulance agency that provides 911 response services for the geographic service area.

2. A nonlicensed BLS First Response Agency may execute a mutual aid agreement with multiple nonlicensed BLS First Response Agencies that serve the same geographic service area.

3. A mutual aid agreement shall automatically renew at the conclusion of a calendar year.

4. A nonlicensed BLS First Response Agency or a Class I ALS agency may terminate a mutual aid agreement thirty (30) days after written notice is provided to the other party.

5. A mutual aid agreement between a Class I ALS agency and a nonlicensed BLS First Response agency serving the same geographic area shall be updated as changes to the agreement occur and shall include provisions for:

a. Medical direction;

b. BLS protocols;

c. Response protocol;

d. Geographic service areas to be served;

e. Circumstances causing dispatch of the nonlicensed BLS first response agency;

f. Training;

g. Quality assurance processes; and

h. Liability Insurance if applicable.

6. A nonlicensed BLS First Response agency shall not provide BLS care outside of the geographic service area of the Class I ALS agency.

7. A nonlicensed BLS First Response agency unable to secure a written mutual aid agreement with a Class I ALS agency within its geographic service area, may operate within the jurisdiction as a nonlicensed BLS First Response agency if the agency has written correspondence from at least one (1)~~two (2)]~~ Class I 911 agency within its geographic service area~~agencies]~~ denying the agency's request to enter into a mutual aid agreement. The correspondence denying the mutual aid request shall be maintained on file at the agency.

8. A license to provide BLS care shall not be issued solely through the execution of a mutual aid agreement between a Class I agency and a nonlicensed BLS First Response agency;

(f) A Class VII rotor wing air ambulance service providing ALS emergency or nonemergency air transportation;

(g) A fixed wing class VII service provides ALS or BLS emergency or nonemergency air transportation; and

(h) A Class VIII agency providing BLS or ALS pre-hospital care above the first-aid level at special events, sports events, concerts, or large social gatherings.

1. A Class VIII agency shall not transport patients beyond the grounds of an event and shall be bound by the geographic service area of its Certificate of Need.

2. A Class VIII agency shall not transport patients independently to a hospital.

3. If transport of a patient is required, a Class VIII agency shall contact 911 for transport by a Class I agency licensed for the geographic service area.

(2) The KBEMS office shall license agencies in accordance with subsection (1)~~(1-or-i)]~~ of this section.

(3) An agency shall obtain a license from the board within ninety (90) days of issuance of a Certificate of Need from the Cabinet for Health and Family Services.

(4) An agency that does not receive a license within ninety (90) days of the issuance of its Certification of Need shall not be

granted a license by the board.

(5) An agency shall not hold more than one (1) license per level of classification in one (1) defined geographic service area unless each license was obtained prior to January 1, 2018.

Section 2. Public Notice of Negative Action. The board office shall publish on the KBEMS Web site or similar publication of the board, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

ANGELA EVANS, KBEMS General Counsel

For JIM DUKE, KBEMS Chairperson

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: February 15, 2018 at 8 a.m.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Board of Emergency Medical Services; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 231-1175, email [aevans@mmlk.com](mailto:aevans@mmlk.com).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the different classes of ambulance agencies and the specific requirements for each class.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to differentiate the services each ambulance class can provide.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is authorized by statute to establish specific requirements for the different ambulance classes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs potential applicants of the various ground ambulance classifications and the types within the classes, assisting potential applicants in determining which class is the most appropriate for them to apply.

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

(a) How the amendment will change this existing administrative regulation: The amendment allows agency to have more than one designation; extends pediatric care to the age to twenty-one years; and only requires correspondence from one Class I ALS denying a mutual aid agreement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to prevent redefining the national medical definition of pediatrics, eliminate the unintended consequence of agencies having to choose only one designation, and prevent requiring two denials when from a Class I ALS when only one may exist within a geographic region.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized by statute to establish specific requirements for each classification.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will keep agencies in compliance with the current process of allowing multiple designations and maintaining the pediatric age limit to twenty-one years, allowing agencies to continue transporting their full range of patients.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 213 licensed agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any

additional action by existing entities.

(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 existing entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The potential applicants will be educated on the various classes of ambulance services and be less likely to provide services beyond their classification which benefits the existing agencies.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Ambulance providers and first response agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311A.020, 311A.025, 311A.030, 311A.190

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

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

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

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

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

##### Kentucky Board of Emergency Medical Services (Amended After Comments)

#### 202 KAR 7:550 Required equipment and vehicle standards.

RELATES TO: KRS 311A.030, 311A.180, 311A.190

STATUTORY AUTHORITY: KRS 311A.020, 311A.025,

311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services system and the licensing of ambulance services and medical first response agencies. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the required equipment to operate an ambulance service.

Section 1. Ground Ambulance Specifications. (1) Ground ambulances utilized by Class I, II, III, and IV agencies shall:

(a) Have the name of the provider permanently affixed by paint, decal, or wrap on both sides of the exterior surface of the vehicle.

1. The name shall be the incorporated name or the name under which the provider does business and as it appears on the provider's license.

2. This requirement shall not preclude a provider from adding additional names from another entity on the vehicle due to a joint venture, if the name as licensed by the board is the larger, and visible and legible by the public. 3. A vehicle operated by an agency shall not be marked with the words "advanced life support", "paramedic," or similar words that convey essentially the same meaning on the vehicle's exterior surface visible to the public unless the vehicle is always staffed at an Advanced Life Support level or unless the agency was licensed by the board prior to January 1, 2018;

(b) Be maintained in good operating condition and in full repair without obvious apparent problems relating to tires, exhaust, body integrity, warning devices, or mechanical reliability, which would be recognized by the average lay person who is not an automotive mechanic;

(c) Be designed to provide for the medical care or transportation of patients;

(d) Stow all equipment weighing three (3) pounds or more in an enclosure, bracket, mount, or other appropriate securing device; and

(e) Have tires that meet the manufacturer's standards for the gross vehicle weight of the vehicle.

1. A tire shall not display exposed tire cord or have tread depth less than 2/32 on back tires and 4/32 on front tires if measured in any two (2) adjacent grooves at three (3) locations spaced equally around the tire.

2. Retread tires shall not be used on ground vehicles.

3. Internal patches may be utilized for tire repairs if necessary.

4. More than two (2) patches shall not be used on any one (1) defective tire.

5. Plugs shall not be used for the repair of defective ambulance tires.

(2) All Class I, II, III, and IV ground ambulances shall meet or exceed the minimum physical characteristics established in paragraphs (a) through (e) of this subsection.

(a) A ground ambulance licensed in Kentucky shall be affixed with an official Kentucky Board of Emergency Medical Services decal that states, at a minimum, **the month and year of inspection**~~the expiration date of the license for the agency~~.

(b) An ambulance manufactured prior to January 1, **2019**~~2018~~ shall meet or exceed the standards established in the U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA KKK-A-1822) in effect on the original date of manufacture.

(c) The agency shall require, for a unit in which the chassis of an ambulance is later replaced, the conversion company to supply a letter to verify that no modification exists that was contained in GSA KKK-A-1822 on the original date of module manufacture.

(d) A new production ground ambulance that is ordered after January 1, **2019**~~2018~~ shall comply fully with the ambulance design criteria contained in the most recent version of the Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS). A decal or letter of verification from the manufacturer certifying that the vehicle meets

the GVS standard, if ordered after January 1, **2019**~~2018~~, shall be made available upon inspection.

(e) The agency shall require for any GVS certified vehicle, in which the chassis of an ambulance is later replaced, the conversion company shall supply a letter to verify that no modification exists that was contained in the GVS standard on the original date of module manufacture.

(3) In addition to the GSA KKK-A-1822 or the GVS standards, additional requirements shall be met as established in paragraphs (a) through (d) of this subsection.

(a) The air-conditioning system shall minimally deliver a temperature of sixty-five (65) degrees Fahrenheit or less from the vent or vents in the driver and patient compartments in warm weather conditions as determined by a standard automotive testing thermometer.

(b) The heating system shall minimally deliver a temperature of eighty-five (85) degrees Fahrenheit or more from the vent or vents in the driver and patient compartments in cool weather conditions as determined by a standard automotive testing thermometer.

(c) There shall be no more patients, personnel, and other persons than can be safely secured by means of permanently installed safety belts in the vehicle while the vehicle is in motion.

(d) The patient care area lighting shall be fully functional.

(4) A preventive maintenance program shall be maintained for each vehicle and its equipment to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(5) Documentation shall be maintained by the agency to support evidence of periodic inspections as recommended by the manufacturer, including calibrations required for maintenance and operation of the vehicle and its equipment.

(6) Each vehicle and its equipment shall be checked after each use to ensure that it is in a clean and sanitary condition, unless precluded by emergency conditions.

(7)(a) Except as established in paragraph (b) of this subsection, all linen used for patient care including sheets, blankets, pillowcases, pillows, towels, and washcloths shall be stowed in a separate cabinet and secured from body fluids.

(b) One (1) pillow, one (1) pillow-case, one (1) fitted sheet, two (2) flat sheets, one (1) towel, and two (2) blankets may be utilized on the stretcher that is in-service and shall not require stowing.

Section 2. Class I, II, and IV Basic Life Support Ambulance Equipment and Supplies. (1) Each BLS agency shall maintain evidence in the form of a letter that adult and pediatric medical protocols have been reviewed and approved by the board pursuant to KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class I, II, and IV BLS agency shall carry and maintain, in full operational order, the following minimum basic life support equipment and supplies:

(a) Suction, ventilation, and blood pressure equipment, which shall include:

1. Two (2) sources of suction apparatus, one (1) of which shall be mechanically operated;

2. Rigid catheters;

3. Flexible catheters in adult, pediatric, and infant sizes;

4. Bulb syringe for infant and neonate suction;

5. Disposable adult and pediatric bag-valve-mask with a pediatric pop-off valve with oxygen reservoir, oxygen tubing, and adult, pediatric, infant, and neonate masks;

6. Nasopharyngeal airways (16F-34F; adult and child sizes) with water-soluble lubricant;

7. Oropharyngeal airways (sizes 0-5; adult, child, and infant sizes);

8. Blind-Insertion Airway Device (BIAD) (adult and pediatric); and

9. Manual pediatric and adult regular and large sphygmomanometer cuffs with stethoscope;

(b) Oxygen equipment, including:

1. A fixed oxygen system for each ambulance;

2. Two (2) portable, adequately filled, secured oxygen tanks that are minimally size D;

3. Pressure gauge and flow rate regulator for fixed and portable units with a range of zero to fifteen (15) liters per minute; and
4. Transparent non-rebreather oxygen masks and nasal cannulas for adults and pediatrics;
  - (c) Bandages, bandaging supplies and tape, including:
    1. Commercially packaged or sterile burn sheets;
    2. Triangular bandages;
    3. Dressings of the following types:
      - a. Sterile dressings, including gauze sponges of suitable size; and
      - b. Abdominal dressings;
      4. Gauze rolls, various sizes;
      5. Occlusive dressing, or equivalent;
      6. Adhesive tape of various sizes (include one (1) inch and two (2) inch);
      7. Arterial tourniquet; and
      8. Shears for bandages;
      - (d) Miscellaneous supplies, including:
        1. Hand held flashlight capable of providing adequate lighting to assess a scene or a patient away from the vehicle;
        2. Penlight;
        3. A copy or electronic equivalent of the most current edition of the U.S. Department of Transportation, Emergency Response Guidebook;
        4. A minimum of ten (10) triage tags consistent with START System of Triage;
        5. Obstetrical supplies that shall include at a minimum:
          - (a) Sterile scalpels or scissors;
          - (b) Sterile gloves;
          - (c) Bulb suction;
          - (d) Two (2) umbilical clamps; and
          - (e) Thermal absorbent blanket and head cover, aluminum foil roll, or appropriate heat-reflective material (enough to cover newborn infant);
          6. Sterile irrigation fluids;
          7. Glucometer or blood glucose measuring device with reagent strips and lancets for obtaining a blood glucose sample;
          8. Oral glucose;
          9. Cold packs;
          10. Heat packs;
          11. An AED with a minimum of two (2) complete sets of pads suitable for adult and pediatric populations for all non-ALS vehicles;
          12. Pulse oximeter with pediatric and adult probes;
          13. A length-based resuscitation tape or a reference material that provides appropriate guidance for pediatric drug dosing and equipment sizing based on length OR weight;
          - (e) Splints, including:
            1. Lower extremity mechanical traction splint in adult and pediatric sizes; and
            2. Upper and lower extremity rigid splint devices for adult and pediatric patients;
            - (f) Immobilization devices, including:
              1. Short extrication and immobilization device;
              2. Adult and pediatric impervious long spine boards or other full body immobilization devices with a minimum of three (3) appropriate restraint cross-straps;
              3. Cervical collars in the following sizes:
                - a.(i) Cervical collars for pediatric patients ages two (2) years or older; and
                - (ii) Cervical collars for adults in small, medium, large, and other available sizes; or
                - b. Pediatric and adult adjustable cervical collars; and
                4. Towel rolls or other commercially available cervical immobilization devices for adults and pediatrics;
                - (g) Two (2) currently certified five (5) pound size or larger, secured, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be accessible to the driver and the other to the attendant or attendants in the patient compartment in the ambulance;
                - (h) Multi-position stretcher with wheels and a minimum of three (3) cross-straps in addition to one (1) set of shoulder straps for

- securing the patient to the stretcher, and a fixed mechanism to secure the stretcher while in transit;
- (i) A pediatric transport device with a minimum weight range of ten (10) to forty (40) pounds; and
  - (j) A stair chair for the movement of patients in a seated position.
- (3) Personal protective equipment shall be available to each staff member responding on the vehicle, including:
- (a) One (1) clean scrub gown (or substitute, such as disposable coveralls);
  - (b) Simple disposable face mask;
  - (c) Clear protective goggles or safety glasses;
  - (d) Disposable gloves;
  - (e) One (1) particulate filter mask rated at N95 or better without an exhaust port for patient use;
  - (f) One (1) particulate filter mask rated at N95 or better with or without an exhaust port for protection of crew members; and
  - (g) A means of cleansing the hands, such as disposable towlettes or other solutions.
- (4) Cleaning materials shall be available including:
- (a) Hospital grade disinfectants;
  - (b) Trash bags for disposal of nonbiohazard waste materials;
  - (c) Biohazard bags for the disposal of biohazard waste; and
  - (d) Puncture resistant containers for disposal of sharp objects that are secured to the vehicle.
- (5) Patient comfort items shall be available including:
- (a) Two (2) clean blankets, sheets, pillows, and pillowcases;
  - (b) A disposable urinal;
  - (c) A disposable bed pan; and
  - (d) An emesis container or similar substitute.
- (6) All items with an expiration date shall not be expired.
- Section 3. Class I **ALS**, Class III ACC, Class III PSC, and Class IV Advanced Life Support Ambulance Equipment and Supplies. (1) Each ALS agency shall maintain evidence in the form of a letter that adult and pediatric medical protocols have been reviewed and approved by the board pursuant to KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.
- (2) In addition to the BLS equipment required in Section 2 of this administrative regulation, each Class I **ALS**, Class III ACC, Class III PSC, and Class IV **ALS**~~[agency shall carry on each]~~ vehicle **shall[and]** maintain in fully operational order, supplies and equipment required by the agency's protocols, including a minimum of:
- (a) Endotracheal intubation equipment consisting of:
    1. Laryngoscope handle with extra batteries, bulbs, or blades if applicable;
    2. Laryngoscope blades in the following sizes:
      - a. 0-4, straight Miller; and
      - b. 2-4, curved Macintosh;
    3. Endotracheal tubes in the following sizes:
      - a. 2.5, 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5 cuffed or uncuffed; and
      - b. 6.0, 6.5, 7.0, 7.5 and 8.0 cuffed;
    4. Stylettes in adult and pediatric sizes;
    5. 10-mL syringes;
    6. Magill forceps in adult and pediatric sizes;
    7. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;
    8. End-Tidal CO<sub>2</sub> detection capability (adult and pediatric);
    9. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;
    10. Equipment necessary to perform emergency percutaneous cricothyrotomy; and
    11. Disposable nebulizer;
  - (b) A portable, battery-operated monitor defibrillator that:
    1. Has a tape write-out or recorder, hands-free defibrillator pads, electrocardiogram monitoring leads, and electrodes for adults and pediatrics;
    2. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;
    3. Has synchronized counter-shock capability for cardioversion;
    4. Has a transcutaneous cardiac pacemaker, including adult



and pediatric pads and cables; and

5. Has 12-Lead ECG capability if the vehicle is staffed to provide ALS services;

(c) Vascular Access supplies consisting of:

1. Isotonic crystalloid solutions;

2. Antiseptic solution (alcohol wipes and providone-iodine wipes);

3. Intravenous catheters, 14G-24G;

4. Long-large bore needles or angiocatheters (at least 3.25' in length for needle chest decompression in large patients);

5. Intraosseous needles or intraosseous devices appropriate for children and adults; and

6. Latex-free tourniquet;

(d) Needles of various sizes, including suitable sizes for intramuscular injections;

(e) Intravenous macrodrip and microdrip administrations sets; and

(f) Intravenous arm boards, adult and pediatric, or appropriate substitute.

(3) An ALS agency shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.

(4) Controlled drugs shall be stored in a locked storage box in a locked compartment on the vehicle that is immediately accessible to personnel.

(5) This administrative regulation shall not prevent an agency from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board in accordance with KRS 311A.180.

(6) All items with expiration dates shall not be expired.

Section 4. Class III Adult Critical Care (ACC) Transport Equipment. (1) Each Class III ACC agency shall maintain evidence in the form of a letter that medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation and the ALS equipment required in Section 3 of this administrative regulation, Class III Adult Critical Care agencies shall carry on each vehicle and maintain in fully operational order all supplies and equipment required by the agency's protocols, including at a minimum:

(a) A portable transport ventilator, the capabilities of which shall include:

1. Controlling rate;
2. Volume;
3. FiO2 up to 100 percent;
4. I:E ratio;
5. PEEP;
6. Volume control;
7. Pressure control;
8. SIMV mode;
9. NPPV mode; and
10. Low- and high-pressure warning alarms;

(b) Two (2) portable transport ventilator circuits appropriately sized for the patient being transported;

(c) Continuous Positive Airway Pressure (CPAP) ventilation portable equipment;

(d) Electronic waveform capnography, intubated patient, capable of waveform display;

(e) Difficult airway equipment in the form of a bougie gum elastic ET introducer;

(g) Sterile cricothyrotomy set, surgical or needle;

(h) Invasive pressure monitoring capability electronic waveform available on two (2) channels;

(i) An infusion pump or pumps capable of infusing three (3) separate medications simultaneously;

(j) Six (6) IV infusion pump tubing sets;

(k) Two (2) blood infusion sets; and

(l) A device to monitor core body temperature through rectal or esophageal probe.

Section 5. Class III Pediatric Specialty Care (IIIPSC) Transport Equipment. (1) Each Class III Pediatric Specialty Care agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to the BLS equipment required in Section 2 of this administrative regulation, the ALS equipment required in Section 3 of this administrative regulation, and the Critical Care equipment listed in Section 4 of this administrative regulation, each Class III Pediatric Specialty Care agency shall carry on each vehicle and maintain in fully operational order supplies and equipment required by the agency's protocols, including:

(a) Two (2) 250 ml bags of normal saline or lactated ringers;

(b) Twelve (12) syringes assorted from 1cc to 2cc;

(c) Four (4) three-way stopcocks;

(d) A needle cricothyrotomy kit for children from the ages of twenty-nine (29) days until twenty-one (21)~~twelve (12)~~ years of age; and

(e) A blind-insertion airway device (BIAD) in appropriate sizes for children from the ages of twenty-nine (29) days until twenty-one (21) years of age~~[laryngeal mask airway in sizes 1, 2, and 3; and~~

(f) A king LTD airway in sizes 2, 2.5, 3, and 4].

Section 6. Class III Neonatal Specialty Care (III NSC) Transport Equipment. (1) Each Class III Neonatal Specialty Care agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) In addition to compliance with Section 1 of this administrative regulation, each Class III Neonatal Specialty Care agency shall carry on each vehicle and maintain in fully operational order all supplies and equipment required by the agency's protocols, including:

(a) Direct two-way communications with the designated neonatologist, attending physician, or receiving NICU;

(b) A standby or backup power source other than the one (1) contained in the isolette;

(c) A source of electrical power sufficient to operate the isolette and ancillary electrically powered equipment;

(d) A transport incubator with portable power supply, portable oxygen tanks, or liquid oxygen, and a source of compressed air, including appropriate valves, meters, and fittings. The transport incubator shall be secured in the vehicle using a manufacturer-approved vehicle-mounting device;

(e) One (1) portable heart rate monitor with visual or audible display and alarm system per patient;

(f) One (1) portable blood pressure monitor with an assortment of cuff sizes suitable for infants;

(g) Three (3) battery powered mechanical IV pumps capable of delivering as low as 1cc increments for IV fluids;

(h) A battery or self-powered oxygen sensor and transcutaneous oxygen monitor or oxygen saturation monitor;

(i) Oxygen delivery devices and tubing capable of administering high concentrations of oxygen;

(j) A temperature-monitoring device;

(k) A portable ventilator appropriate for neonatal patients;

(l) An anesthesia or self-inflating bag with an oxygen reservoir of less than 750 ml, a manometer pressure gauge, and premature newborn and infant size clear masks;

(m) A laryngoscope handle;

(n) Laryngoscope Blades in Miller sizes 00, 0, 1, 2, 3;

(o) Two (2) bulbs;

(p) Two (2) batteries;

(q) Endotracheal tubes in various sizes;

(r) Two (2) stylets;

(s) Two (2) meconium aspirators;

(t) Oral airways in various sizes;

(u) Suction equipment with low suction capabilities of less than

eighty (80) mmHg;

(v) Two (2) suction catheters in sizes 5.0, 6, 6.5, 8, and 10 each;

(w) Syringes sizes 1 cc through 60 cc in various sizes;

(x) Two (2) medication access devices;

(y) 23-27 gauge vascular access devices in various sizes;

(z) Sterile gloves in various sizes and sufficient quantity for all crewmembers;

(aa) Medications as required by the master drug list contained in protocols established in accordance with this section;

(bb) IV extension tubing in sufficient length to administer IV fluids or medications;

(cc) IV securing devices in various sizes;

(dd) Two (2) IV filters;

(ee) Two (2) umbilical catheters, sizes 3.5 and 5;

(ff) Ten (10) antiseptic solution wipes;

(gg) One (1) blood glucose-monitoring device;

(hh) Five (5) lancets for obtaining a blood glucose sample;

(ii) One (1) neonatal stethoscope.

(jj) One (1) flashlight;

(kk) Gauze pads;

(ll) One (1) No. 5 and one (1) No. 8 French feeding tube;

(mm) One (1) high intensity light capable of transillumination;

(nn) A biomedical waste plastic bag or impervious container;

(oo) Puncture resistant containers for disposal of sharp objects that shall be secured to the vehicle;

(pp) Gloves made of nitrile or other suitable materials in sufficient quantity for all crewmembers;

(qq) Respiratory face masks in sufficient quantity for all crew members;

(rr) Special procedure trays or instruments capable of performing umbilical catheterization, venous cutdown, and thoracostomy in accordance with established protocol;

(ss) One (1) bulb syringe;

(tt) One (1) cord clamp;

(uu) One (1) age appropriate chest tube evacuation device; and

(vv) Needle aspiration device or chest tubes in appropriate sizes for a neonate patient.

Section 7. Class VI and Class VIII BLS Agency Equipment. (1) Each Class VI and VIII BLS agency shall maintain evidence in the form of a letter that all medical protocols have been reviewed and approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class VI and VIII BLS agency shall be exempt from the ground ambulance requirements established in Sections 1 through 6[7] of this administrative regulation.

(3) Each Class VI and VIII BLS agency shall provide ready access to and maintain in fully operational order all supplies and equipment required by the agency's protocols.

(4)(a) Each Class VIII BLS agency shall have ready access to and maintain in operational order, two (2) complete sets of equipment required by the agency's protocols and this administrative regulation.

(b) Each Class VI BLS agencies shall be required to maintain one (1) complete set of equipment.

(5) Each basic life support non-transport vehicle shall wrap, properly store, and handle all single-service implements to be inserted into the patient's nose or mouth.

(6) Each Class VI and VIII BLS agency shall properly store and keep multiuse items clean and sterile if indicated.

(7) Each Class VI and VIII BLS agency shall carry the following assembled and readily accessible equipment:

(a) Respiratory and resuscitation equipment, including:

1. Portable suction apparatus, capable of a minimum vacuum of 300 millimeters mercury, equipped with two (2) each of the following:

a. Wide-bore tubing;

b. Rigid catheters;

c. Soft pharyngeal suction tips in child size; and

d. Soft pharyngeal suction tips in adult size;

2. One (1) hand-operated bag-mask ventilation unit equipped with clear facemasks and oxygen reservoirs with oxygen tubing in each of the following sizes:

a. Adult;

b. Child;

c. Infant; and

d. Neonatal mask only;

3. Two (2) oropharyngeal airways in each of the following sizes:

a. Adult;

b. Child; and

c. Infant;

4. One (1) pocket mask with a one (1) way valve;

5. Blind-Insertion Airway Devices (BIAD) in adult and pediatric sizes; and

6. Portable oxygen equipment of at least 300 liters capacity and D size cylinder with a regulator capable of delivering 25LPM;

(b) Oxygen delivery devices, including:

1. Two (2) non-rebreathing oxygen masks in both adult and pediatric sizes;

2. Two (2) nasal cannula in both adult and pediatric sizes;

3. Two (2) nasopharyngeal airways with water-soluble lubricant in each of the following sizes:

a. Adult;

b. Child; and

c. Infant;

(c) Wound care supplies, including:

1. Two (2) airtight dressings for open chest wounds;

2. Assorted bandaging supplies for the care of soft tissue injuries; and

3. Sterile water for irrigation;

(d) An AED with a minimum of two (2) complete sets of pads for all non-ALS providers and vehicles;

(e) Patient stabilization equipment, including:

1. Two (2) upper and two (2) lower extremity-splinting devices; and

2. Two (2) cervical collars in each of the following sizes or adjustable equivalents:

a. Pediatric;

b. Small;

c. Medium;

d. Large; and

e. No-Neck;

(f) Personal protection and body substance isolation equipment, including at least one (1) of each of the following for each EMS provider:

1. Gown;

2. Face mask and shield;

3. Gloves;

4. Biohazard bag;

5. Puncture resistant container for the disposal of sharp objects; and

6. Antimicrobial hand cleaner; and

(g) Miscellaneous items, including:

1. Obstetrical supplies, including:

a. Sterile scalpels or scissors;

b. Sterile gloves;

c. Bulb suction; and

d. Two (2) umbilical clamps;

2. One (1) blood pressure sphygmomanometer in each of the following cuff sizes:

a. Large adult;

b. Adult; and

c. Pediatric;

3. One (1) stethoscope in each of the following sizes:

a. Adult; and

b. Pediatric; and

4. A glucometer or blood glucose-measuring device with reagent strips and lancets for obtaining a blood glucose sample.

Section 8. Class VI and VIII ALS Agency Equipment. (1) Each Class VI and VIII ALS agency shall maintain evidence in the form of a letter that medical protocols have been reviewed and

approved by the board in accordance with KRS 311A.180. A hard copy or electronic equivalent of approved protocols shall be accessible to each provider throughout each call.

(2) Each Class VI and VIII ALS agency shall be exempt from the ambulance requirements established in Sections 1 through 6 of this administrative regulation.

(3)(a) Each Class VIII ALS agency shall have ready access to and maintain in operational order, two (2) complete sets of equipment required by the agency's protocols and this administrative regulation.

(b) Each Class VI ALS agency shall be required to maintain one (1) complete set of equipment.

(4) In addition to the BLS equipment required in Section 7 of this administrative regulation, each Class VI and VIII ALS agency shall provide ready access to and maintain in fully operational order, supplies and equipment required by the agency's protocols, including a minimum of:

(a) Endotracheal intubation equipment consisting of:

1. Laryngoscope handle;

2. Various laryngoscope blades in adult, pediatric, and infant sizes;

3. Extra batteries and bulbs for handles or blades;

4. A minimum of seven (7) different sizes of endotracheal tubes for oral and nasal placement in adult, pediatric, and infant sizes;

5. Equipment necessary to perform emergency cricothyrotomy;

6. An end tidal carbon dioxide detection device;

7. Stylettes in adult and pediatric sizes;

8. Magill forceps in adult and pediatric sizes;

9. One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes; and

10. Water-soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(b) A portable monitor defibrillator that:

1. Is capable of displaying a visual display of cardiac electrical activity;

2. Is capable of providing a hard copy of cardiac electrical activity measure;

3. Is capable of delivering direct current energy over a variable range, which is suitable for pediatric and adult usage;

4. Is capable of providing external cardiac pacing;

5. Has adult and pediatric external pads, capable of utilization for immediate monitoring of heart activity and delivery of counter shock in both the adult and pediatric patient;

6. Is capable of being operated from internal rechargeable batteries;

7. Has synchronized counter shock capability for cardioversion; and

8. Has a patient monitoring cable with electrode pads or equivalent for use with the patient monitoring cable;

(c) Sterile, disposable needles, in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the agency's patient treatment protocols;

(d) Disposable syringes in types and sizes sufficient for personnel to administer medications and perform procedures allowed by the agency's patient treatment protocols;

(e) Restriction band appropriate for use with venipuncture procedure;

(f) Disposable, individually packaged antiseptic wipes;

(g) Intravenous fluids as required by the agency's protocol, with macrodrip and microdrip fluid sets, and accessory items including over the needle catheter devices in sizes fourteen (14) to twenty-four (24) gauge;

(h) Intraosseous needles or intraosseous devices appropriate for children and adults; and

(i) Pediatric drug dosage tape or equivalent that provides easy reference for pediatric and infant treatment and drug dosages.

(5) All items with expiration dates shall not be expired.

(6) An ALS agency shall stock and maintain drugs and medications as required by the master drug list contained in protocols established in accordance with this section.

(7) Controlled drugs shall be stored in a locked storage box in a locked compartment that is immediately accessible to personnel.

(8) This administrative regulation shall not prevent an agency from maintaining other supplies or equipment that are required to carry out its protocols as approved by the board in accordance with KRS 311A.180.

Section 9. Safety Equipment. (1) Each ground agency licensed to respond to emergency pre-hospital responses shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance for each staff member:

(a) Eye protection goggles or safety glasses;

(b) Heavy work gloves;

(c) Hard hats that meet ANSI standards;

(d) Reflective safety wear for each crew member that meet current ANSI standard ANSI 107-2010 or ANSI 207-2011; and

(e) Three (3) reflective triangles or strobes, or equivalent warning devices.

(2) A ground ambulance agency subject to emergency pre-hospital response not equipped to provide extrication and rescue services shall execute an agreement with an agency capable of providing extrication and rescue services to the primary geographic service area.

(3) Each Class II, III ACC, III PSC, III NSC, and VIII agency shall be exempt from the requirements of this section unless emergency pre-hospital response is included in the agency's scope of care.

Section 10. Equipment or Medication Waiver. (1) The board for good cause shall grant a waiver of any section of this administrative regulation upon request. An applicant for waiver shall submit an:

(a) "EMS Equipment or Staff Waiver Request"; and

(b) A nonrefundable application fee of \$500 per waiver request.

(2) The application request shall include:

(a) Evidence of prior good faith efforts to comply with each section for which a waiver is requested;

(b) A written explanation of the agency's inability to comply with each section for which a waiver is requested, including any financial or other significant hardship resulting from the agency's efforts to comply;

(c) A written plan for providing adequate care to patients;

(d) The length of time the waiver is requested; and

(e) A plan for compliance with each section of this administrative regulation for which a waiver has been requested.

(3) Requests for waivers shall be submitted to the executive director of the board.

(4) The administrator and medical director of the agency requesting a waiver shall appear before the board's executive committee and the full board at a regularly scheduled meeting to present evidence of hardship that compliance with this administrative regulation will cause.

(5) Waivers shall not be issued for minimum staffing requirements.

(6) Any waiver issued by the board shall expire on December 31 of the year of issue.

(7) Within twenty (20) days of the board's decision, the executive director shall notify the applicant of the decision in writing.

(8) A waiver approved by the board upon a finding of good cause shall be considered a fulfillment of the licensing requirements established in the waiver through December 31 of the year of issue.

(9) The board shall deny the waiver request if, after reviewing the application, it is determined the:

(a) Agency is unable to meet the needs of the agency's patients or geographic service area in the event that the waiver is granted; or

(b) Health or safety of the agency's patients or geographic service area may be jeopardized in the event that the waiver is granted.

(10) An applicant whose request for waiver is denied may file a written request for a hearing before the board within thirty (30) days of the written notice of denial.

(11) A hearing shall be conducted in accordance with KRS

Chapter 13B.

Section 11. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS Web site or similar publication of the board, or otherwise disseminate, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

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

- (a) "EMS Equipment or Staff Waiver Request", (12/2017);
- (b) "U.S. Department of Transportation, Emergency Response Guidebook", (2016);
- (c) "Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS)", (8/2007); and
- (d) "U.S. General Services Administration Federal Specification for the Star-of-Life Ambulance (GSA KKK-A-1822)", (7/2016).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

ANGELA EVANS, KBEMS General Counsel

For JIM DUKE, KBEMS Chairperson

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: February 15, 2018 at 8 a.m.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Board of Emergency Medical Services; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 231-1175, email [aevens@mmlk.com](mailto:aevens@mmlk.com).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the equipment and vehicle standards for ambulance and medical first response agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a minimum equipment and vehicle standard for all emergency medical services agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's statute as it establishes minimum standards to operate emergency medical service agency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the minimum vehicle specifications and specific equipment each vehicle must have in stock.

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

(a) The amendment will change this existing administrative regulation: The amendment delays the year new orders for ambulances must meet the new guidelines and only requires the month and year of the inspection instead of the expiration of the inspection.

(b) The necessity of the amendment to this administrative regulation: The amendment was necessary to prevent agencies that have ordered ambulances during the process of the regulation being implemented from immediately being out of compliance if their previously ordered ambulance does not meet the new requirements. The amendment also reduces the confusion regarding inspection information because the inspection and expiration do not always occur at the same time.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute allows the board to establish minimum standards for the operation of emergency medical service agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will prevent the board from immediately issuing violations to agencies that ordered ambulances

that were acceptable at the time they ordered them but might not meet the new standards pursuant to the new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 213 licensed agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will need to review their equipment and vehicles to ensure they are in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will vary depending on the equipment or medication needed if they do not currently have it in stock.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will know exactly the type of vehicles and equipment required.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds are not needed to implement or enforce the administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does establish a fee for the waiver request application.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated agencies on the basis of any factor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Ambulance providers and first response agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311A.020, 311A.025, 311A.030, 311A.190

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

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

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

(c) How much will it cost to administer this program for the first year? No cost

(d) How much will it cost to administer this program for subsequent years? No cost

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE  
SYSTEM**

**Kentucky Board of Emergency Medical Services  
(Amended After Comments)**

**202 KAR 7:555. Ground agencies.**

RELATES TO: KRS 311A.030, 311A.190

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes minimum licensing requirements.

Section 1. Utilization of Ground Vehicles by Class I, II, III, and IV Licensed Agencies. (1) At the time of initial inspection, each agency shall inform the Kentucky Board of Emergency Medical Services (KBEMS) office of the make, model, year, vehicle identification number or serial number, and license tag number for each vehicle the agency plans to use for medical care and transportation.

(2) A vehicle shall not be placed into operation until the board has conducted a physical inspection of the vehicle and determined it meets the requirements of 202 KAR Chapter 7.

(3) Each agency shall complete a Vehicle Change Form, no later than the next business day after the permanent removal of any licensed vehicle from service by the license holder.

(4) A licensed agency may use a replacement vehicle that meets all of the requirements of 202 KAR Chapter 7 on a temporary basis while a permitted vehicle is out of service. The agency shall complete a Vehicle Change Form within twenty-four (24) hours of the replacement.

(b) A temporary replacement vehicle shall not be used for more than thirty (30) days annually unless the KBEMS office has verified, through a physical inspection, that it meets the requirements of 202 KAR Chapter 7.

(5) The KBEMS office shall be notified by a completed Vehicle Change Form within twenty-four (24) hours or on the next business day if a temporary vehicle is removed from service and the original licensed vehicle is returned to service.

(6)(a) An agency that fails to report using a temporary vehicle shall be required to immediately cease use of the replacement vehicle until the reporting requirements are met.

(b) An agency that fails to remove a temporary vehicle from service after thirty (30) days shall be fined \$500 for each day or partial day the vehicle is in service and not reported.

(7) This administrative regulation shall not prevent a licensed agency from utilizing other means of transporting patients in:

- (a) Disasters;
- (b) Mass casualty incidents; or

(c) Extraordinary scene conditions that would impair access to the safety or care of the patient or personnel operating at the scene.

Section 2. Provider Management Requirements. (1) All licensed agencies shall maintain:

(a) An organizational chart that establishes lines of authority, including the designation of:

1. An administrator responsible for assuring compliance with KRS Chapter 311A and 202 KAR Chapter 7 during the daily operation of the service; and

2. A designee who shall serve in the absence of the administrator;

(b) Records and reports at the ambulance agency base station including:

1. An original, electronic equivalent, or copy of all patient care records consistent with the U.S. Department of Transportation

National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at [www.nemsis.org/technical-resources/version-3](http://www.nemsis.org/technical-resources/version-3);

2. An electronic copy of all completed patient care reports, which shall be maintained to ensure confidentiality and safekeeping for at least seven (7) years from the date on which the service was rendered, or in the case of a minor, at least three (3) years after the minor reaches the age of majority.

3. Copies of Patient Care Reports for the preceding twelve (12) months, which shall be accessible and be immediately available to the board, KBEMS office, or representatives upon request;

(c) Personnel files for each employee or volunteer who staffs a vehicle of a licensed agency. Personnel files shall be maintained for at least one (1) year following separation from employment. As a minimum, all personnel files shall contain:

1. A pre-employment and annual criminal background check administered by the Kentucky Administrative Office of the Courts;

2. A copy of the employee's valid KBEMS certification or licensure card; and

3. A copy of each employee's completion of NIMS ICS 100, 200, 700, and 800;

(d) A policy for the provision of a pre-employment and annual health assessment of employees of the agency, which shall include reporting mechanisms for work-related illness or injury;

(e) A written plan for providers to consult with online adult and pediatric medical direction. This plan shall address as a minimum:

1. The availability of medical direction twenty-four (24) hours a day, seven (7) days a week;

2. The availability of medical direction during an emergency event;

3. The provision of medical direction by a medical professional with a higher level of training or expertise; and

4. Recommended actions in the event of equipment failure, communication barriers, or other unusual circumstance if it is not possible to contact online medical direction;

(f) A plan and records for the provision of continuing education for staff and volunteers, including:

1. A written plan for the method of assessment of staff continuing education needs; and

2. A coordinated plan to meet those needs, including a provision that all continuing education shall be provided either by a licensed TEI or in accordance with 202 KAR 7:601;

(g) An infection control plan in accordance with 29 C.F.R. 1910.1030;

(h) A written plan for training or educating personnel for responding to hazardous materials, criminal, and potential terrorist incidents, including plans for the protection and decontamination of patients, ambulances, equipment, and staff;

(i) A written policy regarding the appropriate destination of a patient who expires during transport if a valid Kentucky EMS[?] DNR, or MOST form is present;

(j) A written plan for the quality assessment of patient care and provider quality improvement, including a monthly review of patient care reports and evaluation of staff performance related to patient care. This plan shall address as a minimum:

- 1. Employee health and safety;
- 2. Compliance with protocols and operating procedures;
- 3. Assessment of dispatch protocols;
- 4. Vehicle operations and vehicle safety;
- 5. Additional training necessary for the patient care provider or providers;

6. Equipment preventive maintenance programs; and

7. A process for the resolution of customer complaints;

(k) A written plan for training personnel and responding to mass casualty incidents and disasters;

(l) A written orientation program for all personnel, including at a minimum:

1. Validation of certification or license with KBEMS;

2. Validation of NIMS ICS 100, 200, 700, and 800 within sixty (60) days of employment for any employee who staffs a licensed vehicle;

3. Validation of Driver's License if applicable;

4. A review of all agency policies, procedures, and protocols;

5. Communication equipment at the base station and on each vehicle;
  6. Operational aspects of the agency fleet and equipment;
  7. Inspection and routine maintenance of agency fleet, facilities, and equipment;
  8. Appropriate processes for disinfection of agency fleet, facilities, and equipment;
  9. Local navigation and geographic orientation; and
  10. Completion of Patient Care Reports and other documentation as established by the agency;
- (m) Proof of professional liability malpractice insurance of a minimum of \$1,000,000;
- (n) Proof of vehicular liability insurance.
- (2) Each agency shall notify the board at least twenty-four (24) hours prior to the transfer of coverage, cancellation, lapse, or other cessation or change in professional liability malpractice insurance or vehicular liability insurance.
- (3) Each agency shall verify valid staff certification or licensure as of the first day of the calendar year.
- (4) If ceasing to operate, an agency shall provide the board with the physical storage location of all Patient Care Reports within five (5) business days of closure. These reports shall be maintained by the owner of the licensed agency, or a contracted third party to meet the timeline established in subsection (1)(b) of this section.
- (5) Each agency that allows an employed emergency responder to provide medical services while off duty in accordance with 202 KAR 7:701, Section 6, shall maintain and implement a policy regarding which employees are approved to provide medical services off duty by the agency's medical director and the manner in which worker's compensation and general liability insurance covers employees off duty. The policy shall be signed by both the agency's administrator and medical director, shall be reviewed annually, and shall include:
- (a) Direction on which employees may remove medical equipment from the agency's premises for the purpose of providing care off duty;
- (b) Direction on which equipment may be removed from the agency's premises for the purpose of providing care off duty; and
- (c) A provision that controlled substances shall not be removed from the agency's premises for the purposes of providing care off duty.
- (6) Each agency shall in the county in which the agency's base station or a satellite is located:
- (a) Document evidence of participation in a local, county, regional, or state disaster or preparedness exercise within the preceding twelve (12) months;
- (b) Coordinate with the county emergency management director plans for the possible use of agency personnel for use in the emergency operations center in a disaster; and
- (c) Maintain a hard copy or electronic equivalent of the most current adopted city, county, or urban county government emergency management agency's emergency operations plan at the ambulance base station.
- Section 3. Operating Requirements. (1) Each licensed agency, except Class IV and VIII, shall provide service twenty-four (24) hours, a day, and seven (7) days a week. Class IV and VIII agencies shall operate during the hours of operation for their geographical service area or designated event.
- (2) Each licensed agency shall retain staffing schedules for at least the previous twelve (12) months.
- (3) Each agency administrator or designee shall be familiar with emergency management reporting and procurement processes and software platforms utilized to communicate the needs of the local government to state agencies.
- (4) A licensed Class I, II, III, VI, or VII agency that ceases to provide continuous service on a twenty-four (24) hour basis shall surrender its license to the board's office within twenty-four (24) hours of the agency ceasing to provide continuous service.
- (5) A licensed agency shall have a written plan to assure all requests for service shall be promptly answered.
- (6) A licensed agency shall have a written scope of care policy

- to include the types of services performed, limitations of response, and the types of medical teams provided.
- (7) Any agency licensed and located within the geographical service area that determines it is unable to have a vehicle responding within ten (10) minutes from the initial time an emergency call is received from the dispatch center shall notify the next closest appropriate licensed agency to respond.
- (8) An agency shall enter into a mutual aid agreement with another Kentucky licensed ambulance agency operating within the same or contiguous counties that provide response to medical emergencies. These agreements shall be in writing and address:
- (a) The type of mutual aid assistance to be provided, including ALS or BLS medical care and transport and ALS or BLS medical first response;
- (b) Response personnel, including levels of training or education and provisions for joint in-service training or education if appropriate;
- (c) Response vehicles, including unit identifiers and the station or location from which the vehicles shall be operated;
- (d) A plan of action for the mutual aid agreement, including dispatch and notification procedures;
- (e) Radio and other communications procedures between the ambulance agency and other response agencies with which the agency has mutual aid agreements;
- (f) On-scene coordination and scene control including medical direction if several agencies respond to the same incident;
- (g) Exchange of patient information, records, and reports as allowed by law; and
- (h) The effective dates and process for amendment or termination.
- (9) A ground agency shall send a written request for a mutual aid agreement to at least two (2) contiguous counties and retain a copy of each request and each county's response;
- (10) Each agency shall maintain a policy or affiliation agreement with the primary call-taking center that provides dispatch services for all or part of the service area of the ground agency. The agreement shall state at a minimum that:
- (a) Requests for emergency ambulance service shall be dispatched or notified within two (2) minutes from determining that the caller is requesting ambulance response;
- (b) In the event that the closest licensed agency for that geographic service area is unable to have a vehicle responding to an emergency call within ten (10) minutes from the time the call is dispatched, the agency shall notify the next closest appropriate licensed agency to respond; and
- (c) The agreement shall specify which patient information shall be collected by the call-taking center during a call for service.
- (11) If a ground agency is unable to secure a written affiliation agreement with the dispatch center, the ground agency shall retain all written correspondence to the dispatch center requesting an affiliation agreement and the dispatch center's denial of the agency's request.
- (12) An agency shall not respond to requests for emergency service outside of its licensed geographic service area without first receiving authorization from the licensed agency in the geographic service area in which the request originates.
- (13) A licensed Class I ground agency that is located in a geographical service area containing multiple destination hospitals, with regard to the furnishing of 911 response and transportation, shall not engage in:
- (a) Exclusive or coercive practices regarding transportation decisions with regard to any affiliated hospital or hospital emergency department;
- (b) Preferential transportation to any affiliated hospital emergency department if the transports are not justified by time, place, patient convenience, or other objective factors affecting a patient;
- (c) Noncompetitive transportation to any affiliated hospital emergency department; or
- (d) Transports to any affiliated hospital emergency department if that hospital is not the closest to the patient location or most appropriate based on the availability of particular services or patient preference.



(14) An agency that cannot meet the timelines established in subsection (10) of this section shall contact another licensed agency and receive an estimated time of arrival to the request for service. If the mutual aid agency can arrive at the location where the request originated more quickly than the agency licensed for the geographic service area, the agency licensed for the geographic service area shall request mutual aid from its neighboring agency to respond to the call.

(15) An agency shall not refuse a request for emergency pre-hospital response if a unit is available in its geographic service area.

(16) An agency shall not exhaust its resources by answering a nonemergency call or for response to mutual aid requests.

(17) This administrative regulation shall not be construed to prevent a licensed agency from providing medical first response emergency or nonemergency pre-hospital care at or below the level for which the agency is licensed through the use of designated agency-owned response vehicles.

(18) A communications system shall be developed, coordinated, and maintained by each licensed agency. The communication system shall comply with paragraphs (a) through (e) of this subsection.

(a) Radio equipment used in emergency medical services vehicles shall be appropriately licensed through the FCC. Copies of the current FCC licenses shall be on file in the agency office.

(b) A licensed agency shall have the capability to communicate on all VHF Kentucky State Mutual Aid Frequencies in accordance with the Commonwealth of Kentucky Field Operations Guide (KY-FOG).

(c) Each ambulance shall be equipped with mobile two (2) way radio communication equipment with a control point located in both the driver's compartment and patient care compartment of the vehicle capable, under normal conditions, of operating on agency, dispatch center, mutual aid, and hospital frequencies.

(d) Each ambulance shall have a minimum of two (2) portable push-to-talk two (2) way radio communication devices capable of operating on the agency dispatch center, mutual aid, and hospital frequencies.

(e) One (1) alternative method of two (2) way communication may be substituted for one (1) portable two (2) way radio.

Section 4. Medical Directors. (1) Each licensed agency shall have a medical director who meets the requirements established in 202 KAR 7:801.

(2) A licensed agency shall notify KBEMS within twenty-four (24) hours of a decision to discontinue a medical director agreement by either the agency or the medical director.

(3)(a) If an agency is found to be operating without a medical director, the agency shall be provided emergency medical direction by the KBEMS Medical Advisor for a fee of \$100 per day for the first thirty (30) calendar days the agency is without a medical director.

(b) The fee shall increase to \$500 per day after thirty (30) calendar days.

Section 5. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS web site or similar publication of the board, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Field Operations Guide (KY-FOG)", (6/2012);

(b) "NHTSA NEMSIS Data Dictionary", (v3.40) U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at [https://www.nemsis.org/media/nemsis\\_v3/3.4.0.150302/DataDictionary/PDFHTML/DEMMS/NEMSISDataDictionary.pdf](https://www.nemsis.org/media/nemsis_v3/3.4.0.150302/DataDictionary/PDFHTML/DEMMS/NEMSISDataDictionary.pdf); and

(c) "Vehicle Change Form", (12/2017).

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subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

ANGELA EVANS, KBEMS General Counsel

For JIM DUKE, KBEMS Chairperson

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: February 15, 2018 at 8 a.m.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Board of Emergency Medical Services; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 231-1175, email [aevans@mmlk.com](mailto:aevans@mmlk.com).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the operating procedures for ground ambulance agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a uniform process for ground ambulance operations for which all agencies are required to abide by.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's authority to create standards for ground ambulance services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the requirements for ground ambulances to operate.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies only emergency service requests cannot be responded to without proper authorization.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to explain when an agency may respond to a request for emergency services.

(c) How the amendment conforms to the content of the authorizing statutes: The board has the authority to regulate ambulance services and the amendment addresses when emergency services can be provided outside an agency's geographic region.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify for licensees the scenarios of when an agency shall not respond to a request for emergency services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,264 licensed ground ambulance agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation establishes a twenty-four (24) hour time frame for an agency to surrender its license when it ceases to provide continuous twenty-four (24) hour service and a twenty-four (24) hour time frame to notify the board of a transfer or lapse in insurance.

(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 agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agencies will have set standards for the ground ambulance agencies and clearly defined time frames to notify the board of various circumstances.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:  
None

(a) Initially: None

(b) On a continuing basis: None

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee increase is necessary to implement this 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 was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Ambulance providers and first response agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311A.020, 311A.025, 311A.030, 311A.190

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

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

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

(c) How much will it cost to administer this program for the first year? No cost

(d) How much will it cost to administer this program for subsequent years? No cost

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

##### Kentucky Board of Emergency Medical Services (Amended After Comments)

#### 202 KAR 7:560. Ground vehicle staff.

RELATES TO: KRS 189.910-189.950, 311A.030, 311A.190

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the board to exercise all administrative functions in the regulation of the emergency medical services system and the licensing of ambulance services and medical first response agencies. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the minimum staffing requirements for ground vehicles.

Section 1. Staffing Requirements. (1) Each Class I agency BLS

ambulance shall at minimum, be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(2) Each Class I agency ALS ambulance shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an Advanced EMT or licensed as a paramedic.

1. Each Class I ALS agency providing primary 911 emergency ambulance service shall ensure that an on-duty paramedic shall staff at least twenty-five (25) percent of the agency's staffed ambulances at any time during a twenty-four (24) hour period.

2. To ensure compliance, each agency shall maintain its work schedules from the previous twelve (12) months until reviewed during its annual inspection.

(3) Each Class I agency operating an ALS ambulance providing a BLS level of care shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(4) Each Class II agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(5) A Class III Adult Critical Care ambulance agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT);

(b) An attendant licensed as a paramedic; and

(c) One (1) licensed:

1. Registered nurse[~~with a current certification as a CCRN for adults that shall be obtained within one (1) year of hire~~];

2. Advanced practice registered nurse[~~certified in adult acute care~~];

3. Respiratory therapist;

4. Physician assistant[~~specializing in critical care~~];

5. Physician; or

6. Additional paramedic.

(6) Each Class III Pediatric Specialty Care Ambulance Agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) A primary attendant licensed as a registered nurse and certified as a CCRN that is obtained within one (1) year of hire; and

(c) One (1) additional attendant licensed as a [Two (2) attendants licensed as a:]

1. Registered nurse[~~with a current certification as a CCRN for Pediatrics that is obtained within one (1) year of hire~~];

2. Advanced practice registered nurse[~~certified in pediatric acute care~~];

3. Respiratory therapist;

4. Physician assistant;

5. Physician; or

6. Paramedic.[~~(c) A paramedic and respiratory therapist shall not simultaneously serve as attendants.~~]

(7) Each Class III Neonatal Specialty Care Ambulance Agency shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) A primary[An] attendant licensed as a registered nurse with a current certification as a CCRN[in Neonatology] or RNC-NIC that is obtained within one (1) year of hire; and

(c) One (1) additional attendant licensed as[licensed]:

1. An advanced practice registered nurse[~~certified in neonatology~~];

2. A respiratory therapist;

3. A physician assistant[~~specializing in neonatology~~]; or

4. A physician; or

**5. Registered nurse with a current certification as a CCRN in Neonatology or RNC-NIC that is obtained within one (1) year of hire].**

(8) Each Class IV agency operating a BLS ambulance shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an emergency medical technician (EMT).

(9) Each Class IV service operating an ALS ambulance shall at minimum be staffed by:

(a) A driver certified as an emergency medical technician (EMT); and

(b) An attendant certified as an Advanced EMT or licensed as a paramedic.

1. Each Class IV ALS agency that provides emergency and nonemergency transportation for restricted locations, such as industrial sites or other sites, shall ensure an on-duty paramedic staffs at least twenty-five (25) percent of the agency's staffed ambulances at any time during a twenty-four (24) hour period.

2. To ensure compliance, each agency shall maintain its work schedules from the previous twelve (12) months until reviewed by board staff during its annual inspection.

(10) Each Class VI BLS medical first response agency shall at minimum be staffed by a certified:

(a) Emergency medical responder (EMR); or

(b) Emergency medical technician (EMT).

(11) Each Class VI ALS medical first response agency shall at minimum be minimally staffed by:

(a) A certified Advanced EMT; or

(b) A licensed paramedic.

(12) Each Class VIII BLS agency shall be minimally staffed by a certified:

(a) Emergency medical responder (EMR); or

(b) Emergency medical technician (EMT).

(13) Each Class VIII ALS agency shall be minimally staffed by:

(a) A certified Advanced EMT; or

(b) A licensed paramedic.

(14) Each Class I ALS, Class III ACC, Class IV ALS, and Class VI ALS agency shall have a licensed paramedic on duty at all times.

(15) At all times, the attendant shall monitor the patient and remain with the patient in the patient compartment.

(16) This administrative regulation shall not prevent an agency from utilizing staff other than those required by this administrative regulation in:

(a) Disasters;

(b) Mass casualty incidents; or

(c) Extraordinary scene conditions that would impair the safety of the patient or personnel operating at the scene.

(17) A certified emergency medical responder who were employed by a Class I, II, or III agency as a driver prior to January 1, 2018 may continue in that role if the emergency medical responder's employment relationship with the Class I, II, or III agency does not lapse.

(18) Alternative staff shall not operate a licensed vehicle unless at the direction of the agency administrator and the vehicle is out of service and not subject to an emergency response.

Section 2. Motor Vehicle Operator Requirements. (1) Each person operating a vehicle shall:

(a) Be at least eighteen (18) years of age;

(b) Hold a valid driver's license in any state or territory of the United States; and

(c) Complete at least four (4) hours of driver training and education every two (2) years.

(2) The driver training and education shall consist of a:

(a) Review of driving a vehicle under emergency conditions;

(b) Review of KRS 189.910 through 189.950 regarding operation of emergency vehicles;

(c) Demonstration by the student of forward and back-up driving maneuvers in a controlled situation, such as in an obstacle

course designed specifically for this purpose; and

(d) Review of defensive driving techniques and procedures with hands-on experience or exposure by visual aids or planned demonstrations.

Section 3. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS Web site or similar publication of the board, or otherwise disseminate, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

ANGELA EVANS, General Counsel for KBEMS

For JIM DUKE, KBEMS Chairperson

APPROVED BY AGENCY: February 15, 2018

FILED WITH LRC: February 15, 2018 at 8 a.m.

CONTACT PERSON: Angela Evans; Legal Counsel, Kentucky Board of Emergency Medical Services; McBrayer, McGinnis, Leslie & Kirkland, PLLC, 201 East Main Street Suite 900, Lexington, Kentucky 40507, phone (859) 231-8780, fax (859) 231-1175, email [aevans@mmlk.com](mailto:aevans@mmlk.com).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Angela Evans

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the staffing requirements for ground vehicles.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a minimum staffing standard for all ground emergency medical services agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with the board's statute as it establishes minimum standards for staff of ground emergency medical service agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the minimum staffing requirements for each class of ground emergency medical service agencies.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the certification requirement for nurses.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because nurses in performing this specific transport currently obtain specific neonatal or pediatric intensive care training and do not transport adults. Requiring the additional certification was not necessary, as these nurses do not transport adult patients, which is the type of patient addressed in the certification originally included.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute allows the board to establish minimum standards for the operation of emergency medical service agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow agencies to continue to provide the inter-transport services and neo-natal pediatric transport services they have been providing without being in violation of the regulations and providing clarification to the agencies about the new staffing requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,264 ground ambulance agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will need to review their

staffing of vehicles to ensure they are in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will vary depending on the amount of staff, if any, needed to be in compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The agencies will know the level of certification required to serve in each role on an ambulance based on its classification.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: None

(a) Initially: None

(b) On a continuing basis: None

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated agencies on the basis of any factor.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Ambulance providers and first response agencies.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 311A.020, 311A.025, 311A.030, 311A.190

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No cost

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

#### 902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 198B.260, Chapter 209, 211.842-211.852, Chapter 214[214.175], 216.2970, 216B.010, 216B.015, 216B.040, 216B.042, 216B.0425(2), 216B.045, 216B.050, 216B.055,

216B.075, 216B.085, 216B.105-216B.125, 216B.140-216B.175, 216B.185, 216B.190, 216B.230-216B.239, 216B.250, 216B.400-216B.402, 216B.990, 219.011-219.081, Chapter 310 [311.241-311.247,] 311.560[(4)], 311.992, Chapter 311B, 314.011(8), 314.042(8), 320.210(2), 333.030, 446.400, Chapter 620, 29 C.F.R. 1910.1030(d)(2)(vii), 40 C.F.R. Part 403, 42 C.F.R. Part 405, 412.22(c), Part 493, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 - 1320d-8, 1395x(r)(2) - (5), 1395u(b)(18)(C)[412.23(e)]

STATUTORY AUTHORITY: KRS[216.2970(1);] 216B.042(1); 216B.175(3), 42 U.S.C. 263a]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires[that] the[Kentucky] Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient[regulate] health facilities and health services. This administrative regulation—establishes the minimum licensure requirements for the operation of hospitals and the basic services [to be] provided by hospitals.

Section 1. Definitions. (1) "Accredited record technician" means an individual who:

(a)[a person who] Has graduated from a program for medical record technicians that is accredited by the Council on Medical Education of the American Medical Association and the American Health Information Management[Medical Record] Association;[;] and

(b)[who] Is certified as an accredited record technician by the American Health Information Management[Medical Record] Association.

(2)[“Certified radiation operator” means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of radiation-producing machines.

(3)] "Governing authority" means the individual, agency, partnership, or corporation[;] in which the ultimate responsibility and authority for the conduct of the health facility[institution] is vested.

(3)[(4)] "Induration" means a firm area in the skin which develops as a reaction to the intradermal injection of five (5) tuberculin units of purified protein derivative by the Mantoux technique when a person has tuberculosis infection.

(5)] "Long-term acute inpatient hospital services" means acute inpatient services provided to patients whose average inpatient stay is greater than twenty-five (25) days.

(4)[(6)] "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority.

(7)] "Organ procurement agency" means a federally designated organization that[which] coordinates and performs activities to[which] encourage the donation of organs or tissues for transplantation.

(5)[(8)] "Protective device" means a device designed to protect a person from falling, and may include:

(a)[to include] Side rails;

(b) A[;] safety vest; or

(c) A safety belt.

(6)[(9)] "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(7) "Registered health information administrator" means an individual who has obtained professional certification from the American Health Information Management Association.

(8)[(10)] "Registered[, certified] or registry-eligible dietitian" means an individual [a person] who is licensed as a dietitian[certified] in accordance with KRS Chapter 310.

(9)[(11)] "Registered records administrator" means a person who is certified as a registered records administrator by the American Medical Record Association.

—(12)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.[(13)] "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein

derivative (PPD). The results of the test shall be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

—(14) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.]

Section 2. Requirements to Provide Services. A facility shall not be licensed as[,] or hold itself out to be[, or be called,] a hospital unless it provides:

- (1) The full range of services required by Section 4 of this administrative regulation; and
- (2) Treatment for a variety of illnesses.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for:

1. The management and operation of the hospital; and
- 2.[for] Compliance with federal, state, and local law pertaining to its operation.

(b) The governing authority shall:

1. Appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority; and
2. Designate a mechanism for the annual[periodic] performance review of the administrator.

(2) Administrator.

(a) The administrator shall:

1. Act as the chief executive officer;
2. Be responsible for the management of the hospital; and
3. Act as the[Provide] liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through:

- 1.[Periodic] Reports; and
2. Attendance at meetings of the governing authority.

(c) The administrator shall:

1. Develop an organizational structure including lines of authority, responsibility, and communication; and
2. Organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of each subordinate[subordinates] to whom the administrator[he] has assigned duties.

(e) The administrator shall:

1. Hold interdepartmental and departmental meetings as[, where] appropriate;
2. Attend or be represented at the meetings on a regular basis; and
3. Report to each department and[as well as] to the governing authority the pertinent activities of the hospital.

(3) Administrative records[and reports].

(a) The hospital shall establish administrative records that reflect and guide the administrative operations of the hospital, including:

1. Minutes of the governing authority;
2. Financial records;
3. Personnel records; and
4. Employee health records.

(b) A hospital shall have discretion as to the form or content of any administrative record it establishes.

(c)[Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. Administrative reports shall include:

- 1. Minutes of the governing authority and staff meetings;
- 2. Financial records and reports;
- 3. Personnel records;
- 4. Inspection reports;
- 5. Incident investigation reports; and
- 6. Other pertinent reports made in the regular course of business.

—(b)] The hospital shall maintain a:

1. Patient admission register;
  - 2.[and] Discharge register;
  - 3.[If applicable, a] Birth register, if applicable; and
  - 4.[a] Surgical register, if applicable[shall also be maintained].
- (d)[(e)] Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility that includes the[including] lines of authority, responsibility, and communication, and departmental organization;

(b) The admission procedure to assure[which assures] that a patient is admitted to the hospital in accordance with medical staff policy;

(c) Any constraint imposed on admissions by a limitation of:

1. Services;
  2. Physical facilities;
  3. Staff coverage; or
  4. Other relevant factor;
- (d) Financial requirements for patients on admission;
- (e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian, or legal representative for diagnostic or[and] treatment procedures;

(g) Effective procedures for tracking[An effective procedure for recording accidents involving a patient, visitor, or staff member, including] incidents, including[of] transfusion reactions, drug reactions, and medication errors that may occur in the facility. A hospital shall have discretion as to its process, and the procedures shall encourage[, and similar events, and a] statistical analysis to inform process improvement activities[shall be reported in writing through the appropriate committee];

(h) Procedures for meeting the requirements of KRS Chapter 214 and 902 KAR 2:020, including the reporting of:

1. Notifiable infectious conditions;
2. Notifiable non-infectious conditions;
3. Multi-drug resistant organisms;
4. Other reportable disease surveillance; and
5. Electronic laboratory reporting[Report of communicable diseases to the health department in whose jurisdiction the disease occurs, pursuant to the reporting requirements of KRS Chapter 214 and 902 KAR 2:020];

(i) Use of restraints and a mechanism for monitoring and controlling the[their] use of restraints;

(j) The internal transfer of a patient from one (1) level or type of care to another, if applicable;

(k) The discharge and termination of services[and]

(l) An organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency; and

(m) Policies that assure the reporting of cases of abuse, neglect, or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620, including evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated internally to prevent further potential abuse while the investigation is in progress.

(5) Patient identification. The hospital shall have a system for identifying each patient from the time of admission to discharge[.]; For example, an identification bracelet imprinted with the following:

- (a) Name of patient;
  - (b) Hospital identification number;
  - (c) Date of admission; and
  - (d) Name of attending medical staff member.
- (6) Discharge planning.
- (a) The hospital shall have a discharge planning program to assure continuity of care for a patient who is[being]:
1. Transferred to another health care facility; or
  2. Discharged to the home.
- (b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope

of the general hospital.

(c) The hospital shall:

1. Coordinate the discharge of the patient with the patient and the person or agency responsible for the postdischarge care of the patient; ~~and~~

2. Provide pertinent information concerning postdischarge needs to the responsible person or agency, including the full range of qualified providers or appropriate support organizations in the community available to provide post-acute care services; and

3. Comply with the requirements established in KRS 216B.230 to 216B.239, which include providing each patient or the patient's legal guardian, if applicable, with at least one (1) opportunity to designate a lay caregiver.

(7) Transfer procedures and agreements.

(a) The hospital shall have a written patient transfer procedure and agreement with at least one (1) of each type of other health care facility able to provide a level of inpatient care not provided by the hospital.

(b) A hospital that~~facility which~~ does not have a transfer agreement in effect, but has documented a good faith effort to enter into ~~such~~ an agreement, shall be in compliance with paragraph (a) of this subsection~~requirement~~.

(c) A transfer procedure and agreement shall:

1. Specify the responsibilities each institution assumes in the transfer of a patient; and

2. Establish the hospital's responsibility for:

a. Notifying the receiving entity promptly of the impending transfer of a patient; and

b. Arranging for appropriate and safe transportation.

(d)~~(b)~~ If a patient is transferred to another health care facility or to the care of a home health agency:

1. A transfer form containing the following information shall accompany the patient or be sent immediately to the other health care facility or home health agency:

a. Attending medical staff member's instructions for continuing care;

b. Current summary of the patient's medical record;

c. Information as to special supplies or equipment needed for patient care; and

d. Pertinent social information on the patient and family; and

2. A copy of the patient's signed discharge summary shall be forwarded to the health care facility or home health agency within thirty (30) days of the patient's discharge.

(e)~~(c)~~ If a patient is transferred~~transfer is~~ to another licensed level of care within the same facility:

1. The history and physical examination report shall:

a. Be transferred to the other licensed level of care within the same hospital pursuant to KRS 216B.175(3); and

b. shall be transferred and shall Serve to meet the history and physical examination requirement for the licensed level of care to which the patient has been transferred~~, in accordance with KRS 216B.175(3); and~~

2. The complete medical record or a current summary of the record shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority.

(b) The medical staff shall be responsible:

1. To the governing authority for the quality of medical care provided to the patients; and

2. For the ethical and professional practice of its members.

(c) The organized medical staff shall be composed of doctors of medicine or doctors of osteopathy.

(d) At the discretion of the hospital, the governing body may elect to include the following practitioners as eligible for appointment to the medical staff to provide only those services authorized within the practitioner's respective scope of practice:

1. A licensed practitioner described in 42 U.S.C. 1395x(r)(2) – (5); or

2. A non-physician licensed practitioner described in 42 U.S.C. 1395u(b)(18)(C).

(e) The governing body of a hospital shall not be required to open eligibility for medical staff appointment to any licensed

practitioner in addition to doctors of medicine or doctors of osteopathy.

(f)~~(b)~~ The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority that address the following~~, which shall~~:

1. ~~State the necessary~~ Qualifications for medical staff membership, including licensure to practice~~medicine or dentistry~~ in Kentucky in accordance with authorized scope of practice, except for graduate doctors of medicine or doctors of osteopathy~~physicians~~ in their first year of hospital training;

2.a. ~~Define and describe the~~ Responsibilities and duties of each category of medical staff membership the medical staff may choose to create, for example, active, associate, or courtesy;

b. ~~Delineate the~~ Clinical privileges that may be possessed by medical~~of~~ staff members and allied health professionals;

c. Procedures~~Establish a procedure~~ for granting and withdrawing medical staff membership and clinical privileges; and

d. Procedures for reviewing credentials ~~review~~;

3. ~~Provide~~ A mechanism for appeal of decisions adversely affecting medical~~regarding~~ staff membership or clinical~~and~~ privileges;

4. ~~Provide~~ A method for the selection of officers of the medical staff;

5. Policy~~Establish requirements~~ regarding the frequency of, and attendance at,~~general staff and department or service~~ meetings of the medical staff;

6. Authority to appoint committees to address areas of operation or clinical focus, which may include the following ~~Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. Committees may include:~~

a. Executive committee;

b.~~;~~ Credentials committee;

c.~~;~~ Medical audit committee;

d.~~;~~ Medical records committee;

e. Infection~~;~~ Infections control committee;

f.~~;~~ Tissue committee;

g.~~;~~ Pharmacy and therapeutics committee;

h.~~;~~ Utilization review committee; or

i.~~;~~ and Quality assurance committee; and

7. ~~Establish~~ A policy requiring a member of the medical staff to sign a verbal order for diagnostic testing or treatment:

a. As soon as possible after the order was given; or

b. If the patient was discharged prior to the order being authenticated, within thirty (30) days of the patient's discharge.

(g) All licensed practitioners appointed to the medical staff shall:

1. Be privileged in accordance with and function under the policies or bylaws required by paragraph (f) of this subsection; and

2. Comply with the hospital infection control and employee health~~health~~ policies.

(9) Personnel.~~(a)~~ The hospital shall:

(a) Employ a sufficient number of qualified personnel to provide effective patient care and other related services;

(b)~~and shall~~ Have written personnel policies and procedures available to hospital personnel;

(c) ~~Have~~~~(b) There shall be~~ a written job description for each position subject to review and revision~~. Each job description shall be reviewed and revised~~ as necessary;

(d) ~~Have~~~~(c) There shall be~~ an employee health program for the mutual protection of employees and patients, including provisions for preemployment medical~~and periodic health~~ examination and follow-up medical examination no less than every three (3) years thereafter for staff who serve patients;

(e) Have a tuberculosis infection control program~~(f)~~~~. The hospital shall~~ Comply with the~~following~~ tuberculosis testing requirements established for health care workers in 902 KAR 20:205; and

(g) Maintain the following information~~:~~ 1. The skin test status of each staff member shall be documented in the employee's personnel record.



~~— a. A skin test shall be initiated on each new staff member before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment.~~

~~— b. Skin testing shall not be required at the time of initial employment if the employee:~~

~~— (i) Documents a prior skin test of ten (10) or more millimeters of induration; or~~

~~— (ii) Is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis.~~

~~— c. Two (2) step skin testing shall be required for a new employee over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless the employee can document that he or she has had a tuberculosis skin test within one (1) year prior to his or her current employment.~~

~~— d. A staff member who has never had a skin test result of ten (10) or more millimeters induration shall be skin tested annually, on or before the anniversary of the last skin test.~~

~~— 2. A staff member who has a skin test result of ten (10) or more millimeters induration on initial employment or annual testing, shall receive a chest x-ray unless:~~

~~— a. A chest x-ray within the previous two (2) months showed no evidence of tuberculosis; or~~

~~— b. The individual can document the previous completion of a course of prophylactic treatment with isoniazid. The employee shall be advised of the symptoms of the disease and instructed to report to his or her employer and to seek medical attention promptly if symptoms persist.~~

~~— 3. The hospital administrator shall ensure that skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. Skin testing dates and results and chest x-ray reports shall be recorded as a permanent part of the personnel record.~~

~~— 4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known:~~

~~— a. Names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and~~

~~— b. Chest x-rays suspicious for tuberculosis.~~

~~— 5. A staff member whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months, unless medically contraindicated, as determined by a licensed physician. A medication shall be administered only upon the written order of a physician or other ordering personnel acting within their statutory scope of practice. If an individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and shall have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.~~

~~— 6. A staff member who documents completion of preventive treatment with isoniazid shall be exempt from further screening requirements.~~

~~— (d) The following information shall be included in each employee's personnel record:~~

- ~~1. Name, address, Social Security number;~~
- ~~2. Health record[records];~~
- ~~3. Evidence of current registration, certification, or licensure;~~
- ~~4. Record[Records] of training and experience; and~~
- ~~5. Record[Records] of performance evaluation.~~

~~(10) Physical and sanitary environment.~~

~~(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.~~

~~(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas:~~

1. Plant maintenance;

2.[.] Laundry operations;[if applicable,] and

3. Housekeeping.

(c) There shall be an infection control program[committee] charged with [the] responsibility for[of] investigating, controlling, and preventing infections in the hospital. A multidisciplinary infection control[The] committee shall have oversight of the program. The program shall:

1. Be directed by:

a. A certified infection control preventionist; or

b. An infection preventionist that has education or specialized training and experience necessary to be certified within two (2) years of employment;

2. Have assigned administrative and professional staff to perform:

a. Infection control surveillance;

b. Investigation of cases and outbreaks;

c. Infection control training;

d. Reporting of diseases; and

e. Infection control collaborations with employee health services;

3. Receive every report of an infection incident discovered by an employee; and

4.[2.] Develop written infection control policies[.] consistent with the Centers for Disease Control and Prevention guidelines.

(d) The infection control policies shall address the:

1. Prevention of disease transmission to and from patients, visitors, and employees, including:

a. Universal blood and body fluid precautions;

b. Precautions for infections that[which] can be transmitted by the airborne route;[and]

c. Work restrictions, including return to work policies for employees with infectious diseases;

d. Policies for vaccinating health care personnel or documenting immunity status for:

(i) Hepatitis B;

(ii) Influenza;

(iii) Measles;

(iv) Mumps;

(v) Rubella;

(vi) Pertussis; and

(vii) Varicella;

e. Policies for vaccinating health care personnel to prevent meningococcal disease, typhoid fever, or polio for personnel who have certain health conditions or are at risk for work-related exposure;

f. Handwashing and hand hygiene;

g. Antimicrobial stewardship; and

h. Reporting, investigating, and controlling outbreaks of healthcare-associated infections;

2. Use of environmental cultures;[.] Culture testing results shall be recorded and reported to the Infection Control Committee; and

3. Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, and free from accumulations of dirt, rubbish, and foul, stale, or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. A written housekeeping procedure shall be:

a. Established for the cleaning of each area; and

b.[copies shall be] Made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. The[Such] equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be:

a. Labeled;

b.[.] Stored in closed metal containers;[.] and

c. Kept separate from other cleaning materials.

5. The facility shall be kept free from insects, ~~and~~ rodents, ~~and~~ their nesting places, and entrances to their nesting places shall be eliminated.

6. Garbage and trash shall be:

a. ~~Shall be~~ Stored in areas separate from those used for preparation and storage of food; ~~and~~

b. ~~Shall be~~ Removed from the premises regularly.

7. Trash ~~and c.~~ containers shall be cleaned on a regular basis.

(g) Sharp wastes.

1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be:

a. Segregated from other wastes; and

b. Placed in puncture resistant containers immediately after use.

2. A needle or other contaminated sharp shall not be purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

3. A sharp waste container shall be:

a. Incinerated on or off site; or

b. ~~shall be~~ Rendered nonhazardous.

4. Nondisposable sharps, such as large-bore needles or scissors, shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department, in accordance with 902 KAR 20:009, Section 22.

(h) Disposable waste.

1. Disposable waste shall be:

a. Placed in a suitable bag or closed container ~~so as~~ to prevent leakage or spillage; and

b. ~~shall be~~ Handled, stored, and disposed of ~~in such a way as~~ to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of waste material.

3. The ~~following~~ wastes identified in this subparagraph shall receive special handling:

a. Microbiology laboratory waste including a viral or bacterial culture, contaminated swab, or a specimen container or test tube used for microbiologic purposes shall be incinerated, autoclaved, or otherwise rendered nonhazardous; ~~and~~

b. Pathological waste including a tissue specimen from a surgical or necropsy procedure shall be incinerated.

4. Blood, blood specimens, used blood tubes, or blood products ~~The following wastes~~ shall be:

a. Disposed of by incineration;

b. ~~or be~~ Autoclaved before disposal; or

c. ~~be~~ Carefully poured down a drain connected to a sanitary sewer, subject to limitations in subparagraph 5, of this paragraph: ~~blood, blood specimens, used blood tubes, or blood products~~.

5. Wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment law, including 40 C.F.R. ~~C.F.R.~~ 403, ~~401 KAR 5:557,~~ and relevant local ordinances.

6. An incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed ~~so as~~ to control the spread of infection.

2. Clean linen and clothing shall be stored in a clean, dry, dust-free area designated exclusively for this purpose.

3. An uncovered mobile cart may be used to distribute a daily supply of linen in patient care areas.

4. ~~3.~~ Soiled linen and clothing shall be placed in a suitable bag or closed container ~~so as~~ to prevent leakage or spillage, and there shall be minimal handling of soiled linen to prevent generating further aerosols ~~handled in such a way as to minimize direct exposure of personnel to soiled linen~~.

5. Soiled linen shall be stored in an area separate from clean linen.

(11) Medical and other patient records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records.

(b) A medical record shall be maintained ~~in~~ in accordance with accepted professional principles ~~for every patient admitted to the hospital or receiving outpatient services~~.

1. The medical records service shall:

a. Be directed by:

(i) A registered health information ~~records~~ administrator, either on a full-time, part-time, or consultative basis; or

(ii) ~~by~~ An accredited record technician on a full-time or part-time basis; and

b. ~~shall~~ Have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. Medical records shall be retained for at least:

a. Six ~~(6)~~ ~~Five (5)~~ years from date of discharge; or

b. ~~If, in the case of~~ a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest ~~longer~~.

3. A provision shall be made for written designation of the specific location for storage of medical records ~~if in the event~~ the hospital ceases to operate because of disaster ~~or for any other reason~~.

4. ~~The hospital shall be responsible for safeguarding~~ ~~It shall be the responsibility of the hospital to safeguard both~~ the record and its informational content against loss, defacement, and tampering.

5. Particular attention shall be given to protection from damage by fire or water.

(c) ~~(b)~~ A system of identification and filing to assure ~~insure~~ the prompt location of a patient's medical record shall be maintained in accordance with the requirements of this paragraph.

1. Index cards, if used, shall bear at least the patient's full name, birth date, and medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of a patient whose admission is a result of, or related to, outpatient services.

3. Clinical information pertaining to inpatient and outpatient services shall be centralized in the patient's medical record.

4. A hospital using automated data processing shall ~~may~~ keep patient indices electronically or reproduced on paper and kept in books.

(d) Ownership.

1. Medical records shall be ~~(c) Records of patients are~~ the property of the hospital.

2. The original medical record shall not be removed ~~and shall not be taken~~ from the facility except by court order or subpoena.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established by paragraph (e) of this subsection.

(e) Confidentiality and Security: Use and Disclosure.

1. The hospital shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The hospital may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. A hospital may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(f) A patient's records, or portion thereof, including x-ray film, may be routed for consultation:

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian, or the executor of his estate. (d) Medical record contents shall be pertinent, ~~and~~ current, and ~~shall~~ include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of the person or agency responsible for patient;

2. Date of admission, name of attending medical staff member,

and allied health professional in accordance with subsection (8)(d)2.[(b)2] of this section;

3. Chief complaint;

4. Medical history including present illness, travel history, occupational history, past history, family history, and physical examination results;

5. Report of special examinations or procedures, which may include[such as] consultations, clinical laboratory tests, x-ray interpretations, or EKG interpretations[.etc.];

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member or other ordering personnel acting within the limits of his or her[their] statutory scope of practice;

8. Medical, surgical, or [and] dental treatment notes and reports, signed and dated by a physician, dentist, **licensed practitioner**, or other ordering personnel acting within the limits of his or her[their] statutory scope of practice if [when] applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by the attending surgeon[.] or oral surgeon, including the:

a.[to include] Anesthesia record signed by the anesthesiologist or **an advanced practice registered nurse who is a certified registered nurse anesthetist**;

b.[.] Preoperative physical examination and diagnosis;

c.[.] Description of operative procedures and findings;

d.[.] Postoperative diagnosis[.] and

e. Tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan that[which] addresses the comprehensive care needs of the patient, including[te include] the coordination of the facility's service departments that have impact on patient care;

11. Nurses' observations and progress notes of a physician, dentist, **licensed practitioner**, or other ordering personnel acting within the practitioner's[their] statutory scope of practice;

12. Record of temperature, blood pressure, pulse, and respiration;

13. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, if[as is] applicable;

14. Discharge summary, including:

a. Condition of patient on discharge[.] and

b. Date of discharge; and

15. In case of death:

a. Autopsy findings, if performed; and

b. An indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(g) [(e)] Records shall be indexed according to disease, operation, and attending medical staff member using a[.Any] recognized indexing system [may be used].

1. The disease and operative indices shall:

a. Use recognized nomenclature;

b. Include each specific disease diagnosed and each operative procedure performed; and

c. Include essential data on each patient having that particular condition[.]

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member[.]

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written protocol regarding[for] organ procurement for transplant[.] in consultation with an organ procurement agency[.that encourages organ donation and identifies potential organ donors].

(b) If a patient has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ or tissue donor.

(c) The hospital protocol shall include:

1. Criteria[.] developed in consultation with the organ procurement agency[.] for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or the administrator's[his] designee to notify the organ procurement agency of a potential organ donor; and

4. Procedures by which the patient's attending physician or designee shall document in the patient's medical record[that]:

a. If the patient is a potential donor, that the organ procurement agency has been notified; or

b. The contraindications to donation. [5. Procedures for the hospital administrator or his designee to report to the Cabinet for Health Services, Office of the Inspector General, information about the possible sale, purchase, or brokering of a transplantable organ, as required by KRS 311.241(3).]

(d) A patient with impending or declared brain death or cardiopulmonary death, as determined pursuant to KRS 446.400, shall not be a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) An[The] attending medical staff member shall assume[full] responsibility for diagnosis and care of his or her patient with respect to any medical or psychiatric problem that is present on admission or develops during hospitalization, subject to this paragraph:

1. If a patient is admitted by a practitioner identified in 42 C.F.R. 482.12(c)(4):

a. The patient shall be under the care of the practitioner for any condition that is specifically within the scope of practice of the practitioner as that scope is defined by the medical staff and permitted by state law; and

b. A doctor of medicine or doctor of osteopathy shall be responsible for care of the patient for any condition beyond the scope of the admitting practitioner's license.

2. If a patient is admitted by a[non-physician] licensed practitioner identified at 42 U.S.C. 1395u(b)(18)(C), a doctor of medicine or doctor of osteopathy shall be responsible for diagnosis and care of the patient.

(c) Other qualified personnel may:

1. Complete medical histories;

2.[.] Perform physical examinations; or

3.[.] Record findings[.] and compile discharge summaries[.] in accordance with the:

a. Practitioner's[their] scope of practice; and

b.[the] Hospital's protocols and bylaws.

(d) [(e)] A complete history and physical examination shall be conducted according to the requirements of KRS 216B.175(2).

1. The history and physical examination shall include:

a. A description of the patient's chief complaint and[.] the major reason for hospitalization;

b. A history of the patient's:

(i) Present illness;

(ii) Past illnesses;

(iii) Surgeries;

(iv) Medications;

(v) Allergies;

(vi) Social history;

(vii) Occupational history;

(viii) Travel history; and

(ix) Immunizations;

c. A review of the patient's anatomical systems and level of function at the time of the exam;

d. The[A] patient's vital signs; and

e. A general observation of the patient's:

(i) Alertness;

(ii) Debilities; and

(iii) Emotional behavior[.]

2. The results of the history and physical examination shall be:

a. Recorded;

b.[.] Reviewed for accuracy[.] and

c. Signed by the practitioner conducting the examination.

(e)(d) The attending medical staff member shall:  
 1. State his or her final diagnosis;  
 2. Assure that the discharge summary is completed; and  
 3. Sign the records within thirty (30) calendar days following the patient's discharge.

(f)(e) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(g)(f) There shall be sufficient medical staff coverage for all clinical services of the hospital, in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice.

(b) A registered nurse with a bachelor of science degree in nursing, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(c)(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital, in keeping with their size and scope of activity.

4. Persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(d)(c) The hospital shall have written nursing care procedures and written nursing care plans for patients.

(e) Patient care shall be carried out in accordance with:

1. Attending medical staff member's orders;

2. Nursing process; and

3. Nursing care procedures.

(f)(4) The nurse shall evaluate the patient using standard nursing procedure.

(g)(2) A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

(h)(3) Nursing notes shall be:

1. Written and signed on each shift by nursing staff [persons] rendering care to patients;

2. The notes shall be Descriptive of the nursing care given; and

3. Include information and observations of significance that contribute to the continuity of patient care.

(i)(4) A medication shall be administered only by a:

1. Registered nurse;

2. Physician;

3. Dentist;

4. Physician's assistant;

5. Advanced practice registered nurse;

6. Licensed practical nurse under the supervision of a registered nurse; or

7. Paramedic acting within his or her statutory scope of practice and in accordance with the hospital's operating policies and procedures; or

8. Nurse extern in accordance with 201 KAR 20:400.

(j)(5) Except in a circumstance that requires a verbal order, a medication, diagnostic test, or treatment shall not be given without a written order signed by a physician, dentist, licensed practitioner, or other ordering personnel acting within his or her statutory scope of practice.

(k)(a) A verbal order for a medication shall be:

1. Given only to a licensed practical or registered nurse, paramedic, or pharmacist; and

2. Signed by a member of the medical staff or other ordering practitioner: (i) as soon as possible after the order was given; or (ii) if the patient was discharged prior to the order being authenticated, within thirty (30) calendar days of the patient's

discharge.

(l)(b) A verbal order for a diagnostic test or treatment order may be given to a licensed practitioner acting within his or her statutory scope of practice and the hospital's protocols.

(m)(e) A person receiving a verbal order for medication, a diagnostic test, or treatment shall, at the time the order is received:

1. Immediately transcribe the order;

2. Repeat the order to the person issuing the order; and

3. Annotate the order on the patient's medical record, as repeated and verified.

(n) A patient restraint or protective device, other than bed rails, shall not be used except:

1. In an emergency until the attending medical staff member can be contacted; or 2. Upon a written or telephone order of the attending medical staff member.

(o) If a patient restraint is necessary, the least restrictive form of protective device shall be used that affords the patient the greatest possible degree of mobility and protection.

(p) A locking restraint shall not be used under any circumstances.

(q)(7) Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, infection control, employee health policies, and administrative policies.

(r) Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department organized, directed, and staffed to provide quality food service and optimal nutritional care.

(b)(4) The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience, shall be knowledgeable in food service management.

(c)(2) The dietary service shall have at least one (1) registered or registry-eligible dietician working full-time, part-time, or on a consultative basis to supervise the nutritional aspects of patient care.

(d)(3) Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

(e)(4) The dietary department shall have current written policies and procedures for food storage, handling, and preparation.

(f) Written dietary policy and procedure shall be available to dietary personnel.

(g)(5) An in-service training program that includes the proper handling of food, safety, and personal grooming shall be given at least quarterly for new dietary employees.

(h)(b) Menus shall be planned, written, and rotated to avoid repetition.

(i) Nutritional needs shall be met in accordance with:

1. Recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; and

2. The medical staff member's orders.

(j)(e) Each meal shall correspond with the posted menu.

(k) If a change is necessary, substitution shall provide equal nutritive value and the change shall be recorded on the menu.

(l) Each menu shall be kept on file for thirty (30) calendar days.

(m)(d) Every diet, regular or therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member or other ordering personnel acting within his or her statutory scope of practice.

(n) Information on the diet order shall be specific and complete and shall include:

1. The title of the diet;

2. Modifications in specific nutrients stating the amount to be allowed in the diet; and

3. Specific problems that may affect the diet or eating habits.

(o)(e) Food shall be:

1. Prepared by methods that conserve nutritive value, flavor, and appearance;

2. ~~[- and shall be]~~ Served at the proper temperatures; and  
 3. Prepared in a form ~~[-]~~ such as cut, chopped, or ground ~~[-]~~ to meet individual needs.

~~(p) [(f)]~~ If a patient refuses foods served, a nutritious ~~substitution [substitutions]~~ shall be offered.

~~(q) [(g)]~~ At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member.

~~(r)~~ Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

~~(s) [(h)]~~ There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

~~(t) [(i)]~~ There shall be an identification system for patient trays ~~[-]~~ and methods used to assure that each patient receives the appropriate diet as ordered.

~~(u) [(j)]~~ The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005, the Kentucky [Retail] food code.

(4) Laboratory services.

~~(a)~~ The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities, and equipment to perform services commensurate with the hospital's needs for its patients.

~~(b)~~ Anatomical pathology services and blood bank services shall be available in the hospital or by arrangement with other facilities.

1. [(a)] Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope, and nature of the hospital.

a. [1-] Equipment necessary to perform the basic tests shall be provided by the hospital.

b. [2-] Equipment shall be in good working order, routinely checked, and precise in terms of calibration.

c. [3-] Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, immunology, and immunohematology ~~[serology, and clinical microscopy]~~.

d. [a- Some] Services may be provided through arrangement with another licensed hospital ~~that [which]~~ has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to 42 C.F.R. Part 493 ~~[C.F.R. Part 405]~~, KRS 333.030, and relevant administrative regulations.

e. [b-] The original report from a test performed by an outside laboratory shall be contained in the patient's medical record.

f. [4-] Laboratory facilities and services shall be available at all times.

g. [a-] Emergency laboratory services shall be available twenty-four (24) hours a day, seven (7) days a week, including holidays, ~~either~~ in the hospital or ~~through [under]~~ arrangement ~~[-]~~ as specified in clause d. of this subparagraph [3a of this paragraph].

h. [b-] The conditions, procedures, and availability of a service performed by an outside laboratory shall be in writing and available in the hospital.

i. [5-] There shall be a clinical laboratory director and a sufficient number of supervisors, technologists, and technicians to perform promptly and proficiently the tests requested of the laboratory.

j. The laboratory shall not perform a procedure or test outside the scope of training of the laboratory personnel.

k. [6-] Laboratory services shall be under the direction of a:

(i) Pathologist;

(ii) ~~or other~~ Doctor of medicine or osteopathy with training and experience in clinical laboratory services ~~[-]~~; or

(iii) a Laboratory specialist with a doctoral degree in physical, chemical, or biological sciences, and training and experience in clinical laboratory services.

l. [7-] A ~~signed~~ report of each laboratory service provided shall be filed with the patient's medical record.

(i) A duplicate copy shall be kept in the department.

~~(ii) Each [a- The laboratory report shall be signed by the technologist who performed the test. b- Every]~~ request for a laboratory test shall be ordered and signed by qualified personnel

in accordance with ~~his or her [their]~~ scope of practice and the hospital's protocols and bylaws.

2. [(b)] Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital, either in the hospital or under arrangement as specified in subparagraph 1.d. [paragraph (a) 3a] of this ~~paragraph [subsection]~~.

a. [1-] Anatomical pathology services shall be under the direct supervision of a pathologist ~~on a~~ full-time, ~~regular~~ part-time, or ~~on a~~ ~~regular~~ consultative basis.

b. ~~If the supervision is provided on a consultative basis. [If the latter pertains,]~~ the hospital shall provide for at least monthly consultative visits by a pathologist.

c. [2-] The pathologist shall participate in staff, departmental, and clinicopathologic conference.

d. [3-] The pathologist shall be responsible for establishing the qualifications of staff and ~~for their~~ in-service training.

e. [4-] Except for exclusions listed in written policies of the medical staff, tissues removed at surgery shall be examined macroscopically, and if necessary, microscopically ~~[examined]~~ by the pathologist.

f. [a-] A list of tissues ~~that [which]~~ do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

g. [b-] A tissue file shall be maintained in the hospital.

h. [c-] In the absence of a pathologist, there shall be an established plan for sending tissue ~~[requiring examination]~~ to a pathologist outside the hospital if examination is required.

i. [5-] A signed report of a tissue examination shall be filed promptly with the patient's medical record.

j. A duplicate copy shall be kept in the department.

k. [a-] Each report of a ~~macroscopic [macro]~~ or microscopic examination performed shall be signed by the pathologist.

l. [b-] Examination results shall be filed promptly in the patient's medical record.

m. The medical staff member requesting the examination shall be notified promptly.

n. [c-] A duplicate copy of each examination report shall be filed in the laboratory in a manner ~~that [which]~~ permits ready identification and accessibility.

3. [(e)] The laboratory shall meet the proficiency testing and quality control provisions in accordance with the certification requirements of 42 C.F.R. Part 493 ~~[U.S.C. Part 263a]~~.

4. [(d)] Blood bank. Facilities for procurement, safekeeping, and transfusion of blood and blood products shall be provided or shall be readily available.

a. [1-] The hospital shall maintain ~~[- as a minimum,]~~ proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

b. [2-] For emergency situations, the hospital shall:

(i) a- Maintain at least a minimum blood supply in the hospital at all times; and

(ii) b- Be able to obtain blood quickly from community blood banks or institutions.

c. ~~If the hospital provides donor services, the hospital shall [- or c-]~~ have an up-to-date list of donors and equipment necessary to obtain blood ~~[from them]~~.

d. [3-] If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer, and availability of blood products between the hospital and donor center.

e. [4-] There shall be a provision for:

(i) Prompt blood typing and cross-matching; and

(ii) ~~for~~ Laboratory investigation of transfusion reactions, either through the hospital or by arrangement with others on a continuous basis, under the supervision of a physician.

f. [5-] Blood storage facilities in the hospital shall have an adequate alarm system, which shall be:

(i) Regularly inspected and tested; and

(ii) ~~[shall be otherwise]~~ Safe and adequate. Inspections of the alarm system shall be documented.

g. [6-] Records shall be kept on file indicating the receipt and disposition of blood provided to patients in the hospital.

h.[7-] A committee of the medical staff, or its equivalent, shall:  
 (i) Review transfusions of blood or blood derivatives; and  
 (ii) [shall] Make recommendations concerning policies governing transfusion practices.

i.[8-] Samples of each unit of blood used at the hospital shall be retained[~~—according to the instructions of the committee indicated in subparagraph 7 of this paragraph.~~] for further testing if there was[~~in the event of~~] an adverse reaction.

j. Blood not retained ~~that~~[which] has exceeded its expiration date shall be disposed of promptly.

k.[9-] The review committee shall:

(i) Investigate each transfusion reaction occurring in the hospital; and

(ii)[shall] Make recommendations to the medical staff regarding improvement in transfusion procedure.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distribution of pharmaceuticals in accordance with state and federal law.

(b)[4-] A hospital that maintains a pharmacy for compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

(c)[a-] The pharmacist shall be responsible for supervising and coordinating the activities of the pharmacy department.

(d)[b-] Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

(e)[2-] A hospital that does not maintain[~~not maintaining~~] a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies, and equipment.

1. Prescription medications shall be dispensed by a registered pharmacist elsewhere.

2. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

(f)[a-] The consulting pharmacist shall assist in drawing up correct procedures and directions for the distribution of drugs.

(g) The consulting pharmacist shall visit the hospital on a regularly scheduled basis in the course of his or her duties.

(h)[b-] The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(i)[(b)] Records shall be kept of the transactions of the pharmacy or drug room and[~~shall be~~] correlated with other hospital records if[~~where~~] indicated.

(j)[4-] The pharmacy shall establish and maintain a system of records and bookkeeping in accordance with accounting procedures and policies of the hospital for:

1. Maintaining adequate control over the requisitioning and dispensing of drugs and drug supplies; and

2.[~~for~~] Charging patients for drugs and pharmaceutical supplies.

(k)[2-] A record of the stock on hand and of the dispensing of every controlled substance shall be maintained to ensure[~~in such a manner~~] that the disposition of any particular item may be readily traced.

(l)[(e)] The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the original order[~~—~~] or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for, and disposition of, unused medications or special prescriptions returned to the pharmacy if[~~as a result of~~]:

a. The[~~discharge of the~~] patient is discharged; or

b. The medication or prescription does not meet requirements for sterility or labeling;

5. Emergency pharmaceutical services; and

6. Reporting adverse medication reactions to the:

a. Appropriate committee of the medical staff; and

b. Food and Drug Administration MedWatch Program.

(m)[(d)] Therapeutic ingredients of medications dispensed shall be favorably evaluated in the:

1. United States Pharmacopoeia;

2. National Formulary; or

3. United States Homeopath-Pharmacopoeia;[~~4. New drugs; or~~

~~5. Accepted dental remedies.~~] Other necessary medication shall be approved for use by the appropriate committee of the medical staff.

(n)[(e)] A pharmacist shall be responsible for determining specifications and choosing acceptable sources for drugs[~~—~~] with approval of the appropriate committee of the medical staff.

(o)[(f)] There shall be available a formulary or list of drugs accepted for use in the hospital, which shall be developed and amended as necessary[~~at regular intervals~~] by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have:

1. Diagnostic radiology facilities currently licensed or registered pursuant to[~~the Kentucky Radiation Control Act of 1978 —~~](KRS 211.842 to 211.852);

2. At least one (1) fixed diagnostic x-ray unit capable of general x-ray procedures;

3. A radiologist on at least a consulting basis to:

a. Function as medical director of the department; and

b. Interpret films requiring specialized knowledge for accurate reading; and

4. Personnel adequate to supervise and conduct services, including one (1) certified radiation operator who shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

(c)[4-] Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

(d)[2-] Radiologic services shall be performed only upon the written order of qualified personnel in accordance with the:

1. Professional's[~~their~~] scope of practice; and

2.[~~the~~] Hospital's protocols and bylaws.

(e)[~~and~~] The written order shall contain a concise statement of the reason for the service or examination.

(f)[3-] Reports of interpretations shall be written or dictated and signed by the radiologist.

(g)[4-] Only an individual licensed pursuant to 201 KAR Chapter 46 and KRS Chapter 311B[~~a certified radiation operator~~], under the direction of medical staff members, if necessary, shall use any x-ray apparatus or material. Uses include application, administration, and removal of:

1. Radioactive elements;

2.[~~—~~] Disintegration products;[~~—~~] and

3. Radioactive isotopes.

(h) An individual licensed pursuant to 201 KAR Chapter 46 and KRS Chapter 311B[~~A certified radiation operator~~], under the direction of a physician, may administer medications allowed within:

1. The professional's[~~their professional~~] scope of practice; and

2.[~~the~~] Context of radiological services and procedures being performed.

(i)[(e)] The radiology department shall be free of hazards for patients and personnel.

(j) Proper safety precautions shall be maintained against:

1. Fire and explosion hazards;

2.[~~—~~] Electrical hazards; and

3. Radiation hazards.

(7) Physical restoration or rehabilitation service.

(a) If the hospital provides rehabilitation, work hardening, physical therapy, occupational therapy, audiology, or speech-language pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(b)[(a)] A hospital that provides[~~in which~~] physical restoration or rehabilitation services[~~are available~~] shall provide individualized



techniques ~~intended~~[required] to:

1. Achieve maximum physical function normal to the patient; and

2. Prevent[while preventing] unnecessary debilitation and immobilization.

(c) The hospital shall develop[(b)] written policies and procedures[shall be developed] for each rehabilitation service provided.

(d) The hospital shall designate[(e)] a member of the medical staff[shall be designated] to coordinate restorative services provided to patients in accordance with their needs.

(e)[(d)] Therapeutic equipment shall be:

1. Adequate to meet the needs of the service; and

2.[shall be] In good condition.

(f)[(e)] Therapy services shall be provided only upon written orders of qualified personnel in accordance with the practitioner's[their] scope of practice and according to the hospital's protocols and bylaws.

(g)[(f)] Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time, or consultative basis.

(h) The hospital shall maintain[(g)] a complete therapy record[shall be maintained] for each patient provided physical therapy services.

(i) The report shall be:

1. Signed by the therapist who prepared the report[(it)] and

2. Maintained in[shall be a part of] the patient's medical record.

(8) Emergency services.

(a) A hospital shall develop written procedures for emergency patient care, including a requirement for:

1. Each patient requesting emergency care to be evaluated by a registered nurse;

2. At least one (1) registered nurse on duty to perform patient evaluation; and

3. A physician to be on call.

(b) A patient who[that] presents at[(to)] the hospital for[requesting] emergency services shall be triaged by a registered nurse or paramedic acting:

1. Within his or her[statutory] scope of practice;[.] and

2. In accordance with the hospital's formal operating policies and procedures.

(c) The medical staff of a hospital within an organized emergency department[~~of service~~] shall establish and maintain a manual of policy and procedures for emergency and nursing care provided in the emergency room.

(d)[4-] The emergency service shall be under the direction of a licensed physician.

(e) Medical staff members shall be available at all times for the emergency service, either on duty or on call.

(f) Current schedules and telephone numbers shall be posted in the emergency room.

(g)[2-] Nursing personnel shall be assigned to[.] or designated to cover[.] the emergency service at all times.

(h)[3-] Facilities shall be provided to assure prompt diagnosis and emergency treatment.

(i) A specific area of the hospital shall be utilized for patients requiring emergency care on arrival.

(j) The emergency area shall be:

1. Located in close proximity to an exterior entrance of the facility; and

2.[shall be] Independent of the operating room suite.

(k)[4-] Diagnostic and treatment equipment, drugs, and supplies shall be:

1. Readily available for the provision of emergency services; and

2.[shall be] Adequate in terms of the scope of services provided.

(l)[5-] Adequate medical records shall be:

1. Kept on every patient seen in the emergency room.~~These records shall be~~ under the supervision of the Medical Record Service; and

2. If[where] appropriate,[shall be] integrated with inpatient and outpatient records.

(m) Emergency room records shall include at least:

1.[a-] A log listing the patient visits to the emergency room in chronological order, including:

a.[(i)] Patient identification;

b.[(ii)] Means of arrival;

c.[(iii)] Person transporting patient; and

d.[(iv)] Time of arrival;

2.[b-] History of present complaint and physical findings;

3.[c-] Laboratory and x-ray reports, if[where] applicable;

4.[d-] Diagnosis;

5.[e-] Treatment ordered and details of treatment provided;

6.[f-] Patient disposition;

7.[g-] Record of referrals;

8.[h-] Instructions to the patient or family for those not admitted to the hospital; and

9.[i-] Signatures of attending medical staff member, and nurse if [when] applicable.

(9) Outpatient services.

(a) A hospital with an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections[.] or clinics, the number of which shall depend on the:

1. Size and degree of departmentalization of the medical staff;

2.[the] Available facilities;[.] and

3.[the] Needs of the patients the outpatient department[patient it] serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies, which may include:

1.[such as] Home health agencies;

2.[.] The local health department;

3.[.] Social and welfare agencies;[.] and

4. Other outpatient departments.

(d) Each service offered by the outpatient department shall be under the direction of a:

1. Physician who shall be[is] a member of the medical staff; or

2. Licensed healthcare practitioner qualified by education, experience, and specialized training related to the specific type of service under the practitioner's direction if the hospital has a separate director for each outpatient service.

(e)[4-] A registered nurse shall be responsible for the nursing services of the outpatient department.

(f)[2-] The number and type of other personnel employed shall be determined by the:

1. Volume and type of services provided; and

2. Type of patient served in the outpatient department.

(g)[(e)] Necessary laboratory and other diagnostic tests shall be available through:

1. The hospital;

2. A laboratory in another licensed hospital; or

3. A laboratory licensed pursuant to KRS 333.030.

(h)[(f)] Medical records shall be maintained and if [where] appropriate, coordinated with other hospital medical records.

(i)[4-] The outpatient medical record shall be filed in a location that [which] insures ready accessibility to the:

1. Medical staff members;

2.[.] Nurses;[.] and

3. Other personnel of the outpatient department.

(j)[2-] Information in the medical record shall be complete and sufficiently detailed relative to the patient's:

1. History;

2.[.] Physical examination;

3.[.] Laboratory and other diagnostic tests;

4.[.] Diagnosis;[.] and

5. Treatment.

(10) Surgery services.

(a) A hospital in which surgery is performed shall have an operating room and a recovery room supervised by a registered nurse qualified by training, experience, and ability to direct surgical nursing care.

(b)[4-] Sufficient surgical equipment, including suction facilities and instruments in good repair, shall be provided to assure safe

and aseptic treatment of surgical cases.

(c)[2-] If flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including:

1. Use of shoes with conductive soles; and
2. Prohibition of garments or other items of silk, wool, or synthetic fibers ~~that~~<sup>which</sup> accumulate static electricity.

(d)[(b)] There shall be effective policies and procedures regarding:

1. Surgical staff privileges;
- 2.[,] Functions of the service;[, ] and
3. Evaluation of the surgical patient.

(e)[4-] Surgical privileges shall be delineated for each member of the medical staff ~~performing~~<sup>doing</sup> surgery in accordance with the competencies of each ~~staff member~~.

(f)[, and] A roster of medical staff specifying the surgical privileges of each shall be maintained.

(g)[2-] Except in ~~emergency~~<sup>emergencies</sup>, a surgical operation or other hazardous procedure shall be performed only on written consent of the patient or ~~the patient's~~<sup>his</sup> legal representative.

(h)[3-] The operating room register shall:

1. Be complete and up to date; and
- 2.[, It shall] Include the following:
  - a. Patient's name;
  - b. Hospital room number;
  - c. Preoperative and postoperative diagnosis;
  - d. Complications, if any;
  - e. Names of:
    - (i) Surgeon;
    - (ii)[,] First assistant;
    - (iii)[,] Anesthesiologist or an advanced practice registered nurse who is a certified registered nurse anesthetist; and
  - (iv)[,] Scrub and circulating nurse;
  - f. Operation performed; and
  - g. Type of anesthesia.

(i)[4-] There shall be a complete history and physical workup in the chart of ~~each~~<sup>every</sup> patient prior to surgery.

(j) If the history and workup has been transcribed, but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart.

(k) The chart shall:

1. Accompany the patient to the operating suite; and
- 2.[shall] Be returned to the patient's floor or room after the operation.

(l)[5-] An operative report describing the techniques and findings shall be:

1. Written or dictated immediately following surgery; and
- 2.[shall be] Signed by the surgeon.

(m)[6-] Tissues removed by surgery shall be:

1. Placed in suitable solutions;
- 2.[,] Properly labeled;[, ] and
3. Submitted to the pathologist for macroscopic and, if necessary, microscopic examination.

(n)[7-] An infection of a clean surgical case shall be recorded and reported to the Infection Control Program~~[appropriate committee of the medical staff]~~. The ~~program~~<sup>committee</sup> shall investigate~~the matter~~ according to established procedures for investigation and review of surgical site infections~~a procedure previously developed by the committee~~.

(o)[(e)] Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) A hospital that provides surgical or obstetrical services shall have anesthesia services available.

(b) Anesthesia services shall be organized under written policies and procedures regarding:

1. Staff privileges;
- 2.[,] The administration of anesthetics;[, ] and
3. The maintenance of safety controls.

(c)[(b)] A physician member of the medical staff shall be the medical director of anesthesia services.

(d) If possible, the director shall be a physician specializing in anesthesiology.

(e)[(e)] If anesthetics are not administered by an anesthesiologist, the medical staff shall designate an advanced practice~~a medical staff anesthetist or a~~ registered nurse who is a certified registered nurse anesthetist qualified to administer anesthetics~~at the direction of the operating surgeon~~.

(f)[(d)] A qualified medical staff member or licensed practitioner functioning within their scope of practice shall perform a preanesthetic physical examination for every patient requiring anesthesia services.

(g) The following shall be recorded within forty-eight (48) hours of surgery:

1. Findings of the preanesthetic physical examination;
2. An anesthetic record on a special form; and
3. A postanesthetic follow-up, with findings recorded by the:
  - a. Anesthesiologist; or
  - b.[, Medical staff anesthetist, or] Advanced practice registered nurse who is a certified registered nurse anesthetist.

(h)[(e)] The postanesthetic follow-up note shall:

1. Be written:
  - a. Upon discharge from the postanesthesia recovery area; or
  - b. Within three (3) to twenty-four (24) hours after the procedure requiring anesthesia; and
- 2.[, The note shall] Include:
  - a.[1-] Blood pressure and pulse measurements;
  - b.[2-] Presence or absence of the swallowing reflex and cyanosis;

c.[3-] Postoperative abnormalities or complications; and

d.[4-] The patient's general condition.

(12) Obstetrics service.

(a) A hospital providing obstetrical care shall have:

1. Adequate space;
- 2.[,] Necessary equipment and supplies;[, ] and
3. A sufficient number of nursing personnel to:
  - a. Assure safe and aseptic treatment of mothers and newborns; and

b.[te] Provide protection from infection and cross-infection.

(b)[4-] The obstetrics service shall be under the:

1. Medical direction of a physician; and
- 2.~~under the~~ Supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care.

(c) If a hospital ~~has~~<sup>with</sup> an obstetrical caseload that does not justify a separate nursing staff, the hospital's obstetrical nurses shall be designated and~~shall be~~ oriented to the specific needs of obstetrical patients.

(d)[2-] A registered nurse shall be on duty in the labor and delivery unit if a patient is in the unit.

(e) Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until the patient is transferred to the maternity unit.

(f)[3-] An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and for an obstetrical emergency.

(g)[4-] Patients in labor shall be cared for in adequately equipped labor rooms.

(h)[(b)] An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery, in accordance with 902 KAR 4:020.

(i)[(e)] The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism and other inherited and congenital disorders ~~to infants~~.

(j)[(d)] The hospital shall have a method and procedure for the positive associative identification of the mother and infant.

(k) The identifiers shall be placed on mother and newborn in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(l)[(e)] An up-to-date register book of deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth, and weight;

2. Mother's full name, including maiden name, address, birthplace, and age at time of this birth;

3. Father's full name, birthplace, and age at time of this birth; and

4. Full name of attending physician or nurse midwife.

~~(m)[(f)]~~ Each hospital providing maternity service shall provide a nursery~~[which shall]~~ not~~[be]~~ used for any other purpose.

~~(n)~~ Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

~~(o)[(g)]~~ A policy shall be established for:

1. A delivery occurring outside the delivery room; and

2. A patient with an infectious disease.

~~(p)[(h)]~~ Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

~~(q)[(i)]~~ The hospital shall comply with the provisions of KRS 214.175 by~~[in]~~ participating in surveys conducted by the cabinet for the purpose of determining the prevalence~~[relating to the determination]~~ of alcohol or other substance abuse among pregnant women and newborn infants.

~~(j)~~ The hospital shall comply with the provisions of KRS 216.2970 by providing an~~[in conducting]~~ auditory screening~~[examinations]~~ for all newborn infants.

(13) Pediatric services.

(a) A hospital providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services.

(b) If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care.

(c) There shall be available beds and other equipment that~~[which]~~ are appropriate in size for pediatric patients.

~~(d)[(b)]~~ There shall be proper facilities and procedures for the isolation of children with infectious, contagious, or communicable conditions.

~~(e)~~ At least one (1) patient room shall be available for isolation use.

~~(f)[(e)]~~ A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

~~(g)[(d)]~~ Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience, and ability to direct effective pediatric nursing.

~~(h)~~ Nursing personnel assigned to pediatric service shall be oriented to the special care of children.

~~(i)[(e)]~~ Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. A hospital with a psychiatric unit shall:

~~(a)~~ Designate the location and number of beds to be licensed as psychiatric beds; and

~~(b)[shall]~~ Meet the requirements of 902 KAR 20:180~~[for psychiatric hospital operations, services, and licensure administrative regulation]~~.

(15) Chemical dependency treatment services. A hospital providing chemical dependency treatment services shall:

~~(a)~~ Meet the requirements of 902 KAR 20:160, Sections 3 and 4; and

~~(b)[shall]~~ Designate the location and number of beds to be used for chemical dependency treatment services.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff.

~~(c) If printed resources are used,~~ the library collection shall be organized~~[and available to the medical and nursing staff members at all times]~~.

~~(d) The library collection may be composed of digital references, which shall be on line or accessible on a computer.~~

Section 5. Long-term Acute Inpatient Hospital Services. (1) A hospital licensed pursuant to this administrative regulation and seeking to qualify for available Title XVIII Medicare reimbursement may provide long-term acute inpatient hospital services pursuant to applicable federal law and in accordance with this section.

~~(2)[upon the following conditions: (a)]~~ The area of the hospital designated to provide long-term acute inpatient hospital services shall provide services in compliance with:

~~(a)[4.]~~ This administrative regulation; and

~~(b)[2.]~~ 42 C.F.R.~~[C.F.R. Section]~~ 412.22.

~~(3)[(b)]~~ A hospital wishing to provide long-term acute inpatient hospital services shall~~[may]~~ request authorization from the Office of Inspector General, Cabinet for Health and Family Services.

~~(4)~~ The Office of Inspector General shall conduct a survey to determine if the requirements of this section are met and ~~[shall]~~ notify the hospital of the survey results by letter.

Section 6. Optional Designations. A hospital shall be designated as a:

(1) Primary stroke center if the hospital meets the criteria established in KRS 216B.0425(2); or

(2) SANE-ready hospital if the hospital meets the criteria established in KRS 216B.401(1)~~(2) A hospital that establishes its authority to be reimbursed for Title XVIII Medicare for long-term care acute inpatient hospital services pursuant to this section, shall not receive Title XIX Medicaid reimbursement for the same services]~~.

STEVEN D. DAVIS, Inspector General

SCOTT W. BRINKMAN, Acting Secretary

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#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes, phone 502-564-2888, email [stephanie.brammer@ky.gov](mailto:stephanie.brammer@ky.gov), and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by hospitals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1) which requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing the minimum licensure requirements for the operation of and services provided by hospitals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements for the operation of and services provided by hospitals.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing administrative regulation by updating the requirements for infection control; removing the requirement for administrative reports to include inspection and incident investigation reports; requiring hospitals to maintain written policies that assure the reporting of cases of abuse, neglect, or exploitation of adults and children pursuant to KRS Chapters 209 and 620, including evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated

internally to prevent further potential abuse while the investigation is in progress; expanding this administrative regulation's current use of "medical staff" beyond an organized body of physicians to include, at the discretion of the hospital's governing body, podiatrists, optometrists, chiropractors and non-physician licensed practitioners such as physician assistants, advanced practice registered nurses, and other licensed practitioners listed in 42 U.S.C. 1395u(b)(18)(C), thereby aligning this administrative regulation with the Federal Conditions of Participation for Hospitals to permit the above licensed practitioners to admit patients and serve as the attending provider if certain criteria is met; requiring hospitals to comply with the requirements of SB 129 from the 2017 legislative session, enacted as KRS 216B.230 to 216B.239, and provide each patient or the patient's legal guardian, if applicable, with at least one (1) opportunity to designate a lay caregiver; removing the tuberculin skin testing requirements from this administrative regulation and replacing those requirements with a cross-reference to 902 KAR 20:205; requiring hospitals to maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320-8, and 45 C.F.R. Parts 160 and 164, as amended; allowing nurse externs to administer medications in hospitals; allowing a licensed health care practitioner qualified by education, experience, and specialized training to serve as the director, in lieu of a physician, of an outpatient department if the hospital has a separate director for each outpatient service; and making changes to comply with the drafting and formatting requirements of KRS Chapter 13A. As a result of public comments, the Cabinet made technical changes to improve clarity.

(b) The necessity of the amendment to this administrative regulation: This amendment makes necessary updates to enhance the delivery of efficient medical care.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.042(1)(b) by establishing the minimum licensure requirements for the operation of and services provided by hospitals.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 216B.042(1)(b) by establishing the requirements for licensure as a hospital in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects entities licensed by the Cabinet for Health and Family Services as hospitals.

(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: Hospitals must comply with the reporting requirements of KRS Chapter 209 and 620, as well as comply with the requirements of SB 129 to provide each patient or the patient's legal guardian, if applicable, with at least one (1) opportunity to designate a lay caregiver. Hospitals' governing authorities may appoint certain licensed practitioners to its medical staff. Hospitals may employ nurse externs to administer medications.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pursuant to this amendment and the proposed amendment of 201 KAR 20:400, Kentucky-licensed hospitals may employ non-licensed nursing student externs under the supervision of a registered nurse. The nursing student externs may administer medications in the hospital upon demonstration of clinical competence, which allows the extern to act in a supportive role to the registered nurse as well as gain clinical experience.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: No costs are necessary to implement this amendment.

(b) On a continuing basis: No costs are necessary to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects entities licensed by the Cabinet for Health and Family Services as hospitals. This administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation during 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 C.F.R. 482.12(c)(1), 42 C.F.R. 493, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 - 1320d-8, 42 U.S.C. 1395x(r)(2) – (5), 42 U.S.C. 1395u(b)(18)(C)

2. State compliance standards. KRS 216B.042

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 482 establishes the Conditions of Participation that hospitals must meet to participate in the Medicare and Medicaid Programs. 42 C.F.R. 482.12(c)(1) establishes federal requirements for a hospital's governing body. 42 C.F.R. 493 is the

section of the federal regulations titled "Standards and Certification: Laboratory Requirements", issued by the Centers for Medicare and Medicaid Services to enact the CLIA law that establishes quality standards for laboratory testing performed on specimens from humans, such as blood, body fluid, and tissue, for the purpose of diagnosis, prevention, or treatment of disease, or assessment of health. 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information. 42 U.S.C. 1395x(r)(2) – (5) and 42 U.S.C. 1395u(b)(18)(C) are federal Medicare laws that describe what types of licensed practitioners may be appointed to the medical staff of a hospital.

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 requirements that are more strict than federal laws or regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**(Amended After Comments)**

**907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.**

RELATES TO: KRS Chapter 13B, 194A.025(3), 205.624, 311.621-311.643, 387.500-387.800, 42 U.S.C. 1396a, 1396n[(c)], 1396u-2, 42 C.F.R. 422.112, 431.51, 431.200-431.241, Part 438, 45 C.F.R. 233.100

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438[, 2012 Ky. Acts ch. 144, Part 1.G.3.b.(17)]

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

Section 1. Enrollment of Medicaid or KCHIP Recipients into Managed Care. (1) Except as provided in subsection (3) of this section, enrollment into a managed care organization shall be mandatory for a Medicaid or KCHIP recipient.

(2) The provisions in this administrative regulation shall be applicable to a:

- (a) Medicaid recipient; or
- (b) KCHIP recipient.

(3) The following recipients shall not be required to enroll, and shall not enroll, into a managed care organization:

- (a) A recipient who resides in:

- 1. A nursing facility for more than thirty (30) calendar days; or
- 2. An intermediate care facility for individuals with an intellectual disability; or

- (b) A recipient who is:

- 1. Determined to be eligible for Medicaid benefits due to a nursing facility admission;
- 2. Receiving:
  - a. Services through the breast and cervical cancer program pursuant to 907 KAR 20:055;
  - b. Medicaid benefits in accordance with the spend-down policies established in 907 KAR 20:020;
  - c. Services through a 1915(c) home and community based services waiver program;

d. Hospice services in a nursing facility or intermediate care facility for individuals with an intellectual disability; or

e. Medicaid benefits as a Medicaid Works individual;

3. A Qualified Medicare beneficiary who is not otherwise eligible for Medicaid benefits;

4. A specified low-income Medicare beneficiary who is not otherwise eligible for Medicaid benefits;

5. A Medicare qualified individual group 1 (QI-1) individual;

6. A qualified disabled and working individual;

7. A qualified alien eligible for Medicaid benefits for a limited period of time; or

8. A nonqualified alien eligible for Medicaid benefits for a limited period of time.

~~(4)(a)[Except for a child in foster care, a recipient who is eligible for enrollment into managed care shall be enrolled with an MCO that provides services to an enrollee whose primary residence is within the MCO's service area.~~

~~(b) A child in foster care shall be enrolled with an MCO in the county where the child's DCBS case is located.~~

~~(5)(a)[During the department's implementation of managed care in accordance with this administrative regulation,] The department shall assign a recipient to an MCO based upon an algorithm that considers:~~

- 1. Continuity of care; and
- 2. Enrollee preference of an MCO provider.

~~(b) An assignment shall focus on a need of a child or an individual with a special health care need.~~

~~(5)(6)(a) A newly eligible recipient or a recipient who has had a break in eligibility of greater than two (2) months shall have an opportunity to choose an MCO during the eligibility application process.~~

~~(b) If a recipient does not choose an MCO during the eligibility application process, the department shall assign the recipient to an MCO in accordance with subsections (4) and (6) of this section.~~

~~(6)(7) Each member of a household shall be assigned to the same MCO.~~

~~(7)(8) The effective date of enrollment for a recipient described in subsection (5)(6) of this section shall be:~~

- ~~(a) the date of Medicaid eligibility; and~~
- ~~(b) No earlier than January 1, 2013 for region three.~~

~~(8)(9) A recipient shall be given a choice of MCOs.~~

~~(9)(10) A recipient enrolled with an MCO who loses Medicaid eligibility for less than two (2) months shall be automatically reenrolled with the same MCO upon redetermination of Medicaid eligibility[unless the recipient moves outside of the MCO's regional coverage].~~

~~(10)(11) A newborn who has been deemed eligible for Medicaid shall be automatically enrolled with the newborn's mother's MCO as an individual enrollee for up to sixty (60) calendar days.~~

~~(11)(12)(a) An enrollee may change an MCO for any reason, regardless of whether the MCO was selected by the enrollee or assigned by the department:~~

1. Within ninety (90) calendar days of the effective date of enrollment;

2. Annually during an open enrollment period;

3. Upon automatic enrollment under subsection ~~(9)(10)~~ of this section, if a temporary loss of Medicaid eligibility caused the recipient to miss the annual opportunity in subparagraph 2. of this paragraph; or

4. When the Commonwealth of Kentucky imposes an intermediate sanction specified in 42 C.F.R. 438.702(a)(3).

(b) An MCO shall accept an enrollee who changes MCOs under this section.

~~(12)(13) Only the department shall have the authority to enroll a Medicaid recipient with an MCO in accordance with this section.~~

~~(13)(14) Upon enrollment with an MCO, an enrollee shall receive an identification card issued by the MCO[two (2) identification cards.~~

~~(a) A card shall be issued from the department that shall verify Medicaid eligibility.~~

~~(b) A card shall be issued by the MCO that shall verify~~

enrollment with the MCO].

**(14)(15)** (a) Within five (5) business days after receipt of notification of a new enrollee, an MCO shall send, by a method that shall not take more than three (3) calendar days to reach the enrollee, a confirmation letter to an enrollee.

(b) The confirmation letter shall include at least the following information:

1. The effective date of enrollment;
2. The name, location, and contact information of the PCP;
3. How to obtain a referral;
4. Care coordination;
5. The benefits of preventive health care;
6. The enrollee identification card;
7. A member handbook; and
8. A list of covered services.

**(15)(16)** Enrollment with an MCO shall be without restriction.

**(16)(17)** An MCO shall:

- (a) Have continuous open enrollment for new enrollees; and
- (b) Accept enrollees regardless of overall enrollment.

**(17)(18)** (a) Except as provided in paragraphs[paragraph] (b) through (e) of this subsection, a recipient eligible to enroll with an MCO shall be enrolled beginning with the first day of the month that the enrollee applied for Medicaid.

(b) A newborn shall be enrolled beginning with the newborn's date of birth.

(c) An unemployed parent shall be enrolled beginning with the date the unemployed parent met the definition of unemployment in accordance with 45 C.F.R. 233.100.

(d)1. Except as provided in paragraph (e) of this subsection, if an enrollee is retroactively determined eligible for Medicaid, the retroactive eligibility shall be for a period up to three (3) months prior to the month that the enrollee applied for Medicaid.

2.~~[Except as established in paragraph (f) of this subsection,]~~ An MCO shall be responsible for reimbursing for covered services provided to a retroactively determined eligible individual referenced in subparagraph 1. of this paragraph during the individual's retroactive eligibility period.

(e) If an enrollee is retroactively determined eligible for Medicaid as a result of being determined retroactively eligible for SSI benefits:

1. The individual's enrollment date with an MCO shall be the first of the month following the month in which the department is notified of the individual's retroactive eligibility for SSI benefits; and

2. The department shall be responsible for reimbursing for any services provided during the retroactive eligibility period for an individual determined to be retroactively eligible for SSI benefits.

~~[(f) In addition to the reimbursement obligation established in paragraph (e)2. of this subsection, the department shall be responsible for reimbursing for services provided to an individual:~~

1. ~~Determined to be retroactively eligible for any portion of the retroactive eligibility period which occurred prior to November 1, 2011 for regions one (1), two (2), four (4), five (5), six (6), seven (7), or eight (8) if the individual has a retroactive eligibility period prior to November 1, 2014; or~~

2. ~~Determined to be retroactively eligible for any portion of the retroactive eligibility period which occurred prior to January 1, 2013 for region three (3) if the individual has a retroactive eligibility period prior to January 1, 2013.~~

~~(g) The requirements established in paragraph (e)2. and (f)2. of this subsection shall be effective January 1, 2013.]~~

**(18)(19)** For an enrollee whose eligibility resulted from a successful appeal of a denial of eligibility, the enrollment period shall begin:

(a)[1-] On the first day of the month of the original application for eligibility; or

(b)[2-] On the first day of the month of retroactive eligibility as referenced in subsection **(17)(18)**(d) or (e) of this section, if applicable; and

(b) No earlier than:

1. November 1, 2011 for regions one (1), two (2), four (4), five (5), six (6), seven (7), or eight (8); or
2. January 1, 2013 for region three (3).

**(19)(20)** A provider shall be responsible for verifying an

individual's eligibility for Medicaid and enrollment in a managed care organization when providing a service.

Section 2. Disenrollment. (1) The policies established in 42 C.F.R. 438.56 shall apply to an MCO.

(2) Only the department shall have the authority to disenroll a recipient from an MCO.

(3) A disenrollment of a recipient from an MCO shall[:

~~(a) Become effective on the first day of the month following disenrollment; and~~

~~(b) occur:~~

~~(a)[4-] If the enrollee:~~

1.~~[a-]~~**[No longer resides in an area served by the MCO;**

2.~~[b-]~~ Becomes incarcerated or deceased; or

2.~~[3-]~~**[e-]** Is exempt from managed care enrollment in accordance with Section 1(3) of this administrative regulation; or

~~(b)[2-] In accordance with 42 C.F.R. 438.56.~~

(4) An MCO may recommend to the department that an enrollee be disenrolled if the enrollee:

(a) Is found guilty of fraud in a court of law or administratively determined to have committed fraud related to the Medicaid Program;

(b) Is abusive or threatening but not for uncooperative or disruptive behavior resulting from his or her special needs (except if his or her continued enrollment in the MCO seriously impairs the entity's ability to furnish services to either this particular enrollee or other enrollees) pursuant to 42 C.F.R. 438.56(b)(2); **or**

~~(c) Becomes deceased; or~~

**(d) No longer resides in an area served by the MCO].**

(5) An enrollee shall not be disenrolled by the department, nor shall the managed care organization recommend disenrollment of an enrollee, due to an adverse change in the enrollee's health.

(6)(a) An approved disenrollment shall be effective no later than the first day of the second month following the month the enrollee or the MCO files a request in accordance with 42 C.F.R. 438.56(e)(1).

(b) If the department fails to make a determination within the timeframe specified in paragraph (a) of this subsection, the disenrollment shall be considered approved in accordance with 42 C.F.R. 438.56(e)(2).

(7) If an enrollee is disenrolled from an MCO, the:

(a) Enrollee shall be enrolled with a new MCO if the enrollee is:

1. Eligible for Medicaid; and

2. Not excluded from managed care participation; and

(b) MCO shall:

1. Assist in the selection of a new primary care provider, if requested;

2. Cooperate with the new primary care provider in transitioning the enrollee's care; and

3. Make the enrollee's medical record available to the new primary care provider in accordance with state and federal law.

(8) An MCO shall notify the department or Social Security Administration in an enrollee's county of residence within five (5) working days of receiving notice of the death of an enrollee.

Section 3. Enrollee Rights and Responsibilities.~~[(4)]~~ An MCO shall have written policies and procedures[:

~~(a)] to protect the rights of an enrollee that meets[includes the:~~

1. ~~Protection against liability for payment in accordance with 42 U.S.C. 1396u-2(b)(6);~~

2. ~~Rights specified in 42 C.F.R. 438.100;~~

3. ~~Right to prepare an advance medical directive pursuant to KRS 311.621 through KRS 311.643;~~

4. ~~Right to choose and change a primary care provider;~~

5. ~~Right to file a grievance or an appeal;~~

6. ~~Right to receive assistance in filing a grievance or an appeal;~~

7. ~~Right to a state fair hearing;~~

8. ~~Right to a timely referral and access to medically indicated specialty care; and~~

9. ~~Right to access the enrollee's medical records in accordance with federal and state law; and~~

~~(b) Regarding the responsibilities of enrollees that include the~~



responsibility to:

1. ~~Become informed about:~~
  - a. ~~Enrollee rights specified in paragraph (a) of this subsection;~~
  - and
  - b. ~~Service and treatment options;~~
2. ~~Abide by the MCO's and department's policies and procedures;~~
3. ~~Actively participate in personal health and care decisions;~~
4. ~~Report suspected fraud or abuse; and~~
5. ~~Keep appointments or call to cancel if unavailable to keep an appointment.~~

(2) ~~The information specified in subsection (1) of this section shall meet] the information requirements established in 42 C.F.R. 438.10[and the negotiated terms of the contract between the MCO and the department].~~

Section 4. MCO Internal Appeal Process. (1) ~~An MCO shall have written policies and procedures describing how an enrollee shall submit a request for:~~

- (a) ~~A grievance with the MCO;~~
- (b) ~~An appeal with the MCO; or~~
- (c) ~~A state fair hearing in accordance with KRS Chapter 13B.~~

(2) ~~An enrollee may[shall have thirty (30) calendar days from the date of an event causing dissatisfaction to] file a grievance orally or in writing with the MCO at any time.~~

(a) Within five (5) working days of receipt of a grievance, an MCO shall provide the enrollee with written notice that the grievance has been received and the expected date of its resolution.

(b) An investigation and final resolution of a grievance shall:

1. Be completed within thirty (30) calendar days of the date the grievance is received by the MCO; and
2. Include a resolution letter to the enrollee that shall include:
  - a. All information considered in investigating the grievance;
  - b. Findings and conclusions based on the investigation; and
  - c. The disposition of the grievance.

(2) ~~(3)] An MCO shall have an internal appeal process in place that allows an enrollee to challenge a denial of coverage of, or payment for, a service in accordance with 42 C.F.R. 438.400 through 438.424 and 42 U.S.C. 1396u-2(b)(4).~~

(3) ~~(4)] (a) A provider shall not be an authorized representative of an enrollee without the enrollee's written consent for the specific action that is being appealed or that is the subject of a state fair hearing.~~

(b) 1. For authorized representative purposes, written consent unique to an appeal or state fair hearing shall be required for the appeal or state fair hearing.

2. A single written consent shall not qualify as written consent for more than one (1):

- a. Hospital admission;
- b. Physician or other provider visit; or
- c. Treatment plan.

(4) ~~(5)] A legal guardian of an enrollee who is a minor or an incapacitated adult or an authorized representative of an enrollee in accordance with subsection (3) ~~(4)]~~ of this section shall have the right to file an appeal on behalf of the enrollee.~~

(5) ~~(6)] An enrollee shall have sixty (60) ~~[thirty (30)]~~ calendar days from the date of receiving a notice of adverse action from an MCO to file an appeal either orally or in writing with the MCO.~~

(6) ~~(7)] An MCO shall resolve an appeal within thirty (30) calendar days from the date the initial oral or written appeal is received by the MCO.~~

(7) ~~(8)] An MCO shall have a process in place that ensures that an oral or written inquiry from an enrollee seeking to appeal an adverse action is treated as an appeal to establish the earliest possible filing date for the appeal.~~

(8) ~~(9)] An oral appeal shall be followed by a written appeal that is signed by the enrollee or an individual listed in subsection (4) ~~(5)]~~ of this section within ten (10) calendar days.~~

(9) ~~(10)] (a) Within five (5) working days of receipt of an appeal, an MCO shall provide the enrollee with written notice that the appeal has been received and the expected date of its resolution. A copy of this information shall also be sent to an individual listed~~

in subsection (4) ~~(5)]~~ of this section, if applicable.

(b) An MCO shall confirm in writing receipt of an oral appeal unless an expedited resolution has been requested.

(10) ~~(11)] An MCO shall extend the thirty (30) day timeframe for resolution of an appeal established in subsection (6) ~~(7)]~~ of this section by fourteen (14) calendar days if:~~

- (a) The enrollee requests the extension; or
- (b) 1. The MCO demonstrates to the department that there is need for additional information; and
2. The extension is in the enrollee's interest.

(11) ~~(12)] For an extension requested by an MCO, the MCO shall give the enrollee written notice of the extension and the reason for the extension within two (2) working days of the decision to extend.~~

(12) ~~(13)] (a) For an appeal, an MCO shall provide written notice of its decision within thirty (30) calendar days to an enrollee or a provider, if the provider filed the appeal.~~

(b) The provider shall:

1. Give a copy of the notice to the enrollee; or
2. Inform the enrollee of the provisions of the notice.

(13) ~~(14)] An MCO shall:~~

(a) Continue to provide benefits to an enrollee, if the enrollee requested a continuation of benefits, until one (1) of the following occurs:

1. The enrollee withdraws the appeal;
2. Fourteen (14) calendar days have passed since the date of the resolution letter, if the resolution of the appeal was against the enrollee and the enrollee has not requested a state fair hearing or taken any further action; or
3. A state fair hearing decision adverse to the enrollee has been issued;

(b) Have an expedited review process for appeals if the MCO determines that allowing the time for a standard resolution could seriously jeopardize an enrollee's life or health or ability to attain, maintain, or regain maximum function;

(c) Resolve an expedited appeal within three (3) working days of receipt of the request; and

(d) Extend the timeframe for an expedited appeal established in paragraph (c) of this subsection by up to fourteen (14) calendar days if:

1. The enrollee requests the extension; or
- 2.a. The MCO demonstrates to the department that there is need for additional information; and
- b. The extension is in the enrollee's interest.

(14) ~~(15)] For an extension requested by an MCO, the MCO shall give the enrollee written notice of the reason for the extension.~~

(15) ~~(16)] If an MCO denies a request for an expedited resolution of an appeal, the MCO ~~[it]~~ shall:~~

(a) Transfer the appeal to the thirty (30) day timeframe for a standard resolution, in which the thirty (30) day period shall begin on the date the MCO received the original request for appeal;

(b) Give prompt oral notice of the denial; and

(c) Follow up with a written notice within two (2) calendar days of the denial.

(16) ~~(17)] An MCO shall document in writing an oral request for an expedited resolution and shall maintain the documentation in the enrollee case file.~~

(17) ~~(18)] An MCO shall:~~

(a) ~~Provide information specified in 42 C.F.R. 438.10(g)(1) about the grievance system to a service provider and a subcontractor at the time they enter into a contract;~~

(b) ~~Maintain a grievance or an appeal file in a secure and designated area;~~

(c) ~~Make a grievance or an appeal file accessible to the department or its designee upon request;~~

(d) ~~Retain a grievance or an appeal file for ten (10) years following a final decision by the MCO, the department, an administrative law judge, judicial appeal, or closure of a file, whichever occurs later;~~

(e) ~~Have procedures for assuring that a grievance or an appeal file contains:~~

1. Information to identify the grievance or appeal;

2. The date a grievance or appeal was received;
  3. The nature of the grievance or appeal;
  4. A notice to the enrollee of receipt of the grievance or appeal;
  5. Correspondence between the MCO and the enrollee;
  6. The date the grievance or appeal is resolved;
  7. The decision made by the MCO of the grievance or appeal;
  8. The notice of a final decision to the enrollee; and
  9. Information pertaining to the grievance or appeal; and
- (f) Make available to an enrollee documentation regarding a grievance or an appeal.

(19) An MCO shall designate an individual to:

- (a) Execute the policies and procedures for resolution of a grievance or appeal;
- (b) Review patterns or trends in grievances or appeals; and
- (c) Initiate a corrective action, if needed.

(20) If an MCO takes adverse action at the conclusion of an internal appeal process, the MCO shall issue an adverse action letter to the enrollee that complies with KRS 13B.050(3)(d) and (e).

(18)(21)(a) The requirements and policies stated in this section [of this administrative regulation] regarding an MCO appeal shall apply to an MCO.

(b) If a requirement or policy regarding an appeal or an MCO appeal stated in another Kentucky administrative regulation within Title 907 of the Kentucky Administrative Regulations contradicts a requirement or policy regarding an MCO appeal that is stated in this section [of this administrative regulation], the requirement or policy stated in the other administrative regulation shall not apply to an MCO.

Section 5. Department's State Fair Hearing for an Enrollee. (1) An enrollee shall have a right to a state fair hearing administered by the department in accordance with KRS Chapter 13B only after exhausting an MCO's internal appeal process.

(2) The department shall provide an enrollee with a hearing process that shall adhere to 907 KAR 1:563; 42 C.F.R. 438, Subpart F (438.400-438.424); and 42 C.F.R. 431, Subpart E (431.200-431.250).

(3)(a) An enrollee or authorized representative may request a state fair hearing by filing a written request with the department.

(b) If an enrollee or authorized representative requests a hearing, the request shall:

1. Be in writing and specify the reason for the request;
2. Indicate the date of service or the type of service denied; and
3. Be postmarked or filed within 120 calendar [forty-five (45)] days from the date of the MCO adverse action letter issued at the conclusion of the MCO internal appeal process.

(4) A document supporting an MCO's adverse action shall be:

- (a) Received by the department no later than five (5) calendar days from the date the MCO receives a notice from the department that a request for a state fair hearing has been filed by an enrollee; and

(b) Made available to an enrollee upon request by either the enrollee or the enrollee's legal counsel.

(5) An automatic ruling shall be made by the department in favor of an enrollee if an MCO fails to:

- (a) Comply with the requirements of:
  1. Section 4 of this administrative regulation; or
  2. Subsection (4) of this section; or
- (b) Participate in and present evidence at the state fair hearing.

Section 6. [Member Services. (1) An MCO shall have a member services function that includes a member call center and a behavioral health call center that shall:

(a) Be staffed Monday through Friday from 7:00 a.m. to 7:00 p.m. Eastern Time; and

(b) Meet the call center standards, which shall:

1. Be approved by the American Accreditation Health Care Commission or Utilization Review Accreditation Committee (URAC); and
2. Include provisions addressing the call center abandonment rate, blockage rate, and average speed of answer.

(2)(a) An MCO shall provide access to medical advice to an

enrollee through a toll-free call-in system, available twenty-four (24) hours a day, seven (7) days a week.

(b) The call-in system shall be staffed by medical professionals to include:

1. Physicians;
2. Physician assistants;
3. Licensed practical nurses; or
4. Registered nurses.

(3) An MCO shall:

(a) Provide foreign language interpreter services, free of charge, for an enrollee;

(b) Respond to the special communication needs of the disabled, blind, deaf, or aged;

(c) Facilitate direct access to a specialty physician for an enrollee:

1. With a chronic or complex health condition;
2. Who is aged, blind, deaf, or disabled; or
3. Identified as having a special healthcare need and requiring a course of treatment or regular healthcare monitoring;

(d) Arrange for and assist with scheduling an EPSDT service in conformance with federal law governing EPSDT;

(e) Provide an enrollee with information or refer the enrollee to a support service;

(f) Facilitate direct access to a covered service in accordance with 907 KAR 17:020;

(g) Facilitate access to a:

1. Behavioral health service;
2. Pharmaceutical service; or
3. Service provided by a public health department, community mental health center, rural health clinic, federally qualified health center, the Commission for Children with Special Health Care Needs, or a charitable care provider;

(h) Assist an enrollee in:

1. Scheduling an appointment with a provider;
2. Obtaining transportation for an emergency or non-emergency service;
3. Completing a health risk assessment; or
4. Accessing an MCO health education program;

(i) Process, record, and track an enrollee grievance and appeal; or

(j) Refer an enrollee to case management or disease management.

Section 7.] Enrollee Selection of Primary Care Provider. (1) Except for an enrollee described in subsection (2) of this section, an MCO shall have a process for enrollee selection and assignment of a primary care provider.

(2) The following shall not be required to have, but may request, a primary care provider:

- (a) A dual eligible;
- (b) A child in foster care;
- (c) A child under the age of eighteen (18) years who is disabled; [or]

(d) A pregnant woman who is presumptively eligible pursuant to 907 KAR 20:050; or

(e) An adult for whom the state is appointed a guardian [4:840].

(3)(a) For an enrollee who is not receiving supplemental security income benefits:

1. An MCO shall notify the enrollee within ten (10) calendar days of notification of enrollment by the department of the procedure for choosing a primary care provider; and

2. If the enrollee does not choose a primary care provider, an MCO shall assign to the enrollee a primary care provider who:

- a. Has historically provided services to the enrollee; and
- b. Meets the requirements of subsection (6) of this section.

(b) If no primary care provider meets the requirements of paragraph (a) 2. of this subsection, an MCO shall assign the enrollee to a primary care provider who is within:

1. Thirty (30) miles or thirty (30) minutes from the enrollee's residence if the enrollee is in an urban area; or
2. Forty-five (45) miles or forty-five (45) minutes from the enrollee's residence if the enrollee is in a rural area.

(4)(a) For an enrollee who is receiving supplemental security income benefits and

is not a dual eligible, an MCO shall notify the enrollee of the procedure for choosing a primary care provider.

(b) If an enrollee has not chosen a primary care provider within thirty (30) calendar days, an MCO shall send a second notice to the enrollee.

(c) If an enrollee has not chosen a primary care provider within thirty (30) calendar days of the second notice, the MCO shall send a third notice to the enrollee.

(d) If an enrollee has not chosen a primary care provider within thirty (30) calendar days after the third notice, the MCO shall assign a primary care provider.

(e) Except for an enrollee who was previously enrolled with the MCO, an MCO shall not automatically assign a primary care provider within ninety (90) calendar days of the enrollee's initial enrollment.

(5)(a) An enrollee shall be allowed to select from at least two (2) primary care providers within an MCO's provider network.

(b) At least one (1) of the two (2) primary care providers referenced in paragraph (a) of this subsection shall be a physician.

(6) A primary care provider shall:

(a) Be a licensed or certified health care practitioner who functions within the provider's scope of licensure or certification, including:

1. A physician;
2. An advanced practice registered nurse;
3. A physician assistant; or
4. A clinic, including a primary care center, federally qualified health center, federally qualified health center look-alike, or rural health clinic;

(b) Have admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges;

(c) Agree to provide twenty-four (24) hours a day, seven (7) days a week primary health care services to enrollees; and

(d) For an enrollee who has a gynecological or obstetrical health care need, a disability, or chronic illness, be a specialist who agrees to provide or arrange for primary and preventive care.

(7) Upon enrollment in an MCO, an enrollee shall have the right to change primary care providers:

- (a) Within the first ninety (90) calendar days of assignment;
- (b) Once a year regardless of reason;
- (c) At any time for a reason approved by the MCO;
- (d) If, during a temporary loss of eligibility, an enrollee loses the opportunity provided by paragraph (b) of this subsection;
- (e) If Medicare or Medicaid imposes a sanction on the PCP;
- (f) If the PCP is no longer in the MCO provider network; or
- (g) At any time with cause, which shall include the enrollee:

1. Receiving poor quality of care;
2. Lacking access to providers qualified to treat the enrollee's medical condition; or

3. Being denied access to needed medical services.

(8) A PCP shall not be able to request the reassignment of an enrollee to a different PCP for the following reasons:

- (a) A change in the enrollee's health status or treatment needs;
- (b) An enrollee's utilization of health services;
- (c) An enrollee's diminished mental capacity; or
- (d) Disruptive behavior of an enrollee due to the enrollee's special health care needs unless the behavior impairs the PCP's ability to provide services to the enrollee or others.

(9) A PCP change request shall not be based on race, color, national origin, disability, age, or gender.

(10) An MCO shall have the authority to approve or deny a primary care provider change.

(11) An enrollee shall be able to obtain the following services outside of an MCO's provider network:

(a) A family planning service in accordance with 42 C.F.R. 431.51;

(b) An emergency service in accordance with 42 C.F.R. 438.114;

(c) A post-stabilization service in accordance with 42 C.F.R. 438.114 and 42 C.F.R. 422.113(c); or

(d) An out-of-network service that an MCO is unable to provide within its network to meet the medical need of the enrollee in accordance with 42 C.F.R. 438.206(b)(4) subject to any prior

authorization requirements of the MCO.

(12) An MCO shall:

(a) Notify an enrollee within:

1. Thirty (30) calendar days of the effective date of a voluntary termination of the enrollee's primary care provider; or

2. Fifteen (15) calendar days of an involuntary termination of the enrollee's primary care provider; and

(b) Assist the enrollee in selecting a new primary care provider.

Section 7[8]. Member Handbook.[{4}] An MCO shall[:

(a)] send a member handbook to an enrollee as required by 42 C.F.R. 438.10[and the negotiated terms of the contract between the MCO and the department][- by a method that shall not take more than three (3) days to reach the enrollee, within five (5) business days of enrollment;

(b) Review the member handbook at least annually;

(c) Communicate a change to the member handbook to an enrollee in writing; and

(d) Add a revision date to the member handbook after revising the member handbook.

(2) A member handbook shall:

(a) Be available:

1. In hardcopy in English, Spanish, and any other language spoken by at least five (5) percent of the potential enrollee or enrollee population; and

2. On the MCO's Web site;

(b) Be written at no higher than a sixth-grade reading comprehension level;

(c) Include at a minimum the following information:

1. The MCO's network of primary care providers, including the names, telephone numbers, and service site addresses of available primary care providers, and, if desired by the MCO, the names and contact information for other providers included in the MCO's network;

2. The procedures for:

a. Selecting a PCP and scheduling an initial health appointment;

b. Obtaining:

(i) Emergency or non-emergency care after hours;

(ii) Transportation for emergency or non-emergency care;

(iii) An EPSDT service;

(iv) A covered service from an out-of-network provider; or

(v) A long-term care service;

c. Notifying DCBS of a change in family size or address, a birth, or a death of an enrollee;

d. Selecting or requesting to change a PCP, which shall include:

(i) A reason a request for a change may be denied by the MCO; and

(ii) A reason a provider may request to transfer an enrollee to a different PCP; and

e. Filing a grievance or appeal, including the title, address, and telephone number of the person responsible for processing and resolving a grievance or appeal;

3. The name of the MCO, address, and telephone number from which it conducts its business;

4. The MCO's:

a. Business hours; and

b. Member service and toll-free medical call-in telephone numbers;

5. Covered services, an explanation of any service limitation or exclusion from coverage, and a notice stating that the MCO shall be liable only for those services authorized by the MCO, except for the services excluded in Section 7(11) of this administrative regulation;

6. Member rights and responsibilities;

7. For a life-threatening situation, instructions to use the emergency medical services available or to activate emergency medical services by dialing 911;

8. Information on:

a. The availability of maternity and family planning services, and for the prevention and treatment of sexually transmitted diseases;

b. Accessing the services referenced in clause a. of this subparagraph;

c. Accessing care before a primary care provider is assigned or chosen;

d. The Cabinet for Health and Family Services' independent ombudsman program; and

e. The availability of, and procedures for, obtaining:

- (i) A behavioral health or substance abuse service;
- (ii) A health education service; and
- (iii) Care coordination, case management, and disease management services;

9. Direct access services that may be accessed without a referral; and

10. An enrollee's right to obtain a second opinion and information on obtaining a second opinion; and

(d) Meet the information requirements established in Section 11 of this administrative regulation.

(3) Changes to the member handbook shall be approved by the department prior to the publication of the handbook.

Section 9. Member Education and Outreach. (1) An MCO shall:

- (a) Have an enrollee and community education and outreach program throughout the MCO's service area;
- (b) Submit an annual outreach plan to the department for approval;
- (c) Assess the homeless population within its service area by implementing and maintaining an outreach plan for homeless individuals, including victims of domestic violence; and
- (d) Not differentiate between a service provided to an enrollee who is homeless and an enrollee who is not homeless.

(2) An MCO's outreach plan shall include:

- (a) Utilizing existing community resources including shelters and clinics; and
- (b) Face-to-face encounters].

Section 8[10]. Enrollee Non-Liability and Liability for Payment. (1)(a) Except as specified in Section 9 of this administrative regulation[907 KAR 17:030], an enrollee shall not be required to pay for a medically necessary covered service provided by the enrollee's MCO.

(b) An enrollee may be liable for the costs of services received during an appeal process in accordance with:

- 1.[907 KAR 17:025, Section 2(4)(b)2g;
- 2.] 42 C.F.R. 431.230; or
- 2.[3.] 42 C.F.R. 438.404.

(2)[(a)] An MCO shall not impose cost sharing on an enrollee greater than the limits established by the department in 907 KAR 1:604.

Section 9. Recoupment of Payment from an Enrollee for Fraud, Waste, or Abuse. (1) If an enrollee is determined to be ineligible for Medicaid through an administrative hearing or adjudication of fraud by the CHFS OIG, the department shall recoup a capitation payment it has made to an MCO on behalf of the enrollee.

(2) An MCO shall request a refund from the enrollee referenced in subsection (1) of this section of a payment the MCO has made to a provider for the service provided to the enrollee.

(3) If an MCO has been unable to collect a refund referenced in subsection (2) of this section within six (6) months, the commonwealth shall have the right to recover the refund from the enrollee.

Section 10. Third Party Liability and Coordination of Benefits. (1) Medicaid shall be the payer of last resort for a service provided to an enrollee.

(2) An MCO shall:

- (a) Exhaust a payment by a third party prior to payment for a service provided to an enrollee;
- (b) Be responsible for determining a legal liability of a third party to pay for a service provided to an enrollee;
- (c) Actively seek and identify a third party liability resource to pay for a service provided to an enrollee in accordance with 42 C.F.R. 433.138; and
- (d) Assure that Medicaid shall be the payer of last resort for a

service provided to an enrollee.

(3) In accordance with 907 KAR 20:005 and KRS 205.624, an enrollee shall:

(a) Assign, in writing, to the MCO the enrollee's rights to a medical support or payment from a third party for a medical service paid for by the MCO; and

(b) Cooperate with an MCO in identifying and providing information to assist the MCO in pursuing a third party that may be liable for care or services.

(4) If an MCO becomes aware of a third party liability resource after payment for a service provided to an enrollee, the MCO shall seek recovery from the third party resource.

Section 11.[(b) An MCO operating in Region 3 shall not impose cost sharing on an enrollee enrolled with the MCO in Region 3 prior to January 1, 2014.

Section 11. Provision of Information Requirements. (1) An MCO shall:

(a) Comply with the requirements established in 42 U.S.C. 1396u-2(a)(5) and 42 C.F.R. 438.10; and

(b) Provide translation services to an enrollee on site or via telephone.

(2) Written material provided by an MCO to an enrollee or potential enrollee shall:

(a) Be written at a sixth grade reading comprehension level;

(b) Be published in at least a fourteen (14) point font;

(c) Comply with the requirements established in 42 U.S.C. Chapter 126, the Americans with Disabilities Act;

(d) Be updated as necessary to maintain accuracy;

(e) Be available in Braille or in an audio format for an individual who is partially blind or blind; and

(f) Be provided and printed in each language spoken by five (5) percent or more of the enrollees in each county.

(3)(a) All written material intended for an enrollee, unless unique to an individual enrollee or exempted by the department, shall be submitted to the department for review and approval prior to publication or distribution to the enrollee.

(b) Written material submitted to the department for review by an MCO shall be considered approved by the department if the department does not object or notify an MCO within:

1. Thirty (30) days regarding a standard submission; or

2. Five (5) days regarding an expedited submission.

(c)1. Written material submitted to the department for review and approval shall be considered received for review beginning with the date that the commissioner or a deputy commissioner of the department acknowledges, to the MCO, receipt of the submission.

2. The acknowledgement referenced in subparagraph 1 of this paragraph shall be demonstrated by evidence of:

a. A return receipt if sent via U.S. Mail;

b. A read receipt if sent via e-mail; or

c. The signature of a Cabinet for Health and Family Services employee taking receipt of the submission in the case of hand-delivery, including overnight mail or courier delivery.

Section 12. Confidentiality of Medical Information. (1) An MCO shall:

(a) Maintain confidentiality of all enrollee eligibility information and medical records;

(b) Prevent unauthorized disclosure of the information referenced in this subsection in accordance with KRS 194A.060, KRS 214.185, KRS 434.840 to 434.860, and 42 C.F.R. 431 Subpart F, 431.300 to 431.307;

(c) Have written policies and procedures for maintaining the confidentiality of enrollee records;

(d) Comply with 42 U.S.C. 1320d-2, the Health Insurance Portability and Accountability Act, and 45 C.F.R. Parts 160 and 164;

(e) On behalf of its employees and agents:

1. Sign a confidentiality agreement attesting that it will comply with the confidentiality requirements established in this section; and

2. Submit the confidentiality agreement referenced in subparagraph 1. of this paragraph to the department;

(f) Limit access to medical information to a person or agency which requires the information in order to perform a duty related to the department's administration of the Medicaid program, including the department, the United States Department of Health and Human Services, the United States Attorney General, the CHFS OIG, the Kentucky Attorney General, or other agency required by the department; and

(g) Submit a request for disclosure of information referenced in this subsection which has been received by the MCO to the department within twenty-four (24) hours.

(2) Information referenced in subsection (1)(g) of this section shall not be disclosed by an MCO pursuant to the request without prior written authorization from the department.

Section 13. Americans with Disabilities Act and Cabinet Ombudsman. (1) An MCO shall:

(a) Require by contract with its network providers and subcontractors that a service location meets:

1. The requirements established in 42 U.S.C. Chapter 126, the Americans with Disabilities Act; and

2. All local requirements which apply to health facilities pertaining to adequate space, supplies, sanitation, and fire and safety procedures;

(b) Fully cooperate with the Cabinet for Health and Family Services independent ombudsman; and

(c) Provide immediate access to the Cabinet for Health and Family Services independent ombudsman to an enrollee's records if the enrollee has given consent.

(2) An MCO's member handbook shall contain information regarding the Cabinet for Health and Family Services independent ombudsman program.

Section 14. Marketing. (1) An MCO shall:

(a) Comply with the requirements established in 42 C.F.R. 438.104 regarding marketing activities;

(b) Have a system of control over the content, form, and method of dissemination of its marketing and information materials;

(c) Submit a marketing plan and marketing materials to the department for written approval prior to implementation or distribution;

(d) If conducting mass media marketing, direct the marketing activities to enrollees in the entire service area pursuant to the marketing plan;

(e) Not conduct face-to-face marketing;

(f) Not use fraudulent, misleading, or misrepresentative information in its marketing materials;

(g) Not offer material or financial gain to a:

1. Potential enrollee as an inducement to select a particular provider or use a product; or

2. Person for the purpose of soliciting, referring, or otherwise facilitating the enrollment of an enrollee;

(h) Not conduct:

1. Direct telephone marketing to enrollees or potential enrollees who do not reside in the MCO service area; or

2. Direct or indirect door-to-door, telephone, or other cold-call marketing activity; and

(i) Not include in its marketing materials an assertion or statement that the Centers for Medicare and Medicaid Services (CMS), the federal government, the Commonwealth, or another entity endorses the MCO.

(2) An MCO's marketing material shall meet the information requirements established in Section 11 of this administrative regulation.

Section 15.] Legal Guardians. (1) A parent, custodial parent, person exercising custodial control or supervision, or an agency with a legal responsibility for a child by virtue of a voluntary commitment or of an emergency or temporary custody order shall be authorized to act on behalf of an enrollee who is under the age of eighteen (18) years, a potential enrollee, or a former enrollee for the purpose of:

(a) Selecting a primary care provider;

(b) Filing a grievance or appeal; or

(c) Taking an action on behalf of the child regarding an interaction with an MCO.

(2)(a) A legal guardian who has been appointed pursuant to

KRS 387.500 to 387.800 shall be allowed to act on behalf of an enrollee who is a ward of the commonwealth.

(b) A person authorized to make a health care decision pursuant to KRS 311.621 to 311.643 shall be allowed to act on behalf of an enrollee, potential enrollee, or former enrollee in making the health care decisions.

(c) An enrollee shall have the right to:

1. Represent the enrollee; or

2. Use legal counsel, a relative, a friend, or other spokesperson.

Section 12[16. Enrollee Surveys. (1) An MCO shall:

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

(b) Satisfy a member satisfaction survey requirement by participating in the Agency for Health Research and Quality's current Consumer Assessment of Healthcare Providers and Systems Survey (CAHPS) for Medicaid Adults and Children, which shall be administered by an NCQA-certified survey vendor;

(c) Provide a copy of the current CAHPS survey referenced in paragraph (b) of this subsection to the department;

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

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

(f) Provide to the department:

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

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

3. The number and percentage of enrollees surveyed;

4. Enrollee survey response rates;

5. Enrollee survey findings; and

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

(2) The department shall:

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

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

(3) If an MCO conducts a survey that targets a subpopulation's perspective or experience with access, treatment, or services, the MCO shall comply with the requirements established in subsection (1)(e) and (f) of this section.

Section 17]. Enrollees with Special Health Care Needs. (1)(a) In accordance with 42 C.F.R. 438.208, the following shall be considered an individual with a special health care need:

1. A child in or receiving foster care or state-funded adoption assistance;

2. A homeless individual;

3. An individual with a chronic physical or behavioral illness;

4. A blind or disabled child;

5. An individual who is eligible for SSI benefits; or

6. An adult who is a ward of the Commonwealth in accordance with 910 KAR Chapter 2.

(b) In accordance with 42 C.F.R. 438.208, an MCO shall:

1. Have a process to target enrollees for the purpose of screening and identifying those with special health care needs;

2. Assess each enrollee identified by the department as having a special health care need to determine if the enrollee needs case management or regular care monitoring;

3. Include the use of appropriate health care professionals to perform an assessment; and

4. Have a treatment plan for an enrollee with a special health care need who has been determined, through an assessment, to need a course of treatment or regular care monitoring.

(c)1. An enrollee who is a child in foster care[or receiving adoption assistance] shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.

2.a. The service plan referenced in subparagraph 1. of this paragraph shall be used by DCBS and the MCO to determine the

enrollee's medical needs and to identify if there is a need for case management.

b. The MCO shall be available to meet with DCBS at least quarterly~~[once a month]~~ to discuss the health care needs of the child as identified in the service plan. The child's caretaker may attend each meeting held to discuss the health care needs of that child.

c. If a service plan identifies the need for case management or DCBS requests case management for an enrollee, the foster parent of the child or DCBS shall work with the MCO to develop a case management plan of care.

d. The MCO shall consult with DCBS prior to developing or modifying a case management plan of care.

e. If the service plan accomplishes a requirement stated in paragraph (b) of this subsection, the requirement stated in paragraph~~[subsection]~~ (b) shall be considered to have been met.

(2) A treatment plan referenced in subsection (1)(b)4<sub>2</sub> of this section shall be developed:

(a) With participation from the enrollee or the enrollee's legal guardian as referenced in Section 11~~[45]~~ of this administrative regulation; and

(b) By the enrollee's primary care provider, if the enrollee has a primary care provider.

(3) An MCO shall:

(a)1. Develop materials specific to the needs of an enrollee with a special health care need; and

2. Provide the materials referenced in subparagraph 1. of this paragraph to the enrollee, caregiver, parent, or legal guardian;

(b) Have a mechanism to allow an enrollee identified as having a special health care need to directly access a specialist, as appropriate, for the enrollee's condition and identified need; and

(c) Be responsible for the ongoing care coordination for an enrollee with a special health care need.

(4) The information referenced in subsection (3)(a) of this section shall include health educational material to assist the enrollee with a special health care need or the enrollee's caregiver, parent, or legal guardian in understanding the enrollee's special need.

(5)(a) An enrollee who is a ward of the commonwealth shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DAIL prior to being enrolled with the MCO.

(b) If the service plan referenced in paragraph (a) of this subsection identifies the need for case management, the MCO shall work with DAIL or the enrollee to develop a case management plan of care.

Section 13~~[48]~~. Second Opinion. An enrollee shall have the right to a second opinion within the MCO's provider network for a surgical procedure or diagnosis and treatment of a complex or chronic condition.

Section 14~~[49]~~. Managed Care Requirements. (1) All aspects of managed care~~and the requirements of 907 KAR Chapter 17~~ shall be governed and controlled by the applicable federal and state laws, including 42 C.F.R. Part 438, 42 U.S.C. 1396n, and 42 U.S.C. 1396u-2, and the negotiated terms of the contract between a managed care organization and the department.

(2) The current MCO contracts shall be posted on the department's Web site at <http://chfs.ky.gov/dms/contracts.htm>.

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

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

(2) Disapproves the policy.

STEPHEN P. MILLER, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 11 a.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](mailto:Laura.Begin@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-6746, ext. 3457, [donna.little@ky.gov](mailto:donna.little@ky.gov); or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.520(3), 42 U.S.C. 1396n(b), and 42 C.F.R. Part 438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(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 managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

(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 907 KAR 17:010 updates citations in the RELATES TO and STATUTORY AUTHORITY paragraphs and throughout the administrative regulation; clarifies that "days" means "calendar days"; deletes outdated provisions that applied during the department's initial implementation of managed care and other specified time periods that have already occurred; requires an MCO to issue an identification card to an enrollee; deletes the requirement that a disenrollment become effective on the first day of the month following disenrollment; deletes provisions that are already established in the negotiated contracts governed by KRS Chapter 45A; updates provisions to comply with 42 C.F.R. Part 438; specify that an adult for whom the state is appointed guardian shall not be required to have a primary care provider; authorizes a primary care provider to be a federally qualified health center look-alike; establishes provisions governing recoupment of payment from an enrollee for fraud, waste, or abuse, and third party liability and coordination of benefits (which were both moved from 907 KAR 17:030); requires the MCO to be available to meet with DCBS at least quarterly, rather than once a month, to discuss the health care needs of a child in foster care; and specifies that all aspects of managed care and the requirements of 907 KAR Chapter 17 shall be governed and controlled by the applicable federal and state laws and the negotiated terms of the contract between a managed care organization and the department. The current MCO contracts shall be posted on the department's Web site.

The Amended After Comments version will change this administrative regulation by: deleting provisions in Sections 1(4), 1(10), 2(3)(a)1., and 2(4)(d) that referenced the MCO's service areas or specific counties where an MCO operates, because the MCOs have statewide service areas; inserts a cross-reference for clarity regarding the MCO assignment process in Section 1(6)(b); amending Sections 3 and 7 to delete references to the contract between the MCO and the department because 42 C.F.R. 438.10 governs enrollee rights and responsibilities and the member handbook; and amending Section 14(1) to delete a reference to the requirements of 907 KAR Chapter 17 for clarity.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to remove provisions that are established in the negotiated contracts. Enforcement of the contractual provisions is

governed by contracts law and KRS Chapter 45A. The additional changes made in the Amended After Comments version are necessary for the department to make changes in response to some of the comments received during the public comment process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by removing provisions that repeated, summarized, or were otherwise covered by federal law and the negotiated terms of the contracts. Many provisions of 42 C.F.R. Part 438 require the managed care contracts to provide specified information, rather than state administrative regulations. See, for example, 42 C.F.R. 438.330(a)(1) and (3).

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not any actions that regulated entities will have to take to comply with this amendment that are not already required by the negotiated terms of the MCO contracts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not any costs to complying with the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Medicaid providers and five (5) managed care organizations will receive the benefit of updated (and corrected) cross-references. Additionally, this administrative regulation clarifies that all aspects of managed care and the requirements of 907 KAR Chapter 17 shall be governed and controlled by the applicable federal and state laws, and the negotiated terms of the contract between a managed care organization and the department. These amendments also bring the administrative regulation into compliance with federal law that requires that certain provisions governing managed care be specified in the negotiated contracts, not the state administrative regulations.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of 907 KAR Chapter 17 are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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, additional, or different requirements or responsibilities than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438.

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

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

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

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services (Amended After Comments)

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

RELATES TO: KRS 194A.025(3), 205.593, 304.14-135, 304.17A-700-304.17A-730[205.646, —304.17A-270], 42 C.F.R. 431.52, Part 438, 447.45, 447.46[455], 42 U.S.C. 1396a(a)(37), 1396n[(e)], 1396u-2(b)(2)(A)(i)[(7)]

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3),



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

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

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

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

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

~~(b)[2. Quality requirements established in 907 KAR 17:025, Section 5;~~

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

~~1. A teaching hospital;~~

~~2. A rural health clinic;~~

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

~~4. A local health department; and~~

~~5. A community mental health center;~~

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

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

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

~~(2)[The length of an exclusion, termination, or suspension referenced in subsection (1)(e) of this section shall equal the length of the exclusion, termination, or suspension imposed by a Medicare or Medicaid program.~~

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

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

~~(a) Notify the department; and~~

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

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

~~(a) Describe the deficiency in detail; and~~

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

Section 2. Provider Access Requirements. (1) The access standards requirements established in 42 C.F.R. Part 438[438.206 through 438.210] shall apply to an MCO.

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

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

(b) Specialists available for the subpopulations designated in 907 KAR 17:010, Section 12; and

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

(3)[(a)] Emergency medical and behavioral health services shall be available and accessible twenty-four (24) hours a day,

seven (7) days a week. [(b) An emergency service shall be provided at a health care facility most suitable for the type of injury, illness, or condition, whether or not the facility is in the MCO network.]

[(4)]-and

(c) Urgent care medical and behavioral health services shall be available and accessible within forty-eight (48) hours of request.

(5) Time and Distance Standards. [(3)] (a) An MCO's primary care provider delivery site shall be within:

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

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

(b) A hospital shall be within:

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

2. Sixty (60) miles or sixty (60) minutes of an enrollee's residence in a non-urban area.

(c) A behavioral or physical rehabilitation service, a dental service, a general vision service, a laboratory service, a radiological service, or a pharmacy service shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(d)1. A pharmacy delivery site, except for a mail order pharmacy, shall not be further than fifty (50) miles from an enrollee's residence.

2. Transport time or distance threshold shall not apply to a mail-order pharmacy except that the mail-order pharmacy shall:

a. Be physically located within the United States of America; and

b. Provide delivery to the enrollee's residence.

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

(7) Appointment Wait Times. (a) Except as provided by subsection (3) or (4) of this section or paragraph (b) of this subsection, [(e)] an appointment wait time for a primary care provider, behavioral health provider, specialist, or dental, general vision, laboratory, or radiological service [at an MCO's primary care delivery site] shall not exceed[:

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

[(b)]-or

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

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

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

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

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

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

3.] A behavioral health service appointment following a discharge from an acute psychiatric hospital shall occur within seven (7) calendar [fourteen (14)] days of discharge.

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

(5) An MCO shall have:

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

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

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

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

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

2. Sixty (60) minutes of an enrollee's residence in a non-urban area.

(b) A hospital located in Region 3 shall be within:

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

2. Sixty (60) miles or sixty (60) minutes of an enrollee's residence in a non-urban area.

(8) A behavioral or physical rehabilitation service in:

(a) Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

(b) Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(9)(a) A dental service in:

1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(b) A dental appointment wait time shall not exceed:

1. Three (3) weeks for a regular appointment; or

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

(10)(a) A general vision, laboratory, or radiological service in:

1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(b) A general vision, laboratory, or radiological appointment wait time shall not exceed:

1. Three (3) weeks for a regular appointment; or

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

(11)(a) A pharmacy service in:

1. Region 1, Region 2, Region 4, Region 5, Region 6, Region 7, or Region 8 shall be within sixty (60) minutes of an enrollee's residence; or

2. Region 3 shall be within sixty (60) miles or sixty (60) minutes of an enrollee's residence.

(b) A pharmacy delivery site, except for a mail-order pharmacy, shall not be further than fifty (50) miles from an enrollee's residence.

(c) Transport time or distance threshold shall not apply to a mail-order pharmacy except that it shall:

1. Be physically located within the United States of America; and

2. Provide delivery to the enrollee's residence.

(12)(a) Prior authorization shall not be required for a physical emergency service or a behavioral health emergency service.

(b) In order to be covered, an emergency service shall be:

1. Medically necessary;

2. Authorized after being provided if the service was not prior authorized; and

3. Covered in accordance with 907 KAR 17:020.]

Section 3. MCO Provider Enrollment. (1) A provider enrolled with an MCO shall:

(a) Be credentialed by the MCO in accordance with 42 C.F.R. Part 438 [the standards established in Section 4 of this administrative regulation]; and

(b) Be enrolled [eligible to enroll] with the Kentucky Medicaid Program in accordance with 907 KAR 1:672.

(2) An MCO shall:

(a) [Not enroll a provider in its network if:

1. The provider has an active sanction imposed by the Centers for Medicare and Medicaid Services or a state Medicaid agency;

2. A required provider license or a certification is not current;

3. Based on information or records available to the MCO:

a. The provider owes money to the Kentucky Medicaid program; or

b. The Kentucky Office of the Attorney General has an active fraud investigation of the provider; or

4. The provider is not credentialed;

(b)] Have and maintain documentation regarding a provider's qualifications; and

(b) [(c)] Make the documentation referenced in paragraph (a) [(b)] of this subsection available for review by the department.

(3)[(a)] A provider shall not be required to participate in Kentucky Medicaid fee-for-service to enroll with an MCO.

Section 4. Prompt Payment of Claims. (1) In accordance with 42 U.S.C. 1396a(a)(37), an MCO shall have prepayment and postpayment claims review procedures that ensure the proper and efficient payment of claims and management of the program.

(2) An MCO shall:

(a) Comply with the prompt payment provisions established in 1. 42 C.F.R. 447.45 and 447.46; and

2. KRS 205.593, KRS 304.14-135, and KRS 304.17A-700 to 304.17A-730; and

(b) Notify a requesting provider of a decision to:

1. Deny a claim; or

2. Authorize a service in an amount, duration, or scope that is less than requested.

(3) The payment provisions in this section shall apply to a payment to:

(a) A provider within the MCO network; and

(b) An out-of-network provider.

Section 5. [(b)] If a provider is not a participant in Kentucky Medicaid fee-for-service, the provider shall obtain a Medicaid provider number from the department in accordance with 907 KAR 1:672.

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

(a) Have policies and procedures that comply with 907 KAR 1:672; KRS 205.560; and 42 C.F.R. 455 Subpart E, 455.400 to 455.470, regarding the credentialing and recredentialing of a provider;

(b) Have a process for verifying a provider's credentials and malpractice insurance that shall include:

1. Written policies and procedures for credentialing and recredentialing of a provider;

2. A governing body, or a group or individual to whom the governing body has formally delegated the credentialing function; and

3. A review of the credentialing policies and procedures by the governing body or its delegate;

(c) Have a credentialing committee that makes recommendations regarding credentialing;

(d) If a provider requires a review by the credentialing committee, based on the MCO's quality criteria, notify the department of the facts and outcomes of the review;

(e) Have written policies and procedures for:

1. Excluding, terminating, or suspending a provider; and

2. Reporting a quality deficiency that results in an exclusion, suspension, or termination of a provider;

(f) Document the MCO's monitoring of a provider;

(g) Verify a provider's qualifications through a primary source that includes:

1. A current valid license or certificate to practice in the Commonwealth of Kentucky;

2. A Drug Enforcement Administration certificate and number, if applicable;

3. If a provider is not board certified, proof of graduation from a medical school and completion of a residency program;

4. Proof of completion of an accredited nursing, dental, physician assistant, or vision program, if applicable;

5. If a provider states on an application that the provider is board certified in a specialty, a professional board certification;

6. A previous five (5) year work history;

7. A professional liability claims history;

8. If a provider requires access to a hospital to practice, proof that the provider has clinical privileges and is in good standing at the hospital designated by the provider as the primary admitting hospital;

9. Malpractice insurance;

10. Documentation, if applicable, of a:

a. Revocation, suspension, or probation of a state license or Drug Enforcement Agency certificate and number;

b. Curtailment or suspension of a medical staff privilege;

~~c. Sanction or penalty imposed by the United States Department of Health and Human Services or a state Medicaid agency; or~~

~~d. Censure by a state or county professional association; and~~

~~11. The most recent provider information available from the National Practitioner Data Bank;~~

~~(h) Obtain access to the National Practitioner Data Bank as part of the MCO's credentialing process;~~

~~(i) Have:~~

~~1. A process to recredential a provider at least once every three (3) years that shall be in accordance with subsection (3) of this section; and~~

~~2. Procedures for monitoring a provider sanction, a complaint, or a quality issue between a recredentialing cycle;~~

~~(j) Have or obtain National Committee for Quality Assurance (NCQA) accreditation for its Medicaid product line within four (4) years of the date an MCO begins participation, for an MCO that did not begin participating by June 27, 2013; and~~

~~(k) Continuously maintain NCQA accreditation for the MCO's Medicaid product line after obtaining the accreditation.~~

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

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

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

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

~~(c) The provider's history of a:~~

~~1. Loss of license or a felony conviction;~~

~~2. Loss or limitation of a privilege; or~~

~~3. Disciplinary action;~~

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

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

~~(f) Malpractice insurance maintained by the provider; and~~

~~(g) The correctness and completeness of the application.~~

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

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

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

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

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

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

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

~~(f) Provider orientation and training, including:~~

~~1. Medicaid covered services;~~

~~2. EPSDT coverage;~~

~~3. Medicaid policies and procedures;~~

~~4. MCO policies and procedures; and~~

~~5. Fraud, waste, and abuse;~~

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

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

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

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

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

~~(b) Operate a provider call center.~~

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

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

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

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

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

~~(a) Medicaid coverage policies and procedures;~~

~~(b) Reporting fraud and abuse;~~

~~(c) Medicaid eligibility groups;~~

~~(d) The standards for preventive health services;~~

~~(e) The special needs of enrollees;~~

~~(f) Advance medical directives;~~

~~(g) EPSDT services;~~

~~(h) Claims submission;~~

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

~~(j) Cultural sensitivity;~~

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

~~(l) The reporting of communicable diseases;~~

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

~~(n) Medical records;~~

~~(o) The external quality review organization; and~~

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

~~(2) Ensure that a provider:~~

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

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

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

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

~~(a) Maintain:~~

~~1. Continuity of an enrollee's health care;~~

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

~~3. Formalized relationships with other PCPs to refer enrollees for after-hours care, during certain days, for certain services, or other reasons to extend the hours of service of the PCP's practice;~~

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

~~1. Within the MCO's network; or~~

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

~~(c) Discuss advance medical directives with an enrollee;~~

~~(d) Provide primary and preventive care, including **Early and Periodic Screening, Diagnostic, and Treatment (EPSDT)** services;~~

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

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

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

~~Section 9.] Provider Discrimination. An MCO shall:~~

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

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

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

~~(c) KRS 304.17A-270; and~~

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

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

~~(1) Not require a provider to perform a treatment or procedure that is contrary to the provider's conscience, religious beliefs, or~~

ethical principles in accordance with 42 C.F.R. 438.102;

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

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

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

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

~~Section 7.11. Provider Grievances and Appeals. (1) An MCO shall have written policies and procedures for the filing of a provider grievance or appeal:~~

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

~~(a) A grievance with an MCO; or~~

~~(b) An appeal with an MCO regarding:~~

~~1. A provider payment issue; or~~

~~2. A contractual issue.~~

~~(3)(a) Except as established in paragraph (b) or (c) of this subsection, a provider grievance or appeal shall be resolved within thirty (30) calendar days.~~

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

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

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

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

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

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

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

~~(2) An enrollee medical record shall:~~

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

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

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

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

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

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

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

~~4. The plan of treatment including:~~

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

~~b. Therapy or other prescribed regimen; and~~

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

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

~~(a) Enrollee identification information on each page;~~

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

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

~~(d) Provider's name;~~

~~(e) Known allergies or adverse reactions of the enrollee;~~

~~(f) Enrollee's past medical history;~~

~~(g) Identification of any current problem;~~

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

~~(i) Documentation of immunizations;~~

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

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

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

~~(m) Hospital discharge summaries;~~

~~(n) Advance medical directives for adults; and~~

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

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

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

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

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

~~(d) Provide to the department:~~

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

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

~~3. The number and percentage of providers surveyed;~~

~~4. Provider survey response rates;~~

~~5. Provider survey findings; and~~

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

~~(2) The department shall:~~

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

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

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

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

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

~~(2) Disapproves the policy.907 KAR 17:015.~~

STEPHEN P. MILLER, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 11 a.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](mailto:Laura.Begin@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-6746, ext. 3457, [donna.little@ky.gov](mailto:donna.little@ky.gov); or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the managed care organization requirements and policies relating to providers.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to comply with KRS 205.520(3), 42 U.S.C. 1396n(b), and 42 C.F.R. Part 438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(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 managed care organization requirements and policies relating providers.

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

(a) How the amendment will change this existing administrative regulation: The amendment to 907 KAR 17:015 updates citations in the RELATES TO paragraph and throughout the administrative regulation; clarifies that "days" means "calendar days"; deletes provisions that are already established in the negotiated contracts governed by KRS Chapter 45A or that are specified in federal law; amends Section 2 to reorganize that section for clarity, to reduce duplication, and to match provisions established in federal law or the negotiated contracts relating to provider access; and establishes prompt payment of claims provisions (which were moved from 907 KAR 17:030). The Amended After Comments changes delete a paragraph in Section 2(3) regarding emergency services as those provisions restated federal law and clarified the meaning of the acronym "EPSDT".

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to remove provisions that are established in the negotiated contracts. Enforcement of the contractual provisions is governed by contracts law and KRS Chapter 45A. The additional changes made in the Amended After Comments version are necessary for the department to make changes in response to some of the comments received during the public comment process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by removing provisions that repeated, summarized, or were otherwise covered by federal law and the negotiated terms of the contracts. Many provisions of 42 C.F.R. Part 438 require the managed care contracts to provide specified information, rather than state administrative regulations. See, for example, 42 C.F.R. 438.330(a)(1) and (3).

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not any actions that regulated entities will have to take to comply with this amendment that are not already required by the negotiated terms of the MCO contracts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not any costs to complying with the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Medicaid providers and five

(5) managed care organizations will receive the benefit of updated (and corrected) cross-references. These amendments also bring the administrative regulation into compliance with federal law that requires that certain provisions governing managed care be specified in the negotiated contracts, not the state administrative regulations.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of 907 KAR Chapter 17 are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to providers.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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, additional, or different requirements or responsibilities than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438.

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

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

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

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**(Amended After Comments)**

**907 KAR 17:020. Managed care organization service and service coverage requirements and policies.**

RELATES TO: KRS 194A.025(3), Chapters 202A, 645, 42 U.S.C. 1396n(c), 42 C.F.R. 422.113(c), 431.51(a)(4), 431.52, Part 438, 447.500-447.522, 42 U.S.C. 1396b(m)(2)(A)(xiii), 1396d(r), 1396u-2(b)(2)(A)(i), (ii).

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

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

~~Section 1. [MCO Service Areas. An MCO's service areas shall be as established in the MCO Service Areas.~~

~~Section 2.] Covered Services. (1) Except as established in subsection (2) of this section, an MCO shall be responsible for the provision of a covered health service:~~

~~(a) That[Which] is established in Title 907 of the Kentucky Administrative Regulations;~~

~~(b) That[Which] shall be in the amount, duration, and scope that the services are covered for recipients pursuant to the department's administrative regulations located in Title 907 of the Kentucky Administrative Regulations; and~~

~~(c) Beginning on the date of enrollment of a recipient into the MCO.~~

~~(2) Other than a nursing facility cost referenced in subsection (3)(i) of this section, an MCO shall be responsible for the cost of a non-nursing facility covered service provided to an enrollee during the first thirty (30) days of a nursing facility admission in accordance with this administrative regulation.~~

~~(3) An MCO shall not be responsible for the provision or costs of the following:~~

~~(a) A service provided to a recipient in an intermediate care facility for individuals with an intellectual disability;~~

~~(b) A service provided to a recipient in a 1915(c) home and community based waiver program;~~

~~(c) A hospice service provided to a recipient in an institution;~~

~~(d) A nonemergency medical transportation service provided in accordance with 907 KAR 3:066;~~

~~(e) Except as established in Section 5[6] of this administration~~

regulation, a school-based health service;

(f) A service not covered by the Kentucky Medicaid Program;

(g) A health access nurturing development service pursuant to 907 KAR 3:140;

(h) An early intervention program service pursuant to 907 KAR 1:720; or

(i) A nursing facility service for an enrollee during the first thirty (30) days of a nursing facility admission.

(4) The following covered services provided by an MCO shall be accessible to an enrollee without a referral from the enrollee's primary care provider:

(a) A primary care vision service;

(b) A primary dental or oral surgery service;

(c) An evaluation by an orthodontist or a prosthodontist;

(d) A service provided by a women's health specialist;

(e) A family planning service;

(f) An emergency service;

(g) Maternity care for an enrollee under age eighteen (18);

(h) An immunization for an enrollee under twenty-one (21);

(i) A screening, evaluation, or treatment service for a sexually transmitted disease or tuberculosis;

(j) Testing for HIV, HIV-related condition, or other communicable disease;~~[and]~~

(k) A chiropractic service;

(l) A behavioral health service; and

(m) A substance use disorder service.

(5) An MCO shall:

(a) Not require the use of a network provider for a family planning service;

(b) In accordance with 42 C.F.R. 431.51(a)(4)(b), reimburse for a family planning service provided within or outside of the MCO's provider network;

(c) Cover an emergency service:

1. In accordance with 42 U.S.C. 1396u-2(b)(2)(A)(i);

2. Provided within or outside of the MCO's provider network; ~~and/or]~~

3. If provided out-of-state, in accordance with 42 C.F.R. 431.52;

(d) Comply with 42 U.S.C. 1396u-2(b)(2)(A)(ii); and

(e) Be responsible for the provision and reimbursement of a covered service as described in this section beginning on or after the beginning date of enrollment of a recipient with an MCO as established in 907 KAR 17:010.

(6)(a) If an enrollee is receiving a medically necessary covered service the day before enrollment with an MCO, the MCO shall be responsible for the reimbursement of continuation of the medically necessary covered service without prior approval and without regard to whether services are provided within or outside the MCO's network until the MCO can reasonably transfer the enrollee to a network provider.

(b) An MCO shall comply with paragraph (a) of this subsection without impeding service delivery or jeopardizing the enrollee's health.

(7) To determine if a service is medically necessary and clinically appropriate, the MCO shall:

(a) Comply with 907 KAR 3:130; and

(b) Make utilization decisions as follows:

1. Except as provided in subparagraphs 2. and 3. of this paragraph, by using Interqual, unless Interqual criteria does not specifically address a particular service or a particular population in which case the MCO shall submit its proposed medical necessity criteria for the particular service or population to the department for approval;

2. For substance use, by using the American Society of Addiction Medicine (ASAM); and

3. For behavioral health services not covered by Interqual, by using the following standardized tools:

a. For adults, the Level of Care Utilization System (LOCUS);

b. For children, the Child and Adolescent Service Intensity Instrument (CASII) or the Child and Adolescent Needs and Strengths Scale (CANS); and

c. For young children, the Early Childhood Service

**Intensity Instrument (ECSII) [using Interqual, unless otherwise negotiated in the MCO contract].**

Section 2[3]. Early and Periodic Screening, Diagnosis[Diagnostic], and Treatment (EPSDT) Services. (1) An MCO shall provide an enrollee under the age of twenty-one (21) years with EPSDT services in compliance with:

- (a) 907 KAR 11:034; and
- (b) 42 U.S.C. 1396d(r).

(2) A provider of an EPSDT service shall meet the requirements established in 907 KAR 11:034.

Section 3[4]. Emergency Care, Urgent Care, and Post-stabilization Care. (1) An MCO shall provide to an enrollee:

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

(b) Urgent care within forty-eight (48) hours.

(2) Post-stabilization services shall be provided and reimbursed in accordance with 42 C.F.R. 422.113(c) and 438.114(e).

(3)(a) Prior authorization shall not be required for a physical emergency service or a behavioral health emergency service.

(b) In order to be covered, an emergency service shall be:

1. Medically necessary; and

2. [Authorized after being provided if the service was not prior authorized; and

3.] Covered in accordance with Section 1(5)(c) of this administrative regulation.

Section 4[5]. Maternity Care. An MCO shall:

(1) Have procedures to assure:

(a) Prompt initiation of prenatal care; or

(b) Continuation of prenatal care without interruption for a woman who is pregnant at the time of enrollment;

(2) Provide maternity care that includes:

(a) Prenatal;

(b) Delivery;

(c) Postpartum care; and

(d) Care for a condition that complicates a pregnancy; and

(3) Perform all the newborn screenings referenced in 902 KAR 4:030.

Section 5[6]. Pediatric Interface. (1) An MCO shall:

(a) Have procedures to coordinate care for a child receiving a school-based health service or an early intervention service; and

(b) Monitor the continuity and coordination of care for the child receiving a service referenced in paragraph (a) of this subsection as part of its quality assessment and performance improvement (QAPI) program[established in 907 KAR 17:025].

(2) Except when a child's course of treatment is interrupted by a school break, after-school hours, or summer break, an MCO shall not be responsible for a service referenced in subsection (1)(a) of this section.

(3) A school-based health service provided by a school district shall not be covered by an MCO.

(4) A school-based health service provided by a local health department shall be covered by an MCO.

~~Section 6[7]. Pediatric Sexual Abuse Examination. (1) An MCO shall enroll at least one (1) provider in its network who has the capacity to perform a forensic pediatric sexual abuse examination.~~

~~(2) A forensic pediatric sexual abuse examination shall be conducted for an enrollee at the request of the DCBS.~~

Section 8.] Lock-in Program. (1) An MCO shall have a program to control utilization of:

(a) Drugs and other pharmacy benefits; and

(b) Non-emergency care provided in an emergency setting.

(2)(a) The program referenced in subsection (1) of this section shall be approved by the department.

(b) An MCO shall not be required to use the criteria established in 907 KAR 1:677 for placing an enrollee in the MCO's lock-in program if:

1. The MCO provides notice to the enrollee, in accordance with the adverse action notice requirements established in 907 KAR 17:010, of being placed in the MCO's lock-in program; and

2. The enrollee is granted the opportunity to appeal being placed in a lock-in program in accordance with the:

a. MCO internal appeal process requirements established in 907 KAR 17:010; and

b. The department's state fair hearing requirements established in 907 KAR 17:010.

Section 7[9]. Pharmacy Benefit Program. (1) The pharmacy benefit program shall be in compliance with the applicable federal and state law, including 42 U.S.C. 1396b(m)(2)(A)(xiii)[,] and 42 C.F.R. 447.500 through 447.522[, and the negotiated terms of the contract between the MCO and the department].

(2)[An MCO shall:

(a) Have a pharmacy benefit program that shall have:

1. A point-of-sale claims processing service;

2. Prospective drug utilization review;

3. An accounts receivable process;

4. Retrospective utilization review services;

5. Formulary and non-formulary drugs;

6. A prior authorization process for drugs;

7. Pharmacy provider relations;

8. A toll-free call center that shall respond to a pharmacy or a physician prescriber twenty-four (24) hours a day, seven (7) days a week; and

9. A seamless interface with the department's management information system;

(b) Maintain a preferred drug list (PDL);

(c) Provide the following to an enrollee or a provider:

1. PDL information; and

2. Pharmacy cost sharing information; and

(d) Have a Pharmacy and Therapeutics Committee (P&T Committee), which shall:

1. Meet periodically throughout the calendar year as necessary; and

2. Make recommendations to the MCO for changes to the drug formulary.

(2)(a) The department shall comply with the drug rebate collection requirement established in 42 U.S.C. 1396b(m)(2)(A)(xiii).

(b) An MCO shall:

1. Cooperate with the department in complying with 42 U.S.C. 1396b(m)(2)(A)(xiii);

2. Assist the department in resolving a drug rebate dispute with a manufacturer; and

3. Be responsible for drug rebate administration in a non-pharmacy setting.

(3) An MCO's P&T committee shall meet and make recommendations to the MCO for changes to the drug formulary.

(4) If a prescription for an enrollee is for a non-preferred drug and the pharmacist cannot reach the enrollee's primary care provider or the MCO for approval and the pharmacist determines it necessary to provide the prescribed drug, the pharmacist shall:

(a) Provide a seventy-two (72) hour supply of the prescribed drug; or

(b) Provide less than a seventy-two (72) hour supply of the prescribed drug, if the request is for less than a seventy-two (72) hour supply.

(3)[(5)] Cost sharing imposed by an MCO shall not exceed the cost sharing limits established in 907 KAR 1:604.

Section 8.[10. MCO Interface with the Department Regarding Behavioral Health. An MCO shall:

(1) Meet with the department monthly to discuss:

(a) Serious mental illness and serious emotional disturbance operating definitions;

(b) Priority populations;

(c) Targeted case management and peer support provider certification training and processes;

(d) IMPACT Plus program operations;

(e) Satisfaction survey requirements;



(f) Priority training topics;  
 (g) Behavioral health services hotline; or  
 (h) Behavioral health crisis services;  
 (2) Coordinate:  
 (a) An IMPACT Plus covered service provided to an enrollee in accordance with 907 KAR 3:030;  
 (b) With the department:  
 1. An enrollee education process for:  
 a. Individuals with a serious mental illness; and  
 b. Children or youth with a serious emotional disturbance; and  
 2. On establishing a collaborative agreement with a:  
 a. State-operated or state-contracted psychiatric hospital; and  
 b. Facility that provides a service to an individual with a co-occurring behavioral health and developmental and intellectual disabilities; and  
 (c) With the department and community mental health centers a process for integrating a behavioral health service hotline; and  
 (3) Provide the department with proposed materials and protocols for the enrollee education referenced in subsection (2)(b) of this section.

Section 11.] Behavioral Health Services. (1) An MCO shall:

(a) Provide a medically necessary behavioral health service to an enrollee in accordance with the access standards established in 907 KAR 17:015, Section 2;  
 (b) Use the DSM-IV multi-axial classification system to assess an enrollee for a behavioral service;  
 (c) Have an emergency or crisis behavioral health toll-free hotline staffed by trained personnel twenty-four (24) hours a day, seven (7) days a week;  
 (d) Not operate one (1) hotline to handle both an emergency or crisis call and a routine enrollee call; and  
 (e) Not impose a maximum call duration limit.  
 (2) Staff of a hotline referenced in subsection (1)(c) of this section shall:  
 (a) Communicate in a culturally competent and linguistically accessible manner to an enrollee; and  
 (b) Include or have access to a qualified behavioral health professional to assess and triage a behavioral health emergency.  
 (3) A face-to-face emergency service shall be available:  
 (a) Twenty-four (24) hours a day; and  
 (b) Seven (7) days a week.

Section 9.[12. Coordination Between a Behavioral Health Provider and a Primary Care Provider. (1) An MCO shall:

(a) Require a PCP to have a screening and evaluation procedure for the detection and treatment of, or referral for, a known or suspected behavioral health problem or disorder;  
 (b) Provide training to a PCP in its network on:  
 1. Screening and evaluating a behavioral health disorder;  
 2. The MCO's referral process for a behavioral health service;  
 3. Coordination requirements for a behavioral health service; and  
 4. Quality of care standards;  
 (c) Have policies and procedures that shall be approved by the department regarding clinical coordination between a behavioral health service provider and a PCP;  
 (d) Establish guidelines and procedures to ensure accessibility, availability, referral, and triage to physical and behavioral health care;  
 (e) Facilitate the exchange of information among providers to reduce inappropriate or excessive use of psychopharmacological medications and adverse drug reactions;  
 (f) Identify a method to evaluate continuity and coordination of care; and  
 (g) Include the monitoring and evaluation of the MCO's compliance with the requirements established in paragraphs (a) to (f) of this subsection in the MCO's quality improvement plan.  
 (2) With consent from an enrollee or the enrollee's legal guardian, an MCO shall require a behavioral health service provider to:  
 (a) Refer an enrollee with a known or suspected and untreated physical health problem or disorder to their PCP for examination

and treatment; and

(b) Send an initial and quarterly summary report of an enrollee's behavioral health status to the enrollee's PCP.

Section 13.] Court-Ordered Psychiatric Services. (1) An MCO shall:

(a) Provide an inpatient psychiatric service to an enrollee under the age of twenty-one (21) or over the age of sixty-five (65) who has been ordered to receive the service by a court of competent jurisdiction under the provisions of KRS Chapters 202A or 645;  
 (b) Not deny, reduce, or negate the medical necessity of an inpatient psychiatric service provided pursuant to a court-ordered commitment for an enrollee under the age of twenty-one (21) or over the age of sixty-five (65);  
 (c) Coordinate with a provider of a behavioral health service the treatment objectives and projected length of stay for an enrollee committed by a court of law to a state psychiatric hospital; and  
 (d) Enter into a collaborative agreement with the state-operated or state-contracted psychiatric hospital assigned to the enrollee's district[region] in accordance with 908 KAR 2:040[3:040] and in accordance with the Olmstead decision.  
 (2) An MCO shall present a modification or termination of a service referenced in subsection (1)(b) of this section to the court with jurisdiction over the matter for determination.  
 (3)(a) An MCO behavioral health service provider shall:  
 1. Participate in a quarterly continuity of care meeting with a state-operated or state-contracted psychiatric hospital;  
 2. Assign a case manager prior to or on the date of discharge of an enrollee from a state-operated or state-contracted psychiatric hospital; and  
 3. Provide case management services to an enrollee with a severe mental illness and co-occurring developmental disability who is discharged from a:  
 a. State-operated or state-contracted psychiatric hospital; or  
 b. State-operated nursing facility for individuals with severe mental illness.  
 (b) A case manager and a behavioral health service provider shall participate in discharge planning to ensure compliance with the Olmstead decision.

Section 10[14]. Centers for Medicare and Medicaid Services Approval and Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or  
 (2) Disapproves the policy. [Section 15. Incorporation by Reference. (1) "MCO Service Areas", November 2012 edition, is incorporated by reference.  
 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.  
 (3) It may also be obtained online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.]

STEPHEN P. MILLER, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 11 a.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](mailto:Laura.Begin@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Donna Little, (502) 564-6746, ext. 3457, [donna.little@ky.gov](mailto:donna.little@ky.gov); or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the managed care

organization service and service coverage requirements and policies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.520(3), 42 U.S.C. 1396n(b), and 42 C.F.R. Part 438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(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 managed care organization service and service coverage requirements and policies.

(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 907 KAR 17:020 updates citations in the RELATES TO paragraph and throughout the administrative regulation; deletes references to and the incorporation by reference of an outdated document that established service areas for MCOs; makes changes to comply with the drafting and formatting requirements of KRS Chapter 13A; adds provisions regarding the determination of medical necessity and clinical appropriateness; adds provisions regarding prior authorization and coverage of emergency services (which were moved from 907 KAR 17:015); deletes provisions that are already established in the negotiated contracts governed by KRS Chapter 45A; updates provisions to comply with 42 C.F.R. Part 438; and specifies that the pharmacy benefit program shall be in compliance with the applicable federal and state law and the negotiated terms of the contract between the MCO and department. The Amended After Comments version makes the following changes: amends Section 1(4) to add a behavioral health service and a substance use disorder service to the list of covered services that shall be accessible to an enrollee without a referral from the enrollee's primary care provider; amends Section 1(7)(b) to update the required criteria for making utilization decisions to match the contractual provisions by specifying the criteria for substance use and behavioral health services and the process if the specified criteria do not specifically address a particular service or a particular population; amends Section 3(3)(b)2. to delete language requiring an emergency service to be "authorized after being provided if the service was not prior authorized"; amends Section 7 to delete references to the contract between the MCO and the department; and amends Section 9 to correct an administrative regulation cross-reference and reference the enrollee's "district" rather than "region", to match the terminology used in that cross-referenced administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to remove provisions that are established in the negotiated contracts. Enforcement of the contractual provisions is governed by contracts law and KRS Chapter 45A. The additional changes made in the Amended After Comments version are necessary for the department to make changes in response to some of the comments received during the public comment process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by removing provisions that repeated, summarized, or were otherwise covered by federal law and the negotiated terms of the contracts. Many provisions of 42 C.F.R. Part 438 require the managed care contracts to provide specified information, rather than state

administrative regulations. See, for example, 42 C.F.R. 438.330(a)(1) and (3).

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not any actions that regulated entities will have to take to comply with this amendment that are not already required by the negotiated terms of the MCO contracts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not any costs to complying with the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Medicaid providers and five (5) managed care organizations will receive the benefit of updated (and corrected) cross-references. These amendments also bring the administrative regulation into compliance with federal law that requires that certain provisions governing managed care be specified in the negotiated contracts, not the state administrative regulations.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis. The MCOs are already required to adhere to the negotiated contracts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of 907 KAR Chapter 17 are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the Medicaid managed care organization service and service coverage requirements and policies.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438.

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

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

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

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

KENTUCKY STATE BOARD OF ELECTIONS  
(Amendment)

**31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists.**

RELATES TO: KRS 116.085, 116.155, 117.025, 117.225

STATUTORY AUTHORITY: KRS 117.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015 authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation establishes the procedures for election officials and voters to follow to correct and maintain voter registration records and establishes standards for the State Board of Elections to follow when reviewing a request for a voter registration list.

Section 1. Definitions. (1) "Advertisement" means any attempt by publication, dissemination, solicitation, or circulation to induce any person to enter into any obligation, or acquire any title or interest in any good or service.

(2) "Alphabetical labels" means labels of registered voters within the precinct with one (1) name per label and sorted in alphabetical order.

(3) "Alphabetical lists" means lists of registered voters generated from the statewide voter registration database and sorted in alphabetical order by last name within a precinct that have the name, address, age code, party, gender, zip code, and five (5) year voting history of every voter in the precinct.

(4) "Duly qualified candidate" means any person who has filed:

(a) A letter of intent with the Kentucky Registry of Election Finance, or

(b) Nomination papers with the Office of the Secretary of State or county clerk. ~~["CD-R" means a compact computer disc with read-only memory containing the voter's name and address, county code, precinct code, gender, party, zip code, date of birth, date of registration, and five (5) year voting history generated from the statewide voter registration database.]~~

(5) "Household labels by street order" means labels that are generated from the statewide voter registration database and sorted by street address within the precinct with as many as four (4) names per label of the voters whose last name and address are an identical match.

(6) "Household labels by zip code order" means labels that are generated from the statewide voter registration database and sorted by zip code within the county with as many as four (4) names per label of the voters whose last name and address are an identical match.

(7) "Sale" means any sale, rental, distribution, offer for sale, rental, or distribution, or attempt to sell, rent, or distribute any good or service to another.

(8) "Statewide voter registration database" means a complete roster of all qualified voters within the state by county and precinct that the State Board of Elections is required to maintain pursuant to KRS 117.025(3)(a).

(9) "Street order lists" means lists of registered voters generated from the statewide voter registration database sorted in street order within a precinct and contain the name, address, age code, party, gender, zip code, and a five (5) year voting history of every registered voter in the precinct.

(10) "Voter registration list" means a list of registered voters generated from the statewide voter registration database in any format in any given election precinct in the Commonwealth of Kentucky that the State Board of Elections is required to furnish pursuant to KRS 117.025(3)(h).

Section 2. Correction of Voter Registration Records. (1) Each county clerk shall instruct the precinct election officers of the necessity for informing each voter that he or she shall correct any error existing in his or her address as it appears upon the precinct signature roster.

(2) Each precinct election officer shall instruct each voter to correct any error existing in his or her address as it appears upon the precinct signature roster.

(3) Each voter shall, when he or she signs the precinct signature roster, correct any error existing in his or her address as it appears upon the precinct signature roster.

(4) Each county clerk shall take all steps necessary to correct and update each voter's address upon the statewide voter registration database.

Section 3. Interpretation of Commercial Use. Commercial use, as that term is used in KRS 117.025(3)(h), shall be interpreted by the Board of Elections to mean:

(1) The use by the requester of the voter registration list, or any part thereof, in any form, for profit, the solicitation of donations, or for the sale or advertisement of any good or service; or

(2) The transfer of a voter registration list by the requester for a profit to any other person whom the requester knew or should have known intended to use the voter registration list, or any part thereof, in any form, for profit, the solicitation of donations, or for the sale or advertisement of a good or service.

Section 4. Exceptions to Commercial Use Interpretation. Commercial use shall not include use of a voter registration list, or any part thereof, for the following purposes:

(1) Use for scholarly, journalistic, political (including political fund raising), or governmental purposes;

(2) Use for publication, broadcast, or related use by a newspaper, magazine, radio station, television station, or other news medium in its news or other publications or broadcasts; or

(3) Use in a publication provided or sold to duly qualified candidates; political party committees, or officials thereof; or any committee that advocates or opposes an amendment or public question.

Section 5. Requests for Voter Registration Lists. A request for voter registration lists shall be made by submitting a completed Request for Voter Registration Data, form SBE-84, to the State Board of Elections with payment of costs as follows:

(1) The minimum charge for lists and label orders shall be ten (10) dollars.

(2) The charge for alphabetical lists shall be four (4) dollars per precinct.

(3) The charge for street order lists shall be four (4) dollars per precinct.

(4) The charge for alphabetical labels shall be ten (10) dollars per thousand labels.

(5) The charge for household labels by street order shall be ten (10) dollars per thousand labels.

(6) The charge for household labels by zip code order shall be ten (10) dollars per thousand labels.

(7) Upon request, any of the above lists may be made available in a password-protected electronic format at like charge. ~~[The minimum charge for CD-R shall be twenty-five (25) dollars.]~~

(8) ~~The charge for CD-R shall be one (1) dollar per 1,000 records up to 100,000 records; fifty (50) cents per thousand records over 100,000 records; \$450 statewide.]~~

Section 6. Incorporation by Reference. (1) "Request for Voter Registration Data", SBE 84, October 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 West Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALISON LUNDERGAN GRIMES, Secretary of State,  
Chair of the State Board of Elections

APPROVED BY AGENCY: November 21, 2017

FILED WITH LRC: January 23, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on March 22, 2018, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 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: Lindsay Hughes Thurston, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687. Email [Lindsay.thurston@ky.gov](mailto:Lindsay.thurston@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lindsay Hughes Thurston

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for requesting voter registration data.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for requesting voter registration data.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the State Board of Elections to fulfill its duties under KRS 117.025(3)(h), this administrative regulation is necessary to establish the procedure for requesting voter registration data.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for requesting voter registration data.

(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 defines "Duly Qualified Candidate", a term used in the regulation that previously was not defined. Additionally, it allows for the State Board of Elections to fulfill a request for voter registration data by electronic means if requested.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to define a term used in the regulation and to allow for alternative methods for fulfilling data requests.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 117.025(3)(h).

(d) How the amendment will assist in the effective administration of the statutes: This amendment defines "Duly Qualified Candidate", a term used in the regulation that previously was not defined. Additionally, it allows for the State Board of Elections to fulfill a request for voter registration data by electronic means if requested.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment could affect requesters of voter registration data.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals identified in question (3) will have to familiarize themselves with this amended administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is unknown if individuals identified in question (3) will incur costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue to the entities identified in question (3).

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

(a) Initially: There will be no cost to implement this administrative regulation for the first year.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

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

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

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

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

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact requesters of voter registration data and registered Kentucky voters.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 117.025(3)(h).

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET Kentucky Board of Licensure and Certification for Dietitians and Nutritionists (Amendment)

201 KAR 33:070. Telehealth and telepractice.

RELATES TO: KRS 310.070, 310.200

STATUTORY AUTHORITY: KRS 310.200(1), (2)

NECESSITY, FUNCTION AND CONFORMITY: KRS 310.200 requires the Board of Licensure and Certification for Dietitians and Nutritionists to adopt administrative regulations to further the objectives stated therein. This administrative regulation establishes procedures necessary to prevent abuse and fraud through the use of telehealth, prevent fee-splitting through the use of telehealth, and utilize telehealth in the provision of dietitian and nutrition services, and in the provision of continuing education.

Section 1. Definitions. (1) "Client" means the person receiving the services of the dietitian or nutritionist.

(2) "Educator" means a presenter speaking to a group of individuals on a topic generally without a focus on the specific needs of any particular individual.

(3) "Licensed healthcare professional" means a medical doctor, registered nurse, practical nurse, nurse practitioner, advanced practice registered nurse, physician's assistant, chiropractor, certified diabetes educator, pharmacist, speech-language pathologist, registered dietitian, certified nutritionist, podiatrist, audiologist, or psychologist licensed in the jurisdiction where he or she is physically located.

(4) "Practitioner" means a licensed dietitian or certified nutritionist.

(5) "Telehealth" is defined by KRS 310.200(3).

(6) "Telepractice" means the practice of dietetics or nutrition as defined by KRS 310.005(2) and provided by using communication technology that is two (2) way, interactive, simultaneous audio and video.

Section 2. Client Requirements. ~~[A—practitioner-patient relationship shall not commence via telehealth. An initial, in-person meeting for the practitioner and patient who will prospectively utilize telehealth shall occur in order to evaluate if the potential or current client is a candidate to receive services via telehealth.]~~ A licensed health care professional may represent the practitioner at the initial ~~[in-person]~~ meeting. A practitioner who uses telehealth to deliver dietetics or nutrition services shall, at the initial ~~[in-person]~~ meeting with the client:

(1) Make attempts to verify the identity of the client;

(2) Obtain alternative means of contacting the client other than electronically such as by the use of a telephone number or mailing address;

(3) Provide to the client alternative means of contacting the licensee other than electronically such as by the use of a telephone number or mailing address;

(4) Provide contact methods of alternative communication the practitioner shall use for emergency purposes such as an emergency on call telephone number;

(5) Document if the client has the necessary knowledge and skills to benefit from the type of telepractice provided by the licensee; and

(6) Inform the client in writing and document acknowledgement of the risk and limitations of:

(a) The use of technology in the provision of telepractice;

(b) The potential breach of confidentiality of information, or inadvertent access of protected health information, due to technology in the provision of telepractice;

(c) The potential disruption of technology in the use of telepractice;

(d) When and how the practitioner will respond to routine electronic messages;

(e) In what circumstances the practitioner will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the practitioner;

(g) How communications shall be directed to a specific licensee;

(h) How the practitioner stores electronic communications from the client; and

(i) That the practitioner may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A practitioner using telehealth to deliver services or who telepractices shall:

(1) Limit the telepractice to the area of competence in which proficiency has been gained through education, training, and experience;

(2) Maintain current competency in telepractice through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(3) Document the client's presenting problem, purpose, or diagnosis, and include which services were provided by telepractice;

(4) Use secure communications with each client, including encrypted text messages, via e-mail or secure Web sites, and not use personal identifying information in non-secure communications; and

(5) Ensure that confidential communications obtained and stored electronically shall not be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. (1) A practitioner using telehealth to deliver dietetics or nutrition services shall comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with a disability.

(2) A person providing dietetic or nutrition services for which an exception to licensure does not apply or who represents himself or herself as a dietitian, licensed dietitian, or certified nutritionist pursuant to KRS 310.070 shall be licensed by the board if:

(a) Services are offered via telehealth; and

(b) These services are provided or the representation is made to a person when he or she is physically located in Kentucky.

(3) A person providing dietetic or nutrition services for which an exception to licensure does not apply or who represents himself or herself as a dietitian, licensed dietitian, or certified nutritionist pursuant to KRS 310.070 shall be licensed by the board if:

(a) Services are offered via telehealth; and

(b) These services are provided or the representation is made from a physical location in Kentucky. This person may be subject to licensure requirements in other states where the services are received by the client.

(4) No provision of this administrative regulation shall restrict the ability of educators to present on topics related to dietetics and nutrition pursuant to KRS 310.070(2)(d).

Section 5. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services or who telepractices shall not:

(1) Engage in false, misleading, or deceptive advertising of telepractice; or

(2) Split fees.

LORA ARNOLD PARKS, Chairperson

APPROVED BY AGENCY: February 9, 2018

FILED WITH LRC: February 9, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2018 at 10 AM Eastern Time at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 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: Matt James, Board Counsel, 700 Capitol Ave., Ste. 118, Frankfort, Kentucky 40601; phone (502) 696-5300; fax: (502) 564-2894; email [matt.james@ky.gov](mailto:matt.james@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes procedures for dietitians and nutritionists practicing telehealth.

(b) The necessity of this administrative regulation: This regulation is necessary to establish procedures for dietitians and nutritionists practicing telehealth, which is required by KRS 310.200.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish administrative regulations for the practice of dietitians and nutritionists in KRS 310.041, and specifically for telehealth in KRS 310.200.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures for dietitians and nutritionists practicing telehealth.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the in-person requirement for the commencement of the practitioner-patient relationship.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to remove the in-person requirement for the commencement of the practitioner-patient relationship.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 310.200 requires the Board to promulgate regulations governing telehealth.

(d) How the amendment will assist in the effective and administration of the statutes: The amendment will allow practitioner-patient relationships to commence without an in-person meeting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,289 licensed dietitians and 45 dual license/certificate holders.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: Dietitians and nutritionists will have to abide by the procedures governing telehealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Dietitians and nutritionists will be able to provide services via telehealth.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensed dietitians and certified nutritionists.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure and Certification for Dietitians and Nutritionists is housed for administrative purposes within the Department of Professional Licensing in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 310.041, 310.200

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A.

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

#### GENERAL GOVERNMENT CABINET Board of Licensed Diabetes Educators (Amendment)

##### 201 KAR 45:001. Definitions for 201 KAR Chapter 45.

RELATES TO: KRS 309.335

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.330 ~~through~~ 309.339. This administrative regulation establishes the definitions ~~for terms to be~~ used in 201 KAR Chapter 45 ~~those administrative regulations~~.

Section 1. Definitions. (1) "Apprentice diabetes educator" is defined by KRS 309.325(5).

(2) "Board" is defined by KRS 309.325(1).

(3) "Diabetes education" is defined by KRS 309.325(2).

(4) "Diabetes educator" means:

(a) A "licensed diabetes educator" as defined by KRS 309.325(3);

(b) A "master licensed diabetes educator" as defined by KRS 309.325(4); or

(c) An "apprentice diabetes educator" as defined in KRS 309.325(5).

(5) "Licensed diabetes educator" is defined by KRS 309.325(3).

(6) "Master licensed diabetes educator" is defined by KRS 309.325(4).

(7) "Supervisor" means a licensed diabetes educator as defined by KRS 309.325(3) in good standing, or a master licensed



diabetes educator as defined by KRS 309.325(4) in good standing.

(8) "Work experience" means the hours spent performing the services and tasks and drafting documentation and reports necessary for providing diabetes education to a person with diabetes or the caregiver of someone with diabetes, or the hours spent interacting with a supervisor. "Work experience" can include up to fifteen (15) hours of continuing education units as established in 201 KAR 1:030 per renewal period.

KIM DeCOSTE, Chairperson

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 14, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 29, 2018 at 9 AM Eastern Time at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 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: Matt James, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-9380, [matt.james@ky.gov](mailto:matt.james@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation provides the definitions for the section.

(b) The necessity of this administrative regulation: This regulation is necessary because it provides the definitions for the section.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish regulations for the practice of diabetes educators in KRS 309.331(1).

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

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

(a) How the amendment will change this existing administrative regulation: This amendment specifies that an apprentice diabetes educator may count up to fifteen (15) hours of continuing education courses per renewal period toward the apprentice work experience requirement.

(b) The necessity of the amendment to this administrative regulation: This amendment specifies the amount of hours that an apprentice diabetes educator may count towards the apprentice work experience requirement per renewal period.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.331 authorizes the Kentucky Board of Licensed Diabetes Educators to promulgate administrative regulations in accordance with KRS Chapter 13A to carry out and enforce KRS 309.325 to 309.339.

(d) How the amendment will assist in the effective and administration of the statutes: This amendment specifies the amount of hours that an apprentice diabetes educator may count towards the apprentice work experience requirement per renewal period.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: Over 500 individuals are licensed or master licensed diabetes educators, and there are currently several apprentice diabetes educators.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: Apprentice diabetes educators will be able to count up to fifteen (15) hours of continuing education courses towards the apprentice work experience requirement per renewal period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for applying is established in a separate regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Apprentice diabetes educators will be able to count up to fifteen (15) hours of continuing education courses towards the apprentice work experience requirement per renewal period.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensees and apprentice diabetes educators.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensed Diabetes Educators is housed for administrative purposes within the Department of Professional Licensing in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331, 309.335

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

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

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas that differ from statewide requirements.

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

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

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

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

(5) "In-line muzzleloader" means a gun:

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

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

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

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

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

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

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

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

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

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

(14) "Wildlife management area" or "WMA" means a tract of land:

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

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

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

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

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

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

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

(4) If a WMA is:

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

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

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

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

(b) Any WMA or state park either-sex quota hunt.

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

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

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

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

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

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

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

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

1. Nail;

2. Spike;

3. Screw-in device;

4. Wire; or

5. Tree climber;

(b) May use a portable stand or climbing device;

(c) Shall:

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

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

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

(e) Shall not use an existing permanent tree stand;

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

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

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

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

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

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

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

## VOLUME 44, NUMBER 9 – MARCH 1, 2018

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

- (a) On a WMA or state park if gun deer hunting is allowed;
- (b) Hunting within the sixteen (16) county elk zone when a firearms elk season is open, pursuant to 301 KAR 2:132; or
- (c) Hunting within the bear zone during a bear firearms season, pursuant to 301 KAR 2:300.

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

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

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

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

- (a) A deer quota hunt; and
- (b) The no-hunt option.
- (5) A person who applies for the no-hunt option shall:
  - (a) Not be drawn for a quota hunt; and
  - (b) Be given one (1) preference point for each year the no-hunt option is selected.
- (6) If applying as a party:

(a) Each applicant's preference points shall be used to calculate an average point total for the party~~be independent of each other~~; and

(b) A party with a higher preference point average will be randomly selected before a party with a lower preference point average~~The entire party shall be selected if one (1) member of the party is selected~~.

(7) There shall be a maximum of ten (10) percent of nonresidents drawn in each quota hunt pool.

(8) The commissioner shall extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

~~(9)~~(8) A hunter may take up to two (2) deer on a quota hunt in Zones 2, 3, and 4, only one (1) of which may be an antlered deer, except as established in Section 6 of this administrative regulation.

~~(10)~~(9) If a hunter has purchased the appropriate permits, a hunter may take unlimited antlerless deer in:

- (a) The West Kentucky WMA gun hunt;
- (b) WMA quota hunts in Zone 1; and
- (c) State Park quota hunts in Zone 1, except as established in Section 8 of this administrative regulation.

~~(11)~~(10) One (1) person shall be drawn from the eligible quota hunt applicants who were not selected in the original drawing, and shall receive one (1) deer permit that carries with it all the privileges of the Special Commission Permit established in 301 KAR 3:100.

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

(1) Complete the quota hunt application process on the department's Web site~~Call the toll-free number listed in the current fall hunting and trapping guide or apply online~~ at fw.ky.gov [by completing the Quota Hunt Application: Deer Quota Hunt Form.] between September 1 and September 30;

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

(3) Select:

- (a) A first and second choice of hunts; or
- (b) The no-hunt option;

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

- (a) Electronic funds transfer;
- (b) Visa Card;
- (c) MasterCard; or

~~(d) Discover Card;~~

~~(4)~~(5) Not apply more than one (1) time; and

~~(5)~~(6) Not apply as a group of more than five (5) persons.

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

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

- (a) A valid annual Kentucky hunting license; and
- (b) A deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

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

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

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

(a) Either:

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

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

(b) With documentation of the participant's:

1. Proof of identification~~Social Security number~~ or draw confirmation number; and

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

(5) Check out at the designated check station:

- (a) If finished hunting;
- (b) If the hunter's bag limit is reached; or
- (c) By 8 p.m. Eastern time on the final day of the hunt;
- (6) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested;

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

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

Section 6. Wildlife Management Area Requirements. (1) Dr. Norman and Martha Adair WMA.

(2) Ballard WMA.

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

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

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

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

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

(4) Beaver Creek WMA.

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

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

(c) The youth gun seasons shall be open pursuant to statewide requirements.

(5) Big Rivers WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

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

(c) The archery and crossbow quota hunt shall begin the Monday following the second Saturday in October and continue through November 30, except that it shall be closed during the two

(2) day quota hunt as established in paragraph (b) of this subsection.

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

1. Telechecked; or
2. Checked in on the department's Web site at fw.ky.gov.

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

(a) Archery, October youth gun, and crossbow seasons shall only be open through October 14; and

(b) December free youth weekend shall be closed.

(7) Cedar Creek Lake WMA.

(8) Clay WMA.

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

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

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

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

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

(9) Dewey Lake WMA.

(a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(b) Guns shall be prohibited for deer hunting on the:

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

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

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

(10) Dix River WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(11) Fishtrap Lake WMA.

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

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

(c) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(12) Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days; and
2. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer.

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

1. Travel through the WMA on an established public road; or
2. Use an area designated as open by signs.

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

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

(e) The youth gun seasons shall be open pursuant to statewide requirements.

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

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

(a) The youth gun seasons shall be open pursuant to statewide requirements.

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

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

(d) The Green River Lake and Dennis-Gray WMAs shall be considered to be located in the Eastern Time Zone.

(14) Griffith Woods WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(15) Higginson-Henry WMA. The youth gun seasons shall be open pursuant to statewide requirements.

(16) J.C. Williams WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(17) Kentucky River WMA.

(a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

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

(18) Kleber WMA.

(a) The quota hunts shall be for:

1. Two (2) consecutive days beginning the first Saturday in November; and

2. Two (2) consecutive days beginning the first Saturday in December.

(b) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(19) Knobs State Forest WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(20) Lake Barkley WMA shall be open pursuant to statewide requirements except:

(a) The North Refuge shall be closed from November 1 to February 15; and

(b) Duck Island shall be closed from October 15 to March 15, except that it shall be open for the October muzzleloader season, pursuant to statewide requirements.

(21) Livingston County WMA. The youth gun, muzzleloader, and modern gun seasons shall be open pursuant to statewide requirements, except a person shall not hunt deer with a modern gun during the modern gun deer season.

(22) Curtis Gates Lloyd WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(23) Mill Creek WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(24) Miller-Welch Central Kentucky WMA. The archery and crossbow seasons shall be open pursuant to statewide requirements:

(a) On Monday through Thursday, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

(25) Mud Camp Creek WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(26) Mullins WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide ~~deer~~ requirements.

(27) Ohio River Islands WMA, Stewart Island Unit.

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.

(b) The archery season shall be from the first Saturday in September through October 14.

(c) The crossbow season shall be from October 1 through October 14.

(d) The October youth gun season shall be open pursuant to statewide requirements.

(e) The remainder of the WMA shall be open pursuant to statewide requirements.

(28) Paintsville Lake WMA.

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

(b) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(c) A person shall not use a gun for deer hunting on:

1. The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge; and

2. The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake.

(29) Peabody WMA.

(a) The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(30) Pennyrite State Forest-Tradewater WMA. The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.

(31) Ping-Sinking Valley WMA. The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(32) Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

- (a) Shall not use a modern gun;
- (b) Shall not use an in-line muzzleloader;
- (c) Shall not use a scope;
- (d) May use a crossbow during the entire archery season; and
- (e) Shall use only open or iron sights on any weapon.

(33) Redbird WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(34) Dr. James R. Rich WMA.

(a) There shall be a quota hunt for two (2) consecutive days beginning on the first Saturday in:

- 1. November; and
- 2. December; and

(b) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(35) Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(36) Rockcastle River WMA.

(a) The youth gun seasons shall be open pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for two (2) consecutive days beginning the second Saturday in November.

(37) Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth gun seasons shall be open pursuant to statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open pursuant to statewide requirements through the end of modern gun season.

(b) The remainder of the WMA shall be open pursuant to statewide requirements.

(38) South Shore WMA.

(a) The youth gun, October muzzleloader, and modern gun seasons shall be open pursuant to statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.

(b) The archery and crossbow seasons shall be open pursuant to statewide requirements, except that the area shall be closed November 15 through January 15.

(c) The December free youth weekend and December muzzleloader season shall be closed.

(39) T.N. Sullivan WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide

requirements.

(40) R.F. Tarter WMA. The youth gun and muzzleloader seasons shall be open pursuant to statewide requirements.

(41) Taylorsville Lake WMA.

(a) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in:

- 1. November; and
- 2. December.

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons.

(c) The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(42) Twin Eagle WMA. The youth gun and December muzzleloader seasons shall be open pursuant to statewide requirements.

(43) Paul Van Booven WMA.

(44) Veteran's Memorial WMA.

(a) The December muzzleloader and youth gun seasons shall be open pursuant to statewide requirements.

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in:

- 1. November; and
- 2. December for antlerless deer.

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

(45) West Kentucky WMA.

(a) All tracts shall be open pursuant to statewide requirements for the archery and crossbow seasons, except that the statewide archery and crossbow seasons shall be closed during department administered quota, mentor, and gun deer hunts.

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open gun deer hunts.

(c) Tract 7 and "A" tracts shall not be open for department administered quota or gun deer hunts, except as established in paragraph (d) of this subsection.

(d) The "A" tracts shall be open to shotgun hunters participating in the mentor hunt.

(e) The quota hunt shall be for four (4) consecutive days beginning the third Saturday in December~~[prior to Thanksgiving]~~.

(f) There shall be a mentor hunt for four (4) consecutive days beginning the third Saturday in December~~[prior to Thanksgiving]~~ in which:

- 1. There shall be no more than two (2) youths per adult;
- 2. There shall be no more than one (1) adult per youth; and
- 3. The adult may take a deer.

(g) The gun hunt shall:

1. Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;

2. Require a hunter to check-in at a designated check station from 4 p.m. to 8 p.m. Central Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central time on hunt days;

3. Require a hunter to check out at the designated check station:

- a. When finished hunting; or
- b. By 7 p.m. Central time on the final day of the hunt;

4. Have an unlimited bag limit, only one (1) of which may be an antlered deer; and

5. Require every person to check in during the gun hunt, except for:

- a. A person traveling on an established public road; or
- b. A person in an area designated as open by signs.

(h) Gun hunters shall not use centerfire rifles or handguns.

(i) All persons shall check in daily at the designated check-in locations before entering the "A" tracts.

(j) A participant in the quota hunt, mentor hunt, or open gun hunt shall:

1. Sign in for the hunting tract of his or her choice at check-in prior to each day's hunt; and

2. ~~[Except after noon.]~~ Not hunt outside of that tract, except after noon.

(46) Yatesville WMA.

(a) The youth gun and muzzleloader seasons shall be open

pursuant to statewide requirements.

(b) The modern gun season shall be open pursuant to statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(47) Yellowbank WMA. The December muzzleloader and youth gun deer seasons shall be open pursuant to statewide requirements.

Section 7. State Park Deer Seasons. (1) A state park may allow archery and crossbow hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(2) A state park may allow up to sixteen (16) days of modern gun hunting and up to eleven (11) days of muzzleloader hunting from the first Saturday in September through the third Monday in January for antlered or antlerless deer.

(3) A state park shall be open to deer hunting as established in this subsection and Section 8 of this administrative regulation.

(a) Lake Barkley State Resort Park. Deer hunting shall be allowed beginning on the second Tuesday of January for two (2) consecutive days.

(b) Greenbo Lake State Resort Park. Deer hunting shall be allowed beginning on the:

1. First Friday of November for three (3) consecutive days;
2. Second Friday of November for three (3) consecutive days;

and

3. Second Tuesday of January for two (2) consecutive days.

(c) Green River Lake State Park.

1. Archery and crossbow deer hunting shall be allowed beginning on the first Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed beginning on the second Thursday of December for four (4) consecutive days.

(d) Dale Hollow Lake State Resort Park.

1. Youth deer hunting shall be allowed beginning on the second Saturday of December for two (2) consecutive days.

2. Deer hunting shall be allowed beginning on the first Saturday of January for two (2) consecutive days.

(e) Kenlake State Resort Park. Archery and crossbow deer hunting shall be allowed beginning on the second Thursday of November for four (4) consecutive days.

(f) Kincaid Lake State Park.

1. Archery and crossbow hunting shall be allowed beginning on the second Thursday of December for four (4) consecutive days.

2. Archery and crossbow deer hunting shall be allowed beginning on the third Thursday of December for four (4) consecutive days.

(g) Yatesville Lake State Park. Muzzleloader, archery, and crossbow deer hunting shall be allowed pursuant to statewide [deer]requirements on the second Monday of December for three (3) consecutive days.

(h) Jenny Wiley State Resort Park.

1. Deer hunting shall be allowed beginning on the first Saturday of January for two (2) consecutive days.

2. The bag limit shall be two (2) deer, only one (1) of which may be antlered.

3. The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.

4. A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026.

Section 8. State Park Deer Hunt Requirements. (1) A person shall not hunt on a state park unless:

(a) Selected by a random drawing as established in Section 3 of this administrative regulation;

(b) The person is a member of a successful applicant's quota hunt party;

(c) The person is participating in a deer hunt established in Section 7 of this administrative regulation; or

(d) The person successfully registers on a first-come, first-served basis as part of a process administered by the Department

of Parks, at an area established in subparagraphs 1. through 5. of this paragraph:

1. Blue Licks Battlefield State Resort Park;
2. Carter Caves State Resort Park;
3. John James Audubon State Park;
4. My Old Kentucky Home State Park; and
5. Taylorsville Lake State Park.

(2) A person participating in a state park quota hunt, except for the quota hunts at Green River Lake State Park and the Yatesville Lake State Park open deer hunt, shall:

(a) Check in and check out as required in Section 5 of this administrative regulation;

(b) Furnish at check-in a driver's license or other form of government-issued identification;

(c) Check in:

1. Between noon and 8 p.m. Eastern Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or

2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park deer hunt; and

(d) Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.

(3) A person participating in a state park deer hunt shall:

(a) Comply with the requirements established in 301 KAR 2:172; and

(b) Check a harvested deer by completing the telecheck or online check-in process as established in 301 KAR 2:172.

(4) A person participating in a state park deer hunt shall not:

(a) Take more than one (1) antlered deer;

(b) Hunt over bait;

(c) Use:

1. A tree stand except a portable stand;
2. Climbing devices that nail or screw to the tree; or
3. Climbing spikes;

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a gun within 100 yards of a maintained road or building; or

(f) Hunt:

1. In an area posted as closed by signs;
2. Outside park boundaries; or
3. From a ground blind, if gun deer hunting is allowed, unless first attaching a hat or vest made of solid, unbroken hunter orange material to the blind so that it is visible from all sides.

(5) A person participating in a state park deer hunt, other than the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park and any department-administered state park quota hunt, may take up to two (2) bonus deer per hunt that shall not count toward the statewide limit if the person:

(a) Takes no more than one (1) bonus antlered deer per license year; and

(b) Obtains the valid bonus deer tag from the state park hunt administrators.

(6) A person participating in a state park deer hunt or in possession of harvested wildlife on state park property shall comply with all posted state park rules and regulations concerning the possession, storage, or disposal of harvested wildlife.

Section 9. Other Public Lands. (1) On Daniel Boone National Forest, Jefferson National Forest, and Land Between the Lakes, a person shall not use bait[, feed, minerals, or other attractants].

(2) The areas established in paragraphs (a) through (g) of this subsection may schedule a gun, crossbow, or archery deer hunting season between September 1 and January 31:

- (a) Big South Fork National River and Recreation Area;
- (b) Clark's River National Wildlife Refuge;
- (c) Daniel Boone National Forest;
- (d) Jefferson National Forest;
- (e) Land Between the Lakes National Recreation Area;
- (f) Ohio River Islands National Wildlife Refuge; and
- (g) Reelfoot National Wildlife Refuge.

(3) An area listed in subsection (2) of this section may issue a

bonus permit for antlered or antlerless deer, which shall:

- (a) Not count against a hunter's statewide bag limit; and
- (b) Only be issued for a hunt that is open to the general public.
- (4) At Land Between the Lakes, a person:
  - (a) Shall not take more than:
    1. Two (2) deer during archery hunts; and
    2. One (1) deer during quota hunts;
  - (b) Who is a quota deer hunter shall:
    1. Apply in advance at Land Between the Lakes; and
    2. Only hunt from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset; and
  - (c) Who harvests a deer shall:
    1. Check in the carcass pursuant to U.S. Forest Service requirements; and
    2. Affix a game check card pursuant to U.S. Forest Service requirements.
  - (5) At Reelfoot National Wildlife Refuge:
    - (a) Zone 1 bag limits shall apply during the open archery season;
    - (b) A person shall not take more than two (2) deer by gun, only one (1) of which shall be antlered;
    - (c) A quota hunt participant shall:
      1. Tag deer with a tag issued by the Refuge; and
      2. Comply with the Refuge check-in requirements; and
    - (d) A person who is archery hunting shall:
      1. Only take deer using the appropriate statewide or additional deer permit; and
      2. Check harvested deer through the department's telephone or online check-in systems.
    - (6) At Otter Creek Outdoor Recreation Area:
      - (a) The archery and crossbow seasons shall be open pursuant to statewide requirements; and
      - (b) There shall be a quota hunt for two (2) consecutive days beginning the second Saturday in December.
    - (7) At Twin Knobs Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during odd-numbered years for mobility-impaired persons.
    - (8) At Zilpo Campground, the area shall be closed to all statewide seasons, except that there shall be a quota hunt on the second Saturday in December during even-numbered years for mobility-impaired persons.

Section 10. Special Areas under Federal Control. (1) The areas established in paragraphs (a) through (e) of this subsection may schedule a gun, archery, or crossbow deer hunting season between September 1 and January 31:

- (a) Bluegrass Army Depot;
- (b) Fort Campbell;
- (c) Fort Knox;
- (d) Hidden Valley Training Center; and
- (e) Wendell Ford Regional Training Center.
- (2) An area listed in subsection (1) of this section may issue a bonus permit for antlered or antlerless deer, which shall:
  - (a) Not count against a hunter's statewide bag limit; and
  - (b) Only be issued for a hunt that is open to the general public.
- (3) Except on the Hidden Valley Training area, on the areas listed in subsection (1) of this section, a deer hunter shall:
  - (a) Obtain a permit from the area before hunting;
  - (b) Only hunt on assigned dates;
  - (c) Remain in assigned areas;
  - (d) Tag deer with tags issued on the area, unless otherwise established in this section;
  - (e) Keep the area tag attached to the deer until the carcass is processed; and
  - (f) Check deer at a designated check station before leaving the area.
- (4) At Bluegrass Army Depot, a person shall not take an antlered deer whose outside antler spread is less than fifteen (15) inches.
  - (5) At Fort Knox, a person shall:
    - (a) Not take an antlered deer whose outside antler spread is less than twelve (12) inches;

(b) Not use bait; and

(c) Record harvested deer on a Fort Knox harvest log and check harvested deer pursuant to area requirements and as established in 301 KAR 2:172.

(6) At Hidden Valley Training Area, a person shall not use a gun to hunt deer. ~~[Section 11, Incorporation by Reference. (1) "Quota Hunt Application: Deer Quota Hunt Form", March 2014, is incorporated by reference.~~

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

GREGORY K. JOHNSON, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: February 7, 2018

FILED WITH LRC: February 14, 2018 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2018 at 9:00 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 March 31, 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 deer hunting seasons, application procedures, and other matters pertaining to deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas that differ from statewide requirements.

(b) The necessity of this administrative regulation: To establish deer hunting seasons, limits, and methods of taking deer to control and manage deer populations and hunting pressure on wildlife management areas, state parks, and other public lands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or Title 301 KAR. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by establishing hunting requirements for Wildlife Management Areas (WMAs), state parks, and other public lands in order to properly manage deer populations, minimize user conflict, and to provide reasonable hunting opportunity for sportsmen and



women.

(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 modifies the quota hunt preference point system for party applicants, establishes a 10% cap for nonresident participants in each quota deer hunt, removes the requirement for an applicant to provide their Social Security Number when applying for a quota deer hunt, discontinues the quota deer hunt application process by phone, moves the Dewey Lake WMA quota deer hunt from December to November, moves the West Kentucky WMA quota and youth mentor deer hunts from November to December, and incorporates recent changes in the administrative process for public deer hunts held at the Fort Knox military reservation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maximize hunter opportunity without harm to the deer resource.

(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: For the 2016-17 deer season, there were approximately 244,000 resident and 27,000 non-resident Kentucky deer hunters. Additionally, 8,083 people applied for quota deer hunts administered by the Department.

(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: Those who hunt deer on WMAs and state parks must comply with the individual hunt requirements for those sites, as listed in the fall hunting guide produced by the department.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Deer hunters will benefit because the amendment will make the quota hunt application and drawing process more equitable and efficient, and will help to reduce the waiting period for hunters to be selected for a hunt.

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

(a) Initially: There will not be an additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will not be an additional cost on a continuing basis.

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

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

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

(9) TIERING: Is tiering applied? No. All persons who hunt deer on WMAs, state parks, or other public lands are treated equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Department of Fish and Wildlife Resources' Wildlife and Law Enforcement Divisions will be affected 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 148.029(5), 150.025(1), 150.390(1) and 150.620.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

#### 501 KAR 6:270. Probation and parole policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.3104, 439.3105, 439.3107, 439.345, 439.470, 439.551

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.3105, 439.3107, 439.345, 439.470, and 439.551 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 Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures", February 14, 2018[September 11, 2017], are incorporated by reference. Probation and Parole Policies and Procedures include:

- 27-06-02 Access to Services (Amended 6/4/15)
- 27-07-01 Cooperation with Law Enforcement Agencies (Amended 6/4/15)
- 27-08-01 Critical Incident Planning and Reporting and Use of Force (Amended 8/11/15)
- 27-09-01 Community Resources (Amended 6/4/15)
- 27-10-01 Pretrial Diversion (Amended 6/4/15)
- 27-10-02 Mandatory Re-Entry Supervision (Amended 2/14/18[6/4/15])
- 27-10-03 Post-incarceration Supervision (Amended 6/4/15)
- 27-11-01 Citizen Complaints (Amended 6/4/15)
- 27-11-02 Employee-Offender Interaction (Amended 6/4/15)
- 27-12-01 Case Classification (Amended 8/11/15)
- 27-12-03 Initial Interview and Intake of New Case (Amended 8/11/15)
- 27-12-04 Conditions of Supervision Document and Request for Modification (Amended 6/4/15)

## VOLUME 44, NUMBER 9 – MARCH 1, 2018

|          |  |
|----------|--|
| 27-12-05 | Releasee's Report Document (Amended 6/4/15)  |
| 27-12-06 | Grievance Procedures for Offenders (Amended 6/4/15)  |
| 27-12-07 | Administrative Caseloads (Amended 6/4/15)  |
| 27-12-11 | Guidelines for Monitoring Financial Obligations (Amended 6/4/15)   |
| 27-12-13 | Community Service Work (Amended 8/11/15)   |
| 27-12-14 | Offender Travel (Amended 6/4/15)   |
| 27-13-01 | Drug and Alcohol Testing, Assessment, and Referral of Offenders (Amended 2/14/18[6/4/15])                    |
| 27-14-01 | Interstate Compact (Amended 2/14/18[6/4/15])   |
| 27-15-01 | Investigating and Reporting Violations and Unusual Incidents (Amended 6/4/15)                                |
| 27-15-02 | Home Incarceration, Curfew, and Electronic Monitoring for Community Offenders (Added 6/4/15)                 |
| 27-15-03 | Graduated Sanctions and Discretionary Detention (Amended 9/11/17)  |
| 27-16-01 | Search, Seizure, and Processing of Evidence (Amended 8/11/15)  |
| 27-17-01 | Absconder Procedure (Amended 7/11/12)  |
| 27-18-01 | Probation and Parole Issuance of Detainer or Warrant (Amended 2/14/18[7/11/12])                              |
| 27-19-01 | Preliminary Revocation Hearing (Amended 6/4/15)  |
| 27-20-03 | Parole Compliance Credit (Amended 9/11/17)   |
| 27-21-01 | Apprehension of Probation and Parole Violators (Amended 2/14/18[12/16/11])                                   |
| 27-23-01 | In-state Transfer (Amended 2/14/18[7/11/12])   |
| 27-24-01 | Releasing Offender from Active Supervision (Amended 2/14/18[12/16/11])                                       |
| 27-24-02 | Reinstatement of Offenders to Active Supervision (Amended 7/11/12)   |
| 27-26-01 | Assistance to Former Offenders and Dischargees (Amended 7/11/12)   |
| 27-30-01 | Sex Offender Registration (Amended 12/16/11)   |
| 27-30-02 | Sex Offender Supervision (Amended 7/11/12)   |
| 28-01-01 | Probation and Parole Investigation Reports, Confidentiality, Timing, and General Comments (Amended 12/16/11) |
| 28-01-02 | Probation and Parole Investigation Documents (Administrative Responsibilities) (Amended 12/16/11)            |
| 28-01-03 | Presentence, Post-sentence, and Other Investigative Reports (Amended 2/14/18[3/12/12])                       |
| 28-01-08 | Calculation of Custody Time Credit (Amended 2/14/18[9/11/12])  |
| 28-03-01 | Parole Plan Investigation, Half-way Houses, and Sponsorship (Amended 3/12/12)                                |
| 28-03-02 | Release on Parole (Amended 12/16/11)   |
| 28-04-01 | Furlough Verifications (Amended 7/11/12)   |

(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: February 6, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on March 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 March 31, 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](mailto: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 supervision of offenders on probation and parole.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 439.3406, 439.430, 439.470, 439.480, 439.550, 439.552, 439.562, 532.050, 533.050, and to meet American Correctional Association (ACA) standards requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation updates policy and procedures relating to supervision of offenders on probation and parole.

(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 policies and procedures relating to supervision of offenders on probation and parole and provide direction and information to Probation and Parole employees in the supervision of offenders.

(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 procedural and operational changes in regards to the supervision of those on probation and parole.

(b) The necessity of the amendment to this administrative regulation: To update policies and procedures and address procedural and operational changes in regards to the supervision of those on probation and parole.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates policy and procedures relating to supervision of offenders on probation and parole. The Department is authorized to implement or amend practices or procedures to ensure the safe and efficient operation of the Division of Probation & Parole.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and offenders updated policies and procedures to comply with procedural changes and improve operations.

(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, 859 employees, over 47,000 offenders, 120 Circuit Courts and the Parole Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Department of Corrections staff will have to learn the updates in the policies and procedures. The Department will provide routine training to staff. Offenders will have to abide by revised policies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not 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 consistent procedures of Probation and Parole supervision.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: The amendment to the regulation updates supervision practices but does not increase costs beyond what is budgeted to the Department of Corrections.

(b) On a continuing basis: The amendment to the regulation updates supervision practices but does not increase costs beyond what is budgeted to the Department of Corrections.

(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 releasing authority sets fees for most offenders. This regulation sets supervision fees for Interstate Compact offenders. This regulation also sets fees for drug testing required for offenders on supervision. No increase in fees has been made in this amendment.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment to this regulation impacts the operations of the Kentucky Department of Corrections and its Probation and Parole Offices.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 439.3406, 439.430, 439.470, 439.480, 439.550, 439.552, 439.562, 532.050, 533.050 and to meet American Correctional Association (ACA) standards requirements.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The releasing authority sets fees for most offenders. This regulation sets supervision fees for Interstate Compact offenders, which is estimated to generate approximately \$150,000-200,000 annually. These fees are allocated to the Kentucky general fund. This regulation also sets fees for drug testing required for offenders on supervision. In CY 2016, the Division collected over \$819,000 in drug testing fees. Drug testing fees collected are allocated to Department of Corrections restricted funds. This amendment does not affect 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? It is anticipated that the amount collected will be similar for subsequent years. This amendment does not affect revenue.

(c) How much will it cost to administer this program for the first year? No increase in cost is anticipated from the amendment.

(d) How much will it cost to administer this program for subsequent years? No increase in cost is anticipated from the amendment. The Department continues to staff as funding levels allow

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

#### 701 KAR 5:110. Use of local monies to reduce unmet technology need.

RELATES TO: KRS 156.670, 157.650, 157.655, 157.660, 157.665, 160.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 (1)(c)(b) requires the Kentucky Board of Education to promulgate administrative regulations governing the acquisition and use of educational equipment for the schools. KRS 156.670(1) requires the development of the master plan for education technology to outline Commonwealth activities related to the purchase, development, and use of technology. The master plan requires a district to submit a plan and report which describes its educational initiatives that have technology components and their unmet technology need. KRS 157.655 stipulates that a local public school district may participate in the education technology funding program based on the unmet technology need described in the local district plan and approved by the Kentucky Board of Education. Based on review of the unmet technology need, it has been determined that full implementation of the Kentucky Education Technology System (KETS) cannot be funded based solely on offers of assistance from the Education Technology Trust Fund. This administrative regulation establishes the requirements governing the use of local monies to reduce unmet technology need to ensure that all school district technology procurements, in categories for which KETS standards for unmet need have been established, will reduce the unmet technology need regardless of source of funds.

Section 1. Definitions. (1) "Department" means the Kentucky Department of Education.

(2) "District education technology plan" means the plan developed by the local school district to address the unmet technology need of the district.

(3) "Kentucky Education Technology System" or "KETS" means the statewide system set forth in the technology master plan issued by the Kentucky Board of Education and approved by the Legislative Research Commission.

(4) "Master plan" means the long-range plan for the implementation of the Kentucky Education Technology System approved by the Kentucky Board of Education and the Legislative Research Commission.

(5) "Unmet technology need" means the total cost of technology, meeting or exceeding the criteria established in the master plan, needed to achieve the capabilities outlined in the approved district education technology plan of the local school district.

Section 2. Determination of Unmet Need. A local school district shall determine its unmet technology need as part of the education technology planning process. Unmet technology need shall be audited by the department and subject to the approval of the Kentucky Board of Education as part of the state review and assistance calculation process, as provided by the master plan.

Section 3. Reducing Unmet Need. (1) In categories of unmet technology need, as provided in the 2018-2024[2013-2018] KETS Master Plan, a district shall limit procurements to those which will reduce unmet technology need until the district's unmet technology need no longer exists.

(2) The department shall assist districts in selecting equipment, software, and services which will reduce the unmet technology need.

Section 4. Alternative Technology. For technology components for which KETS standards have not been established, a local school district may propose alternative technologies (waivers) in

the local district education technology plan, particularly if the technology is proposed to achieve innovation. The department shall respond to the waiver within a three (3) week time period. If denied, the local school district may appeal to the Commissioner of Education.

Section 5. Incorporation by Reference. (1) The 2018-2024 [2013-2018] KETS Master Plan, dated February 2018~~[November 2012]~~, is hereby incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Office of Education Technology, 5th floor, 300 Sower Boulevard~~[Knowledge, Information and Data Services, 15 Fountain Place]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 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: February 14, 2018

FILED WITH LRC: February 14, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 22, 2018, at 10 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies when KETS standards for unmet need have been established and full implementation of KETS cannot be funded solely on offers of assistance, then any local public school district technology procurements will reduce the unmet need regardless of the funding source. This regulation also incorporates by reference the 2018-2024 KETS Master Plan.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.160, KRS 156.670, 157.655

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides for specifics for the acquisition and use of educational equipment for the schools as required by KRS 156.160; incorporates the master plan as described in KRS 156.670; and stipulates that a local public school district may participate in the education technology funding program based on the unmet technology need described in KRS 157.655.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides for the use of local monies to reduce unmet technology need and incorporates the Master Plan

by reference.

(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 incorporates the new 2018-2024 KETS Master Plan by reference and removes the reference to the 2013-2018 KETS Master Plan. Also, revision to the office name and the physical address.

(b) The necessity of the amendment to this administrative regulation: The KETS Master Plan for Education Technology has been updated per KRS 156.670 and the regulation needs to be amended to reflect the latest version.

(c) How the amendment conforms to the content of the authorizing statute: This amendment incorporates the updated 2018-2024 KETS Master Plan as KRS 156.670 requires the plan to be updated.

(d) How the amendment will assist in the effective administration of the statutes: The updated KETS Master Plan for Education Technology establishes the roadmap for technology use and procurement for local public school districts for the next 6 fiscal years.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local public school districts and KDE, as they are the intended audience of the document incorporated by reference. The KDE as it is tasked with the development and revision of this plan.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action necessary by local public school districts to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs to local public school districts

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amendment of this regulation provides the current KETS Master Plan as a document incorporated by reference and revises the office name and physical location.

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

(a) Initially: No costs

(b) On a continuing basis: No costs

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A (as per items 5a and 5b)

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None to implement the amended regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all public schools and districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local public school districts and the Kentucky Department of Education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and KRS 156.160

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

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The Master Plan establishes the roadmap for technology use and procurement for local public school districts for the next 6 fiscal years. The plan governs technology purchases that are made to reduce education technology need by districts using existing funds and does not require districts to spend additional funds. No additional expenses or revenues to local public school districts or the Kentucky Department of Education.

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

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

(c) How much will it cost to administer this program for the first year? No additional costs and the Master Plan does not require districts to spend additional funds.

(d) How much will it cost to administer this program for subsequent years? No additional costs and the Master Plan does not require districts to spend additional funds.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**(Amendment)**

**703 KAR 5:225. Continuous Improvement Planning for Schools and Districts[School and district accountability, recognition, support, and consequences].**

RELATES TO: KRS 158.645, 158.649, 158.6451, 158.6453, 158.6455, 160.346, 20 U.S.C. 6311[7864]

STATUTORY AUTHORITY: KRS 158.649, 158.6453, 158.6455, 160.346

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide accountability system[assessment program] that measures the achievement of students, schools, and districts; complies with the federal Elementary and Secondary Education Act[No Child Left Behind Act of 2001], 20 U.S.C. secs. 6301 et seq., as amended by the Every Student Succeeds Act (ESSA), or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education, following the revision of academic standards and development of a student assessment program, to create an accountability system to classify schools and districts, including a formula for accountability, goals for improvement, and rewards and consequences. This administrative regulation establishes the comprehensive school and district improvement plan process. The requirements are key components of the continuous improvement process in Kentucky and ultimately fulfillment of school, district, and state goals under the Kentucky State Plan as required by the ESSA[statewide system of accountability, recognition, support, and consequences, and meets requirements of the U.S. Department of Education to receive approval of a state-level waiver of specific requirements of the federal No Child Left Behind Act of 2001 pursuant to 20 U.S.C. 7861].

Section 1. Definitions. (1) "Charter school" means a "public charter school" as defined in KRS 160.1590(12); "Annual measurable objective" or "AMO" means the improvement goal for each school or district calculated from the total score of the next-generation learners component.]

(2) "Charter school board of directors" or "governing board" has the same meaning as in KRS 160.1590(6);

(3)[(2)] "Comprehensive District Improvement Plan" or "CDIP" means a plan developed by the local school district with the input of parents, faculty, staff, and representatives of school councils from each school in the district, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students.

(4)[(3)] "Comprehensive School Improvement Plan" or "CSIP" means a plan developed by the school council, or successor, and charter schools[pursuant to KRS 160.346] with the input of parents, faculty, and staff, based on a review of relevant data that includes targets, strategies, activities, and a time schedule to support student achievement and student growth, and to eliminate achievement gaps among groups of students. [(4)]—"District of distinction" means a highest-performing district that:

(a) Meets its current year AMO, student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80) percent for the prior two (2) years;

(c) Does not have a school categorized as a focus school or priority school; and

(d) Scores at the ninety-fifth (95th) percentile or higher on the Overall Score.

(5) "Focus district" means a district that has a non-duplicated student gap group score in the bottom ten (10) percent of non-duplicated student gap group scores for all districts. Focus calculations shall combine two (2) years of data.

(6) "Focus school" means a school that has a non-duplicated student gap group score in the bottom ten (10) percent of non-duplicated student gap group scores for all elementary, middle, and high schools; schools with an individual student subgroup by level that falls in the bottom five (5) percent for individual subjects; or high schools that have a graduation rate that has been less than eighty (80) percent for two (2) consecutive years. Focus calculations shall combine two (2) years of data; focus calculations for new or reconfigured schools shall use one (1) year of data.

(7) "Graduation rate goal" means the annual graduation rate goal set by the department for each high school and district that measures progression toward the statewide goal of ninety-eight (98) percent by 2024 and is computed by dividing, by ten (10), the difference between the 2014 baseline percent and ninety-eight (98) percent.

(8) "High-progress district" means a district that:

(a) Meets its current year AMO, student participation rate, and graduation rate goal;

(b) Has a graduation rate above eighty (80) percent for the prior two (2) years; and

(c) Has an improvement score indicating the district is in the top ten (10) percent of improvement of all districts as determined by the difference in the two (2) most recent calculations of the overall score.

(9) "High-progress school" means:

(a) A Title I school that:

1. Meets its current year AMO, student participation rate, and graduation rate goal;

2. Has a graduation rate above eighty (80) percent for the prior two (2) years; and

3. Has an improvement score indicating the school is in the top ten (10) percent of improvement of all Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the overall score; or

(b) A Non-Title I school that:

1. Meets its current year AMO, student participation rate, and graduation rate goal;

2. Has a graduation rate above eighty (80) percent for the prior two (2) years; and

3. Has an improvement score indicating the school is in the top ten (10) percent of improvement of all non-Title I elementary, middle, or high schools as determined by the difference in the two (2) most recent calculations of the overall score.

(10) "Highest-performing district" means a district that:

- (a) Meets its current year AMO, student participation rate, and graduation rate goal;
- (b) Has a graduation rate above eighty (80) percent for the prior two years; and
- (c) Scores at the ninetieth (90th) percentile or higher on the overall score except that a district shall not qualify as highest-performing if any school in the district is categorized as a focus school or priority school.
- (11) "Highest-performing school" means an elementary, middle, or high school level that:
- (a) Meets its current year AMO, student participation rate, and graduation rate goal;
- (b) Has a graduation rate above eighty (80) percent for the prior two (2) years; and
- (c) Scores at the ninetieth (90th) percentile or higher on the overall score.
- (12) "Mean" means the sum of the values divided by the number of values.
- (13) "Next-generation instructional programs and supports" means a component of the state-wide accountability system for Kentucky public schools and districts based on reviews of instructional programs.
- (14) "Next-generation learners" means a component of the state-wide accountability system for Kentucky public schools and districts based on student data.
- (15) "Next-generation professionals" means a component of the state-wide accountability system for Kentucky public schools and districts based on teacher and administrator data.
- (16) "Next-generation schools and districts" means a component of the state-wide accountability system that reports performance data for schools and districts.
- (17) "Non-duplicated student gap group score" means an aggregate, non-duplicated count of achievement scores of student groups that include African/American, Hispanic, American Indian, Limited English proficiency, students in poverty based on qualification for free and reduced price lunch, and students with disabilities who have an Individualized Education Program (IEP).
- (18) "Overall score" means the score resulting from a compilation of the accountability components listed in Section 2 of this administrative regulation that determines placement of a school or district in a classification for recognition, support, or consequences.
- (19) "Participation rate" means the percent of all students and the student subgroups in the school or district that participate in annual statewide assessments, with a goal of ninety-five (95) percent.
- (20) "Percentile" means the value of a variable below which a certain percent of numbers fall.
- (21) "Priority district" means a district that has an overall score in the bottom five (5) percent of overall scores for all districts that have failed to meet the AMO for the last three (3) consecutive years.
- (22) "Priority school" means a school that has an overall score in the bottom five (5) percent of overall scores by level for all schools that have failed to meet the AMO for the last three (3) consecutive years.
- (23) "Progressing" means a designation attached to a school or district's classification as proficient, distinguished, or needs improvement to indicate that the school has met its AMO, student participation rate for the all students group and each subgroup, and has met its graduation rate goal.
- (24) "School level" means the standard configuration of grade levels that form elementary, middle, and high schools as established in 703 KAR 5:240, Section 5.
- (25) "School of Distinction" means a highest-performing elementary, middle, or high school that:
- (a) Meets its current year AMO, student participation rate, and graduation rate goal, and is not identified as a focus school;
- (b) Has a graduation rate above eighty (80) percent for the prior two (2) years; and
- (c) Scores at the ninety-fifth (95th) percentile or higher on the overall score.
- (26) "Standard deviation" means a measure of the dispersion

of a set of data from its average.

(27) "Student subgroup" means a student group that includes African-American, American Indian, Asian, White, Hispanic, English-language learners, students in poverty on qualification for free or reduced price lunch, or students with disabilities who have an Individualized Education Program (IEP).

Section 2. Statewide System of Accountability, Recognition, Support, and Consequences. (1) The accountability system established by 703 KAR chapter 5 shall be called Unbridled Learning: College and Career Ready for All.

(2) An overall score shall be used to classify schools and districts for recognition, support, and consequences. The overall score shall be a compilation of the following accountability components:

(a) Next-Generation Learners, as established in 703 KAR 5:200;

(b) Next-Generation Instructional Programs and Support, as established in 703 KAR 5:230; and

(c) Next-Generation Professionals, as established in an administrative regulation that will be promulgated by the Kentucky Board of Education to establish the requirements for Next-Generation Professionals.

Section 3. Weighting of Components Comprising the Overall Score. (1) The timeline and weighting of each component as a percentage of the overall score shall occur as follows:

| Year                           | Component  | Percentage of Overall Score |
|--------------------------------|--|-----------------------------|
| 2014-2015                      | Next-Generation Learners                           | 77 percent                  |
|                                | Next-Generation Instructional Programs and Support | 23 percent                  |
| 2015-2016 and subsequent years | Next-Generation Learners                           | 70 percent                  |
|                                | Next-Generation Instruction Programs and Support   | 20 percent                  |
|                                | Next-Generation Professionals                      | 10 percent                  |

(2) If data cannot be calculated for any component, the weights shall be distributed equally to the other components that shall be reported for the school or district.

Section 4. Classifications, Annual Measurable Objectives, and Goals. (1) A school level or district shall be classified based on the overall score in accordance with the requirements established in this subsection.

(a) By level of elementary, middle, or high, a distribution of scores from the overall score shall be computed in order to determine the percentiles associated with each overall score.

(b) The overall score associated with specific percentiles shall classify a school level or district as follows:

| Percentile based on Overall Score | School or District Classification |
|-----------------------------------|-----------------------------------|
| At or above ninety (90)           | Distinguished                     |
| At or above seventy (70)          | Proficient                        |
| Below seventy (70)                | Needs Improvement                 |

(c) The overall score associated with specific percentiles used to classify a school or district as distinguished, proficient, or needs improvement shall be recalculated as the components of the accountability system listed in Section 2 of this administrative regulation are added. When all components have been added, the overall score associated with specific percentiles used to classify a school or district as distinguished, proficient, or needs improvement shall remain constant for a period of five (5) years before calculation of the overall score associated with specific percentiles shall be re-established.

(2) Each school level or district shall receive an AMO. The method for determining the AMO shall be as follows:

(a) Using the total score of next-generation learners, a mean and standard deviation shall be computed for the elementary, middle, and high school levels; and

(b) The mean and standard deviation shall be recalculated as adjustments of next-generation learners component are made.

(3)(a) The AMO goal for a school level or district classified as



needs improvement shall be to increase the total score by one-third (1/3) of a standard deviation in a five (5)-year period and shall not be set lower than 1.0.

(b) The AMO goal for a school level or district classified as proficient or distinguished shall be one-half (1/2) the goal of a needs improvement school or district annually and shall not be set lower than 0.5.

(4) Each school level or district classified as distinguished, proficient, or needs improvement that meets its AMO goal, student participation rate, and graduation rate goal shall be further classified as progressing.

(5) For a school level with a changed school service area as established in 703 KAR 5:240, Section 6, the AMO shall be recalculated based on current students. A school or district may submit a plan to recalculate the AMO as established in this subsection.

(a) A school or a district may request that individual students be tracked across schools or that the district AMO be used for the school.

(b) The department shall approve the plan and shall assure accurate calculations and the inclusion of all students.

(c) Upon approval, the plan shall be implemented and remain in effect until an additional change in school service area occurs.

(d) The granting of a request for a different method to recalculate an AMO shall include a requirement that each affected school and district waive in writing its right to make the request the basis of a subsequent appeal of a school's classification.

(e) The intent to submit a plan to recalculate the AMO shall be received by the department by June 30 of the year prior to which the AMO recalculation shall occur.

(6) A focus school identified using the non-duplicated student gap group score method shall be determined in accordance with the requirements established in this subsection.

(a) The non-duplicated student gap group shall be ranked for all schools in the state.

(b) The schools in the lowest ten (10) percent of the non-duplicated student gap group scores by level shall be called focus schools.

(c) Additional Title I schools shall be added to the list as needed to ensure that the list includes at least ten (10) percent of the Title I schools.

(d) Non-duplicated student gap groups by school shall have at least ten (10) students in order for the subject area calculation to occur.

(7) A focus school identified using the bottom five (5) percent method shall be determined as established in this subsection.

(a) By level of elementary, middle, or high, individual student subgroups shall be ranked on the percentage of proficient and distinguished students for all schools in the state in each subject area of reading, mathematics, science, social studies, and writing.

(b) Student subgroups shall number at least twenty-five (25) students in order for the calculation to occur.

(c) A school having an individual student subgroup by level and subject that falls below the bottom five (5) percent cut score shall be identified as a focus school.

Section 5. Recognition. (1) Recognition categories shall include Schools or Districts of Distinction, Highest-Performing Schools or Districts, and High-Progress Schools or Districts. Schools and districts in these categories shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying the category of recognition and the rewards for which they are eligible.

(2)(a) Each recognized school or district shall be authorized to use a department-approved web logo and other promotional materials as may be designated by the department reflecting the category of recognition earned.

(b) Subject to availability of funds, financial rewards may be used in conjunction with other recognition activities, and may include funding for special professional growth opportunities or support to enable recognized schools or districts to partner with and mentor a lower-performing school or district.

(c) Highest-performing and high-progress schools and districts

shall receive special recognition as determined by the Commissioner of Education.

(3) A school or district identified for recognition shall continue to meet eligibility criteria in order to retain its designation and receive recognition for that category.

(4) A school or district identified as a priority school or district or a focus school or district shall not be eligible for recognition as a highest-performing school or district or a school or district of distinction, but may receive recognition as a high-progress school or district, if it meets the definition established in Section 1 of this administrative regulation and the requirements of this section.

(5) In order to qualify for recognition, a school or district shall meet the AMO goal, graduation rate goal, and student participation rate, and each high school's graduation rate shall be above eighty (80) percent.

Section 6. Supports and Consequences. (1) Supports and consequences categories shall include Priority Schools and Districts and Focus Schools and Districts.

(2) A priority school or district shall undergo the education recovery processes established in KRS 160.346 and 703 KAR 5:260, in addition to the requirements and consequences established in this administrative regulation.

(3) A focus school or district shall be required to revise its CSIP or CDIP consistent with the requirements of this section and Section 9 of this administrative regulation.

(4) A school or district that is identified as a priority or focus school or district shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data, identifying its category and the required supports and consequences that shall apply.

(5) A school or district that is identified as a priority or focus school or district for the first time shall revise its CSIP or CDIP within ninety (90) days of receiving the notice from the Commissioner of Education.

Section 7. Continuing Consequences for Schools and Districts that Remain in Priority or Focus Status for More Than One (1) Year. (1) To exit the priority status, the school or district shall:

(a) Meet AMO goals for three (3) consecutive years;

(b) No longer be identified by the applicable percent calculation of being in the lowest five (5) percent; and

(c) Score at or above an eighty (80) percent graduation rate for three (3) consecutive years.

(2) To exit the focus status, the requirements of this subsection shall be met:

(a) A focus school in the non-duplicated student gap group category shall:

1. Be above the lowest ten (10) percent category;

2. Show improvement in the non-duplicated student gap group; and

3. Meet AMO for two (2) years in a row.

(b) A focus school in the bottom five (5) percent category shall have the individual subgroup that triggered the school's placement in the category to:

1. Rise above the bottom five (5) percent cut score;

2. Show improvement in the individual subgroup that triggered the school's placement; and

3. Meet AMO for two (2) years in a row.

(c) A focus school in the category due to graduation rate shall:

1. Have a graduation rate higher than eighty (80) percent; and

2. Meet AMO for two (2) years in a row.

(d) A focus district in the non-duplicated student gap group category shall be above the lowest ten (10) percent category.

(3)(a) A school or district that is identified as a priority school or district for two (2) or more consecutive times, or a school or district that remains in the focus school or district category for three (3) consecutive years, shall revise its CSIP or CDIP as specified in Section 9 of this administrative regulation within ninety (90) days of receiving notice from the Commissioner of Education.

(b) The superintendent and the council shall review, revise, and agree upon the CSIP.

(c) The CSIP or CDIP shall be posted to the appropriate school



or district Web site.

(4)(a) In addition to the requirements of this section, a priority school or district that is identified for three (3) or more consecutive times, or a focus school or district that is identified for four (4) or more consecutive years, shall revise its CSIP or CDIP as specified in Section 9 of this administrative regulation.

(b) The superintendent and the council shall review, revise, and agree upon the CSIP, which shall then be electronically transmitted to KDE within ninety (90) days of receiving notice from the Commissioner of Education.

(c) The CSIP or CDIP shall be posted to the appropriate school or district Web site.

(d) The school or district shall engage in the following actions:

1. Participate in a set of improvement strategies outlined by an accreditation process;
2. If directed by the department, receive the assignment of a high-achieving partner school or district of similar demographics for mentor activities as directed by the department; and
3. Accept ongoing assistance and resources throughout the year as assigned or approved by the department.]

Section 2[8]. Monitoring. (1) The department shall review and approve all submissions required by this administrative regulation.

(2) The department shall monitor implementation of each CDIP or CSIP and shall provide guidance based upon information which may include[gathered from] the following:

- (a) Progress reports from the school through the district;
- (b) Data reviews;
- (c) On-site observation; and
- (d) Other information supplied at the option of the district or school.

(3) In addition to the activities undertaken by the department, each school district or governing board shall monitor compliance of their respective[individual] schools[within the district].

Section 3[9]. Comprehensive School and District Improvement Plan Process. (1) Each school or district shall, by January 1 of each school year,[annually] develop, review, and revise a comprehensive school or district improvement plan.

(2) The structure of a school or district comprehensive improvement plan shall include:

(a) Completion of the Continuous Improvement Diagnostic between August 1 and October 1 of each school year[Executive summary that shall include a vision and a mission];

(b) Completion of the needs assessment between October 1 and November 1 of each school year, which shall include[Needs assessment that shall include]:

1. A description of the data reviewed and the process used to develop the needs assessment;
2. A review of the previous plan and its implementation to inform development of the new plan; and
3. Perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions;

(c) Process for development of the CSIP or CDIP, to be completed between November 1 and January 1 of each school year, which[that] shall include:

1. Analysis of data to determine causes and contributing factors;
2. Prioritization of needs; and
3. Development of goals, objectives, strategies, and activities based on the needs assessment and root cause analysis, that shall include targets or measures of success, timelines, persons responsible, a budget that includes resources needed and source of funding, and a process for meaningful stakeholder communications and input;

(d) A set of assurances, approved by and on file with the local board of education, with a signed declaration by the superintendent that all schools in the district are in compliance with the requirements of the statutes and administrative regulations included in those assurances; and

(e) A process for annual review and revision by the school or district.

(3) Continuous improvement and capacity building shall drive

the development of the plan.

(4) Other required components in the process shall include:

(a) A standards-based process for measuring organizational effectiveness that shall include purpose and direction, governance and leadership, teaching and assessing for learning, resources and support systems, and using results for continuous improvement;

(b) A data driven self-evaluation based on the standards, including a means to gather meaningful stakeholder input;

(c) A written improvement plan based on the issues identified in the self-evaluation;

(d) A set of assurances that includes a determination of compliance with each assurance and the ability to upload any supporting documentation needed;

(e) Electronic submission of all elements of the plan;

(f) Monitoring implementation of the plan through implementation and impact checks; and

(g) Evaluation of the effectiveness based on the strategies and activities in the plan.

(5) A CSIP shall also include the elements required of schools by KRS 158.649(5).

(6)[A CSIP or CDIP for a priority or focus school or district shall also address the following:

(a) ~~Curriculum alignment for schools within the district and within each individual school, ensuring the instructional program is:~~

1. Research-based;
2. Rigorous;
3. Aligned with the Kentucky Core Academic Standards as established in 704 KAR 3:303; and
4. Based on student needs;

(b) ~~Provision of time for collaboration on the use of data to inform evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work, if a priority or focus school;~~

(c) ~~Activities to target the underperforming areas of achievement, gap, growth, readiness, or graduation rate;~~

(d) ~~Activities to target demonstrators of weakness in program reviews;~~

(e) ~~Activities to target areas of need identified in teacher and leader effectiveness measures;~~

(f) ~~School safety, discipline strategies, and other non-academic factors that impact student achievement, such as students' social, emotional, and health needs, if a priority or focus school;~~

(g) ~~Design of the school day, week, or year to include additional time for student learning and teacher collaboration, if a priority or focus school;~~

(h) ~~Specific strategies to address gaps in achievement and graduation rates between the highest-achieving student performance group and the lowest-achieving student performance group, if a focus school or district; and~~

(i) ~~Short-term, monthly plans for the first ninety (90) days of implementation, and the establishment of teacher turnaround teams with intensive year-round training focused on teacher effectiveness and school improvement in the professional development component of its plan, if a priority school.~~

(7) A priority or focus district shall use a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the CDIP. A district containing a priority or focus school shall assist these schools in using these data to inform the needs assessment required by the CSIP.

(8) The Commissioner's Raising Achievement and Closing Gaps Council and the Commissioner's Parents Advisory Council shall provide guidance to focus schools and districts as they conduct their needs assessments and revise their CSIPs and CDIPs.

(9) A priority school shall document meaningful family and community involvement in selecting the intervention strategies that shall be included in the revised CSIP.

(10) The CDIP for a district with a priority or focus school shall include the support to be provided to the priority or focus school by the district. The priority or focus school's CSIP shall include the support that will be provided by the district to the school.

(44)] The CDIP for each district shall be posted to the district's Web site. The CSIP for each school shall be posted to the school's Web site.

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.

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 14, 2018 at 2 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on March 22, 2018, at 10 a.m., in the State Board Room, Fifth Floor, Sower Building, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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:** 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 [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Elementary and Secondary Education Act (ESEA), as reauthorized by the Every Student Succeeds Act (ESSA), 20 U.S.C 6301, requires states receiving Title I Part A funding to adopt a system of accountability. An element of that accountability system is a system of goal making and planning that is utilized by schools and districts. Districts will address identified needs through setting goals in their Comprehensive School Improvement Plan (CSIP) and Comprehensive District Improvement Plan (CDIP), which will be reviewed annually. Much of Kentucky's support and monitoring activities for all schools and districts with regard to federal and state programs center around the development, revision and monitoring of the CSIP or CDIP.

(b) The necessity of this administrative regulation: The amendments to this regulation are required for alignment to the State Plan, as submitted to the United States Department of Education. This regulation reflects the essential functions and requirements under Title I Part A, as reauthorized under the Every Student Succeeds Act.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 158.6453 and 158.6455. It also aligns with the requirements under the ESEA, 20 U.S.C 6301, as reauthorized by the ESSA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines the continuous improvement process in Kentucky that is used by schools and districts in their pursuit of their school, district, and state goals under the state accountability system. These are systems that will be utilized to meet federal requirements under the required accountability system.

(2) If this is an amendment to an existing administrative

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment removes the old accountability system that is housed in a new regulation, 703 KAR 5:270. Additionally, the regulation has been simplified and modified to reflect current practices.

(b) The necessity of the amendment to this administrative regulation: The continuous improvement process provided in this regulation is a necessary element of Kentucky's accountability system because of the direct tie to school and district goal setting and planning to meet those goals. It is also an element of the Kentucky State Plan that was submitted for approval to the United States Department of Education.

(c) How the amendment conforms to the content of the authorizing statute: KRS 158.6453 and 158.6455 spell out the required elements of the assessment and accountability system. The continuous improvement process described in this regulation is directly tied to the goal setting and planning required to meet the improvement required in the accountability system and uses the data required in the assessment system.

(d) How the amendment will assist in the effective administration of the statutes: This regulation outlines the continuous improvement process in Kentucky that is used by schools and districts in their pursuit of their school, district, and state goals under the state accountability system. These are systems that will be utilized to meet federal requirements under the required accountability system.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by the amendments made in this regulation include: All public schools and school districts. The KDE as it is tasked with providing guidance, support, technical assistance, and review and oversight of the submitted CSIPs and CDIPs.

(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: Schools and districts already comply with the continuous improvement framework as provided in this regulation as it was a component of the previous system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KDE provides the supports indicated in the regulation through the use of federal funding. There should be no additional cost to schools and districts because they are already complying with the framework provided in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The supports provided in this regulation will lead schools and districts to sustainable school improvement through intentional goal setting, planning, reflection, and action.

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

(a) Initially: The requirements in this regulation existed prior to the ESSA reauthorization and this regulation amendment. As a result, there is no initial cost. Federal funding is utilized for this work.

(b) On a continuing basis: KDE incurs an ongoing cost of staff and resources. Federal funding is utilized for this work.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under Title I Part A.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Kentucky Department of Education will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453, KRS 158.6455, and 20 U.S.C. 6301

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

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

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

(c) How much will it cost to administer this program for the first year? This framework existed prior to the amendment in this regulation. As a result, there is no initial cost. Federal funding is utilized for this work.

(d) How much will it cost to administer this program for subsequent years? KDE incurs an ongoing cost of staff and resources. Federal funding is utilized for this work.

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

Revenues (+/-): N/A  
Expenditures (+/-): NA  
Other Explanation: N/A

#### PUBLIC PROTECTION CABINET Kentucky Claims Commission (Amendment)

#### 802 KAR 1:010. Tax appeal procedures [Hearing procedures].

RELATES TO: KRS Chapter 13B, 49.220, 49.230, 49.240, 49.250 [131.340, 131.355, 131.365, 131.370, 133.130(10)]

STATUTORY AUTHORITY: KRS 13B.170, 49.020, 49.220(1) [131.340(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020 [13B.170] authorizes the commission[Board of Tax Appeals] to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the commission's statutory authority[of KRS Chapter 13B to establish procedures for appeals to the Kentucky Board of Tax Appeals]. KRS 49.220 authorizes the commission, with exclusive jurisdiction, to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation. This administrative regulation establishes the procedures governing tax appeals[supplements the provisions of KRS 131.310 through 131.370, 133.120(10) and Chapter 13B].

Section 1. Rules Applicable to All Filings. (1) Filings. All documents shall be filed by mail, electronic mail to taxappeals@ky.gov, or in person. Documents filed by electronic mail shall be considered received when sent if properly addressed.

(2) Service. Any party who files a document with the commission or hearing officer shall serve to all other parties to the

appeal a copy of the document filed. A filed document shall be accompanied by a certification stating:

- (a) That a copy has been served on each party; and
- (b) The method of service used.

#### Section 2. Rules for Filing Tax Appeals with the Commission.

(1) Initiation of tax appeal. A party wishing to appeal a final ruling, order, or determination of any agency of state or county government affecting revenue or taxation shall file a petition of appeal with the commission.

(2) Timing. The initial petition of appeal shall be received by the commission within thirty (30) days of the date of mailing of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal.

(a) An untimely appeal shall be dismissed.

(b) If the appeal is timely filed, the commission or hearing officer shall notify the petitioner of deficiencies and allow fifteen (15) days to amend the petition.

(3) Format and content. A petition of appeal shall be legibly written, typed, or printed and contain the following:

(a) A statement of all relevant issues of fact and law;

(b) A statement certifying that the information contained in the petition of appeal is true and correct to the best of the petitioner's knowledge;

(c) The signature of the petitioner;

(d) The petitioner's mailing address, telephone number, and e-mail address;

(e) If represented by an attorney, the petitioner's attorney's name, mailing address, telephone number, and e-mail address; and

(f) A copy of the final ruling, order, or determination to be reviewed.

(4) Upon receiving a petition of appeal, the commission shall:

(a) Provide notice to the appellee that an action has been filed; and

(b) Provide notice to the petitioner that the petition of appeal has been received. [Definition: "Board" means Kentucky Board of Tax Appeals.

#### Section 2. Formal Administrative Hearings.

In accordance with KRS131.340 and Chapter 13B, an aggrieved party may petition the board for a formal hearing in accordance with KRS Chapter 13B.

(1) A petition shall:

(a) Be in writing;

(b) Be signed by the petitioner;

(c) Be styled "Petition of Appeal";

(d) Be filed in person or mailed by certified mail, return receipt requested, to the Kentucky Board of Tax Appeals and received by the board within thirty (30) days of the date of issuance of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal; and

(e) Contain a statement of all relevant issues of fact and law.

(2) Filing by facsimile or other electronic means shall not be accepted.

(3) The appealing party shall file:

(a) An original and four (4) copies of the Petition of Appeal; and

(b) Five (5) copies of the county board of assessment's final ruling, order, or determination.

(3) If a party who appeals fails to comply with any part of subsections (1), (2), (3), or (4) of this section, the board or the hearing officer shall:

(a) Dismiss the appeal for failure to comply; or

(b) If the appeal is timely filed, notify the appealing party of deficiencies and allow the appealing party fifteen (15) days to amend the petition.

(5) Upon receiving a petition of appeal, the Kentucky Board of Tax Appeals shall provide notice to the appellee that a Petition of Appeal has been filed. The appellee or his attorney shall file an entry of appearance within thirty (30) days of the date of the notice.]

Section 3. Representation in proceedings before the

commission[Board]. (1) The appellee or the appellee's attorney shall file an entry of appearance within thirty (30) days of the date of the notice of appeal provided by the commission. The entry of appearance shall contain the mailing address, telephone number, and email address of the appellee and the appellee's attorney, if any. ~~If the appeal is by an individual, the individual whose tax liability is at issue shall appear and represent himself of herself or engage legal counsel to provide representation.~~

(2) An individual who is not an attorney shall not ~~be permitted to~~ represent any entity or other individual[or legal entity] who is a party to an appeal. ~~[(3) In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in Section 3(1) of this administrative regulation, the entity shall be represented by an attorney on all matters before the board, including the filing of the Petition of Appeal.~~

(4) An attorney admitted to practice in another state, but not in the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).]

Section 4. Discovery. (1) Discovery may be obtained without prior order of the commission[board] or hearing officer pursuant to the Kentucky Rules of Civil Procedure[30, 34, 33, 34, and 36, as amended].

(2) The commission[board] or hearing officer may deny, limit, or require discovery.

(3) ~~[Sanctions.]~~ If a party fails to comply with[obey] an order regarding discovery, the commission[board] or hearing officer may order that the:

(a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;

(b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;~~or]~~

(c) Appeal be dismissed or relief be granted as requested by the opposing party;

(d) Appeal be stayed until the order is obeyed; or

(e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.

(4) A response to discovery under subsection (1) of this section shall not be filed with the commission[board] unless required by ~~[an] order or used as evidence[of the board or hearing officer]~~.

Section 5. ~~[Subpoenas. Upon good cause shown, the board or hearing officer shall issue a subpoena to any party upon request, provided that the request for subpoena shall be received by the board or hearing officer at least sixty (60) days prior to the hearing.~~

Section 6. ~~[Prehearing Filings. At least thirty (30) days prior to the hearing, a party shall file with the commission[board] or hearing officer a]~~the following]:

(1) ~~[A]~~ Prehearing summary that contains~~[the following]~~:

(a) ~~[A]~~ Summary of the party's position on any issue of fact in dispute;

(b) ~~[A]~~ Summary of the party's position on any issue of law raised by the appeal; and

(c) ~~[A]~~ Written statement of facts to which the party agrees and any facts that[which] a party does not dispute;

(2) [(d)-A] List of the names, addresses, and phone numbers (if known) of all witnesses who[which] the party expects to call to testify as a witness at the hearing; and

(3) [(e)-A] Copy of all exhibits that[which] the party intends to introduce at the hearing.];

(2) Proposed findings of fact and conclusions of law; and

(3) A proposed final order if the appeal is heard by the board, or a proposed recommended order if the appeal is heard by a hearing officer.

Section 7. Briefs. (1) A party shall file with the board or hearing officer any brief required by order of the board or hearing officer. If the board or hearing officer has not issued an order pertaining to

briefs, then a party may file an original and four ~~(4)~~ copies of a brief.

(2) The board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed, to assist in adjudicating the hearing.

(3) A brief shall be typewritten or hand printed. A photocopy shall be accepted. A copy of a brief shall be clearly legible and double spaced, except for quotations, on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long, with margins of not less than one (1) inch and a font size of not less than twelve (12) point. A brief shall include a copy of any legal authority relied upon in the brief, unless this requirement is specifically waived by the board or hearing officer.]

Section 6. Motion Practice. (1) ~~[Section 8. Motions, Responsive Pleadings, and Time Computation. (1) A party shall file an original and four (4) copies of all pleadings or motions with the board or hearing officer.(2) Any[other] party affected by a motion or pleading may file an original and four (4) copies of] a response to the motion or pleading within fifteen (15) days from the date on which the motion or pleading was originally served[upon all parties to the appeal].~~

~~(2) [(3)] A moving party may file an original and four (4) copies of] a reply to another party's response. The reply shall be filed within fifteen (15) days from the date the response was served. [No] Other replies or responses shall not be filed, unless prior approval is granted by the commission[board] or hearing officer. [Section 9. Notice of Motions and Pleadings. Any party who files a motion or pleading shall serve all other parties to the appeal a copy of the motion or pleading. A motion or pleading shall be accompanied by a certification that a copy has been served on each interested party.]~~

Section 7. ~~[Section 10.] Summary Disposition. At any time after an appeal[a preceeding] has begun, a party may move for a summary disposition of the whole or a part of the appeal[preceeding], in which event the[following] procedure established in subsections (1) through (4) of this section shall apply. (1) The moving party shall file a motion that:~~

~~(a) Asserts[Assert] that there are no disputed material facts as to one (1) or more of the issues before the commission[board] or hearing officer.[-]~~

~~(b) [The moving party shall] Includes[in its motion] a statement specifying which material facts are undisputed. A material undisputed fact may be submitted to the commission[board] or hearing officer through affidavits, discovery responses, or deposition testimony;~~

~~(c) States[or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the original petition or appeal, as well as any documents or exhibits attached to the petition, may be relied upon as undisputed material facts by the appellee.~~

~~(2) The moving party shall state] that any issue before the commission[board] or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation; and~~

~~(d) Attaches [- The moving party shall submit] a copy of any legal authority that[which] supports the moving party's position on any legal issue before the commission[board] or hearing officer.~~

~~(2) [(a) [(3)]] Within twenty (20) days after a party moves for summary disposition[and complies with the requirements set forth in Section 9 of this administrative regulation], any other party shall:~~

~~1. [may] Submit [to the board or hearing officer - (a)] an acknowledgment that there are no disputed material facts;~~

~~2. Submit a response stating that a material fact is in dispute, along with[or] any affidavit, discovery response, or deposition testimony[or response to discovery] that shows the material fact[facts to be] in dispute. Facts stated in the petition of appeal and any document or exhibit attached thereto may be relied upon as undisputed material facts by the appellee; and~~

~~3. Attach[(b)] all legal authorities that[which] support the opposing party's position on any legal issue.~~

(b)[(4)] Failure of a nonmoving party to respond within twenty (20) days to the motion for summary disposition or to request additional time to respond to the motion may[.shall] result in the commission[board] or hearing officer finding[assuming] there are no disputed factual issues[before it] to be considered in deciding the legal issues.

(3) If the nonmoving party files a response to the motion for summary disposition, the moving party[part] shall have ten (10) days to file a reply to the response.

(4)[(5)] The commission[board] or hearing officer may grant a motion for summary disposition in whole or in part. If the commission[board] or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the commission[board] or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 8. Other. Except as otherwise stated in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B[Section 11. Time. KRS 446.030 shall apply to computation of time under this administrative regulation].

MARCUS CAREY, Chair

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 27, 2018 at 10:30 a.m. at the Kentucky Claims Commission, 130 Brighton Park Blvd., Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this proposed administrative regulation will be accepted if received on or before 11:59 PM on March 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Patrick Flannery, Kentucky Claims Commission, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817 email [Patrick.Flannery@ky.gov](mailto:Patrick.Flannery@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Patrick Flannery

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amendment updates regulations and sets forth rules, procedures, and responsibilities for adjudicating appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation. This amendment reflects the powers and duties of the newly consolidated agency known as the Kentucky Claims Commission as authorized by KRS 49.020 and KRS 49.220, which codified the reorganization of the Kentucky Board of Tax Appeals and consolidated its functions with the Board of Claims and the Crime Victims Compensation Board.

(b) The necessity of this administrative regulation: This amendment is necessary to update rules and procedures for the adjudication of tax appeals by the newly consolidated agency known as the Kentucky Claims Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment conforms to the duties and powers set forth for the Kentucky Claims Commission in KRS 49.020 and 49.220.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This amendment will assist in the effective administration of KRS 49.200 – 49.250 by facilitating and clarifying processes and procedures for the adjudication of tax appeals before the Kentucky Claims Commission.

(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 reduces paperwork and updates terminology and authorities to conform to the new statutory scheme governing the adjudication of tax appeals set forth in KRS Chapter 49.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because the current administrative regulation predates the creation of the Kentucky Claims Commission in 2016. This amendment updates terminology, processes, and procedures for adjudication of tax appeals in accord with the new statutory scheme set forth in KRS Chapter 49.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates the terminology, processes, and procedures for adjudication of tax appeals to conform with the authorities laid out in KRS 49.200 – 49.250.

(d) How the amendment will assist in the effective administration of the statutes: This amendment reduces paperwork and updates terminology, processes, and procedures for adjudication of tax appeals to more effectively administer the new responsibilities of the Kentucky Claims Commission set forth in KRS 49.200 – 49.250.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect approximately 400-500 individuals, business entities, taxpayers, real property owners, property valuation administrators, the Department of Revenue and other tax collecting entities who will commonly appear before the Kentucky Claims Commission.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to file tax appeals compliant with the updated processes and procedures of the Kentucky Claims Commission as a result of this amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify and streamline the processes and procedures of the Kentucky Claims Commission's handling of tax appeals, benefitting all entities involved with a more efficient system of adjudication.

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

(a) Initially: There is no initial cost associated with implementing this amendment.

(b) On a continuing basis: There is no continuing basis cost associated with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because

this administrative regulation applies equally to all parties.

# FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will impact the Kentucky Claims Commission, property valuation administrators, County Attorneys, County Clerks, the Department of Revenue, and the Transportation Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310, KRS 13B, KRS 49.020(2), and KRS 49.220(1).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this amendment 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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None

## CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amendment)

### 922 KAR 2:090. Child-care center licensure.

RELATES TO: KRS Chapter 13B, ~~17.165, 17.500-17.580,~~ Chapter 157, 158.030, 199.011(3)(4), (4), (16), 199.892, 199.894(1), (3), 199.895, 199.896, 199.898, 214.010, 314.011(5), 600.020(1), 620.020(8), 620.030(4), 45 C.F.R. 98.2, 42 U.S.C. 601-619, 42 U.S.C. 9857-9858g

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate 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 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

Section 1. Definitions. (1) "Applicant" means an individual or entity applying to become a licensee or renew status as a licensee~~"Address check" means a cabinet search of the Sex~~

~~Offender Registry to determine if a person's residence is a known address of a registered sex offender].~~

(2) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

(4) "Child care" means care of a child in a center or home that regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(5) "Child-care center" is defined by KRS 199.894(3).

(6) "Director" means an individual who meets the education and training requirements established in Section 10 of this administrative regulation.

(7)(5) "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020, Section 4(4)(a)1, that is accepted for investigation and substantiated by the cabinet's Office of Inspector General.

(8) "Health professional" means a person actively licensed as

a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(9) "Infant" means a child who is less than twelve (12) months of age.

(10)(6) "Licensee" means the owner or and operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education,

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(11)(7) "Nontraditional hours" means the hours of:

(a) 7 p.m. through 5 a.m. Monday through Friday; or

(b) 7 p.m. on Friday until 5 a.m. on Monday.

(12)(8) "Parent" is defined by 45 C.F.R. 98.2.

(13) "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities, including:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar; or

(c) A conference between the provider and a parent.

(14) "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(15)(9) "Premises" means the building and contiguous property in which child care is licensed.

(16) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(17) "Qualified substitute" means a person who meets the requirements of a staff person established in Section 11 of this administrative regulation.

(18) "School-age" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

(19)(40) "Secretary" is defined by KRS 199.011(16)(4).

(20) "Toddler" means a child between the age of twelve (12) and thirty-six (36) months(41)"Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580].

Section 2. Child-care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center. This child-care center shall be licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee; and



(2) A Type II child-care center. This child-care center shall be primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. The following child-care settings shall be exempt from licensure requirements of this administrative regulation, ~~922 KAR 2:110, and~~ 922 KAR 2:120, and 922 KAR 2:280:

(1) Summer camps certified by the cabinet as youth camps ~~that~~which serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs and preschools regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization ~~that~~which a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted;~~and~~

(9) A program providing instructional and educational programs:

(a) That operates for a maximum of twenty (20) hours per week; and

(b) ~~That~~Which a child attends for no more than ten (10) hours per week;

(10) A child-care center that meets requirements of KRS 199.896(19) or (20); and

(11) An after-school program, which is:

(a) A continuation of the school day during the academic year;

(b) Operated and staffed by an accredited private or public school under the purview of the Kentucky Department of Education; and

(c) Not participating in the Child Care Assistance Program in accordance with 922 KAR 2:160.

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Initial Child-Care Center License Application.

(2) Approval of an applicant for initial licensure shall result in the issuance of a preliminary license for a probationary period not to exceed six (6) months.

(3) The issuance of a preliminary license, or the issuance or reapproval of a regular license, shall be governed under the provisions of this section and Sections 6 and~~5 through~~ 7 of this administrative regulation.

(4) If the applicant for licensure is a:

(a) Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) Partnership, the application shall include:

1. A written statement from each partner assuring that the partnership is current and viable; and

2. Proof that each individual is twenty-one (21) years or older by photo identification or birth certificate.

(5) If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-DRCC-01.

(6) If ownership of a child-care center changes and the cabinet approves preliminary licensure upon inspection of the child-care center under the new ownership, the effective date on the preliminary license shall be the date of the approved inspection under the new ownership.

(7) The cabinet shall return the OIG-DRCC-01 and accompanying fee to an applicant if the applicant:

(a) Has an ownership interest in a facility that is licensed or regulated by the cabinet, and that is subject to a finding of fraud or

is involved in an~~other~~ investigation of alleged fraud by:

1. The cabinet's Office of Inspector General; or

2. An agency with investigative authority; and

(b) Is requesting a:

1. Change in ownership; or

2. License for a new facility.

(8) An applicant or an applicant's lead representative shall submit to background checks in accordance with 922 KAR 2:280~~(Section 6(5) of this administrative regulation to confirm compliance with Section 11(7)(j) of this administrative regulation even if the applicant for licensure is not described in Section 6(4) of this administrative regulation).~~

(9) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 5. Evacuation Plan. (1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895 and 42 U.S.C. 9858(c)(2)(U).

(2) The cabinet shall post an online template of an evacuation plan that:

(a) Fulfills requirements of KRS 199.895;

(b) Is optional for a child-care center's use; and

(c) Is available to a licensed child-care center without charge.

Section 6. License Issuance. (1) The cabinet shall monitor a child-care center that operates under a preliminary license issued pursuant to Section 4(2) of this administrative regulation.

(2) Upon completion of the probationary period required in Section 4(2) of this administrative regulation, the cabinet shall:

(a) Approve regular licensure for a child-care center operating under a preliminary license; or

(b) If a condition specified in Section 16~~14~~ of this administrative regulation exists, deny regular licensure.

(3) A preliminary or regular license shall not be issued unless each background check required by 922 KAR 2:280~~KRS 199.896(19)~~ has been completed on behalf of an applicant for licensure.

(4) Background checks in accordance with 922 KAR 2:280 shall apply to:

(a) An applicant or an applicant's representative;

(b) A director;

(c)~~(b)~~ An employee or volunteer who is present during the time a child is receiving care;

(d)~~(e)~~ Any person with supervisory or disciplinary control over a child in care; or

(e) A~~(d) Any~~ person in accordance with 42 U.S.C. 9858f and 45 C.F.R. 98.43~~(having unsupervised contact with a child in care).~~

(5)~~An individual described in subsection (4) of this section shall:~~

(a) Submit to background checks described in paragraph (b) of this subsection;

(b) May be employed or work with a child on a probationary basis for up to ninety (90) calendar days, pending completion of a:

1. Child abuse or neglect check using the central registry in accordance with 922 KAR 1:470;

2. Criminal records check required by KRS 199.896(19);

3. Criminal records check for any previous state of residence if the person resided outside the state of Kentucky in the last five (5) years; and

4. An address check of the Sex Offender Registry; and

(c) Not be left alone in the presence of a child until copies of the background checks in accordance with paragraph (b) of this subsection have been received by the licensee.

(6) Upon completion of background checks described in subsection (4)(b) of this section, a licensee shall discharge immediately:

(a) An individual whose name is listed on the central registry established by 922 KAR 1:470;

(b) An individual who has been convicted of, or has entered an Alford plea or a plea of guilty to, a crime in accordance with KRS 17.165;



(c) An individual who is confirmed by an address check of the Sex Offender Registry and supporting documentation as a registered sex offender;

(d) An individual who has been convicted of, or entered an Alford plea or plea of guilty to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;

(e) A director who has been convicted of, or entered an Alford plea or a plea of guilty to, a felony offense involving fraud, embezzlement, theft, or forgery; and

(f) An individual who has been convicted of, or has entered an Alford plea or a plea of guilty to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this subsection.

(7) An individual who has been convicted of, or entered an Alford plea or a plea of guilty to, a nonviolent felony or misdemeanor not specified in this section shall be handled on a case-by-case basis by the licensee with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Individual's life experiences after conviction, Alford plea, or guilty plea.

(8) If an applicant for licensure has had a previous ownership interest in a child-care provider ~~that~~<sup>which</sup> has 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, the cabinet shall grant the applicant a license if:

(a) A seven (7) year period has expired from the:

1. Date of the prior denial, suspension, or revocation;

2. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or pending adverse action;

3. Last day of legal remedies being exhausted; or

4. Administrative hearing decision; and

(b) The applicant has:

1. Demonstrated compliance with the provisions of this administrative regulation, ~~[922 KAR 2:140,]~~ 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896;

2. Completed, since the time of the prior denial, suspension, revocation, or relinquishment, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its designee; and

3. Not had an application, certification, license, registration, or permit denied, revoked, suspended, or voluntarily relinquished as a result of an investigation or pending adverse action:

a. For one (1) of the reasons set forth in:

(i) KRS 199.896(19); or

(ii) 922 KAR 2:280 [Subsection (6) of this section; or

(iii) Section 11(2) or 11(7)(j) of this administrative regulation];

or

b. Due to a disqualification from:

(i) The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

(ii) Another governmental assistance program for fraud, ~~or~~ <sup>abuse, or criminal conviction related to</sup> that program.

(6) If a license is granted after the seven (7) year period specified in subsection ~~(5)(a))~~<sup>(8)(a))</sup> of this section, the licensee shall serve a two (2) year probationary period during which the child-care center shall be inspected no less than semi-annually ~~(en at least a quarterly basis)~~.

(7) A preliminary or regular license shall specify:

(a) A particular premises;

(b) A designated licensee;

(c) Age category of the children in care;

(d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:

1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;

2. Adequacy of program;

3. Equipment; and

4. Staff;

(e) If provided, nontraditional hours;

(f) If provided, transportation; and

(g) A list of services to be provided by the child-care center.

(8) To qualify for a preliminary license, or maintain a regular license, a child-care center shall:

(a) Provide written documentation from the local authority showing compliance with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county, and state laws;

(d) Provide written proof of liability insurance coverage of at least \$100,000 per occurrence;

(e) Comply with provisions of this administrative regulation, ~~[922 KAR 2:140, and]~~ 922 KAR 2:120, and 922 KAR 2:280;

(f) Cooperate with the cabinet, the cabinet's designee, or another agency with regulatory authority during:

1. An investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030(4); and

2. Unannounced inspections; and

(g) Have a director who meets the requirements listed in Section 10 of this administrative regulation ~~[922 KAR 2:140]~~.

(9) A child-care center shall allow the cabinet or its designee, another agency with regulatory authority, and a parent of an enrolled child unannounced access to the child-care center during the hours of operation.

(10) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet or another agency with regulatory authority, to enter the child-care center or deny access to records relevant to the inspection shall result in the cabinet pursuing adverse action in accordance with Section 15, 16, or 17 ~~[40, 41, or 42]~~ of this administrative regulation.

(11) A regular license shall be issued ~~[and reapproved]~~ if the center has met the requirements contained in this administrative regulation, ~~[922 KAR 2:140,]~~ 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896(3), (13), (15), (16), (18), and (19).

(12) A preliminary or regular license shall not be sold or transferred.

(13) ~~Changes to a child-care center as listed in 922 KAR 2:140, Section 6(4) shall be:~~

(a) In writing to the cabinet or its designee; and

(b) Signed by each owner listed on the preliminary or regular license.

(17) ~~The cabinet or its designee shall not charge a fee for acting upon reported changes.~~

(18) ~~The preliminary or regular license shall be posted in a conspicuous place in the child-care center.~~

(19) A child-care center shall not begin operation without a preliminary license to operate from the cabinet.

(14) A child-care center operating without a preliminary or regular license shall be subject to legal action.

(15) The voluntary relinquishment of a preliminary or regular license shall not preclude the cabinet's pursuit of adverse action.

Section 7. Fees. (1) A nonrefundable initial licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) A nonrefundable renewal fee of twenty-five (25) dollars shall be charged in accordance with KRS 199.896(3).

(3) Licensing fees shall be:

(a) Payable to the Kentucky State Treasurer;

(b) Attached to the licensure application; and

(c) Paid by:

1. Cashier's check;

2. Certified check; ~~or~~

3. Business check; or

4. Money order.

Section 8. General. (1) A licensee shall be responsible for the

operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.

(2) Child-care center staff shall be:

(a) Instructed by the child-care center's director regarding requirements for operation; and

(b) Provided with a copy of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.

(3) A volunteer or board member shall comply with the policies and procedures of the child-care center.

(4) Program policies and procedures shall:

(a) Be in writing; and

(b) Include:

1. Staff policies;

2. Job descriptions;

3. An organization chart;

4. Chain of command; and

5. Other procedures necessary to ensure implementation of:

a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;

b. 922 KAR 2:120, Child-care center health and safety standards;

c. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals; and

d. This administrative regulation.

(5) An activity of a person living in a child-care center that is a dwelling unit shall not interfere with the child-care center program.

(6) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:

(a) The provider's preliminary or regular license;

(b) Each statement of deficiency and civil penalty notice issued by the cabinet during the current licensure year;

(c) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;

(d) Information on the Kentucky Consumer Product Safety Program and the program's Web site as specified in KRS 199.897;

(e) A description of services provided by the child-care center, including:

1. Current rates for child care; and

2. Each service charged separately and in addition to the basic rate for child care;

(f) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and

(g) Daily planned program.

(7) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the assessment or investigation; and

(b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 9. Records. (1) A child-care center shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the child-care center; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable a person in charge to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

(i) Allergies;

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the child-care center;

e. The name and phone number of each person to be contacted in an emergency involving or impacting the child;

f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence; and

g. A permission form for each trip off the premises signed by the child's parent in accordance with 922 KAR 2:120, Section 12;

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the child-care center through the Child Care Assistance Program;

(d) A written schedule of staff working hours;

(e) A current personnel file for each child-care center staff person to include:

1. Name, address, date of birth, and date of employment;

2. Proof of educational qualifications;

3. Record of annual performance evaluation;

4. Documentation of compliance with tuberculosis screening in accordance with Section 11(1)(b) of this administrative regulation; and

5. The results of background checks conducted in accordance with 922 KAR 2:280;

(f) A written annual plan for child-care staff professional development;

(g) A written evacuation plan in accordance with Section 5 of this administrative regulation;

(h) A written record of quarterly practiced earthquake drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(j) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, posted in a prominent place;

(k) A written record of reports to the cabinet required in Section 12 of this administrative regulation; and

(l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 12.

(2) A child-care center shall:

(a) Maintain the confidentiality of a child's record and information concerning a child or the child's parent;

(b) Maintain all records for five (5) years; and

(c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4) and (5).

Section 10. Director Requirements and Responsibilities. (1) A director shall:

(a) Be at least twenty-one (21) years of age;

(b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;

(c) Not be employed in a position other than an onsite child care director, or director of multiple facilities, during the hours the child-care center is in operation;

(d) Ensure:

1. Compliance with 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation; and

2. The designation of one (1) adult staff person in charge to carry out the director's duties if the director is not present in the child-care center during operating hours. The director shall be responsible for the actions of the designee during the director's

absence:

- (e) Manage the staff in their individual job descriptions;
- (f) Assure the development, implementation, and monitoring of child-care center plans, policies, and procedures;
- (g) Supervise staff conduct to ensure implementation of program policies and procedures;
- (h) Post a schedule of daily activities, to include dates and times of activities to be conducted with the children in each classroom;
- (i) Conduct, manage, and document in writing recurring staff meetings;
- (j) Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation;
- (k) Assure that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;
- (l) Assure the health, safety, and comfort of each child;
- (m) Notify the parent immediately of an accident or incident requiring medical treatment of a child;
- (n) Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the background checks as described in 922 KAR 2:280;
- (o) Assure each mandatory record specified in Section 9 of this administrative regulation has not been altered or falsified;
- (p) Coordinate at least one (1) annual activity involving parental or family participation; and
- (q) Not have had previous ownership interest in a child-care provider that had its certification, license, or registration, or permit to operate denied, suspended, or revoked.
- (2) The director of a Type I child-care center shall meet one (1) of the following educational requirements:
  - (a) Master's degree in education or child development field;
  - (b) Bachelor's degree in education or child development field;
  - (c) Master's degree or a bachelor's degree in a field other than education or child development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;
  - (d) Associate degree in Early Childhood Education and Development;
  - (e) Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children;
- (f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:
  - 1. A school-based program following Department of Education guidelines;
  - 2. An early childhood development program, such as Head Start; or
  - 3. A licensed or certified child-care program;
- (g) Child development associate plus one (1) year of verifiable paid experience working directly with children in:
  - 1. A school-based program following Department of Education guidelines;
  - 2. An early childhood development program, such as Head Start; or
  - 3. A licensed or certified child-care program; or
- (h) Three (3) years of verifiable full-time paid experience working directly with children in:
  - 1. A school-based program following Department of Education guidelines;
  - 2. An early childhood development program, such as Head Start; or
  - 3. A licensed or certified child-care program.
- (3) The director of a Type II child-care center shall:
  - (a) Meet the requirements in subsection (2) of this section; or
  - (b) Meet two (2) of the following:
    - 1. Have twelve (12) hours of orientation and child development training;
    - 2. Have one (1) year of verifiable full-time paid experience

working directly with children in:

- a. A school-based program following Department of Education guidelines;
- b. An early childhood development program, such as Head Start; or
- c. A licensed or certified child-care program; or
- 3. Obtain six (6) additional hours of training in child day care program administration.

Section 11. Staff Requirements. (1) Child-care center staff:

- (a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:
  - 1. High school diploma;
  - 2. GED or qualifying documentation from a comparable educational entity; or
  - 3. Commonwealth Child Care Credential as described in 922 KAR 2:250; and
- (b) Shall provide, prior to employment and every two (2) years thereafter:
  - 1. A statement from a health professional that the individual is free of active tuberculosis; or
  - 2. A copy of negative tuberculin results.
- (2)(a) A child-care center shall not employ a person:
  - 1. With a disqualifying background check result in accordance with 922 KAR 2:280; or
  - 2. Determined by a physician to have a health condition that renders the person unable to care for children.
- (b) An individual described in Section 6(4) of this administrative regulation shall report to the licensee if the individual:
  - 1. Meets a disqualifying criterion or has a disqualifying background check result as specified in 922 KAR 2:280;
  - 2. Is the subject of a cabinet child abuse or neglect investigation; or
  - 3. Is determined by a physician to have a health condition that renders the person unable to care for children.
- (3) For a child-care center licensed for infant, toddler, or preschool-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:
  - (a) Infant and child cardiopulmonary resuscitation; and
  - (b) Infant and child first aid.
- (4) For a child-care center licensed for school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:
  - (a) Adult cardiopulmonary resuscitation; and
  - (b) First aid.
- (5) Cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15) clock hours requirement in subsection (16) of this section.
- (6) Child-care centers shall have available in case of need:
  - (a) One (1) qualified substitute staff person for a Type II child-care center; or
  - (b) Two (2) qualified substitute staff persons for a Type I child-care center.
- (7) Each qualified substitute staff person shall:
  - (a) Meet the staff requirements of this administrative regulation; and
  - (b) Provide the required documentation to verify compliance with this administrative regulation.
- (8) A qualified substitute who works in more than one (1) licensed child-care center shall provide the required documentation to verify compliance with this administrative regulation at the time of employment with each child-care center.
- (9) If the operator of a Type II child-care center is unable to provide care in accordance with this administrative regulation, 922 KAR 2:280, or 922 KAR 2:120, the Type II child-care center shall:
  - (a) Close temporarily until the operator is able to resume compliance; and
  - (b) Immediately notify parents of enrolled children of the temporary closure.
- (10) The minimum number of adult workers in a child-care

center shall be sufficient to ensure that:

(a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed;

(b) Each staff person under eighteen (18) years of age and each student trainee are under the direct supervision of a qualified staff person who meets the requirements of this section; and

(c) Unless providing care with a qualified staff person, a person under the age of eighteen (18) shall not be counted as staff for the staff-to-child ratio.

(11) Except for medication as prescribed by a physician, a controlled substance shall not be permitted on the premises during hours of operation.

(12) Alcohol shall:

(a) Not be consumed by any person on the licensed child-care center's premises during hours of operation; and

(b) Be kept out of reach and sight of a child in care.

(13) Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2(11)(f).

(14) For each adult residing at a Type II child-care center, the results of the following shall be maintained on file at the center:

(a) Background checks conducted in accordance with 922 KAR 2:280; and

(b) A copy of negative tuberculin results or a health professional's statement documenting that the adult is free of tuberculosis. Every two (2) years, the adult shall provide negative tuberculin results or health professional's statement documenting that the adult is free of tuberculosis.

(15) If a new adult begins residing in a Type II child-care center, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household.

(16) In accordance with KRS 199.896(15) and (16), a staff person with supervisory authority over a child shall complete the following:

(a) Six (6) hours of cabinet-approved orientation within the first three (3) months of employment;

(b) Nine (9) hours of cabinet-approved early care and education training within the first year of employment, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training; and

(c) Fifteen (15) hours of cabinet-approved early care and education training during each subsequent year of employment, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training completed once every five (5) years.

(17) A staff person's compliance with training requirements of this section shall be verified through the cabinet-designated database maintained pursuant to 922 KAR 2:240.

Section 12. Reports. (1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery:

(a) Communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

(b) An accident or injury to a child that requires medical care initiated by the child-care center or the child's parent;

(c) An incident that results in legal action by or against the child-care center that:

1. Affects a child or staff person; or

2. Includes the center's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(d) An incident involving fire or other emergency, including a vehicular accident when the center is transporting a child receiving child care services;

(e) A report of child abuse or neglect that:

1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with a child in care as the alleged perpetrator; or

(f) An individual specified in Section 6(4) of this administrative regulation meeting a disqualifying criterion or background check result pursuant to 922 KAR 2:280.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirements of Section 10 of this administrative regulation.

(4)(a) Written notification of the following shall be:

1. Made to the cabinet, in writing, to allow for approval before implementation;

a. Change of ownership;

b. Change of location;

c. Increase in capacity;

d. Change in hours of operation;

e. Change of services in the following categories:

(i) Infant;

(ii) Toddler;

(iii) Preschool-age;

(iv) School-age;

(v) Nontraditional hours; or

(vi) Transportation; or

f. Addition to or reduction of the square footage of a child-care center's premises; and

2. Signed by each owner listed on the preliminary or regular license.

(b) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a child-care center's temporary or permanent closure.

Section 13. Annual Renewal[Reapproval]. (1)(a) A regular license shall expire one (1) year from the effective date or last renewal date unless the licensee renews the regular license in accordance with this section and KRS 199.896(3).

(b) A preliminary license shall expire six (6) months from the date of issuance.

(c) A regular license that expires shall lapse and shall not be subject to appeal.

(2) A licensee seeking renewal[reapproval] of a regular license shall:

(a) Submit one (1) month prior to the anniversary of the regular license's effective date[, one (1) month prior to license expiration], an OIG-DRCC-06, Child-Care Center License Renewal Form[OIG-DRCC-04]; [and]

(b) Meet the requirements specified in Sections 4 through 12[7] of this administrative regulation; and

(c) Pay the nonrefundable renewal fee in accordance with KRS 199.896(3).

(2) If requirements of subsection (1) of this section are met, the cabinet shall renew the license in the form of a validation letter.

(3) An application for renewal shall be denied in accordance with Section 16[44] of this administrative regulation.

Section 14[9]. Statement of Deficiency and Corrective Action Plans. (1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within fifteen (15)[ten-(10)] calendar days of the date[receipt] of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or shall be completed;[and]

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; and

(e) Signature of the licensee or designated representative of the licensee and the date of signature.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:

- (a) Accept the plan;
- (b) Not accept the plan; or

(c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 16[44] of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:

(a) Within ~~fifteen~~ten (10) calendar days of ~~the notification's date~~notification, submit an amended plan; or

(b) Have its license revoked or denied for failure to:

1. Submit an acceptable amended plan in accordance with KRS 199.896(4); or

2. Implement the corrective measures identified in the plan of correction.

(7) The cabinet shall not review or accept more than three (3) corrective action plans from a licensed child-care center in response to the same written statement of deficiency~~Following two (2) unacceptable plans of correction, in a forty-five (45) calendar day period, the cabinet may deny or revoke an application for licensure or license~~.

(8) If a licensed child-care center fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke the center's license.

(9) The administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days from the date of the statement of deficiency in accordance with KRS 199.896(5)(c).

Section 15[10]. Directed Plan of Correction (DPOC) ~~[Intermediate Sanctions]~~.~~[(4)]~~ If the cabinet determines that a child-care center is in violation of this administrative regulation, [922 KAR 2:140, or] 922 KAR 2:120, or 922 KAR 2:280, ~~the cabinet may,~~ based on the severity of the violation, the cabinet:

(1) ~~Shall~~~~(a) Require the provider to participate in additional training;~~

~~(b) Increase the frequency of monitoring by cabinet staff;~~

~~(c) enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance;~~

~~(2) Shall~~~~(or (d))~~ notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC~~[an intermediate sanction]~~ has been imposed;

~~(3) Shall increase the frequency of monitoring by cabinet staff;~~

~~(4) May require the provider to participate in additional training; and~~

~~(5) May amend the agreement with the provider if the cabinet identifies an additional violation during the DPOC.~~~~[(2) An intermediate sanction shall result in a suspension or revocation of the license if a child-care center:~~

~~(a) Fails to meet a condition of the intermediate sanction; or~~

~~(b) Violates a requirement of an intermediate sanction.]~~

Section 16[14]. Basis for Denial, Suspension or Revocation.

(1)~~(a)~~ The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896~~[(4) and (19)]~~ if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation,~~[or those of 922 KAR 2:140 or] 922 KAR 2:120, 922 KAR 2:280, or 922 KAR 2:190.~~

~~(b) A licensee whose regular license is suspended or revoked shall:~~

1. Receive a new license certificate indicating that the license is under adverse action; and

2. Post the new license certificate in accordance with Section 8(6) of this administrative regulation.

~~(2)[For the purposes of KRS 199.896(19), an applicant who has been found by the cabinet to have abused or neglected a child~~

~~shall mean an individual who is listed on the central registry described in 922 KAR 1:470.~~

~~(3) An individual described in Section 6(4) of this administrative regulation shall report to the licensee if:~~

~~(a) Convicted of, or entered an Alford or guilty plea to:~~

~~1. A violent crime or sex crime in accordance with KRS 17.165; or~~

~~2. A crime specified in Section 6(6) of this administrative regulation;~~

~~(b) The subject of a cabinet child abuse or neglect investigation;~~

~~(c) Found by the cabinet or a court to have abused or neglected a child;~~

~~(d) Convicted of, or entered an Alford or guilty plea to, a drug-related felony, and five (5) years have not elapsed since the person was fully discharged from imprisonment, probation, or parole;~~

~~(e) Placed on the Sex Offender Registry; or~~

~~(f) determined by a physician to have a health condition that renders the person unable to care for children.~~

~~(4) Each licensee shall report to the cabinet or its designee if the:~~

~~(a) licensee or an individual described in Section 6(4) of this administrative regulation meets a criterion of subsection (3) of this section; or~~

~~(b) Licensee meets a criterion of subsection (7)(j) of this section.~~

~~(5)] Emergency Action.~~

(a) The cabinet shall take emergency action in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center's license.

(b) An emergency order shall:

1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and

2. Specify the regulatory violation that caused the emergency condition to exist.

(c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.

(d) The cabinet or its designee and the child-care center shall make reasonable efforts to:

1. Notify a parent of each child in care of the center's suspension; and

2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within twenty (20)~~five (5)]~~ calendar days of receipt of the order to determine the propriety of the licensure's suspension in accordance with KRS 199.896(7).

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).

(g)1. Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend licensure.

2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(h) A provider's license shall be revoked if the:

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. Condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order~~The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B].~~

~~(3)[(6)]~~ Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

~~(4)[(7)]~~ Unless an applicant for a license meets requirements of Section 6(5)~~[(6)(8)]~~ of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if:

(a) The applicant has had previous ownership interest in a child-care provider ~~that~~~~[which]~~ had its certification, license, or registration, or permit to operate denied, suspended, or revoked;

(b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;

(c) An appeal of a denial, suspension, or revocation is pending;

(d) The applicant previously failed to comply with the requirements of KRS 199.896,~~[922 KAR 2:140;]~~ 922 KAR 2:120, ~~922 KAR 2:280, 922 KAR 2:190,~~~~[or]~~ this administrative regulation, ~~or another administrative regulation effective at the time;~~

(e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud,~~[or]~~ abuse, ~~or criminal conviction related to~~~~[or]~~ that program;

(f) The applicant ~~or the applicant's representative~~ is the parent, spouse, sibling, or child of a previous licensee whose license was denied, suspended, revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity;

(g) The applicant listed as an officer, director, incorporator, or organizer of a corporation or limited liability company whose child-care center license was denied, suspended, revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7) years;

(h) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;

(i) The applicant interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section ~~6(8)(f)[6(44)(f)]~~ or ~~6(9)[6(42)]~~ of this administrative regulation;

(j) The applicant's background check reveals that the applicant is ~~disqualified in accordance with 922 KAR 2:280~~~~[- 1. Is listed on the:~~

a. ~~Central registry in accordance with 922 KAR 1:470; or~~

b. ~~Sex Offender Registry; or~~

2. ~~Has been convicted of, or entered an Alford or guilty plea to, a crime specified in Section 6(6) of this administrative regulation, including a felony offense involving fraud, embezzlement, theft, or forgery];~~ ~~[or]~~

(k) The ~~applicant has been~~~~[licensee is]~~ the subject of more than two (2) ~~directed plans of correction~~~~[intermediate sanctions]~~ during a three (3) year period; ~~or~~

~~(l) The applicant has failed to comply with payment provisions in accordance with 922 KAR 2:190.~~

~~(5)[(8)] A child-care center's license shall be revoked if:~~

(a) A representative of the center interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section ~~6(8)(f)[6(44)(f)]~~ or ~~6(9)[6(42)]~~ of this administrative regulation;

(b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:

1. A child;~~[or]~~

2. The child-care center; ~~or~~

3. ~~Child-care center staff;~~

(c) The licensee is discontinued or disqualified from participation in:

1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or

2. A governmental assistance program as a result of fraud, ~~[or]~~ abuse, ~~or criminal conviction related to~~~~[or]~~ that program;

(d) The licensee fails to meet a condition of, or violates a requirement of ~~a directed plan of correction~~~~[an intermediate sanction]~~ pursuant to Section ~~15[40(2)]~~ of this administrative regulation;

(e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet; ~~[or]~~

(f) The licensee is the subject of more than two (2) ~~directed plans of correction~~~~[intermediate sanctions]~~ during a three (3) year period; ~~or~~

~~(g) The licensee has failed to comply with payment provisions in accordance with 922 KAR 2:190.~~

~~(6)[(9)] The cabinet or its designee shall suspend the license if:~~

(a) ~~A regulatory violation is~~~~[violations are]~~ found ~~to~~~~[that]~~ pose an immediate threat to the health, safety, and welfare of the

children in care as described in KRS 199.896(4); or

(b) The child care-center fails to comply with the approved ~~plan of correction~~~~[corrective active plan]~~.

Section 17[42]. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.

Section 18[43]. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension or revocation, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution. The request shall:

(a) Be submitted to the secretary of the cabinet or designee within twenty (20) calendar days of~~[receipt of]~~ the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-DRCC-02 for a hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

(a) Abate the formal hearing pending completion of the informal dispute resolution process; and

(b) Proceed to informal dispute resolution.

Section 19[44]. Informal Dispute Resolution. (1) A request for informal dispute resolution shall:

(a) Accompany the request for a hearing;

(b) Identify the licensure deficiency in dispute;

(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and

(d) Include documentation that disputes the deficiency.

(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:

(a) Review documentation submitted by the applicant for licensure or licensee; and

(b) If requested, schedule ~~an~~~~[a first-level]~~ informal dispute resolution meeting with the applicant for licensure or licensee.

(3) The~~[first-level]~~ informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(4) The~~[first-level]~~ informal dispute resolution meeting shall be conducted by:

(a) The regional program manager or designee; and

(b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.

(5) Within ten (10) calendar days of completion of the~~[first-level]~~ informal dispute resolution meeting or request, the regional program manager or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(6) An applicant or a licensee may:

~~(a) Accept the determination; or~~

~~(b) Proceed to~~~~[appeal a decision issued by the regional program manager or designee by:~~

~~(a) Proceeding with]~~ a hearing according to KRS 13B.050~~[- or~~

~~(b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Regulated Child Care or designee within ten (10) calendar days of receipt of the first level decision. The request shall specify whether the applicant for licensure or licensee requests a meeting with cabinet staff].~~

~~(7)[Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Regulated Child~~

Care or designee shall:

(a) Review the decision issued from the first-level informal dispute resolution;

(b) Review the documentation described in subsection (1)(d) of this section; and

(c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or licensee.

(8) The second-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(9) Within ten (10) calendar days of completion of the second-level informal dispute resolution meeting or request, the Director of the Division of Regulated Child Care or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for second-level informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(10) If a second-level informal review is requested in lieu of a first-level informal dispute resolution meeting, the Director of the Division of Regulated Child Care or designee shall comply with the provisions of subsection (9)(a) through (c) of this section within ten (10) calendar days of receipt of the request for second-level informal dispute resolution.

(11) If an applicant for licensure or licensee is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.

(12) If an applicant for licensure or licensee is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B concerning the deficiencies that were reviewed in the informal review process.

(13) A request for informal dispute resolution shall not:

(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or

(b) Delay submission of a written plan of correction.

(8)(14) Emergency action taken in accordance with Section 16(2)(14)(5) of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

Section 20(15). Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG-DRCC-01, Initial Child-Care Center License Application", 2018[edition 4/2013];[and]

(b) "OIG-DRCC-02, Licensed Request for Appeal or Informal Dispute Resolution",[edition] 8/3/12; and

(c) "OIG-DRCC-06, Child-Care Center License Renewal Form", 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 1, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 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-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure standards for a child-care center, and describes an applicant's and a child-care center's appeal rights and informal dispute resolution processes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a child-care center's licensure standards, appeal rights, and informal dispute resolution process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of licensure standards for a child-care center and related due process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care center license and related due process.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation consolidates content from 922 KAR 2:110, which is subject to concurrent repeal; adds exemptions in accordance with 2015 Ky. Acts ch. 16; aligns the administrative regulation with the Child Care and Development Fund's 2014 reauthorization, including more comprehensive background checks for child care providers per the federal law and 2017 Ky. Acts ch. 135; streamlines licensure renewal processes; clarifies due process for emergency suspensions and corrective action; replaces an intermediate sanction with a directed plan of correction; expands payment methods for licensure; and requires a child care provider to post a new license when the provider's license is subject to revocation or suspension to foster awareness by the public entering and using the center. The amendment also makes technical corrections in accordance with KRS Chapter 13A, including corresponding updates to material incorporated.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to better support the health, safety, and welfare of children in care; respond to Red Tape Reduction comments and related agency reviews; incorporate statutory requirements and changes that have occurred since the administrative regulation's last amendment; and ensure congruency among the administrative regulations governing licensed child-care centers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its update and clarification of child-care center licensure standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of



the statutes by preserving and enhancing the quality of child-care center licensure standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of November 22, 2017, there were 1,980 Kentucky licensed child-care centers, both Type I and Type II.

(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: Given the new federally mandated background check requirements applicable to licensed child-care centers, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation and be responsive to the recently enacted legislation and the Red Tape Reduction comments and agency reviews.

(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 should entail no new costs to licensed child-care centers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicant and licensed child-care centers and the children in their care will benefit from improved clarity, greater program integrity, and enhanced quality assurance in the child care community.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2, 42 U.S.C. 601-619, 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2), (6)

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98.2, 42 U.S.C. 601-619, 42 U.S.C. 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, 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, 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 is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), (6), 45 C.F.R. 98.2, 42 U.S.C. 601-619

(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 generate no 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 amendment to this administrative regulation will generate no revenue in the 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 in the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Community Based Services

##### Division of Child Care

##### (Amendment)

#### 922 KAR 2:100. Certification of Family Child-Care Homes.

RELATES TO: KRS Chapter 13B, 158.030~~147.165, 147.500—147.580~~, 186.020, 189.125, 194A.050(1), 199.011(3)(2), (4), 199.894(1), (5), 199.895, 199.896(18), 199.897, 199.898, 199.8982, 214.010, 214.036, 311.646, 314.01(5), 527.070(1), 600.020, 620.020(8), 620.030, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8982(1)(f)

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 199.8982(1)(f) requires the cabinet to promulgate administrative regulations to establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, and suspension of a certificate of operation, and to impose minimum staff-to-child ratios for a family child-care home. The statute authorizes the cabinet to establish minimum safety requirements for operation of a certified

family child-care home. This administrative regulation establishes minimum requirements intended to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

Section 1. Definitions. (1) ~~["Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.~~

(2) "Assistant" means a person:

(a) Who meets the requirements listed in Section 2(6) and Section 10(6), (7), and (8) ~~and (9)~~ of this administrative regulation; and

(b) Whose work is either paid or unpaid.

~~(2)(3)~~ "Cabinet" is defined by the KRS 199.011(3) and 199.894(1) ~~(2)~~.

~~(3)(4)~~ "Child" is defined by KRS 199.011(4).

~~(4)(5)~~ "Corporal physical discipline" is defined by KRS 199.896(18).

~~(5)(6)~~ "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

~~(6)(7)~~ "Family child-care home" is defined by KRS 199.894(5).

~~(7)(8)~~ "Health professional" means a person currently licensed as a:

(a) Physician;

(b) ~~Physician~~ [Physician's] assistant;

(c) Advanced practice registered nurse ~~or practitioner~~; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

~~(8)(9)~~ "Home" means the private primary residence of the certified family child-care home provider and contiguous property.

~~(9)(10)~~ "Infant" means a child who is less than twelve (12) months of age.

~~(10)(11)~~ "Parent" is defined by 45 C.F.R. 98.2.

~~(11)(12)~~ "Parental or family participation" means a family child-care home's provision of information or inclusion of a child's parent in the child-care home's activities such as:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and the parent; or

(d) Other activity designed to engage a parent in the program's activities.

~~(12)(13)~~ "Pediatric abusive head trauma" is defined by KRS 620.020(8).

~~(13)(14)~~ "Premises" means the building and contiguous property in which child care is certified.

~~(14)(15)~~ "Preschool-age" means a child who is older than a toddler and younger than school-age.

~~(15)(16)~~ "Provider" means an owner, operator, or person who:

(a) Cares for a child in the provider's own home;

(b) Is not required to be licensed under 922 KAR 2:090; and

(c) Meets the requirements of Section 2 of this administrative regulation.

~~(16)(17)~~ "Related" means having one (1) of the following relationships with the provider:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Step-child; or

(g) Child in legal custody of the provider.

~~(17)(18)~~ "School-age child" means a child who meets the age requirements of KRS 158.030 or who attends ~~attending~~ kindergarten, elementary, or secondary education.

~~(18)(19)~~ "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

~~(20)~~ "Toddler" means a child between the age of twelve (12) months and ~~thirty-six (36)~~ ~~twenty-four (24)~~ months.

Section 2. Certification Process. (1) The cabinet or its designee shall be responsible for certifying a family child-care home.

(2) An applicant for certification shall:

(a) Show proof by photo identification or birth certificate that the individual is at least eighteen (18) years of age;

(b) Obtain commercial liability insurance of at least \$50,000 per occurrence; and

(c) Submit within ninety (90) days of initiation of the application process:

1. A completed OIG-DRCC-03, Initial Certification Application for Family Child-Care Home;

2. A nonrefundable certification fee pursuant to KRS 199.8982(1)(b);

3. Written documentation from the local authority showing the child-care home is in compliance with local zoning requirements;

4. Documentation of the requirements of KRS 199.8982(1)(a)1 through 3 and 5;

5. Background checks completed in accordance with 922 KAR 2:280; and

6. A physician's statement documenting that the family child-care home provider's health is satisfactory for operation of a family child-care home, including that the provider is free of active tuberculosis ~~A DCC-157, Certified Family Child-Care Home Central Registry Check, to complete:~~

a. ~~A child abuse or neglect check using the central registry in accordance with 922 KAR 1:470; and~~

b. ~~An address check of the Sex Offender Registry;~~

6. ~~A completed criminal records check required by KRS 17.165(5); and~~

7. ~~A criminal records check for any previous state of residence completed once if:~~

a. ~~The applicant resided outside the state of Kentucky in the last five (5) years; and~~

b. ~~No criminal records check has been completed for the applicant's previous state of residence~~].

(3) An ~~initial~~ applicant for certification shall have a:

(a) High school diploma, general equivalency diploma (GED), or documentation from a comparable educational entity; or

(b) Commonwealth Child Care Credential in accordance with 922 KAR 2:250.

(4) An applicant shall be currently certified by an agency approved in accordance with 922 KAR 2:240 in infant and child:

(a) Cardiopulmonary resuscitation (CPR); and

(b) First aid.

(5) An adult living in the home of the applicant, present during the hours of operation, or having unsupervised contact with a child in care, and the applicant's assistant shall ~~submit to the cabinet~~:

(a) Complete background checks in accordance with 922 KAR 2:280 ~~A criminal records check pursuant to KRS 17.165(5) by the Kentucky State Police or the Administrative Office of the Courts within one (1) year prior to application;~~

(b) ~~A DCC-157 to complete:~~

1. ~~A child abuse or neglect check using the central registry in accordance with 922 KAR 1:470; and~~

2. ~~An address check of Sex Offender Registry;~~

(c) ~~A criminal records check completed once for any previous state of residence if:~~

1. ~~The adult resided outside the state of Kentucky in the last five (5) years; and~~

2. ~~No criminal records check has been completed for the adult's previous state of residence~~]; and

(b) ~~Submit (d)~~ a copy of negative tuberculin results or a health professional's statement documenting that the adult is free of active tuberculosis.

(6) If an adult other than an adult listed on the initial application begins living in the provider's home, present during the hours of operation or having unsupervised contact with a child in care, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household ~~An applicant or assistant who has been convicted of, or entered an Alford or guilty plea to, a non-violent felony or misdemeanor may be approved on a case-by-case basis with consideration given to the:~~

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences after the conviction, Alford plea,

or guilty plea].

(7) Upon receipt of a completed application for certification, and a nonrefundable certification fee pursuant to KRS 199.8982(1)(b), cabinet staff shall:

(a) Review and process the application; and

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b), including review of the evacuation plan in accordance with Section 18(7) of this administrative regulation.

(8) If the requirements of 922 KAR 2:280, subsections (1) through (7) of this section~~, Section 3~~, and Sections 10 through 19 of this administrative regulation have been met, an applicant shall be certified as described in KRS 199.8982.

(9) Within three (3) months of submission to the cabinet of a complete OIG-DRCC-03, an applicant shall:

(a) Demonstrate completion of six (6) hours of cabinet-approved training in accordance with KRS 199.8982(1)(a)6; and

(b) Develop and implement a written plan for obtaining nine (9) hours of annual cabinet-approved training as required in Section 10(1) of this administrative regulation.

(10)(a) A family child-care home certificate shall:

1. (a) Be displayed in a prominent place, as required by KRS 199.8982(1)(c);

2. (b) Contain the:

a. [1.] Name and address of the child care provider;

b. [2.] Maximum number of unrelated children who may be served;

c. [3.] Identification number; and

d. [4.] Effective and expiration dates; and

3. (e) Be valid for only the:

a. [1.] Name of the individual authorized on the certificate to operate a family child-care home; and

b. [2.] Residential address printed on the certificate.

(b) A certified family child-care home whose certificate is suspended or revoked shall:

1. Receive a new certificate indicating that the provider is under adverse action; and

2. Post the new certificate in accordance with paragraph (a) of this subsection.

(11) A change of location shall require:

(a) A ten (10) calendar day notice;

(b) A completed OIG-DRCC-03;

(c) An inspection of the new home; and

(d) Continued compliance with this administrative regulation.

Section 3. Renewal of Certification. (1) A family child-care certification shall expire[be renewed every] two (2) years from the date of issuance unless the certificate holder meets the requirements of subsection (2) of this section. A certificate that expires shall lapse and shall not be subject to appeal.

(2) A family child-care home provider shall submit one (1) month prior to expiration of the provider's certification:

(a) A completed OIG-DRCC-04, Certified Family Child-Care Home Renewal Form[OIG-DRCC-03];

(b) A nonrefundable renewal fee pursuant to KRS 199.8982(1)(b);

(c) A physician's statement documenting that the family child-care home provider's health is satisfactory for continued operation of a family child-care home; and

(d) Proof that the family child-care home provider continues to meet the minimum requirements specified in Sections 2, 3, and 10 through 19 of this administrative regulation.

(3) The cabinet shall:

(a) Review and process the OIG-DRCC-03 submitted in accordance with subsection (2) of this section[application];

(b) Conduct an unannounced inspection of the home pursuant to KRS 199.8982(1)(b); and

(c) Approve the family child-care home within fifteen (15) calendar days of receipt of the OIG-DRCC-03 submitted in accordance with subsection (2) of this section[application] if the requirements in Sections 2, 3, and 10 through 19 of this administrative regulation are met.

(4) To the extent funds are available, the cabinet shall[may] conduct an annual unannounced inspection of the home pursuant

to KRS 199.8982(1)(b) and 42 U.S.C. 9858c(c)(2)(K)[annually as a condition of certification renewal].

Section 4. Statement of Deficiency and Corrective Action Plans. (1) If the cabinet finds a provider noncompliant with Sections 2, 3, or 10 through 19 of this administrative regulation, the cabinet or its designee shall complete a written statement of deficiency.

(2) Except for a violation posing an immediate threat, a family child-care home shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or shall[will] be completed; and

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; and

(e) Signature of the provider and the date of signature.

(4) The cabinet or its designee shall review the plan and notify a family child-care home within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the family child-care home's certification in accordance with Section 5, 6, 7, or 8 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(6) A family child-care home notified of an unaccepted plan shall:

(a) Submit an amended plan within fifteen (15)[ten (10)] calendar days of notification; or

(b) Have its certification revoked or denied for failure to:

1. Submit an acceptable amended plan; or

2. Implement corrective measures identified in the corrective action plan.

(7) If a family child-care home fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan[Following two (2) unacceptable plans of correction in a forty-five (45) calendar day period], the cabinet shall deny~~[an application for certification]~~ or revoke a provider's certification.

(8) The cabinet shall not review or accept more than three (3) corrective action plans from a family child-care home in response to the same written statement of deficiency.

(9) An administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected by the family child-care home provider within five (5) working days of notification.

(10)[9] The voluntary relinquishment of a family child-care home's certification shall not preclude the cabinet's pursuit of adverse action.

Section 5. Denial of Application for Certification. (1) An application for initial certification~~[or renewal of certification]~~ as a family child-care home shall be denied if the applicant, an assistant, or an adult residing in the household:

(a) Has abused or neglected a child according to a check of the central registry in accordance with 922 KAR 4:470;

(b) has a history of behavior that may impact the safety or security of a child in care including:

(a) [1.] A disqualifying criterion or background check result in accordance with 922 KAR 2:280[criminal conviction of, or an Alford plea or a plea of guilty to, a sex crime or violent crime in accordance with KRS 17.165;

2. A conviction for, or an Alford plea or a plea of guilty to, a drug-related felony, and (5) five years has not elapsed since the person was fully discharged from imprisonment, probation, or parole]; or

(b) [3.] Other behavior or condition indicating inability to provide reliable care to a child]; or

(c) Is placed on the Sex Offender Registry].

(2) An application for certification as a family child-care home provider shall be denied if the applicant or certificate holder:

(a) Fails to comply with the minimum certification standards specified in Sections 10 through 19 of this administrative regulation and KRS 199.8982;

(b) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(c) Refuses, during the hours of operation, access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

  - a. A child in care; or
  - b. The provider's premises; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;

(d) Is placed on a directed plan of correction[intermediate sanction] more than two (2) times in a three (3) year period; or

(e) Has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or
2. Another governmental assistance program due to fraud,~~[or]~~ abuse, or criminal conviction related to~~[of]~~ that program.

(3) Effect of previous denial or revocation.

(a) If an applicant has had a previous child care registration, certification, license, or permit to operate subject to denial, suspension, revocation, or voluntary relinquishment pending an investigation or adverse action, the cabinet shall grant the applicant a certificate to operate a family child-care home if:

1. A seven (7) year period has expired from the:

  - a. Date of the prior notice of denial, suspension, or revocation; or
  - b. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or a pending adverse action[;]
  - c. ~~Last day of legal remedies being exhausted; or~~
  - d. ~~Date of the Final Order from an administrative hearing~~; and

2. The applicant has:

  - a. The proven ability to comply with the provisions of this administrative regulation and KRS 199.8982;
  - b. Completed, since the time of the prior denial or revocation, sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice; and
  - c. Not had an application, registration, certificate, license, or permit to operate as a child care provider denied or revoked for:

    - (i) A disqualifying criterion or background check result in accordance with 922 KAR 2:280~~[Conviction of, or an Alford plea or a plea of guilty to, a sex crime or violent crime in accordance with KRS 17.165;~~
    - (ii) Abuse or neglect of a child according to a child abuse and neglect check of the central registry in accordance with 922 KAR 1:470;
    - (iii) Placement on the Sex Offender Registry;
    - (iv) Conviction of, or an Alford or guilty plea to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole; or
    - (v) Discontinuation or disqualification~~(v) Has been discontinued or disqualified~~ from participation in~~[; 4.]~~ the Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020,~~[;]~~ or~~[2.]~~ another governmental assistance program due to fraud,~~[or]~~ abuse, or criminal conviction related to~~[of]~~ that program.

(b) If a certificate is granted after the seven (7) year period specified in paragraph (a) of this subsection, the provider shall serve a two (2) year probationary period during which the home shall be inspected on at least a quarterly basis.

Section 6. Directed Plan of Correction (DPOC)~~[Intermediate Sanctions]~~. (1) If the cabinet determines that a certified family child-care home provider is in violation of this administrative regulation or 922 KAR 2:280~~[the cabinet may,]~~ based on the severity of the violation, the cabinet:

(a) ~~Shall~~~~Require the provider to participate in additional training;~~

(b) ~~Increase the frequency of monitoring by cabinet staff;~~

(c) ~~enter into an agreement with the provider directing~~~~[detailing]~~ the requirements for remedying a violation and achieving compliance; ~~[or]~~

(b) ~~Shall~~~~(e)]~~ notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC~~[an intermediate sanction]~~ has been imposed;

(c) Shall increase the frequency of monitoring by cabinet staff to verify the implementation of the DPOC;

(d) May require the certified family child-care home to participate in additional training; and

(e) May amend the agreement with the certified family child-care home if the cabinet identifies an additional violation during the DPOC period.

(2) A DPOC~~[An intermediate sanction]~~ shall result in a suspension or revocation of certification or shall be modified to impose additional requirements if a certified family child-care home provider:

(a) Fails to meet a condition of the DPOC~~[intermediate sanction];~~ or

(b) Violates a requirement of the DPOC~~[an intermediate sanction]~~.

Section 7. Suspension. The cabinet shall take emergency action in accordance with KRS 13B.125~~[, by issuing an emergency order that results in suspension of the operation of a certified family child-care home]~~. (1) An emergency order issued pursuant to this section shall:

(a) Be served to a certified family child-care home provider in accordance with KRS 13B.050(2); and

(b) Specify the regulatory violation that caused the emergency condition~~[to exist]~~.

(2) Upon receipt of an emergency order, a provider shall surrender the certificate of operation to the cabinet.

(3) The cabinet or its designee and the provider shall make reasonable efforts to:

(a) Notify a parent of each child in care of the suspended provider; and

(b) Refer a parent for assistance in locating alternate child care arrangements.

(4) A certified family child-care home required to comply with an emergency order issued in accordance with this section may submit a written request for an emergency hearing within twenty (20)~~[five (5)]~~ calendar days of receipt of the order to determine the propriety of the certification's suspension.

(5) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13A.125(3).

(6)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming or reversing~~[, modifying, or revoking]~~ the emergency order to suspend certification.

(b) The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(7) A provider's certification shall be revoked if the~~:~~

(a) ~~Provider does not request a hearing within the timeframes established in subsection (6) of this section;~~

(b) ~~The emergency order is upheld by the administrative hearing conducted in accordance with KRS Chapter 13B; or~~

(c) ~~The~~ condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

Section 8. Revocation.(1) A family child-care home provider's certification shall be revoked if a provider:

(a) Knowingly misrepresents or submits false information on the application or other form required by the cabinet or its designee;

(b) Interferes with a cabinet representative's ability to perform an official duty;

- (c) Refuses, during the hours of operation, access by:
  1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:
    - a. A child in care; or
    - b. The provider's premises; or
  2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records;
- (d) Is convicted of, or enters an Alford or guilty plea to, a criminal charge that threatens the health, safety, or welfare of a child in care;
- (e) Is unable to operate a family child-care home due to a medical condition;
- (f) ~~Does not~~Is unable to continue to meet the requirements of KRS 199.8982(1) or Sections 2, 3, and Sections 10 through 19 of this administrative regulation;
- (g) Is placed on a directed plan of correction~~intermediate sanction~~ more than two (2) times in a three (3) year period; or
- (h) Has been discontinued or disqualified from participation in:
  1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or
  2. Another governmental assistance program due to fraud, ~~or~~ abuse, or criminal conviction related to that program.
- (2)(a) If the cabinet determines that a condition of subsection (1) of this section exists, the cabinet or its designee shall send a written notice of its intention to revoke the certificate to the family child-care home~~revocation delivered~~ by personal service delivery or through certified mail at least thirty (30) calendar days prior to the effective date of the revocation.
- (b) Subsequent to the notice provided in accordance with paragraph (a) of this subsection, a family child-care home's failure to request an appeal pursuant to Section 9 of this administrative regulation shall result in the final determination revoking the home's certification.
- (3) The notice of revocation shall:
  - (a) Explain the reason for the revocation;
  - (b) Specify that the child care provider shall cease operation as a certified family child-care home upon revocation;
  - (c) Advise the family child-care home provider of the right to request an appeal on an OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal, prior to the effective date of the revocation;
  - (d) Specify that revocation shall be stayed if an appeal is requested; and
  - (e) Require the family child-care home provider to surrender the certificate of operation to cabinet staff when the revocation becomes effective.
- (4) If a provider's certification has been revoked, the cabinet or its designee and the provider shall make reasonable efforts to:
  - (a) Notify a parent of each child in care; and
  - (b) Refer the parent for assistance in locating alternate child care arrangements.

Section 9. Appeal of Denials,~~Intermediate Sanctions,~~ Suspension, and Revocation. (1) If the cabinet denies certification,~~imposes an intermediate sanction,~~ suspends certification, or revokes certification, the family child-care home provider may request an appeal by completing an OIG-DRCC-05 within twenty (20) calendar days of receipt of the notice of adverse action.

(2) Upon request of the appeal, the provider shall be afforded a hearing in accordance with KRS Chapter 13B.

(3) If a final order from an administrative hearing does not uphold a suspension, the provider may resume providing child care.

Section 10. Standards for the Provider. (1)(a) A provider shall complete annually at least nine (9) hours of cabinet-approved early care and education training beginning with the second year of operation, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.8982(2):

1. Within the second year of employment or operation in child care; and

2. Every subsequent five (5) years of employment or operation in child care.

(b) A provider or assistant's compliance with the training in accordance with paragraph (a) of this subsection or subsection ~~(8)~~~~(9)~~ of this section ~~shall~~may be verified through the cabinet-designed database maintained pursuant to 922 KAR 2:240.

(2) A provider shall not provide care for more unrelated children than the number authorized on the certificate of operation.

(3) ~~A provider shall have an assistant present if the~~a provider cares for more than:

- (a) Four (4) infants, including the provider's own or related infants; or

~~(b) the provider shall have an assistant present.~~ (4) ~~A provider shall not care for more than~~ Six (6) children under the age of six (6) years old, including the provider's own or related children.

~~(4)~~~~(5)~~ The maximum number of unrelated children in the care of a certified family child-care home provider shall not exceed six (6) at any one (1) time. A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10) at any one (1) time.

~~(5)~~~~(6)~~ If a provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:

- (a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours during a twenty-four (24) hour period; and

(b) Employ an assistant during the period of respite.

~~(6)~~~~(7)~~ Prior to being left alone with a child, an assistant shall be certified by a cabinet-approved agency in infant and child:

- (a) CPR; and
- (b) First aid.

~~(7)~~~~(8)~~ An assistant shall be:

- (a) Eighteen (18) years of age or older;
- (b) Under ~~direct~~ supervision of a provider;
- (c) Used for providing care in a certified family child-care home; and

(d) Used in the absence of the certified provider.

~~(8)~~~~(9)~~ An assistant used ~~in the absence of the family child-care home provider~~ in excess of fourteen (14) calendar days during a one (1) year period shall demonstrate completion of at least nine (9) hours of cabinet-approved training, including:

(a) Six (6) hours of cabinet-approved training in accordance with KRS 199.8982(1)(a)6; and

(b) Pediatric abusive head trauma training pursuant to KRS 199.8982(2), in accordance with subsection (1) of this section.

~~(9)~~~~(10)~~ If a provider, an assistant, or a member in a provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

- (a) For the duration of the ~~family-in-need-of-services assessment or~~ investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

~~(10)~~~~(11)~~ During hours of operation, a provider and another person in the home shall:

- (a) Be free of the influence of alcohol or a controlled substance except for use of a controlled substance as prescribed by a physician; and

(b) Prohibit smoking or vaping in the presence of children in care.

~~(11)~~~~(12)~~ During a provider's absence, an assistant shall be physically present with a child in care~~at the home~~ during hours of operation.

~~(12)~~~~(13)~~ A provider shall:

- (a) Not be employed outside of the home during regular hours of operation; and

(b) Maintain daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the provider through the Child Care Assistance Program.

Section 11. The General Requirements of the Family Child-Care Home Environment. (1) A provider's home and each play area used for child care shall:

- (a) Be free from risk of harm in accordance with the requirements of this administrative regulation; and
- (b) Have adequate:
  - 1. Heating and cooling;
  - 2. Light; and
  - 3. Ventilation.

(2) Each floor level used for child care shall have at least one (1):

- (a) Unblocked exit to the outside;
- (b) Smoke detector;
- (c) Fire extinguisher; and
- (d) Carbon monoxide detector if the home:
  - 1. Uses fuel burning appliances; or
  - 2. Has an attached garage.

~~(3) [A new applicant or a provider who changes location shall have at least two (2) unblocked exits to the outside on each floor level used for child care.]~~

(4) The areas of the home that are accessible to children in care shall be free from items harmful to children including the following items:

- (a) Cleaning supplies, poisons, paints, and insecticides;
- (b) Knives, scissors, and sharp objects;
- (c) Power tools, lawn mowers, hand tools, nails, and other equipment;
- (d) Matches, cigarettes, lighters, combustibles, and flammable liquids;

- ~~(e) [Alcoholic beverages;~~
- ~~(f) [Plastic bags; and~~
- ~~(g) [Litter and rubbish.~~

(4) Alcohol shall:

(a) Not be consumed by any person on the certified family child-care home's premises during hours of operation; and

(b) Be kept out of reach and sight of a child in care.

(5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored away from the presence of children, in separate locked containers, which, in order to be opened, require a:

- (a) Key; or
- (b) Combination.
- (6) Electrical outlets not in use shall be covered.

(7) An electric fan, floor furnace, or freestanding heater or fireplace shall:

- (a) Be out of the reach of a child; or
- (b) Have a safety guard to protect a child from injury.
- (8) A certified family child-care home shall have:

(a) At least one (1) accessible and working ~~land-line~~ telephone on each level used for child care while a child in care is present on that level ~~[unless the cabinet has been notified that the telephone is temporarily out of service]; and~~

(b) A list of emergency numbers posted on each level used for child care or maintained in the contacts of ~~by~~ each telephone, including numbers for the:

- 1. Police;
- 2. Fire station;
- 3. Emergency medical care and rescue squad; and
- 4. Poison control center.

(9) Equipment and toys shall be:

(a) Designated by the manufacturer as developmentally appropriate to the age of children in care;

- (b) In sufficient quantity for the number of children in care; and
- (c) Safe, sound, clean, and in good repair.

(10) Stairs and steps used for children in care shall be:

- (a) Solid;
- (b) Safe; and
- (c) Railed.

(11) If an infant or toddler is in the care of a provider, indoor stairs with more than two (2) steps shall be blocked.

(12) Exclusive of the bathroom and storage area, an indoor area, including furnishings, used for child care shall contain at least thirty-five (35) square feet per child for:

- (a) Play; and
- (b) Activities that meet the developmental needs of the children in care.

(13) An outdoor play area shall be free of unavoidable danger or risk.

(14) Each child in an outdoor play area shall be under the direct supervision of the provider or assistant.

(15) Outdoor stationary play equipment shall be:

- (a) Securely anchored;
- (b) Developmentally appropriate; and
- (c) Safe.

(16) A trampoline shall not be accessible to a child in the care of a provider.

(17) A swimming pool on the premises shall:

- (a) Be maintained and free of debris and body waste;
- (b) Have a water filtering system or be emptied daily;
- (c) Be supervised when in use; and

(d) Be inaccessible to a child ~~[children]~~ when not in use.

(18) An above-ground pool shall have:

- (a) A stationary wall no less than four (4) feet tall; and
- (b) Hand holds or foot holds that are inaccessible when the pool is not in use.

(19) A fire drill shall be:

- (a) Conducted during hours of operation at least monthly; and
- (b) Documented.

(20) An earthquake drill and a tornado drill shall be:

- (a) Conducted during hours of operation at least quarterly; and
- (b) Documented.

(21) A family child-care home shall:

- (a) Be clean;
- (b) Be uncluttered;
- (c) Be free of insects and rodents;
- (d) Have a water supply that is:

- 1. Potable;
- 2. Adequate; and
- 3. From an approved public water supply; and

(e) Have bathrooms, including toilets, sinks, and potty chairs that are:

- 1. Sanitary; and
- 2. In good working condition.

(22) Windows, doors, and outer openings shall be screened to prevent the entrance of vermin.

(23) Indoor and outdoor garbage shall be stored in a waterproof container with a tight-fitting cover.

(24) Playpens and play yards shall:

(a) Meet the federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;

(b) Be manufactured for commercial use; and

(c) Not be used for sleeping or napping.

Section 12. Care Requirements for a Provider. (1) A provider shall ensure the health, safety, and comfort of each child.

(2)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(3) Television or video viewing by a child shall be limited to:

- (a) Two (2) hours daily;
- (b) The planned program activities; and

(c) Developmentally appropriate child-related content, as designated by standardized content guidelines.

(4) A child shall:

(a) Wash hands with liquid soap and warm running water:

1. ~~(a)~~ Before and after eating or handling food;

2. ~~(b)~~ After toileting or diaper change;

3. ~~(c)~~ After handling animals;

4. ~~(d)~~ After wiping or blowing nose;

~~(e)~~ After touching an item or an area of the body ~~[items]~~ soiled with body fluids or waste; and

5. ~~(f)~~ After outdoor and indoor play time; or

(b) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with

paragraph (a) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.

(5) A provider and an assistant shall:

(a) Wash hands with liquid soap and warm running water:

1. Before and after diapering a child;
2. Before and after feeding a child;
3. After toileting or assisting a child with toileting;
4. After handling animals;
5. Before dispensing medication;
6. After caring for a sick child; ~~and~~
7. After wiping or blowing a child's or own nose; and
8. After smoking or vaping; or

(b) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (a) of this subsection. The provider or assistant shall wash the provider or assistant's hands as soon as practicable once liquid soap and warm running water are available.

(6) A provider shall assure that a child does not share:

- (a) [1-] Cups;
- (b) [2-] Eating utensils;
- (c) [3-] Wash cloths;
- (d) [4-] Towels; and
- (e) [5-] Toiletry items.

(7) [(6)] An infant shall sleep and nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(8) [(7)] Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(9) [(8)] Rest time shall include adequate space specified by the child's age as follows:

(a) For an infant:

1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;
2. A firm crib mattress in good repair with a clean tight-fitted sheet that is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet;
3. No loose bedding, such as a bumper or a blanket; and
4. No toys or other items except for the infant's pacifier; or

(b) For a toddler or preschool-age child:

1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and

2. Bedding that is in good repair and is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet.

(10) [(9)] Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending nontraditional hours or is sick.

(11) [(10)] A child who does not sleep shall be permitted to play quietly and be visually supervised.

(12) [(11)] If overnight care is provided, a provider or an assistant shall:

- (a) Remain awake until every child in care is asleep; and
- (b) Sleep on the same floor level of the home as an infant or toddler.

(13) [(12)] A certified family child care home shall provide a daily planned program:

(a) That is available to a parent of a child in care or the cabinet upon request [Posted in writing in a conspicuous location];

(b) Of activities that are ~~individualized and~~ developmentally appropriate for each child served;

(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) That offers a variety of creative activities, such as [including]:

1. Art or music;
2. Math or numbers [Music];
3. Dramatic play;
4. Stories and books;
5. Science or nature;
6. Block building or stacking;

7. Tactile or sensory activity;

8. Multi-cultural exposure [Culture];

9. Indoor or outdoor play in which a child makes use of both small and large muscles;

10. A balance of active and quiet play, including group and individual activity; and

11. An opportunity for a child to:

- a. Have some free choice of activities;
- b. If desired, play apart from the group at times; and
- c. Practice developmentally appropriate self-help procedures in respect to:

- (i) Clothing;
- (ii) Toileting;
- (iii) Hand-washing; and
- (iv) Eating.

(14) [(13)] Except for a school-aged child whose parent has given written permission and whose whereabouts are known, a child shall not be permitted off the premises of a family child-care home without a caregiver.

(15) [(14)] Use of corporal physical discipline shall be prohibited pursuant to KRS 199.896(18).

(16) [(15)] A child shall be released from a family child-care home to:

- (a) The child's custodial parent;
- (b) The person designated in writing by the parent to receive the child; or
- (c) In an emergency, a person designated over the telephone by the parent.

Section 13. Toilet and Diapering Requirements. (1) A toilet room shall:

- (a) Have an adequate supply of toilet paper; and
- (b) Be cleaned and sanitized daily.

(2) A sink shall be:

(a) Located near or in close proximity ~~or immediately adjacent~~ to toilets;

(b) Equipped with hot and cold running water that allows for hand washing;

(c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;

(d) Equipped with liquid soap and single use, disposable hand drying material;

(e) Equipped with an easily cleanable, covered waste receptacle; and

(f) Near or in close proximity ~~Immediately adjacent~~ to a changing area used for infants and toddlers.

(3) Each toilet shall:

- (a) Be kept in clean condition;
- (b) Be kept in good repair;
- (c) Be in a lighted room; and
- (d) Have ventilation.

(4) Toilet training shall be coordinated with the child's parent.

(5) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(6) If a toilet training chair is used, the chair shall be:

- (a) Emptied promptly; and
- (b) Sanitized after each use.

(7) Diapers or clothing shall be:

- (a) Changed when soiled or wet;
- (b) Stored in a covered leak proof container temporarily; and
- (c) Washed or disposed of at least once a day.

(8) The proper methods of diapering and hand-washing shall be available ~~posted~~ at each diaper changing area.

(9) If a child is being diapered, the child shall:

- (a) Not be left unattended; and
- (b) Be placed on a surface that is:
  1. Clean;
  2. Padded;
  3. Free of holes, rips, tears, or other damage;
  4. Nonabsorbent;
  5. Easily cleaned; and
  6. Free of items not used for diaper changing.



(10) Unless another cleaning method is authorized by the child's parent or prescribed by a physician, individual disposable washcloths shall be used to thoroughly clean the affected area of ~~a[the]~~ child.

(11) A provider or an assistant shall disinfect the diapering surface after each child is diapered.

(12) If a provider or an assistant wear disposable gloves, the gloves shall be changed and disposed of after each child is diapered.

Section 14. Food Requirements. (1) A provider and an assistant shall:

- (a) Use sanitary procedures when preparing and serving food;
- (b) Refrigerate perishable food and beverages; and
- (c) Serve:

1. Breast milk or iron-fortified formula to a child;

a. Age birth to twelve (12) months; or

b. Beyond twelve (12) months of age as documented by the parent or the child's physician;

2. Pasteurized whole milk to a child age twelve (12) months to twenty-four (24) months; or

3. Pasteurized skim or low fat one (1) percent milk to a child age twenty-four (24) months to school-age.

(2) Water shall be:

(a) Available to a child in care; and

(b) Served in addition to meal requirements if a child requests throughout the day.

(3) A certified family child-care home shall offer each child the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.

(4) Second servings shall be available to a child.

(5) Food shall not be:

(a) Used for:

1. Reward; or

2. ~~Discipline[Punishment]~~; or

(b) Withheld until all other food items are consumed.

(6) Meals shall:

(a) Be served in an amount appropriate to the age of the child;

(b) Include appropriate types of food according to the age of the child;~~and]~~

(c) Not be served during television or video viewing;

(d) Be served every two (2) to three (3) hours; and

(e) Be served to a child;

1. Seated with sufficient room to manage food and tableware; and

2. Supplied with individual eating utensils designed for use by a child.

(7) Breakfast shall include:

(a) Milk;

(b) A whole grain or an enriched grain bread; and

(c) Fruit, vegetable, or 100 percent juice.

(8) A snack shall include two (2) of the following:

(a) Milk;

(b) Protein source;

(c) Fruit, vegetable, or 100 percent juice; or

(d) A whole grain or an enriched grain bread.

(9) Lunch and dinner shall include:

(a) Milk;

(b) Protein source;

(c) 1. Two (2) vegetables;

2. Two (2) fruits; or

3. One (1) fruit and one (1) vegetable; and

(d) A whole grain or an enriched grain bread.

(10) A weekly menu shall be:

(a) Prepared;

(b) Dated;

(c) Available to a parent of a child in care or the cabinet upon request[Posted in a conspicuous place]; and

(d) Kept on file for thirty (30) calendar days.

(11) Substitutions to a ~~posted~~ weekly menu shall be noted on the day the meal is served.

(12) Unless provided as part of the fee for child care or the

provider is a participant in the food program, an infant's formula shall be prepared, labeled, and provided by the parent.

(13) Each child's bottle shall be:

(a) Labeled;

(b) Covered; and

(c) Refrigerated.

(14) The refrigerator shall:

(a) Be in working order; and

(b) Maintain a product temperature at or below forty-five (45) degrees Fahrenheit.

(15) Except if thawed for preparation or use, frozen food shall be kept at a temperature of zero degrees Fahrenheit as verified by a thermometer in the freezer.

(16) While bottle-feeding an infant, the:

(a) Child shall be held; and

(b) Bottle shall not be:

1. Propped;

2. Left in the mouth of a sleeping infant; or

3. Heated in a microwave.

(17) A certified family child-care home shall meet requirements of subsections (1)(c) and (7) through (9) of this section if the provider participates in the Child and Adult Food Care Program and meets meal requirements specified in 7 C.F.R. 226.20.

Section 15. Medication and First Aid. (1) Medication, including medicine that requires refrigeration, shall be stored in a locked container or area with a lock unless the medication is:

(a) A first aid supply. A first aid supply shall be maintained in accordance with subsection (4) of this section;

(b) Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child in care;

(c) An epinephrine auto-injector. In accordance with KRS 199.8951:

1. An epinephrine auto-injector shall be inaccessible to a child in care;

2. A certified family child-care home provider shall have training on the administration of an epinephrine auto-injector if the provider maintains an epinephrine auto-injector for a child;

3. A certified family child-care home shall seek emergency medical care for a child if an auto-injector is administered to a child; and

4. A certified family child-care home shall report to the child's parent and the cabinet in accordance with subsection (6) of this section and Section 19(10) of this administrative regulation if an epinephrine auto-injector is administered to a child; or

(d) An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care.

(2) Prescription and nonprescription medication shall be administered to a child in care:

(a) With a[daily] written request of the child's parent or the child's prescribing health professional; or

(b) In accordance with KRS 311.646.

(3) Prescription and nonprescription medications shall be:

(a) Labeled; and

(b) Administered according to directions or instructions on the label.

(4) A provider shall:

(a) Maintain first aid supplies that are easily accessible for use in an emergency, and these supplies shall be inaccessible to the children in care; and

(b) Wash superficial wounds with soap and water before bandaging.

(5) First aid supplies shall include a fully-equipped first aid kit containing the following non-expired items:

~~(a)[Liquid soap;~~

~~(b)[Adhesive bandages;~~

~~(c)[(e)] Sterile gauze;~~

~~(d)[(f)] Medical tape;~~

~~(e)[(g)] Scissors;~~

~~(f)[(h)] Thermometer;~~

~~(g)[(i)] Flashlight;~~

- (h) Cold pack;
- (i) First-aid book;
- (j) Disposable gloves; and
- (g)[(k)] CPR mouthpiece.

(6) A provider shall provide immediate notification of a medical emergency to a child's:

- (a) Parent; or
- (b) Emergency contact[Family physician], if the parent is unavailable.

(7) A quiet, separate area that is easily supervised shall be provided for a child too sick to remain with other children.

(8) A provider and an assistant shall:

- (a) Be able to recognize symptoms of childhood illnesses;
- (b) Be able to provide basic first aid; and
- (c) Maintain a child care program that assures affirmative steps are taken to protect children from abuse or neglect pursuant to KRS 600.020(1).

Section 16. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

- 1. The animal is under the supervision and control of an adult;
- 2. Written parental consent has been obtained; and
- 3. The animal is certified as vaccinated against rabies; or
- (b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a certified family child-care home unless the animal is:

- (a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and
- (b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

Section 17. Transportation. (1) If transportation is provided or arranged by the certified family child-care home provider, the provider shall:

- (a) Have written permission from a parent to transport his or her child;
- (b) Have a car or van equipped with seat belts;
- (c) Require that a child:
  - 1. Be restrained in an appropriate safety seat meeting state and federal motor vehicle safety standards in accordance with KRS 189.125 and 49 C.F.R. 571.213;
  - 2. Remain seated while the vehicle is in motion; and
  - 3. If under thirteen (13) years of age, be transported in the back seat;

(d)[Have a valid driver's license issued by the Division of Motor Vehicles;

(e)] Have emergency and identification information about each child in the vehicle if children are being transported; and

(e)[(f)] Conform to state laws pertaining to vehicles, driver's license, and insurance pursuant to KRS 186.020.

(2) A child shall not be left unattended:

- (a) At the site of aftercare delivery; or
- (b) In a vehicle.

(3) A child shall not be left in a vehicle while it is being repaired.

(4) The back of a pickup truck shall not be used to transport a child.

(5) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.

(6) A vehicle shall not transport children and hazardous materials at the same time.

(7) A vehicle transporting a child shall have the headlamps on.

(8) If the driver is not in the driver's seat, the:

- (a) Engine shall be turned off;
- (b) Keys shall be removed; and
- (c) Emergency brake shall be set.

(9) A driver of a vehicle transporting a child for a certified provider shall:

- (a) Be at least twenty-one (21) years old;
- (b) Complete:

1. The background checks described in Section 2(2)(c)5 or 2(5) of this administrative regulation; and

2. An annual check of the:

a. Kentucky driver history records in accordance with KRS 186.018; or

b. Driver history records through the state transportation agency that issued the driver's license;

(c) Hold a current driver's license that has not been suspended or revoked during the last five (5) years; and

(d) Not caused an accident which resulted in the death of a person.

(10) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall pursue an adverse action in accordance with Section 5, 6, 7, or 8 of this administrative regulation:

(a) For a violation of this section; or

(b) If the provider:

1. Fails to report an accident in accordance with Section 19(10)(a) of this administrative regulation; or

2. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

Section 18. Records. (1) A provider shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the family child-care home; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable the provider to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

(i) Allergies;

(ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the family child-care home;

e. The name and phone number of each person to be contacted in an emergency situation involving or impacting the child;

f. Authorization by the parent for the provider to seek emergency medical care for the child in the parent's absence; and

g. A permission form for each trip away from the family child-care home signed by the child's parent in accordance with Section 17(1) of this administrative regulation; and

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the provider through the Child Care Assistance Program.

(2) A certified family child-care home provider shall maintain the confidentiality of a child's records.

(3) The cabinet shall provide, upon request, public information pursuant to KRS 199.8982(1)(d) and (e).

(4) A certified family child-care home provider shall:

(a) Report an incident of suspected child abuse or neglect pursuant to KRS 620.030(1); and

(b) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030(4).

(5) A certified family child-care home provider shall maintain a written record of:

(a) Quarterly practiced earthquake drills and tornado drills detailing the date, time, and participants in accordance with Section 11(20) of this administrative regulation;

(b) Monthly practiced fire drills detailing the date, time, and participants in accordance with Section 11(19) of this administrative regulation; and

(c) Reports to the cabinet that are required in accordance with Section 19(10) of this administrative regulation.

(6) A certified family child-care home provider shall keep all records for five (5) years.

(7)(a) A certified family child-care home provider shall have a written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care in accordance with KRS 199.895.

(b) The cabinet shall post an online template of an evacuation plan that:

1. Fulfills requirements of KRS 199.895;

2. Is optional for an applicant or a family child-care home's use; and

3. Is available to an applicant or a family child-care home without charge.

Section 19. Certified Family Child-Care Home Program. The certified family child-care home provider shall:

(1) Develop written information that specifies the:

(a) Rate for child care;

(b) Expected frequency of payment for the program;

(c) Hours of operation; and

(d) Policy regarding:

1. Late fees;

2. Holidays;

3. Vacation;

4. Illness; and

5. Emergency pick up;

(2) Make available a copy of the certification standards to each parent;

(3) Provide each parent with the name, address, and telephone number of the cabinet for the purpose of registering a complaint if the parent believes the family child-care home provider is not meeting the standards;

(4) Post and provide to each parent a copy of children and parent rights, as required by KRS 199.898;

(5) Allow a parent, the cabinet, the cabinet's designee, or another agency with regulatory authority access to the family child-care home at any time a child is in care;

(6) Communicate with each child's parent about the child's:

(a) Development;

(b) Activities;

(c) Likes; and

(d) Dislikes;

(7) Make available to a parent upon request~~(Post in a prominent area in the home):~~

(a) The staff to child ratios described in Section 10 of this administrative regulation;

(b) The planned program of activities;

(c) Each statement of deficiency issued by the cabinet during the current certification period;

(d) Each plan of correction submitted by the certified family child-care home to the cabinet during the current certification period; and

(e) Daily schedule including any trips outside the family child-care home;

(8) Coordinate at least one (1) annual activity involving parental or family participation;

(9) Maintain a written child care agreement with each child's parent, including the name of each person designated by the parent to pick up the child; and

(10) Report:

(a) The following to the cabinet within twenty-four (24) hours from the time of discovery:

1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

2. An accident or injury to a child that requires medical care;

3. An incident that results in legal action by or against the family child-care home that:

a. Affects:

(i) A child in care;

(ii) The provider;

(iii) An assistant; or

(iv) A member of the provider's household; or

b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud, ~~or~~ abuse, or criminal conviction related to~~or~~ that program;

4. An incident involving fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services; or

5. A report of child abuse or neglect that:

a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

b. Names the alleged perpetrator as the:

(i) Provider;

(ii) Provider's assistant; or

(ii) Member of the provider's household;

(b) The death of a child to the cabinet within one (1) hour; ~~or~~

(c) Temporary or permanent closure as soon as practicable to the cabinet and the parent of a child in the family child-care home; or

(d) A child care staff member meeting a disqualifying criterion or background check result in accordance with 922 KAR 2:280.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ~~["DCC-157, Certified Family Child-Care Home Central Registry Check", edition 4/13;~~

~~(b)] "OIG-DRCC-03, Initial Certification Application for Family Child-Care Home", 2018[edition 7/13]; and]~~

(b) "OIG-DRCC-04, Certified Family Child-Care Home Renewal Form", 2018; and

(c) "OIG-DRCC-05, Certified Family Child-Care Home Request for Appeal", 2018[edition 8/3/12].

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

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 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-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov); and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for a certified family child-care home.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for certified family child-care homes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of standards for certification as a family child-care home.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a certified family child-care home.

(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 clarifies numerous provisions and eliminates others due to public comments received and agency reviews conducted as a result of the Red Tape Reduction initiative, including feeding and meal requirements and access to hygiene products. In addition, the administrative regulation assures more consistent terminology use, clarifies due process for emergency suspensions and correction action, replaces intermediate sanctions with directed plans of correction, updates and clarifies renewal requirements, aligns the administrative regulation with the Child Care and Development Fund's 2014 federal reauthorization and other concurrent regulatory changes, requires hand-washing by staff after smoking or vaping, and incorporates epi-pen allowances authorized by 2016 Ky. Acts ch. 122. Lastly, the amendment also makes technical corrections in accordance with KRS Chapter 13A, including conforming corrections to incorporated material and notice requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to better support the health, safety, and welfare of children in care; reduce "red tape" for providers; incorporate statutory requirements and changes that have occurred since the administrative regulation's last amendment; and ensure congruency among the administrative regulations governing certified family child-care homes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by clarifying and enhancing minimum requirements to foster provider integrity and to protect the health, safety, and welfare of children cared for by certified family child-care home providers.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of certified family child-care home standards in a manner congruent with recognized practice and other provider types' standards, and supportive of integrity in the child care community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for a certified family child-care home or an existing provider will be impacted by this administrative regulation. As of last November 22, 2017, there were 263 certified family child-care homes operating in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: Given the new federally mandated background check requirements applicable to certified family child-care homes, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation and be responsive to the recently enacted legislation and the Red Tape Reduction comments and agency reviews.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified family child-care homes and children in their care will benefit from the clarity and specificity provided in this administrative regulation and new permissions afforded.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

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

## FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858g

(2) State compliance standards. KRS 194A.050(1), 199.8982(1)(f)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 194A.050(1), 199.8982(1)(f), 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858g

(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 generate no 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 amendment to this administrative regulation will generate no revenue in the 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 in the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Community Based Services  
Division of Child Care  
(Amendment)**

**922 KAR 2:120. Child-care center health and safety standards.**

RELATES TO: KRS Chapter 151, 158.030, Chapter 186, 189.125, 199.011(3), 199.894(1), 199.896(2), (18), (19), 199.898, 211.350-211.380, Chapter 217, 227.220, 311.646, Chapter 318, 314.011(5), 527.070(1), 620.030, 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858g

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)

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 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. This administrative regulation establishes health and safety standards for child-care centers.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(2) "Corporal physical discipline" is defined by KRS 199.896(18).

(3) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(4) "Director" means an individual:

(a) Who meets the education and training requirements as specified in 922 KAR 2:090[2:110], Section 10[4];

(b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:280[922 KAR 2:110], and this administrative regulation; and

(c) Who is responsible for directing the program and managing the staff at the child-care center.

(5) "Health professional" means a person currently licensed as

a:

(a) Physician;

(b) Physician[Physician's] assistant;

(c) Advanced practice registered nurse[practitioner]; or

(d) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(6) "Infant" means a child who is less than twelve (12) months of age.

(7) "Licensee" means the owner or[and] operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education;

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(8) "Nontraditional hours" means the hours of:

(a) 7 p.m. through 5 a.m. Monday through Friday; or

(b) 7 p.m. on Friday until 5 a.m. on Monday.

(9) "Parent" is defined in 45 C.F.R. 98.2.

(10) "Premises" means the building and contiguous property in which child care is licensed.

(11) "Preschool-age" means a child who is older than a toddler and younger than school-age.

(12) "Protective surface" means loose surfacing material not installed over concrete, which includes the following:

(a) Wood mulch;

(b) Double shredded bark mulch;

(c) Uniform wood chips;

(d) Fine sand;

(e) Coarse sand;

(f) Pea gravel, except for areas used by children under three

(3) years of age;

(g) Certified shock absorbing resilient material; or

(h) Other material approved by the cabinet or designee.

(13) "Related" means having one (1) of the following relationships with the operator of the child-care center:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Stepchild; or

(g) Child in legal custody of the operator.

(14) "School-age child" means a child who meets the age requirements of KRS 158.030 or who attends[attending] kindergarten, elementary, or secondary education.

(15) "Toddler" means a child between the age of twelve (12) months and thirty-six (36)[~~twenty-four (24)~~] months.

(16) "Transition" means the changing from one (1) child care arrangement to another.

(17) "Transition plan" means a document outlining the process to be used in moving a child from one (1) child care arrangement to another.

(18) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(19) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Child Care Services. (1) Services described in this administrative regulation shall be maintained during all hours of operation that child care is provided.

# VOLUME 44, NUMBER 9 – MARCH 1, 2018

(2) Minimum staff-to-child ratios and group size for an operating child-care center shall be maintained as follows:

| Age of Children   | Ratio   | Maximum Group Size* |
|---|---|---------------------|
| Infant  | 1 staff for 5 children                                | 10                  |
| Toddler <u>12 to 24 months</u>                              | 1 staff for 6 children                                | 12                  |
| Toddler <u>24 to 36 months</u> [Preschool-age 2 to 3 years] | 1 staff for 10 children                               | 20                  |
| Preschool-age 3 to 4 years                                  | 1 staff for 12 children                               | 24                  |
| Preschool-age 4 to 5 years                                  | 1 staff for 14 children                               | 28                  |
| School-age 5 to 7 years                                     | 1 staff for 15 children                               | 30                  |
| School-age 7 and older                                      | 1 staff for 25 children (for before and after school) | 30                  |
|   | 1 staff for 20 children (full day of care)            | 30                  |

\*Maximum Group Size shall be applicable only to Type I child-care centers.

(a) In a Type I child-care center, a group size shall:

1. Be separately maintained in a defined area unique to the group; and
2. Have specific staff assigned to, and responsible for, the group.

(b) The age of the youngest child in the group shall determine the:

1. Staff-to-child ratio; and
2. Maximum group size.

(c) This subsection and subsection (9) of this section shall not apply during normal school hours to a center:

1. Providing early childhood education to mixed-age groups of children whose ages range from two and one-half (2 1/2) years to six (6) years; and
2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.

(d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.

(3)(a) Each center shall maintain a child-care program that assures each child will be:

1. Provided with adequate supervision at all times by a qualified staff person who ensures the child is:
  - a. Within scope of vision and range of voice; or
  - b. For a school-age child, within scope of vision or range of voice; and
2. Protected from abuse or neglect.

(b) The program shall include:

1. A procedure to ensure compliance with and inform child care staff of the laws of the Commonwealth pertaining to child abuse or neglect set forth in KRS 620.030; and
2. Written policy that specifies that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.

(4) The child-care center shall provide a daily planned program:

- (a) Posted in writing in a conspicuous location with each age group and followed;
- (b) Of activities that are individualized and developmentally appropriate for each child served;
- (c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) Unless the child-care center is a before- or after-school program that operates part day or less, that offers a variety of creative activities including the following:

1. Art or music;
2. Math or numbers[Musie];
3. Dramatic play;

4. Stories and books;

5. Science or nature;

6. Block building or stacking;

7. Tactile or sensory activity;

8. Multi-cultural exposure[Culture];

9. Indoor or outdoor play in which a child makes use of both small and large muscles;

10. A balance of active and quiet play, including group and individual activity;

11. An opportunity for a child to:

- a. Have some free choice of activities;
- b. If desired, play apart from the group at times; and
- c. Practice developmentally appropriate self-help procedures in

respect to:

- (i) Clothing;
- (ii) Toileting;
- (iii) Hand-washing; and
- (iv) Eating; and

12. Use of electronic viewing and listening devices if the:

- a. Material is appropriate to the child using the equipment;
- b. Material does not include any violence, adult content viewing, or inappropriate language;

c. Viewing or individual listening is limited to two (2) hours per day;

d. Viewing or listening is discussed with parents prior to viewing or listening; and

e. Viewing or listening is designed as an educational tool.

(5) A child who does not wish to use the electronic devices during the planned program shall be offered other appropriate activities.

(6) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.

(7) Sufficient time shall be allowed for an activity so that a child may progress at their own developmental rate.

(8) A child shall not be required to stand or sit for a prolonged period of time:

- (a) During an activity;
- (b) While waiting for an activity to start; or
- (c) As discipline[punishment].

(9) If school-age care is provided:

(a) A separate area or room shall be provided in a Type I child-care center; and

(b) Each child shall be provided a snack after school.

(10) A child shall not be subjected to:

- (a) Corporal physical discipline pursuant to KRS 199.896(18);
- (b) Loud, profane, threatening, frightening, humiliating, or abusive language; or
- (c) Discipline that is associated with:
  1. Rest;
  2. Toileting; or
  3. Food.

(11) If nontraditional hours of care are provided:

(a) Including time spent in school, a child shall not be permitted to spend more than sixteen (16) hours in the child-care center during one (1) twenty-four (24) hour period;

(b) At least one (1) staff member shall be assigned responsibility for each sleeping room;

(c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity that is developmentally appropriate for the child;

(d) A child sleeping three (3) hours or more shall sleep in:

1. Pajamas; or
2. A nightgown;

(e) If a child attends school from the child-care center, the child shall be offered breakfast; and

(f) Staff shall:

1. If employed by a Type I child-care center, remain awake while on duty; or
2. If employed by or is the operator of a Type II child-care center, remain awake until every child in care is asleep.

(12)(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health

professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 3. General Requirements. (1) Electronic viewing and listening devices shall only be used in the center as a part of the child's planned program of activity described in Section 2(4) of this administrative regulation.

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity can be given adequate supervision by staff.

(3) Computer equipment shall be equipped with a monitoring device which limits access by a child to items inappropriate for a child to view or hear.

(4) A child shall:

(a) Be helped with personal care and cleanliness based upon their developmental skills; ~~and~~

(b) Wash his or her hands with liquid soap and warm running water:

1. a. Upon arrival at the center; or
- b. Within thirty (30) minutes of arrival for school-age children;
2. Before and after eating or handling food;
3. After toileting or diaper change;
4. After handling animals;
5. ~~After wiping or blowing nose;~~

6. ~~After touching an item or an area of the body[items] soiled with body fluids or wastes; and~~

7. ~~After outdoor or indoor play time; and~~

(c) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (b) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.

(5) Staff shall:

- (a) Maintain personal cleanliness;
- (b) Conform to hygienic practices while on duty; ~~and~~
- (c) Wash their hands with liquid soap and running water:

1. Upon arrival at the center;
2. After toileting or assisting a child in toileting;
3. Before and after diapering each child;
4. After wiping or blowing a child's or own nose;
5. After handling animals;
6. After caring for a sick child;
7. Before and after feeding a child or eating;
8. Before dispensing medication; ~~and~~
9. After smoking or vaping; and
10. If possible, before administering first aid; and

(d) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (c) of this subsection. The staff shall wash the staff's hands as soon as practicable once liquid soap and warm running water are available.

(6) A staff person suspected of being infected with a communicable disease shall:

(a) Not perform duties that may allow for the transmission of the disease until the infectious condition can no longer be transmitted; and

(b) Provide a statement from a health professional, if requested.

~~(7) [Except in accordance with subsection (8) of this section,]~~

The following shall be inaccessible to a child in care:

- (a) Toxic cleaning supplies, poisons, and insecticides;
- (b) ~~[Knives and sharp objects;~~
- ~~(c)] Matches, cigarettes, lighters, and flammable liquids; and~~
- ~~(d)] Plastic bags;~~
- ~~(e)] Litter and rubbish;~~
- ~~(f)] Bar soap; and~~
- ~~(g)] Personal belongings and medications of staff.~~

(8) The following shall be inaccessible to a child in care unless under direct supervision and part of planned program of instruction:

- (a) Knives and sharp objects;
- (b) Litter and rubbish; ~~and~~
- (c) Bar soap; and

(d) Plastic bags not used for personal belongings.

(9) In accordance with KRS 527.070(1), firearms and ammunition shall be stored separately in a locked area outside of the designated child care area.

(10) Smoking ~~or vaping~~ shall:

- (a) Be permitted in accordance with local ordinances;
- (b) Be allowed only in outside designated areas; and
- (c) Not be permitted in the presence of a child.

(11) While bottle feeding a child[an infant], the:

- (a) Child shall be held; and
- (b) Bottle or beverage container shall not be:

1. Propped;
2. Left in the mouth of a sleeping child[infant]; or
3. Heated in a microwave.

(12) A fire drill shall be:

- (a) Conducted during hours of operation at least monthly; and
- (b) Documented.

(13) An earthquake drill and a tornado drill shall be:

- (a) Conducted during hours of operation at least quarterly; and
- (b) Documented.

Section 4. Premises Requirements. (1) The premises shall be:

- (a) Suitable for the purpose intended;
- (b) Kept clean and in good repair; and
- (c) Equipped with:

1. A working ~~[land-line]~~ telephone accessible to a room used by a child; ~~and~~

2. A list of emergency numbers posted by the telephone or maintained in the telephone's contact, including numbers for the:

- a. Police;
- b. Fire station;
- c. Emergency medical care and rescue squad; and
- d. Poison control center.

(2) A child-care center shall be in compliance with the State Fire Marshal and the local zoning laws.

(3) Fire and emergency exits shall be kept clear of debris.

(4) A working carbon monoxide detector shall be required in a licensed child-care center that is in a home if the home:

- (a) Uses fuel burning appliances; or
- (b) Has an attached garage.

(5) The building shall be constructed to ensure the:

- (a) Building is:
  1. Dry;
  2. ~~Adequately heated;~~
  3. ~~Ventilated; and~~
  3. ~~4.] Well lit, including clean light fixtures that are:~~
    - a. In good repair in all areas; and
    - b. Shielded or have shatter-proof~~[shattered—proof]~~ bulbs installed; and

(b) Following are protected:

1. Windows;
2. Doors;
3. Stoves;
4. Heaters;
5. Furnaces;
6. Pipes; and
7. Stairs.

(6) Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child.

(7) Measures shall be utilized to control the presence of:

- (a) Rodents;
- (b) Flies;
- (c) Roaches; and
- (d) Other vermin.

(8) An opening to the outside shall be effectively protected against the entrance of vermin by:

- (a) Self-closing doors;
- (b) Closed windows;
- (c) Screening;
- (d) Controlled air current; or
- (e) Other effective means.

(9) Floors, walls, and ceilings shall be smooth, in good repair,



and constructed to be easily cleaned.

(10) The water supply shall be:

- (a) Potable;
- (b) Protected from contamination;
- (c) Adequate in quality and volume;
- (d) Under sufficient pressure to permit unrestricted use; and
- (e) Obtained from an approved public water supply or a source approved by the local health department.

(11) Groundwater supplies for a child-care center caring for:

(a) More than twenty-five (25) children shall meet the specifications of the Energy and Environment Cabinet, [for Environmental and Public Protection] Division of Water[;] established in KRS Chapter 151; or

(b) Twenty-five (25) children or less shall secure approval from the:

1. Energy and Environment Cabinet [for Environmental and Public Protection]; or

2. Local health department.

(12) Sewage shall be properly disposed by a method approved by the:

(a) Energy and Environment Cabinet [for Environmental and Public Protection]; or

(b) Cabinet.

(13) All plumbing shall comply with the State Plumbing Code established in KRS Chapter 318.

(14) Solid waste shall be kept in a suitable receptacle in accordance with local, county and state law, as governed by KRS 211.350 to 211.380.

(15) If a portion of the building is used for a purpose other than child care:

(a) Necessary provisions shall be made to avoid interference with the child-care program; and

(b) A separate restroom shall be provided for use only by those using the building for its child care purpose.

(16) The temperature of the inside area of the premises shall be sixty-five (65) to eighty-two (82) degrees Fahrenheit:

~~(a) Sixty-five (65) to seventy-five (75) degrees Fahrenheit during the winter; or~~

~~(b) Sixty-eight (68) to eighty-two (82) degrees Fahrenheit during the summer months.~~

(17) Outdoor activity shall be restricted based upon:

- (a) Temperature;
- (b) Weather conditions; or

(c) Weather alerts, advisories, and warnings issued by the National Weather Service.

(18) A kitchen shall not be required if:

(a) The only food served is an afternoon snack to school-age children; and

(b) Adequate refrigeration is maintained.

(19) The Department of Housing, Buildings and Construction, State Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.

(20) An outdoor play area shall be:

(a) Except for an after-school child-care program[;] located on the premises of a public or state-accredited nonpublic school, [and] fenced for the safety of the children;

(b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;

(c) Free from:

- 1. Litter;
- 2. Glass;
- 3. Rubbish; and
- 4. Flammable materials;
- (d) Safe from foreseeable hazard;
- (e) Well drained;
- (f) Well maintained;
- (g) In good repair; and
- (h) Visible to staff at all times.

(21) A protective surface shall:

(a) Be provided for outdoor play equipment used to:

- 1. Climb;

2. Swing; and

3. Slide; and

(b) Have a fall zone equal to the height of the equipment.

(22) If a child-care center does not have access to an outdoor play area, an indoor space shall:

(a) Be used as a play area;

(b) Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;

(c) Include equipment for gross motor skills; and

~~(d) Be well-ventilated;~~

~~(e) Be heated; and~~

~~(f) Have a protective surface of at least two (2) inches thick around equipment intended for climbing.~~

(23) Fences shall be:

(a) Constructed of safe material;

(b) Stable; and

(c) In good condition.

(24) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.

(25) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.

(26) A sandbox shall be:

(a) Constructed to allow for drainage;

(b) Covered when not in use;

(c) Kept clean; and

(d) Checked for vermin prior to use.

(27) Bodies of water that shall not be utilized include:

(a) Portable wading pools;

(b) Natural bodies of water; and

(c) Unfiltered, nondisinfected containers.

(28) A child-care center shall have enough toys, play apparatus, and developmentally appropriate materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.

(29) Storage space shall be provided:

(a) In the form of:

1. Shelves; or

2. Other storage device accessible to the children; and

(b) In sufficient quantity for each child's personal belongings.

(30) Supplies shall be stored so that the adult can reach them without leaving a child unattended.

Section 5. Infant and Toddler Play Requirements. (1) Infant and toddler inside areas shall:

(a) Be separate from an area used by an older child;

(b) Not be an exit or entrance; and

(c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.

(2) Except in accordance with subsection (3) of this section or Section 2(2)(c) of this administrative regulation, an infant or toddler shall not participate in an activity with an older child for more than one (1) hour per day.

(3) A toddler may participate in an activity with an older child for more than one (1) hour per day if:

(a) The toddler is in transition to the pre-school age group;

(b) The toddler is thirty-two (32) ~~twenty-one (24)~~ months or older;

(c) Space for the toddler is available in the preschool-age group;

(d) The staff-to-child ratios and group sizes are maintained based on the age of the youngest child;

(e) The center has a procedure for listing a transitioning toddler on attendance records, including a specific day and time the toddler is with either age group; and

(f) The child care center has obtained the signature and approval of the toddler's parent on the toddler's transition plan.

(4) If a child-care center provides an outdoor play area for an infant or toddler, the outdoor area shall be:

(a) Shaded; and

(b) A separate area or scheduled at a different time than an older child.

(5) Playpens and play yards shall:

- (a) Meet federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;
- (b) Be manufactured for commercial use; and
- (c) Not be used for sleeping or napping.

Section 6. Sleeping and Napping Requirements. (1) An infant shall sleep or nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(2) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(3) Rest time shall include adequate space specified by the child's age as follows:

(a) For an infant:

1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;

2. A firm crib mattress in good repair with a clean tight-fitted sheet that shall be changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet;
- 3. No loose bedding, such as a bumper or a blanket; and
- 4. No toys or other items except the infant's pacifier; or

(b) For a toddler or preschool-age child:

1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and

2. Bedding that is in good repair and is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet.

(4) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending the child-care center during nontraditional hours.

(5) A child who does not sleep shall be permitted to play quietly and shall be visually supervised.

(6) Cots, equipment, and furnishings used for sleeping and napping shall be spaced twelve (12) inches apart to allow free and safe movement by a person.

(7) If cots or mats are used, floors shall be free from:

- (a) Drafts;
- (b) Liquid substances;
- (c) Dirt; and
- (d) Dampness.

(8)(a) Cots or mats not labeled for individual use by a child shall be ~~disinfected~~[sanitized] after each use.

(b) Cots or mats labeled for individual use by a child shall be disinfected:

- 1. At least weekly; or
- 2. Immediately if it is soiled or wet.

(9) Individual bedding shall be stored in a sanitary manner.

Section 7. First Aid and Medicine. (1) First aid supplies shall:

(a) Be available to provide prompt and proper first aid treatment;

(b) Be stored out of reach of a child;

(c) Be periodically inventoried to ensure the supplies have not expired~~[are current]~~;

(d) If reusable, be:

- 1. Sanitized; and
- 2. Maintained in a sanitary manner; and

(e) Include:

- 1. Liquid soap;
- 2. Adhesive bandages;
- 3. Sterile gauze;
- 4. Medical tape;
- 5. Scissors;
- 6. A thermometer;
- 7. Flashlight;
- 8. Cold pack;
- 9. First aid book;
- 10. Disposable gloves; and
- 11. A cardiopulmonary resuscitation mouthpiece protector.

(2) A child showing signs of an illness or condition that may be communicable shall not be admitted to the regular child-care program.

(3) If a child becomes ill while at the child-care center:

(a) The child shall be placed in a supervised area isolated from the rest of the children;

(b) The parent shall be contacted immediately; and

(c) Arrangements shall be made to remove the child from the child-care center as soon as practicable.

(4) Prescription and nonprescription medication shall be administered to a child in care:

(a) 1. With a [daily] written request of the child's parent or the child's prescribing health professional; and

2. [(b)] According to the directions or instructions on the medication's label; or

(b) In accordance with KRS 311.646.

(5) The child-care center shall keep a written record of the administration of medication, including:

- (a) Time of each dosage;
- (b) Date;
- (c) Amount;
- (d) Name of staff person giving the medication;
- (e) Name of the child; and
- (f) Name of the medication.

(6) Medication, including refrigerated medication, shall be:

(a) Stored in a separate and locked place, out of the reach of a child unless the medication is:

1. A first aid supply and is maintained in accordance with subsection (1) of this section;

2. Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child;

3. An epinephrine auto-injector. In accordance with KRS 199.8951:

a. An epinephrine auto-injector shall be inaccessible to a child;

b. A child-care center shall have at least one (1) person onsite who has received training on the administration of an epinephrine auto-injector if the child-care center maintains an epinephrine auto-injector;

c. A child-care center shall seek emergency medical care for a child if an auto-injector is administered to the child; and

d. A child-care center shall report to the child's parent and the cabinet in accordance with 922 KAR 2:090, Section 12(1)(b) if an epinephrine auto-injector is administered to a child; or

4. An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care;

(b) Kept in the original bottle; and

(c) Properly labeled.

(7) Medication shall not be given to a child if the medication's expiration date~~[on the bottle]~~ has passed.

Section 8. Kitchen Requirements. (1) The kitchen shall:

(a) Be clean;

(b) Be equipped for proper food:

- 1. Preservation;
- 2. Storage;
- 3. Preparation; and
- 4. Service;

(c) Be adequately ventilated to the outside air; and

(d) Except in a Type II child-care center when a meal is not being prepared, not be used for the activity of a child.

(2) A child-care center required to have a food service permit shall be in compliance with 902 KAR 45:005 and this administrative regulation.

(3) Convenient and suitable sanitized utensils shall be:

- (a) Provided; and
- (b) Used to minimize handling of food during preparation.

(4) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:

(a) Have an indicating thermometer or other appropriate temperature measuring device;

(b) Be in a safe environment for preservation; and

(c) Be forty (40) degrees Fahrenheit or below.

(5) Frozen food shall be:

(a) Kept at a temperature of zero degrees Fahrenheit or below;

and

- (b) Thawed:
  1. At refrigerator temperatures;
  2. Under cool, potable running water;
  3. As part of the cooking process; or
  4. By another method in accordance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217.
- (6) Equipment, utensils, and surfaces contacting food shall be:
  - (a) Smooth;
  - (b) Free of breaks, open seams, cracks, and chips;
  - (c) Accessible for cleaning; and
  - (d) Nontoxic.
- (7) The following shall be clean and sanitary:
  - (a) Eating and drinking utensils;
  - (b) Kitchenware;
  - (c) Food contact surfaces of equipment;
  - (d) Food storage utensils;
  - (e) Food storage containers;
  - (f) Cooking surfaces of equipment; and
  - (g) Nonfood contact surfaces of equipment.
- (8) A single-service item shall be:
  - (a) Stored;
  - (b) Handled and dispensed in a sanitary manner; and
  - (c) Used only once.
- (9) Bottles shall be:
  - (a) Individually labeled;
  - (b) Promptly refrigerated;
  - (c) Covered when not in use; and
  - (d) Consumed within one (1) hour of being heated or removed from the refrigerator.

Section 9. Food and Meal Requirements. (1) Food shall be:

- (a) Clean;
- (b) Free from:
  1. Spoilage;
  2. Adulteration; and
  3. Misbranding;
- (c) Safe for human consumption;
- (d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;
- (e) Obtained from a source that is in compliance with the Department of Public Health's food safety standards and permits, established in KRS Chapter 217;
- (f) Acceptable if from an established commercial food store;
- (g) Served in a quantity that is developmentally appropriate for the child with additional portions provided upon request of the child; and
- (h) Protected against contamination from:
  1. Dust;
  2. Flies;
  3. Rodents and other vermin;
  4. Unclean utensils and work surfaces;
  5. Unnecessary handling;
  6. Coughs and sneezes;
  7. Cuts in skin;
  8. Communicable disease;
  9. Flooding;
  10. Drainage; and
  11. Overhead leakage.
- (2) Food shall not be:
  - (a) Used for reward;
  - (b) Used for discipline;
  - (c) Withheld until all other foods are consumed; or
  - (d) Served while viewing electronic devices.
- (3) A serving of milk shall consist of:
  - (a) Breast milk or iron-fortified formula for a child;
  1. Age birth to twelve (12) months; or
  2. Beyond twelve (12) months of age as documented by the parent or the child's physician;
  - (b) Pasteurized whole milk for children ages twelve (12)

months to twenty-four (24) months; or

- (c) Pasteurized low fat one (1) percent or fat-free skim milk for children ages twenty-four (24) months to school-age.
- (4) Formula or breast milk provided by the parent shall be prepared and labeled.
- (5) A child-care center may participate in the Child and Adult Care Food Program (CACFP).
- (6) A serving of bread shall only consist of whole or enriched grain.
- (7) Drinking water shall be freely available to a child throughout the day.
- (8) Food shall be stored on:
  - (a) Clean racks;
  - (b) Clean shelves;
  - (c) Other clean surfaces; or
  - (d) If maintained in a sanitary condition, in nonabsorbent labeled containers a minimum of six (6) inches off the floor.
- (9) Fruits and vegetables shall be washed before cooking or serving.
- (10) Meat salads, poultry salads, and cream-filled pastries shall be:
  - (a) Prepared with utensils that are clean; and
  - (b) Refrigerated unless served immediately.
- (11) An individual portion of food served to a child or adult shall not be served again.
- (12) Wrapped food that is still wholesome and has not been unwrapped may be reserved.
- (13) Meals shall be:
  - (a) Served every two (2) to three (3) hours; and
  - (b) Served to a child:
    1. Seated with sufficient room to manage food and tableware; and
    2. Supplied with individual eating utensils designed for use by a child.
- (14) All children shall be offered the same food items unless the child's parent or health professional documents a dietary restriction that necessitates an alternative food item for the child.
- (15) A child-care center shall serve:
  - (a) 1. Breakfast; or
  2. A mid-morning snack;
  - (b) 1. Lunch; or
  2. A mid-afternoon snack; and
  - (c) If appropriate, dinner.
- (16) A weekly menu shall be:
  - (a) Prepared;
  - (b) Dated;
  - (c) Posted in advance in a conspicuous place;
  - (d) Kept on file for thirty (30) days; and
  - (e) Amended in writing with any substitutions on the day the meal is served.
- (17) Breakfast shall include:
  - (a) Milk;
  - (b) Bread; and
  - (c) 1. Fruit;
  2. Vegetable; or
  3. 100 percent juice.
- (18) A snack shall include two (2) of the following:
  - (a) Milk;
  - (b) Protein;
  - (c) Bread; or
  - (d) 1. Fruit;
  2. Vegetable; or
  3. 100 percent juice.
- (19) Lunch and dinner shall include:
  - (a) Milk;
  - (b) Protein;
  - (c) Bread; and
  - (d) 1. Two (2) vegetables;
  2. Two (2) fruits; or
  3. One (1) fruit and one (1) vegetable.
- (20) A child-care center shall meet requirements of subsections (3), (15), and (17) through (19) of this section if the child-care center participates in the Child and Adult Food Care

Program and meets meal requirements specified in 7 C.F.R. 226.20.

Section 10. Toilet, Diapering, and Toiletry Requirements. (1) A child-care center shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male toilet room.

- (2) A toilet room shall:
  - (a) 1. Be provided for each gender; or
  - 2. A plan shall be implemented to use the same toilet room at separate times;
  - (b) Have a supply of toilet paper; and
  - (c) Be cleaned and disinfected~~[sanitized]~~ daily.
- (3) A sink shall be:
  - (a) Located in or immediately adjacent to toilet rooms;
  - (b) Equipped with hot and cold running water that allows for hand washing;
  - (c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;
  - (d) Equipped with liquid soap;
  - (e) Equipped with hand-drying blower or single use disposable hand drying material;
  - (f) Equipped with an easily cleanable waste receptacle; and
  - (g) Immediately adjacent to a changing area used for infants and toddlers.
- (4) Each toilet shall:
  - (a) Be kept in clean condition;
  - (b) Be kept in good repair;
  - (c) Be in a lighted room; and
  - (d) Have ventilation to outside air.
- (5) Toilet training shall be coordinated with the child's parent.
- (6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.
- (7) If a toilet training chair is used, the chair shall be:
  - (a) Used over a surface that is impervious to moisture;
  - (b) Out of reach of other toilets or toilet training chairs;
  - (c) Emptied promptly; and
  - (d) Disinfected~~[Sanitized]~~ after each use.
- (8) Diapers or clothing shall be:
  - (a) Changed when soiled or wet;
  - (b) Stored in a covered container temporarily; and
  - (c) Washed or disposed of at least once a day.
- (9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.
- (10) When a child is diapered, the child shall:
  - (a) Not be left unattended; and
  - (b) Be placed on a surface that is:
    - 1. Clean;
    - 2. Padded;
    - 3. Free of holes, rips, tears, or other damage;
    - 4. Nonabsorbent;
    - 5. Easily cleaned; and
    - 6. Free of any items not used for diaper changing.
- (11) Unless allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.
- (12) Staff shall disinfect the diapering surface after each child is diapered.
- (13) If staff wears disposable gloves, the gloves shall be changed and disposed after each child is diapered.
- (14) Combs, towels or washcloths, brushes, and toothbrushes used by a child shall be:
  - (a) Individually stored in separate containers; and
  - (b) Plainly labeled with the child's name.
- (15) Toothbrushes shall be:
  - (a) Individually identified;
  - (b) Allowed to air dry; and
  - (c) Protected from contamination.
- (16) Toothpaste used by multiple children shall be dispensed onto an intermediate surface, such as waxed paper, to avoid cross contamination.

Section 11. Toys and Furnishings. (1) All toys~~[equipment]~~ and furniture contacted by a child shall be:

- (a) Kept clean and in good repair; and
  - (b) Free of peeling, flaking, or chalking paint.
- (2) Indoor and outdoor equipment shall:
- (a) Be clean, safe, and in good repair;
  - (b) Meet the physical, developmental needs, and interests of children of different age groups;
  - (c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint; and
  - (d) Be designed to guard against entrapment or situations that may cause strangulation.
- (3) Toys shall be:
- (a) Used according to the manufacturer's safety specifications;
  - (b) Durable; and
  - (c) Without sharp points or edges.
- (4) A toy or another item that is~~[Toys and other items that are]~~ considered a mouth contact surface~~[surfaces]~~ by a child not toilet trained shall be sanitized daily by:
- (a) 1. Scrubbing in warm, soapy water using a brush to reach into crevices;
  - 2.~~[(b)]~~ Rinsing in clean water;
  - 3.~~[(c)]~~ Submerging in a sanitizing solution for at least two (2) minutes; and
  - 4.~~[(d)]~~ Air dried; or
  - (b) Cleaning in a dishwasher if the toy or other item is dishwasher safe.
- (5) Tables and chairs shall be of suitable size for children.
- (6) Chairs appropriate for staff shall be provided to use when feeding, holding, or playing with a child.

Section 12. Transportation. (1) A center shall document compliance with KRS Chapter 186 and 603 KAR 5:072 pertaining to:

- (a) Vehicles;
  - (b) Drivers; and
  - (c) Insurance.
- (2) A center providing or arranging transportation service shall:
- (a) Be licensed and approved by the cabinet or its designee prior to transporting a child;
  - (b) Have a written plan that details the type of transportation, staff schedule, transportation schedule, and transportation route; and
  - (c) Have written policies and procedures, including emergency procedures practiced monthly by staff who transports children.
- (3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of the:
- (a) Type of transportation offered;
  - (b) Type of vehicle used for transportation;
  - (c) Plan for ensuring staff perform duties relating to transportation properly;
  - (d) Full insurance coverage for each vehicle;
  - (e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle;
  - (f) Contracts, agreements, or documents detailing arrangements with any third party for services; and
  - (g) Safety procedures for:
    - 1. Transporting a child;
    - 2. Loading and unloading a child; and
    - 3. Providing adequate supervision of a child.
- (4) A vehicle used to transport children shall be equipped with:
- (a) A fire extinguisher;
  - (b) First aid supplies as described in Section 7 of this administrative regulation;
  - (c) Emergency reflective triangles; and
  - (d) A device to cut the restraint system, if necessary.
- (5) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this section.
- (6) A vehicle used to transport children shall meet the following requirements:

(a) For a twelve (12) or more passenger vehicle, the child-care center shall maintain[display] a current certification of inspection from the Transportation Cabinet[on the designated window].

(b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:

1. Signal lamps;
2. Identifying colors; and
3. Cautionary words.

(c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.

(d) A vehicle shall not transport children and hazardous materials at the same time.

(7) The appropriate car safety seat meeting federal and state motor vehicle safety standards in 49 C.F.R. 571.213 and KRS 189.125 shall be used for each child.

(8) A daily inspection of the vehicle shall be performed prior to the vehicle's use and documented for the following:

(a) Tire inflation consistent with tire manufacturer's recommended air pressure[Tires];

- (b) Working lights, signals, mirrors, gauges, and wiper blades;
- (c) Working safety restraints;
- (d) Adequate fuel level; and
- (e) Cleanliness and good repair[free of debris].

(9)(a) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.

(b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).

(10) Each child shall:

- (a) Have a seat;
- (b) Be individually belted or harnessed in the seat; and
- (c) Remain seated while the vehicle is in motion.

(11) A child shall not be left unattended:

- (a) At the site of aftercare delivery; or
- (b) In a vehicle.

(12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be picked up.

(13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.

(14) A vehicle transporting a child shall have the headlamps on.

(15) If a vehicle needs to be refueled, it shall be refueled when not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(16) If the driver is not in the driver's seat, the:

- (a) Engine shall be turned off;
- (b) Keys shall be removed; and
- (c) Emergency brake shall be set.

(17) Transportation services provided shall:

- (a) Be recorded in writing and include:
  1. The first and last name of the child transported; and
  2. The time each child gets on and the time each child gets off;
- (b) Be completed by a staff member other than the driver; and
- (c) Be kept for five (5) years.

(18) A driver of a vehicle transporting a child for a center shall:

- (a) Be at least twenty-one (21) years old;
- (b) Complete:

1. The background checks as described in 922 KAR 2:280[2:440]; and

2. An annual check of the:

a. Kentucky driver history records in accordance with KRS 186.018; or

b. Driver history records through the state transportation agency that issued the driver's license;

(c) Hold a current driver's license which has not been suspended or revoked during the last five (5) years; and

(d) Not caused an accident which resulted in the death of a person.

(19) Firearms, ammunition, alcohol, or illegal substances shall

not be transported in a vehicle transporting children.

(20)(a) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall revoke a center's privilege to transport a child or pursue an adverse action in accordance with Section 14, 15, 16, or 17[9, 40, 44, or 42] of 922 KAR 2:090:

1. For a violation of this section; or

2. If the center:

a. Fails to report an accident in accordance with 922 KAR 2:090[2:440], Section 12[6]; or

b. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.

(b) Revocation of a center's privilege to provide transportation services in accordance with paragraph (a) of this subsection shall:

1. Apply to each site listed under the licensee; and

2. Remain effective for no less than a twelve (12) month period.

(21) A parent may use the parent's vehicle to transport the parent's child during a field trip.

Section 13. Animals. (1) An animal shall not be allowed in the presence of a child in care:

(a) Unless:

1. The animal is under the supervision and control of an adult;
2. Written parental consent has been obtained; and
3. The animal is certified as vaccinated against rabies; or

(b) Except in accordance with subsection (3) of this section.

(2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.

(3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a child-care center unless the animal is:

(a) A part of a planned program activity led[lead] by an animal specialist affiliated with a zoo or nature conservatory; and

(b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.

(4) This section shall not apply to wild animals on the outer property of the child-care center which are expected to be found outdoors, such as squirrels and birds, if they are not:

- (a) Disturbed; or
- (b) Brought indoors.

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 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-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov), and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes health and safety standards for child-care centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards regarding health and safety for child-care centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing minimum health and safety standards for child-care centers as condition of their licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the health and safety standards for child-care centers.

(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 clarifies numerous provisions and eliminates others due to public comments received and agency reviews conducted as a result of the Red Tape Reduction initiative, including feeding and meal requirements, multi-aged children in a classroom, and access to hygiene and health products. In addition, the administrative regulation assures more consistent terminology use, aligns the administrative regulation with the Child Care and Development Fund's 2014 reauthorization and other concurrent regulatory changes, requires hand-washing by staff after smoking and vaping, and incorporates epi-pen allowances authorized by 2016 Ky Acts ch. 122. Lastly, the administrative regulation makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to clarify health and safety requirements of licensed child-care centers, make the administrative regulations governing licensed child-care centers congruent, and be responsive to provider and agency inputs resulting from the Red Tape Reduction initiative.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorized statutes by further clarifying and specifying health and safety standards for licensed child-care centers.

(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 provision of enhanced health and safety measures for licensed child care providers in a manner responsive to recent context, congruent with recognized practice, and supportive of integrity in the child care community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An applicant for child-care center licensure or an existing licensed child-care center will be impacted by this administrative regulation. As of November 22, 2017, there were 1,980 Kentucky licensed child-care centers, both Type I and Type II.

(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: Given the new federally mandated background check requirements applicable to licensed child-care centers, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation and be responsive to the recently enacted legislation and the Red Tape Reduction comments and agency reviews.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will impose no new or

additional cost on providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed child-care centers and children in their care will benefit from the clarity and specificity provided in this administrative regulation and new permissions afforded.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any ongoing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? This administrative regulation does not establish any fees, or directly or indirectly increased any fees.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, 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, 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 is impacted by this administrative regulation. A local government or a school district operating a licensed child-care center, in whole or in part, will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), 7 C.F.R. 226.20, 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213, 20 U.S.C. 6081-6084, 42 U.S.C. 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 amendment to this administrative regulation will generate no 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 amendment to this administrative regulation will generate no revenue in the 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 in the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Care**  
**(Amendment)**

**922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program.**

RELATES TO: KRS[17.165, 17.500-17.580,] 189.125, 199.011(3)[(2)], (4), 199.894(1), 199.896(16), (18), 199.898, 199.8982, 199.8994, 214.010, 314.011(5),[KRS] 527.070(1), 620.020(8), 620.030, 45 C.F.R. 98.[604-649, 9858,] 20 U.S.C. 6081-6084, 42 U.S.C. 601-619, 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199.8994(6) requires the cabinet to promulgate administrative regulations to establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child care provider that receives a child care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care. This administrative regulation establishes requirements for providers to participate in the Child Care Assistance Program and the application procedures.

Section 1. Definitions. (1)[~~"Address check" means a cabinet search of the Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.~~

(2) "Cabinet" is defined by KRS 199.011(3) and 199.894(1)[(2)].

(2)[(3)] "Child" is defined by KRS 199.011(4).

(3)[(4)] "Closed" means the provider is no longer a registered program provider.

(4)[(5)] "Conditional Approval" means time-limited approval while completing required training.

(5)[(6)] "Corporal physical discipline" is defined by KRS 199.896(18).

(6)[(7)] "Denied" means the application for program registration is not approved and the applicant will be penalized.

(7)[(8)] "Developmentally appropriate" means suitable for the specific age range and abilities of a child.

(8)[(9)] "Health professional" means a person actively licensed in Kentucky as a:

(a) Physician;

(b) Physician[Physician's] assistant;

(c) Advanced practice registered nurse[practitioner]; or

(d) Registered nurse as defined by[in] KRS 314.011(5) under

the supervision of a physician or advanced practice registered nurse.

(9)[(10)] "~~Related" means having one (1) of the following relationships with the registered provider:~~

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Step-child;

(g) Child in legal custody of the provider; or

(h) Child living with the provider acting in loco parentis.

(14)] "Parent" is defined by 45 C.F.R. 98.2.

(10)[(12)] "Pediatric abusive head trauma" is defined by[in] KRS 620.020(8).

(11) "Related" means having one (1) of the following relationships with the registered provider:

(a) Child;

(b) Grandchild;

(c) Niece;

(d) Nephew;

(e) Sibling;

(f) Step-child;

(g) Child in legal custody of the provider; or

(h) Child living with the provider acting in loco parentis.

(12)[(13)] "~~Revoked" means the provider is no longer a registered provider and the provider will be penalized.~~

(13)[(14)] "~~Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.~~

(15)] "Withdrawn" means the application for program registration is removed from consideration without a penalty.

Section 2. Application Rights and Requirements for Child Care Provider Registration. (1) An individual shall notify the cabinet or its designee of the individual's intent to apply for child care provider registration:

(a) Directly by:

1. Telephone; or

2. Written statement; or

(b) Indirectly by being designated as the choice for providing unregulated child care by an applicant for benefits under the Child Care Assistance Program (CCAP) in accordance with 922 KAR 2:160.

(2) An individual may apply or reapply for child care provider registration on the same day that the notice of intent to apply in accordance with subsection (1) of this section is made with the cabinet or its designee.

(3) An individual who intends and requests to apply for registration as a child care provider shall not be required to appear in person to complete an application and supporting documentation in accordance with subsections (4) and (5) of this section, but may receive all necessary forms and instructions by mail.

(4) To apply for child care provider registration in CCAP, an individual shall, within thirty (30) calendar days of giving notice of intent to apply pursuant to subsection (1) of this section:

(a) Submit:

1.a. A completed DCC-95, Application for Registered Child Care Provider in Provider's Home; or

b. A completed DCC-96, Application for Registered Child Care Provider in Child's Home;

2. Written verification from a health professional that the individual is:

a. Free of active tuberculosis; and

b. In good general health and able to care for children;

3. A completed DCC-94A, Registered Child Care Provider Information Form;

4. A completed IRS W-9, Request for Taxpayer Identification Number and Certification; and

5. A written evacuation plan in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to a child in care that includes:



- a. A designated relocation site;
- b. Evacuation routes;
- c. Measures for notifying parents of the relocation site and ensuring a child's return to the child's parent; and
- d. Actions to address the needs of an individual child to include a child with a special need. The cabinet shall post an online template of an evacuation plan that fulfills requirements of this administrative regulation for an individual's free and optional use;
- (b) Show proof by photo identification or birth certificate that the individual is eighteen (18) years or older;
- (c) Show verification of Social Security number; and
- (d) Submit to background checks in accordance with 922 KAR 2:280~~Meet the requirements of KRS 17.165(5), as shown by providing:~~
  - 1. ~~A criminal records check conducted by the Kentucky State Police or the Administrative Office of the Courts within the previous twelve (12) months on the individual;~~
  - 2. ~~A child abuse and neglect check using the central registry in accordance with 922 KAR 1:470 on the individual;~~
  - 3. ~~A criminal records check for any previous state of residence completed once if:~~
    - a. ~~The applicant resided outside the state of Kentucky in the last five (5) years; and~~
    - b. ~~No criminal records check has been completed for the applicant's previous state of residence; and~~
  - 4. ~~An address check of the Sex Offender Registry].~~
- (5)(a) An applicant may receive conditional approval in accordance with Section 4(2) of this administrative regulation.
- (b) Within ninety (90) calendar days of giving notice of intent to apply for registration as a child care provider in CCAP pursuant to subsection (1) of this section, the applicant shall provide verification that the applicant has obtained six (6) hours of training approved by the cabinet or its designee, in the areas of:
  - 1. Health, safety, and sanitation;
  - 2. Recognition of child abuse and neglect, which may include cabinet-approved pediatric abusive head trauma training in accordance with KRS 199.896(16); and
  - 3. Developmentally appropriate child care practice.
- (c) An applicant who fails to complete training in accordance with paragraph (b) of this subsection shall be subject to cabinet action in accordance with Section 4(4) of this administrative regulation.

Section 3. Additional Requirements for Registered Providers in Provider's Home. (1) If a registered child care provider provides child care services in the provider's home, ~~the provider shall:~~

- ~~(a)[1-] Submit written verification from a health professional that each member of the provider's household age eighteen (18) or older is free from tuberculosis; [and]~~
- ~~(b)[2-] Provide written verification that each member of the provider's household who is age eighteen (18) or older has submitted to background checks in accordance with 922 KAR 2:280; and~~
- ~~(c) Complete and sign the DCC-107A, Registered Provider Home Safety Checklist, with a cabinet representative[meets the requirements in KRS 17.165 by the member's provision of the following to the cabinet or its designee:~~
  - a. ~~Criminal records check conducted by the Kentucky State Police or the Administrative Office of the Courts;~~
  - b. ~~Criminal records check for any previous state of residence completed once if:~~
    - (i) ~~The household member resided outside the state of Kentucky in the last five (5) years; and~~
    - (ii) ~~No criminal records check has been completed for the household member's previous state of residence; and~~
  - c. ~~Child abuse and neglect check using the central registry in accordance with 922 KAR 1:470.~~
- ~~(b) An address check of the Sex Offender Registry and supporting documentation shall confirm that no individual residing in the provider's household is a registered sex offender].~~
- (2) A registered child care provider shall certify that the provider's home and each play area used for child care are safe and have adequate:

- (a) Heat;
- (b) Light; and
- (c) Ventilation.
- (3) Each floor of a registered child care provider's home used for child care shall have at least one (1):
  - (a) Unblocked exit to the outside;
  - (b) Smoke detector;
  - (c) Fire extinguisher; and
  - (d) Carbon monoxide detector if the home:
    - 1. Uses fuel burning appliances; or
    - 2. Has an attached garage.
  - (4) A registered child care provider's home and areas accessible to children in care shall be free of hazards, and the following items shall be inaccessible to a child in care:
    - (a) Cleaning supplies, poisons, paints, and insecticides;
    - (b) Knives, scissors, and other sharp objects;
    - (c) Power tools, lawn mowers, hand tools, nails, and other like equipment;
    - (d) Matches, cigarettes, vaping devices, lighters, combustibles, and flammable liquids;
    - (e) Alcoholic beverages; and
    - (f) Medications.
  - (5) In accordance with KRS 527.070(1), firearms and ammunition shall be stored and locked in locations separate from each other and inaccessible to a child in care.
  - (6) Electrical outlets not in use shall be covered.
  - (7) An electric fan, floor furnace, freestanding heater, wood burning stove, or fireplace, shall:
    - (a) Be out of the reach of a child; or
    - (b) Have a safety guard to protect a child from injury.
  - (8) A registered child care provider shall use protective gates to block all stairways if a child in care is under age three (3).
  - (9) Stairs and steps shall:
    - (a) Be in good repair; and
    - (b) Include railing of comparable length to the stairs or steps.
  - (10) A registered child care provider's home shall have:
    - (a) At least one (1) working telephone with a residential line or an active mobile service; and
    - (b) An accessible list of emergency telephone numbers, including the numbers for the:
      - 1. Police;
      - 2. Fire station;
      - 3. Emergency medical care;
      - 4. Poison control center; and
      - 5. Reporting of child abuse and neglect.
  - (11) A registered child care provider's home shall have a:
    - (a) Refrigerator in working order that maintains a temperature of forty-five (45) degrees Fahrenheit or below; and
    - (b) Freezer that maintains a temperature of zero degrees Fahrenheit.
  - (12) A registered child care provider shall maintain first aid supplies that include:
    - (a) Liquid soap;
    - (b) Band aids;
    - (c) Sterile gauze; and
    - (d) Adhesive tape.
  - (13) A registered child care provider shall wash hands with liquid soap and running water:
    - (a) Before and after diapering a child;
    - (b) Before and after food preparation;
    - (c) Before feeding a child;~~[and]~~
    - (d) After smoking or vaping; and
    - (e) At other times when necessary to prevent the spread of disease.
  - (14) In accordance with KRS 199.896(18), a registered child care provider shall not use corporal physical discipline on a child entrusted to the provider's care.
  - (15) Pets or livestock shall be vaccinated and not left alone with a child.
  - (16) If transportation is provided by a registered child care provider, the provider shall:
    - (a) Have written permission from a parent or guardian to transport the child;

- (b) Have a vehicle equipped with seat belts; and
- (c) Comply with KRS 189.125 regarding child restraint and seating.

(17)(a) If a registered provider provides child care in the provider's home, the cabinet or its designee shall complete an initial or an annual home inspection of the registered child care provider in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and this administrative regulation.

(b) If the cabinet or its designee finds the registered provider is noncompliant with Section 2(4), 5, 6, or 7(2) or this section, the registered provider shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days from the cabinet's statement of noncompliance.

(c) A corrective action plan shall include:

1. Specific action undertaken to correct a violation;

2. The date action was or shall be completed;

3. Action utilized to assure ongoing compliance;

4. Supplemental documentation requested as a part of the plan; and

5. Signature of the provider and the date of signature.

(d) The cabinet or its designee shall review the plan and notify a registered provider within thirty (30) calendar days from receipt of a plan, in writing, of the decision to:

1. Accept the plan;

2. Not accept the plan; or

3. Take negative action in accordance with Section 8 of this administrative regulation.

(e) A notice of unacceptability shall state the specific reasons a plan was not accepted.

(f) A registered provider notified of an unaccepted plan shall:

1. Submit an amended plan within ten (10) calendar days of notification; or

2. Be subject to negative action in accordance with Section 8 of this administrative regulation.

(g) If a registered provider fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall take negative action in accordance with Section 8 of this administrative regulation.

(h) The cabinet shall not review or accept more than three (3) corrective action plans from a registered provider in response to the same written statement of deficiency.

(18) A registered provider's voluntary closure shall not preclude the cabinet's pursuit of negative action.

Section 4. Actions on Applications. (1) The cabinet or its designee shall approve, deny, or withdraw an individual's application for registration within thirty (30) calendar days from receipt of the individual's notice of intent to apply made in accordance with Section 2(1) of this administrative regulation.

(2) The cabinet or its designee may conditionally approve an individual who made a notice and application pursuant to Section 2(1) and (4) of this administrative regulation, to provide child care services to a child for ninety (90) calendar days, if the applicant meets the requirements of:

(a) Sections 2(4), 5, and 6 of this administrative regulation;and

(b) Section 3 of this administrative regulation, if child care is given in the home of the provider;and

(c) 922 KAR 2:280.

(3) The cabinet or its designee shall approve an individual who made a notice and application pursuant to Section 2(1) and (4) of this administrative regulation as a registered child care provider for one (1) year, if the applicant meets the requirements specified in:

(a) Sections 2(4) through (5), 5, and 6 of this administrative regulation;and

(b) Section 3 of this administrative regulation if child care is given in the home of the provider;and

(c) 922 KAR 2:280 for:

1. The applicant; and

2. Any member of the applicant's household who is age eighteen (18) or older if child care is given in the home of the provider.

(4) If a conditionally approved provider, as specified in subsection (2) of this section, has not completed the training requirement~~[within the ninety (90) day timeframe]~~ pursuant to Section 2(5) of this administrative regulation, or if a background check has not been completed in accordance with 922 KAR 2:280, the cabinet or its designee shall:

(a) Not approve an applicant for payment pursuant to 922 KAR 2:160 past the ninety (90) days of conditional approval; and

(b) Deny another:

1. Period of conditional approval for the same applicant; or

2. Application from the same applicant unless;

a. Training has been completed in accordance with Section 2(5) of this administrative regulation; and

b. Background checks have been completed in accordance with 922 KAR 2:280.

(5) The cabinet may confirm training verification provided by an applicant, conditionally approved applicant, or registered child care provider through the cabinet-approved training database maintained in accordance with 922 KAR 2:240.

Section 5. General Requirements for Registered Child Care Providers. (1) A registered child care provider shall not:

(a) Live in the same residence as the child in care;

(b) Hold a license to provide child care in accordance with 922 KAR 2:090;

(c) Hold certification to provide child care in accordance with 922 KAR 2:100; or

(d) Provide care for more than three (3) children unrelated to the provider in accordance with KRS 199.8982(1)(a).

(2) A registered child care provider shall not provide other home based services, including services, such as:

(a) A personal care home in accordance with 902 KAR 20:036;

(b) A family care home in accordance with 902 KAR 20:041;

(c) An adult day care in accordance with 910 KAR 1:160; or

(d) Supports for community living in accordance with 907 KAR 1:145 or 907 KAR 12:010.

(3) A registered child care provider shall:

(a) Comply with the:

1. Provisions of KRS 199.898; and

2. Provider requirements in accordance with 922 KAR 2:160, Section 13;

(b) Allow the cabinet, the cabinet's designee, another agency with regulatory authority, and a parent of a child in care access to the premises where a child receives care during the hours that the child care services are provided; and

(c) Report within ten (10) calendar days any change to the provider's:

1. Address;

2. Name;

3. Telephone number;

4. Household members; or

5. Location where the child care is provided.

(4)(a) A registered child care provider who gives care in the provider's home shall comply with the requirements of Section 3(1) of this administrative regulation within thirty (30)~~ten (10)~~ calendar days for a:

1.~~(a)~~ New household member who is eighteen (18) years or older; or

2.~~(b)~~ Household member who turns age eighteen (18).

(b) If a background check in accordance with Section 3(1) and 922 KAR 2:280 is pending on a member of the registered provider's household who is eighteen (18) years or older, the registered child care provider who gives care in the provider's home shall prohibit unsupervised contact between the household member and a child in care.

(5)(a) A registered child care provider shall maintain an attendance sheet in which the daily arrival and departure times of each child are recorded in accordance with 922 KAR 2:160, Section 13.

(b) A registered child care provider shall retain attendance sheets completed in accordance with paragraph (a) of this subsection for five (5) years.

(6)(a) Care for a child with a special need shall be consistent

with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(7) While providing child care services, a registered provider and another person in the provider's home shall:

(a) Be free of the influence of alcohol or a controlled substance, except for use of a controlled substance as prescribed by a physician; and

(b) Prohibit smoking or vaping in the presence of a child in care.

(8) A registered child care provider shall report to the cabinet or designee:

(a) Within twenty-four (24) hours from the time of discovery:

1. A communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

2. An accident or injury to a child that requires medical care;

3. An incident that results in legal action by or against the registered child care provider that:

a. Affects:

(i) A child in care;

(ii) The registered child care provider; or

(iii) An adult residing in the registered child care provider's household if child care services are provided in the provider's home; or

b. Includes the provider's discontinuation or disqualification from a governmental assistance program due to fraud, ~~or~~ abuse, or criminal conviction related to that program;

4. An incident involving a fire or other emergency, including a vehicular accident when the provider is transporting a child receiving child care services; ~~or~~

5. A report of child abuse or neglect that:

a. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

b. Names:

(i) The registered child care provider as the alleged perpetrator; or

(ii) A member of the registered child care provider's household as alleged perpetrator if child care services are provided in the provider's home; or

6.a. The registered child care provider is disqualified in accordance with 922 KAR 2:280; or

b. If child care is given in the provider's home, a member of the registered provider's household who is eighteen (18) years or older meets a disqualifying criterion or background check result in accordance with 922 KAR 2:280;

(b) An incident of child abuse or neglect pursuant to KRS 620.030;

(c) The death of a child in care within one (1) hour; or

(d) The provider's temporary or permanent closure as soon as practicable, which shall also be given to the parent of a child in care.

Section 6. Child Ratios. During hours of operation, a registered child care provider shall not care for more than:

(1) Three (3) children receiving CCAP per day;

(2) Six (6) children receiving CCAP per day, if those children are:

(a) A part of a sibling group; and

(b) Related to the provider; or

(3) A total of eight (8) children inclusive of the provider's own children.

Section 7. Renewal of Registration. (1) The cabinet or its designee shall send a reminder notice to a registered child care provider at least forty-five (45) calendar days prior to the expiration date of the provider's registration issued in accordance with Section 4(3) of this administrative regulation.

(2) To renew child care provider registration prior to the expiration of the registration, a registered child care provider shall:

(a) Meet the requirements specified in:

1. Sections 2(4), 5, and 6 of this administrative regulation; and

2. 922 KAR 2:280;

(b) Complete, and provide verification of, three (3) hours of training in early care and education approved by the cabinet or its designee:

1. To include one and one-half (1 1/2) hours of pediatric abusive head trauma training:

a. Within first year of employment or operation as a child care provider; and

b. Completed once during each subsequent five (5) years of employment or operation as a child care provider; and

2. In one (1) or more of the following subjects:

a. Child growth and development;

b. Learning environments and nutrition;

c. Health, safety, and nutrition;

d. Family and community partnerships;

e. Child assessment;

f. Professional development and professionalism; or

g. Program management and evaluation;

(c) Submit an updated version of the evacuation plan described in Section 2(4)(a)5 of this administrative regulation;

(d) Retain a copy of the updated evacuation plan; and

(e) Provide a copy of the updated evacuation plan to each parent of a child in care.

(3) In addition to the requirements of subsection (2) of this section, a registered provider who gives care in the provider's home shall also meet the requirements of Section 3 of this administrative regulation.

Section 8. Negative Action for An Applicant or A Registered Child Care Provider. (1) If a registered child care provider or a member of the provider's household is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the ~~family-in-need-of-services assessment or~~ investigation; and

(b) Pending completion of an administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

(2) The cabinet or its designee shall send written notice of negative action to:

(a) An applicant for registration, if the application is:

1. Withdrawn; or

2. Denied; or

(b) A registered child care provider, if the provider's registration is:

1. Closed; or

2. Revoked.

(3) The notice of negative action shall include the:

(a) Reason for the negative action; and

(b) Effective date.

(4) An application for registration shall be denied or a registered provider's registration shall be revoked if:

(a) Written verification from a health professional confirms a diagnosis of tuberculosis;

(b) A disqualifying criterion or background check result in accordance with 922 KAR 2:280 is met~~[A background check pursuant to KRS 17.165(5) reveals a:~~

~~1. Substantiated incident of child abuse or neglect in accordance with 922 KAR 1:470; or~~

~~2. [A conviction for, or an Alford or guilty plea to, a:~~

~~a. Violent crime; or~~

~~b. Sex crime];~~

(c) A history of behavior exists that may impact the safety or security of a child in care including:

1. A conviction, an Alford plea, or a guilty plea related to the abuse or neglect of an adult; or

~~2. [A conviction for, or an Alford or guilty plea to, a drug-related felony unless five (5) years have elapsed since the person was fully discharged from imprisonment, probation, or parole;~~

~~3. A confirmation through an address check and supporting documentation that a:~~

~~a. Provider is a registered sex offender; or~~

~~b. Member of the provider's household is a registered sex~~

offender, if the provider provides child care services in the provider's home; or

4.] Other behavior or condition indicating inability to provide reliable care to a child;

(d) The provider uses or allows the use of any form of corporal physical discipline on a child entrusted to the provider's care;

(e) The cabinet has probable cause to believe there is an immediate threat to the health, safety, or welfare of a child;

(f) The applicant or provider has been discontinued or disqualified from participation in:

1. CCAP, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, ~~abuse, or criminal conviction related to~~ that program;

(g) The applicant or provider knowingly misrepresents or submits false information on a form required by the cabinet; or

(h) During the hours that child care services are provided, the provider refuses access by:

1. A parent of a child in care, the cabinet, the cabinet's designee, or another agency with regulatory authority to:

a. A child in care; or

b. The location of the child care; or

2. The cabinet, the cabinet's designee, or another agency with regulatory authority to the provider's records.

(5) If an applicant 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 a pending adverse action in accordance with 922 KAR 2:090, 2:100, ~~2:140,~~ 2:120, or this administrative regulation, the cabinet shall grant the applicant registration if:

(a) A seven (7) year period has expired from the:

1. Date of the prior denial, suspension, or revocation;

2. Date the certification, license, registration, or permit was voluntarily relinquished as a result of an investigation or a pending adverse action;

3. Last day of legal remedies being exhausted; or

4. Date of the final order from an administrative hearing; and

(b) The applicant complies with:

1. Sections 2, 5, and 6 of this administrative regulation; ~~and~~

2. If care is given in the home of the provider, Section 3 of this administrative regulation; ~~and~~

3. 922 KAR 2:280;

(c) The applicant completes, and provides verification of, an additional twelve (12) hours of training approved by the cabinet or its designee in early care and education;

(d) The applicant has not had an application, certificate, license, registration, or permit to operate as a child care provider denied, revoked, or voluntarily relinquished for:

1. ~~A disqualifying criterion or background check result in accordance with 922 KAR 2:280~~ ~~Conviction of, or an Alford or guilty plea to, a sex crime or violent crime in accordance with KRS 17.165;~~ or

2. ~~Abuse or neglect of a child according to a child abuse and neglect check of the central registry in accordance with 922 KAR 1:470;~~

3. ~~Placement on the Sex Offender Registry;~~

4. ~~Conviction of, or an Alford or guilty plea to, a drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole; or~~

5.] ~~Discontinuance or disqualification from participation in:~~

a. CCAP, including an intentional program violation in accordance with 922 KAR 2:020; or

b. Another governmental assistance program due to fraud, ~~abuse, or criminal conviction related to~~ that program.

(6) An application may be withdrawn:

(a) If all required documentation for the application process is not received within thirty (30) calendar days in accordance with Section 2(4) of this administrative regulation; or

(b) At the request of the applicant.

(7) A registered child care provider's status may be closed:

(a) At the request of the provider; or

(b) If the provider fails to comply with requirements in Section 3,

5, 6, or 7(2) of this administrative regulation.

(8) The voluntary withdrawal, closure, or relinquishment of a provider's registration shall not preclude the cabinet's pursuit of adverse action.

Section 9. Appeal of Negative Action. If the cabinet or its designee denies or withdraws an application for registration, revokes a provider's registration, or closes a provider, the applicant or provider may request an appeal in accordance with 922 KAR 2:260~~[1:320]~~.

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

(a) "DCC-94A Registered Child Care Provider Information Form", 2018~~[edition-7/12]~~;

(b) "DCC-95, Application for Registered Child Care Provider in Provider's Home", 2018~~[edition-7/12]~~;

(c) "DCC-96, Application for Registered Child Care Provider in Child's Home", 2018~~[edition-7/12]~~; ~~and~~

(d) "DCC-107A, Registered Provider Home Safety Checklist", 2018; ~~and~~

(e) "IRS W-9, Request for Taxpayer Identification Number and Certification", December 2014~~[edition-10/07]~~.

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

ADRIA JOHNSON, Commissioner

SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 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-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov), and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for child care providers, who are family, friends, or neighbors, to register and participate in the Child Care Assistance Program (CCAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for child care providers to register and participate in CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of requirements for a child care provider to register and participate in

CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care provider to register and participate in CCAP.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates reference to the new administrative regulation governing comprehensive background checks for child care providers and onsite inspection requirements for a registered provider serving a child in the provider's home pursuant to the Child Care and Development Fund's federal reauthorization. The amendment makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to foster provider integrity in CCAP and to ensure the cabinet is capable of appropriately responding to deficiently operating providers. The amendment also ensures the state's avoidance of federal penalty and registered providers' continued eligibility for CCAP funded through federal award.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes through its update and clarification of the requirements for a child-care provider to register and participate in CCAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by preserving and enhancing the quality of standards for registered child care providers to participate in CCAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicant and existing registered child care providers will be impacted by this administrative regulation. As of December 14, 2017, there were 116 registered child-care providers.

(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: Given the new federally mandated background check requirements and onsite inspection requirements for registered child care providers, the cabinet has attempted to avoid any further impact on regulated entities, but rather, has attempted to clarify provisions of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will entail no or minimal new costs to new applicants or existing registered providers. Registered providers serving children in their homes will be required to undergo an onsite inspection. While this results in some operating burden for the applicable registered providers, it is another assurance measure for the health, safety, and welfare of children in their care. In addition, it preserves federal funding of CCAP.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and registered child-care-providers and the children in their care will benefit from the improved health and safety measures afforded through this and other concurrently filed administrative regulations.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

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

implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort funds for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 20 U.S.C. 6081-6084, 42 U.S.C. 601-619, 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.8994(6)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.8994(6), 45 C.F.R. 98, 20 U.S.C. 6081-6084, 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 amendment to this administrative regulation will generate no 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 amendment to this administrative regulation will generate no revenue in the 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 in the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Community Based Services**  
**Division of Child Care**  
**(Amendment)**

**922 KAR 2:190. Civil penalties.**

RELATES TO: KRS Chapter 13B, 194A.030, 199.011(3), 199.894(1), (3), 199.896, 199.990, 42 U.S.C. 9857-9858g

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other states and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the secretary to promulgate administrative regulations to establish procedures for enforcement of penalties. This administrative regulation establishes the cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(2) "Child-care center" is defined by KRS 199.894(3).

(3) "Licensee" means the owner or~~and~~ operator of a child-care center to include:

- (a) Sole proprietor;
- (b) Corporation;
- (c) Limited liability company;
- (d) Partnership;
- (e) Association; or
- (f) Organization, such as:
  1. Board of education;
  2. Private school;
  3. Faith-based organization;
  4. Government agency; or
  5. Institution.

(4) "Office of Inspector General" or "OIG" means the organizational unit of the cabinet established in accordance with KRS 194A.030(1)(c) or its designee.

(5) "Statement of deficiency" means a finding of a regulatory noncompliance issued in accordance with 922 KAR 2:090, Section 14[9].

Section 2. Types of Violations. The cabinet shall issue a licensee a:

(1) Type A violation if:

(a) A child-care center violates a standard or a requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, [922 KAR 2:110, or] 922 KAR 2:120, or 922 KAR 2:280; and

(b) The violation creates harm, an imminent threat, or an imminent danger to the health, safety, or welfare of a child in the center's care, such as the center:

1. Failing to:

a. Provide for the health, safety, or welfare of a child in care that results in injury to the child, the child's hospitalization, or death of the child;

b. Complete a background~~criminal records check and a child abuse and neglect~~ check required in accordance with 922 KAR 2:280;

(i) 922 KAR 2:090, Section 6; or

(ii) 922 KAR 2:110, Section 5;

c. Remove a person with a disqualifying offense~~[substantiation of child abuse or neglect]~~ from contact with a child in care in accordance with 922 KAR 2:280;

(i) 922 KAR 2:090, Section 6; or

(ii) 922 KAR 2:110, Section 5;

d. Comply with a suspension of services; or

e. Administer discipline in accordance with 922 KAR 2:120, Section 2(8), 2(10), or 9(2);

2. Falsifying records;

3. Operating contrary to approved licensed services; or

4. Changing location without prior approval of the cabinet.

(2) Type B violation if:

(a) A child-care center violates a standard or requirement specified in KRS 199.896, KRS 199.990(4), 922 KAR 2:090, [922 KAR 2:110,] or 922 KAR 2:120; and

(b) The violation presents a concern or risk to the health, safety, or welfare of a child in care, but does not create harm, an imminent threat, or an imminent danger to the child, such as the center:

1. Failing to:

a. ~~[Complete one (1) of a person's background checks required in accordance with:~~

(i) 922 KAR 2:090, Section 6; or

(ii) 922 KAR 2:110, Section 5;

b. Respond to a child's first aid and medical needs in accordance with 922 KAR 2:120, Section 7;

c. Have staff currently certified in cardiopulmonary resuscitation and first aid in accordance with 922 KAR 2:090[2:110], Sections 11(3)[5(3)] through 11(5)[5(5)];

d. Provide adequate supervision in accordance with 922 KAR 2:120, Section 2(3);

e. Make toxic supplies inaccessible to a child in accordance with 922 KAR 2:120, Section 3(7) or 3(8); or

f. Maintain sufficient records on a child in accordance with 922 KAR 2:090[2:110], Section 9[3];

2. Releasing a child to a person who is not designated by the child's parent to pick up the child;

3. Leaving a child alone with an underage caregiver; or

4. Exceeding the staff-to-child ratios in 922 KAR 2:120, Section 2 by fifty (50) percent or more.

Section 3. Assessment of a Civil Penalty. (1) The cabinet shall assess a civil penalty in accordance with KRS 199.896(8) and KRS 199.990(4).

(2) A statement of deficiency shall be issued prior to, or concurrent with, the notice described in Section 4 of this administrative regulation.

(3) A statement of deficiency with a Type A violation shall be:

(a) Corrected within five (5) working days in accordance with 922 KAR 2:090, Section 14(3)[9(3)] and 14(9)[9(8)]; and

(b) Subject to a civil penalty of no more than \$1000 for each occurrence of a Type A violation.

(4) A statement of deficiency with a Type B violation shall:

(a) Have a written corrective action plan within fifteen (15)[ten (10)] days in accordance with 922 KAR 2:090, Section 14(2)[9(2)] and 14(3)[9(3)]; and

(b) Be subject to a civil penalty of \$250 for each occurrence of a Type B violation.

(5) In accordance with KRS 199.896(8)(b)-(d), a licensee shall receive a monetary credit applied towards a civil penalty in the amount of:

(a) Fifty (50) dollars if a review of the licensee's history finds no Type A or Type B violation cited during the three (3) years prior to the date of the statement of deficiency;

(b) Fifty (50) dollars if the written corrective action plan is:

1. Received by the cabinet within the timeframe specified for the violation type pursuant to subsection (3)(a) or (4)(a) of this section; and

2. Accepted by the cabinet; or

(c) Twenty-five (25) percent of the civil penalty if the licensee waives appeal rights described in Section 5 of this administrative regulation.

(6) Treble penalties shall be assessed pursuant to KRS 199.990(4).

Section 4. Civil Penalty Requirements. Notice that a civil penalty has been levied shall:

(1) Be hand delivered by cabinet staff or delivered by certified mail, return receipt requested, to the:

(a) Licensee; or

(b) Director of the child-care center or the director's designee in accordance with 922 KAR 2:090[2:110]; and

(2) Specify:



- (a) The violation for which a civil penalty has been levied;
- (b) The amount of the civil penalty;
- (c) That, in accordance with KRS 199.990(4), the civil penalty shall:
  - 1. Not exceed \$1,000 for each occurrence;
  - 2. Be made payable to the Kentucky State Treasurer; and
  - 3. Be mailed to the Office of Inspector General;
- (d) That an appeal of a civil penalty shall not act to stay correction of a violation, pursuant to KRS 199.896(7);
- (e) That payment of a civil penalty shall be stayed if an appeal is requested; and
- (f) That the cabinet may:
  - 1. Deny, suspend, or revoke a license for the same offense for which a civil penalty is imposed; and
  - 2. Take other action in accordance with KRS 199.896(9).

Section 5. Appeal Rights. (1) A licensee shall have appeal rights in accordance with KRS 199.990(4) and 922 KAR 2:090, Section 18[43].

- (2) An appeal shall not limit the authority of the cabinet to:
  - (a) Issue an emergency order pursuant to KRS 13B.125(2); or
  - (b) Take action pursuant to KRS 199.896(9).

Section 6. Payment of Civil Penalty. (1) The cabinet shall deny an application for child-care center licensure or revoke a child-care center's license if:

- (a) Sixty (60) days have lapsed since the latter of either:
  - 1. The notice in accordance with Section 4 of this administrative regulation; or
  - 2. Completion of the administrative appeal process upholding the civil penalty; and
- (b) A licensee fails to:
  - 1. Pay the civil penalty levied against the child-care center;
  - 2. Enter into an arrangement to pay a civil penalty that is approved by the cabinet; or
  - 3. Comply with the payment arrangement for the civil penalty.
- (2) The cabinet may approve an amendment to a payment arrangement if:
  - (a) A request for an amendment is received from the licensee; and
  - (b) The cabinet makes a determination that the payment arrangement creates a hardship for the licensee or the child-care center's operation with consideration given to:
    - 1. The individual circumstances of the licensee or child-care center; and
    - 2. Factors specified in KRS 199.896(8).
- (3) The cabinet may terminate collection of a civil penalty if the:
  - (a) Licensee dies;
  - (b) Cabinet is unable to locate the licensee; or
  - (c) Cabinet's continued pursuit of the civil penalty would exceed the:
    - 1. Amount of civil penalty; or
    - 2. Public benefit.

ADRIA JOHNSON, Commissioner  
SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 12, 2018

FILED WITH LRC: February 14, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 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-B, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-2767, email [Laura.Begin@ky.gov](mailto:Laura.Begin@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Elizabeth Caywood, phone (502) 564-3703, email [Elizabeth.Caywood@ky.gov](mailto:Elizabeth.Caywood@ky.gov), and Laura Begin

- (1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

- (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the penalties to be assessed for violations that pose an immediate threat, concern, or risk to a child served by a child-care center and related appeals.

- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of the civil penalty and appeal processes used when a child-care center commits a violation or is subject to an adverse action from the cabinet.

- (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 cabinet procedures for a civil penalty and appeal resulting from a child-care center's violation.

- (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 change the existing administrative regulation by aligning its content with the new child care provider background checks and other concurrent amendments to administrative regulations governing the standards for a licensed child-care center. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

- (b) The necessity of the amendment to this administrative regulation: The amendment is necessary for congruency among the administrative regulation and clarity in the public and among regulated entities.

- (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its update of cabinet procedures pertaining to civil monetary penalties.

- (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 alignment of civil monetary penalties with concurrent changes to the standards governing licensed child-care centers.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: From June 1, 2017, to December 18, 2017, the department processed eighty-eight civil monetary penalties impacting the licensed child-care center's quality rating.

- (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 on the part of regulated entities. A regulated entity is only impacted by this administrative regulation if the entity has committed a health and safety violation of licensure standards that subjects the entity to a civil monetary penalty.



(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not change to the civil monetary penalty amounts. There will be no new or enhanced cost for a licensed child-care center subject to a civil monetary penalty due to a health and safety violation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will ensure congruency among the administrative regulations governing licensed child-care providers. In addition, in terms of the public served, the amendment will promote programmatic integrity, health, and safety in licensed child-care centers.

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

(a) Initially: The administrative body will absorb no new initial cost to implement the amendment to this administrative regulation.

(b) On a continuing basis: The administrative body will absorb no new ongoing cost to implement the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no 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 directly establish any fees; rather, it enforces the civil penalties procedures and enforcement per KRS 199.896 and KRS 199.990. This administrative regulation does not directly or indirectly increase any fees.

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

regulation. KRS 194A.050(1), 199.896(2), 42 U.S.C. 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? There will be no new revenue generated by this administrative regulation for government in its first year. Penalties imposed by this administrative regulation have not been increased or enhanced.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.896(2)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 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. The federal law does not expressly address civil penalties or prohibit their application.

(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, namely the Department for Community Based Services and the Office of Inspector General, will be impacted by this administrative regulation. Local governments and school districts that support a licensed child-care center, in whole or in part, would be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

NEW ADMINISTRATIVE REGULATIONS

PUBLIC PROTECTION CABINET  
Kentucky Claims Commission  
(Repealer)

**107 KAR 1:011. Repeal of 107 KAR 1:005, 107 KAR 1:010, 107 KAR 1:015, 107 KAR 1:025, 107 KAR 1:030, and 107 KAR 1:040.**

RELATES TO: KRS 49.270, 49.300, 49.330, 49.340, 49.370, 49.390

STATUTORY AUTHORITY: KRS 49.010, 49.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) authorizes the Kentucky Claims Commission to promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the commission's statutory authority. This administrative regulation repeals 107 KAR 1:005, 107 KAR 1:010, 107 KAR 1:015, 107 KAR 1:025, 107 KAR 1:030, and 107 KAR 1:040. Pursuant to the renumbering and repeal of KRS 346.010 et. seq. and enactment of KRS Chapter 49, the programmatic functions of the former Crime Victims Compensation Board have been absorbed into the Kentucky Claims Commission. The subject matter of these administrative regulations is being concurrently updated and repromulgated as part of KAR Title 802.

Section 1. The following administrative regulations are hereby repealed:

- (1) 107 KAR 1:005. Claim filing;
- (2) 107 KAR 1:010. Financial hardship standards;
- (3) 107 KAR 1:015. Decisions and hearings;
- (4) 107 KAR 1:025. Attorneys' fees;
- (5) 107 KAR 1:030. Reciprocal agreement defined; and
- (6) 107 KAR 1:040. Cooperation with Kentucky Medical Assistance Act.

MARCUS CAREY, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 27, 2018 at 10:30 a.m. at the Kentucky Claims Commission, 130 Brighton Park Blvd., Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this proposed administrative regulation will be accepted if received on or before 11:59 PM on March 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: G. Mitchell Mattingly, Kentucky Claims Commission Attorney, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817 email [mitchell.mattingly@ky.gov](mailto:mitchell.mattingly@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: G. Mitchell Mattingly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 107 KAR 1:005, 107 KAR 1:010, 107 KAR 1:015, 107 KAR 1:025, 107 KAR 1:030, and 107 KAR 1:040. Pursuant to the renumbering and repeal of KRS 346.010 et. seq. and enactment of KRS Chapter 49, the programmatic

functions of the former Crime Victims Compensation Board have been absorbed into the Kentucky Claims Commission. The subject matter of these administrative regulations is being concurrently updated and repromulgated as part of KAR Title 802.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 107 KAR 1:005, 107 KAR 1:010, 107 KAR 1:015, 107 KAR 1:025, 107 KAR 1:030, and 107 KAR 1:040, whose authorizing statutes were renumbered and repealed during the 2017 Session of the General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation repealer is promulgated consistent with KRS 49.020(5), which authorizes the commission to promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the commission's statutory authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repealer will assist in the effective administration of the statutes by repealing 107 KAR 1:005, 107 KAR 1:010, 107 KAR 1:015, 107 KAR 1:025, 107 KAR 1:030, and 107 KAR 1:040 consistent with the renumbering and repeal of their authorizing statutes during the 2017 Session of the General Assembly.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Victims of violent crime will be affected by this administrative regulation repeal.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are required for the entities identified in question (3).

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will benefit from this administrative regulation repealer by the concurrent promulgation of Title 802 of the Kentucky Administrative Regulations with updated, streamlined, and simplified processes and procedures for filing claims with the Commission.

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

(a) Initially: This administrative regulation costs nothing to implement initially.

(b) On a continuing basis: This administrative regulation costs nothing on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary to implement or enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation is a repealer.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Kentucky Claims Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310(3)(a), 49.020(5)

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation repealer imposes no administrative cost for the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation repealer imposes no administrative cost for subsequent years.

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

Revenues (+/-): No impact  
Expenditures (+/-): No impact  
Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Claims Commission (Repealer)

#### 107 KAR 2:011. Repeal of 107 KAR 2:010.

RELATES TO: KRS 216B.050, 216B.400, 314.142, 49.260, 49.280, 49.300 – 49.340, 49.370, 49.390, 49.410, 49.460, 49.470, 403.707, 510.010

STATUTORY AUTHORITY: KRS 49.010, 49.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) authorizes the Kentucky Claims Commission to promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the commission's statutory authority. This administrative regulation repeals 107 KAR 2:010. Pursuant to the renumbering and repeal of KRS 346.010 et. seq. and enactment of KRS Chapter 49, the programmatic functions of the former Crime Victims Compensation Board have been absorbed into the Kentucky Claims Commission. The subject matter of this administrative regulation regarding payments for sexual assault examinations is being concurrently updated and repromulgated as part of KAR Title 802.

Section 1. 107 KAR 2:010. Payment schedule for sexual assault examinations, is hereby repealed.

MARCUS CAREY, Chairman  
DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 27, 2018 at 10:30 a.m. at the Kentucky Claims Commission, 130 Brighton Park Blvd., Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this proposed administrative regulation will be accepted if received on or before 11:59 PM on March 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: G. Mitchell Mattingly, Kentucky Claims Commission Attorney, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817 email [mitchell.mattingly@ky.gov](mailto:mitchell.mattingly@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: G. Mitchell Mattingly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 107 KAR 2:010. Pursuant to the renumbering and repeal of KRS 346.010 et. seq. and enactment of KRS Chapter 49, the programmatic functions of the former Crime Victims Compensation Board have been absorbed into the Kentucky Claims Commission. The subject matter of this administrative regulation regarding payments for sexual assault examinations is being concurrently updated and repromulgated as part of KAR Title 802.

(b) The necessity of this administrative regulation: This regulation is necessary to repeal 107 KAR 2:010. Recently enacted KRS Chapter 49 established the Kentucky Claims Commission, which consolidated into the commission the programmatic functions of the former Board of Tax Appeals, the former Board of Claims, and the former Crime Victims Compensation Board, including the subject of this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is promulgated consistent with KRS 49.020(5), which authorizes the commission to promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the commission's statutory authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 107 KAR 2:010 consistent with the renumbering and repeal of its authorizing statute during the 2017 session of the General Assembly.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 107 KAR 2:010 will affect individuals and businesses seeking reimbursement for sexual assault examinations, who will now find relevant regulations in the concurrently promulgated 802 KAR 3:020.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are required to comply with this administrative regulation repealer.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation repeals 107 KAR 2:010 consistent with the renumbering and repeal of its authorizing statute.

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

(a) Initially: This administrative regulation repealer imposes no initial costs on the administrative body.

(b) On a continuing basis: This administrative regulation repealer imposes no continuing costs on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this administrative regulation repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repeal of an administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation repealer will primarily impact the Kentucky Claims Commission. The administrative regulation repeal and repromulgation under the new regulation in 802 KAR 3:020 will also impact the Kentucky Cabinet for Health and Family Services and the Justice and Public Safety Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310(3)(a), 49.020(5).

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation repealer imposes no administrative cost for the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation repealer imposes no administrative cost for subsequent years.

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

Revenues (+/-): No impact

Expenditures (+/-): No impact

Other Explanation: There will be no change in expenditures as a result of this administrative regulation repealer because the Sexual Assault Examination fee schedule for reimbursements is being repromulgated as 802 KAR 3:020.

#### PUBLIC PROTECTION CABINET Kentucky Claims Commission (Repealer)

#### 108 KAR 1:011. Repeal of 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040.

RELATES TO: KRS 49.030, 49.040, 49.080, 49.100, 49.120, 49.130, 49.140, 49.150, 49.160

STATUTORY AUTHORITY: KRS 49.010, 49.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) authorizes the Kentucky Claims Commission to promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the commission's statutory authority. This administrative regulation repeals 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040. Pursuant to the renumbering and repeal of KRS 346.010 et. seq. and enactment of KRS Chapter 49, the programmatic functions of the former Board of Claims have been absorbed into the Kentucky Claims Commission. The subject matter of this administrative regulation is being concurrently updated and repromulgated as part of KAR Title 802.

Section 1. The following administrative regulations are hereby repealed:

- (1) 108 KAR 1:010, Board operation and claim procedure;
- (2) 108 KAR 1:030, Filing of claims, original signature of claimant required; and
- (3) 108 KAR 1:040, Payment of awards, proof of payment required.

MARCUS CAREY, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 27, 2018 at 10:30 a.m. at the Kentucky Claims Commission, 130 Brighton Park Blvd., Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this proposed administrative regulation will be accepted if received on or before 11:59 PM on March 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: G. Mitchell Mattingly, Kentucky Claims Commission Attorney, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817 email [mitchell.mattingly@ky.gov](mailto:mitchell.mattingly@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: G. Mitchell Mattingly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040. Pursuant to the renumbering and repeal of KRS 346.010 et. seq. and enactment of KRS Chapter 49, the

programmatic functions of the former Board of Claims have been absorbed into the Kentucky Claims Commission. The subject matter of these administrative regulations is being concurrently updated and repromulgated as part of KAR Title 802.

(b) The necessity of this administrative regulation: This regulation is necessary to repeal 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040, whose authorizing statutes were renumbered and repealed during the 2017 Session of the General Assembly.

(b) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation repealer is promulgated consistent with KRS 49.020(5), which authorizes the commission to promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the commission's statutory authority.

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repealer will assist in the effective administration of the statutes by repealing 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040 consistent with the renumbering and repeal of their authorizing statutes during the 2017 session of the General Assembly.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects those seeking to bring negligence claims against state agencies and the agencies defending against such claims.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are required by the entities identified in question (3) to comply with this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Complying with this repealer will have no cost for the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will benefit from this administrative regulation repealer by the concurrent promulgation of Title 802 of the Kentucky Administrative Regulations with updated, streamlined, and simplified processes and procedures for filing and defending claims with the Commission.

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

(a) Initially: There are no initial costs to implement this administrative regulation repealer.

(b) On a continuing basis: There are no continuing basis costs to implement this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this repealer.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. This is a

repeal of administrative regulations.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Kentucky Claims Commission and any state agency defending negligence claims before the Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310(3)(a), 49.020(5)

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation repealer will cost nothing to administer for the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation repealer will cost nothing to administer 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 (+/-): No impact  
Expenditures (+/-): No impact  
Other Explanation: None

#### GENERAL GOVERNMENT CABINET Board of Nursing (Repealer)

#### 201 KAR 20:501. Repeal of 201 KAR 20:500.

RELATES TO: KRS 314.470

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the Board of Nursing to promulgate administrative regulations. 201 KAR 20:500 is being repealed because the previous Nurse Licensure Compact, KRS 314.470, has been replaced by a new Nurse Licensure Compact, KRS 314.475, with new rules.

Section 1. 201 KAR 20:500, Nurse Licensure Compact, is hereby repealed.

LEWIS PERKINS, President

APPROVED BY AGENCY: January 18, 2018

FILED WITH LRC: January 25, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2018 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish



to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on March 31, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 564-4251, email [nathan.goldman@ky.gov](mailto:nathan.goldman@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 20:500, Nurse Licensure Compact.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because the Nurse Licensure Compact in KRS 314.470 has been repealed effective January 19, 2018.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.075 which repealed KRS 314.470.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by repealing an administrative regulation which is no longer needed as its authorizing statute was repealed. A new administrative regulation is being filed to conform to KRS 314.475.

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses licensed in Kentucky, approximately 80,000

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.475

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### GENERAL GOVERNMENT CABINET

##### Board of Nursing

##### (New Administrative Regulation)

#### 201 KAR 20:506. Nurse licensure compact.

RELATES TO: KRS 314.475

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.475, Article I(c)2 requires the board to file any rule adopted by the Interstate Commission of Nurse Licensure Administrators pursuant to Article VIII of KRS 314.475 shall be filed as an ordinary administrative regulation pursuant to KRS Chapter 13A.

Section 1. Definitions (1) "Commission" means the Interstate Commission of Nurse Licensure Compact Administrators.

(2) "Compact" means the Nurse Licensure Compact that became effective on July 20, 2017 and implemented on January 19, 2018.

(3) "Convert" means to change a multistate license to a single-state license if a nurse changes primary state of residence by moving from a party state to a non-party state; or to change a single-state license to a multistate license once any disqualifying events are eliminated.

(4) "Deactivate" means to change the status of a multistate license or privilege to practice.

(5) "Director" means the individual referred to in Article IV of the Interstate Commission of Nurse Licensure Compact Administrators Bylaws.

(6) "Disqualifying event" means an incident, which results in a person becoming disqualified or ineligible to retain or renew a multistate license. These include the following: any adverse action resulting in an encumbrance, current participation in an alternative program, a misdemeanor offense related to the practice of nursing (which includes an agreed disposition), or a felony offense (which includes an agreed disposition).

(7) "Independent credentials review agency" means a non-governmental evaluation agency that verifies and certifies that foreign nurse graduates have graduated from nursing programs that are academically equivalent to nursing programs in the United

States.

(8) "Licensure" includes the authority to practice nursing granted through the process of examination, endorsement, renewal, reinstatement or reactivation.

(9) "Prior Compact" means the Nurse Licensure Compact that was in effect until January 19, 2018.

(10) "Unencumbered license" means a license that authorizes a nurse to engage in the full and unrestricted practice of nursing.

Section 2. Uniform Data Set and Levels of Access. (1) The compact administrator of each party state shall furnish uniform data to the Coordinated Licensure Information System, which shall consist of the following:

- (a) The nurse's name;
- (b) Jurisdiction of licensure;
- (c) License expiration date;
- (d) Licensure classification, license number and status;
- (e) Public emergency and final disciplinary actions, as defined by the contributing state authority;
- (f) A change in the status of a disciplinary action or licensure encumbrance;
- (g) Status of multistate licensure privileges;
- (h) Current participation by the nurse in an alternative program;
- (i) Information that is required to be expunged by the laws of a party state;
- (j) The applicant or nurse's United States Social Security number;
- (k) Current significant investigative information; and
- (l) A correction to a licensee's data.

(2) The public shall have access to items (1)(a) through (g) and information about a licensee's participation in an alternative program to the extent allowed by state law.

(3) In the event a nurse asserts that any Coordinated Licensure Information System data is inaccurate, the burden of proof shall be upon the nurse to provide evidence in a manner determined by the party state that substantiates such claim.

(4) A party state shall report the items in the uniform data set to the Coordinated Licensure Information System within fifteen (15) calendar days of the date on which the action is taken.

Section 3. Querying the Coordinated Licensure Information System. (1) Upon application for multistate licensure, with the exception of renewal by a nurse, a party state shall query the Coordinated Licensure Information System to determine the applicant's current licensure status, previous disciplinary action(s), current participation in an alternative program, and any current significant investigative information.

(2) Upon discovery that an applicant is under investigation in another party state, the party state in receipt of the nurse licensure application shall contact the investigating party state and may request investigative documents and information.

Section 4. Implementation Date. The compact shall be implemented on January 19, 2018.

Section 5. Transition. (1)(a) A nurse who holds a multistate license on the compact effective date of July 20, 2017, and whose multistate license remains unencumbered on the January 19, 2018 implementation date and who maintains and renews a multistate license is not required to meet the new requirements for a multistate license under the compact.

(b) A nurse who retained a multistate license pursuant to subsection (a) of this section and subsequently incurs a disqualifying event shall have the multistate license revoked or deactivated pursuant to the laws of the home state.

(c) A nurse whose multistate license is revoked or deactivated may be eligible for a single state license in accordance with the laws of the party state.

(2) A nurse who applies for a multistate license after July 20, 2017, shall be required to meet the requirements of Article III (c) of the compact.

(3) During the transition period, a licensee who holds a single state license in a Compact state that was not a member of the prior

compact and who also holds a multistate license in a party state, may retain the single state license until it lapses, expires or becomes inactive.

(4) After the implementation date, party states shall not renew or reinstate a single state license if the nurse has a multistate license in another party state.

Section 6. Recognition of new party states after January 19, 2018. (1) All party states shall be notified by the commission within fifteen (15) calendar days when a new party state enacts the compact.

(2) The new party state shall establish an implementation date six (6) months from enactment or as specified in the enabling language and shall notify the Director of the date.

(3) Upon implementation, a new state licensee who holds a single state license in a compact state that was not a member of the prior compact and holds a multistate license in a party state, may retain the single state license until it lapses, expires or becomes inactive.

(4) At least ninety (90) calendar days prior to the implementation date, all other party states shall notify any active single state licensee with an address in the new party state that the licensee may only hold one (1) multistate license in the primary state of residence. The licensee shall be advised to obtain or maintain a multistate license only from the primary state of residence.

(5) Each party state shall deactivate a multistate license when a new home state issues a multistate license.

Section 7. Party State Responsibilities. (1) On all application forms for multistate licensure, a party state shall require, at a minimum:

- (a) A declaration of a primary state of residence; and
- (b) Whether the applicant is a current participant in an alternative program.

(2)(a) An applicant for licensure who is determined to be ineligible for a multistate license shall be notified by the home state of the qualifications not met.

(b) The home state may issue a single state license pursuant to its laws.

(3) A party state shall not issue a single state license to a nurse who holds a multistate license in another party state.

Section 8. Applicant Responsibilities. (1) On all application forms for multistate licensure in a party state, an applicant shall declare a primary state of residence.

(2) A nurse who changes primary state of residence to another party state shall apply for a license in the new party state when the nurse declares to be a resident of the state and obtains privileges not ordinarily extended to nonresidents of the state, including those listed in subsection (4)(a) – (e) of this section.

(3) A nurse shall not apply for a single state license in a party state while the nurse holds a multistate license in another party state.

(4) A party state may require an applicant to provide evidence of residence in the declared primary state of residence. This evidence may include a current:

- (a) Driver's license with a home address;
- (b) Voter registration card with a home address;
- (c) Federal income tax return with a primary state of residence declaration;
- (d) Military form no. 2058 (state of legal residence certificate); or
- (e) W2 form from the United States government or any bureau, division, or agency thereof, indicating residence.

(5) An applicant who is a citizen of a foreign country, and who is lawfully present in the United States and is applying for multistate licensure in a party state may declare either the applicant's country of origin or the party state where they are living as the primary state of residence. If the applicant declares the foreign country as the primary state of residence, the party state shall not issue a multistate license, but may issue a single state license if the applicant meets the party state's licensure



requirements.

(6) An applicant shall disclose current participation in an alternative program to any party state, whether upon initial application or within ten (10) calendar days of enrollment in the program.

Section 9. Change in Primary State of Residence. (1) A nurse who changes his or her primary state of residence from one party state to another party state may continue to practice under the existing multistate license while the nurse's application is processed and a multistate license is issued in the new primary state of residence.

(2) Upon issuance of a new multistate license, the former primary state of residence shall deactivate its multistate license held by the nurse and provide notice to the nurse.

(3) If a party state verifies that a licensee who holds a multistate license changes primary state of residence to a non-party state, the party state shall convert the multistate license to a single state license within fifteen (15) calendar days, and report this conversion to the Coordinated Licensure Information System.

Section 10. Temporary Permits and Licenses. A temporary permit, license, or similar temporary authorization to practice issued by a party state to an applicant for licensure shall not grant multistate licensure privileges.

Section 11. Identification of Licenses. A license issued by a party state shall be clearly identified as either a single state license or a multistate license.

Section 12. Credentialing and English Proficiency for Foreign Nurse Graduates. (1) A party state shall verify that an independent credentials review agency evaluated the credentials of graduates as set forth in Article III (c)(2)ii.

(2) The party state shall verify successful completion of an English proficiency examination for graduates as set forth in Article III (c)(3).

Section 13. Deactivation, Discipline and Revocation. A party state shall determine whether a disqualifying event will result in adverse action or deactivation of a multistate license or privilege. Upon deactivation due to a disqualifying event, the home state may issue a single state license.

Section 14. Dues Assessment. (1) The commission shall determine the annual assessment to be paid by party states. The assessment formula is a flat fee per party state. The commission shall provide public notice of any proposed revision to the annual assessment fee at least ninety (90) calendar days prior to the Commission meeting to consider the proposed revision.

(2) The annual assessment shall be due within the commission's first fiscal year after the implementation date and annually thereafter.

LEWIS PERKINS, President

APPROVED BY AGENCY: January 18, 2018

FILED WITH LRC: January 25, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2018 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on March 31, 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222. phone (502) 429-330, fax (502) 564-4251, email nathan.goldman@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation implements KRS 314.475, the Nurse Licensure Compact.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 314.475, Article I(e)(2) requires rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators to be promulgated as administrative regulations pursuant to KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 314.475 which requires this promulgation.

(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 following the mandate contained in KRS 314.475, Article I(e)(2).

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses licensed in Kentucky, approximately 80,000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is necessary.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.475

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Licensure and Certification for  
Dietitians and Nutritionists  
(New Administrative Regulation)**

**201 KAR 33:080 Scope of practice.**

RELATES TO: KRS 310.005, 310.021, 310.031, 310.041

STATUTORY AUTHORITY: KRS 310.041

NECESSITY, FUNCTION AND CONFORMITY: KRS 310.041 requires the board to promulgate administrative regulations to implement KRS 310.005, 310.012, 310.031, 310.040, 310.041, 310.042, 310.050, 310.070, and 310.990. This administrative regulation establishes the scope of practice for a licensed dietitian or certified nutritionist.

Section 1. Scope of Practice. A licensed dietitian or certified nutritionist shall practice dietetics or nutrition consistent with the skills and procedures in the Academy of Nutrition and Dietetics: Revised 2017 Standards of Practice in Nutrition Care and Standards of Professional Performance for Registered Dietitian Nutritionists.

Section 2. Incorporation by Reference. (1) Academy of Nutrition and Dietetics: Revised 2017 Standards of Practice in Nutrition Care and Standards of Professional Performance for Registered Dietitian Nutritionists", revised 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists, 911 Leewood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

LORA ARNOLD PARKS, Chairperson

APPROVED BY AGENCY: February 9, 2018

FILED WITH LRC: February 9, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2018 at 10 a.m. Eastern Time at the Department of Professional Licensing, 911 Leewood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of

their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 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: Matt James, Board Counsel, 700 Capitol Ave., Ste. 118, Frankfort, Kentucky 40601; phone (502) 696-5300; fax (502) 564-2894; email [matt.james@ky.gov](mailto:matt.james@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Matt James

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the scope of practice for dietitians and nutritionists.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the scope of practice for dietitians and nutritionists.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is given the authority to establish administrative regulations for the practice of dietitians and nutritionists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the scope of practice for dietitians and nutritionists.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,289 licensed dietitians and 45 dual license/certificate holders.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this 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 the administrative regulation or amendment: Dietitians and nutritionists will have to abide by the scope of practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Dietitians and nutritionists will be able to practice within the scope of their licenses or certificates.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the fees paid by licensed dietitians and certified nutritionists.

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

increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation did not establish the fees. The application fee is set in a separate regulation.

(9) TIERING: Is tiering applied? Tiering was not applied because these requirements apply equally to all licensees.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure and Certification for Dietitians and Nutritionists is housed for administrative purposes within the Department of Professional Licensing in the Public Protection Cabinet.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 310.005, 310.041

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for the first year? N/A

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments or school districts) for subsequent years? N/A

(c) How much will it cost to administer this program for the first year? N/A

(d) How much will it cost to administer this program for subsequent years? N/A

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

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

#### GENERAL GOVERNMENT Department of Agriculture Office of Agricultural Marketing (Repealer)

#### 302 KAR 38:011. Repeal of 302 KAR 38:010.

RELATES TO: KRS 260.010

STATUTORY AUTHORITY: KRS 260.015

NECESSITY, FUNCTION, AND CONFORMITY: To define terms used in the administration of the Kentucky Agricultural Product Logo Program and establish procedures for the use of the logo. This administrative regulation repeals 302 KAR 38:010 as it is outdated and will be replaced with administrative regulations for the Kentucky Proud program.

Section 1. 302 KAR 38:010, Agricultural Product Logo Program, is hereby repealed.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: February 8, 2018

FILED WITH LRC: February 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2018, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 March 31, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 302 KAR 38:010.

(b) The necessity of this administrative regulation: This regulation is necessary to repeal the current administrative regulation that is outdated and does not cover the Kentucky Proud program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.010 formerly contemplated the forerunner to the Kentucky Proud Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will remove the possibility for conflicts among programs.

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

(a) How the amendment will change this existing administrative regulation: Not applicable

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No person or entity will be effected as 302 KAR 38:010 is not followed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no anticipated actions associated with the implementation of this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no anticipated costs associated with the implementation of this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no anticipated benefits associated with the implementation of this repealer.

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

(a) Initially: There are no anticipated costs associated with the implementation of this repealer.

(b) On a continuing basis: There are no anticipated costs associated with the implementation of this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no funding sources associated with the implementation of this repealer.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no anticipated costs associated with the implementation of this repealer, no changes in funding are needed.

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: There are no fees associated with the implementation of this repealer.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are no anticipated impacts to state or local government associated with this repealer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.015

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no anticipated impacts to state or local government associated with this repealer.

(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 costs are expected for the first year with the repeal of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No costs are expected for subsequent years with the repeal of this administrative regulation.

(c) How much will it cost to administer this program for the first year? No costs are expected for the first year with the repeal of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are expected for subsequent years with the repeal of this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact is expected.

#### GENERAL GOVERNMENT Department of Agriculture Office of Agricultural Marketing (Repealer)

#### 302 KAR 39:011. Repeal of 302 KAR 39:010.

RELATES TO: KRS 247.800-247.810

STATUTORY AUTHORITY: KRS 247.810

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.810 authorizes the Commissioner of Agriculture, in conjunction with the Secretary of the Tourism Development Cabinet, to promulgate administrative regulations to implement the provisions of KRS 247.800 to 247.810. This administrative regulation sets forth standards for approval by the department of temporary agritourism sites. This administrative regulation repeals 302 KAR 39:010 as it is outdated and not used.

Section 1. 302 KAR 39:010, Agritourism, is hereby repealed.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: February 8, 2018

FILED WITH LRC: February 14, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2018, at 2:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 March 31, 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 302 KAR 39:010.

(b) The necessity of this administrative regulation: This regulation is necessary to repeal the current administrative regulation that is outdated and unused.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.810 authorizes promulgation of administrative regulations. The repealer will be used to remove such as it is outdated and unused.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is necessary to repeal the current administrative regulation that is outdated and unused.

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

(a) How the amendment will change this existing administrative regulation: Not applicable

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No person or entity will be effected as 302 KAR 39:010 is not followed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no anticipated actions associated with the implementation of this repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no anticipated costs associated with the implementation of this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no anticipated benefits associated with the implementation of this repealer.

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

(a) Initially: There are no anticipated costs associated with the implementation of this repealer.

(b) On a continuing basis: There are no anticipated costs associated with the implementation of this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no funding sources associated with the implementation of this repealer.

(7) Provide an assessment of whether an increase in fees or



funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no anticipated costs associated with the implementation of this repealer, no changes in funding are needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees associated with the implementation of this repealer.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? There are no anticipated impacts to state or local government associated with this repealer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 247.810

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no anticipated impacts to state or local government associated with this repealer.

(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 costs are expected for the first year with the repeal of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No costs are expected for subsequent years with the repeal of this administrative regulation.

(c) How much will it cost to administer this program for the first year? No costs are expected for the first year with the repeal of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are expected for subsequent years with the repeal of this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact is expected.

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Repealer)

#### 703 KAR 5:191. Repeal of 703 KAR 5:190 and 703 KAR 5:260.

RELATES TO: KRS 158.6453, 158.6455, 158.782, 160.346

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 158.782, 160.346, 20 U.S.C. 6311

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.346 no longer requires the use of the four intervention options that were required under the federal No Child Left Behind Act. 703 KAR 5:260 is no longer in alignment with the federal law, which was reauthorized under the Every Student Succeeds Act (ESSA), 20 U.S.C. 6311. KRS 158.782 no longer requires the Kentucky Board of Education to promulgate administrative regulations to set forth the criteria for highly skilled education assistance to schools. 703 KAR 5:190 established the program requirements for the highly skilled education assistance program formerly required by KRS 158.148. This administrative regulation repeals 703 KAR 5:260 and

703 KAR 5:190, however, all relevant pieces of the school improvement framework as required under the ESSA, are relocated to 703 KAR 5:280, School improvement procedures.

Section 1. The following administrative regulations are hereby repealed:

(1) 703 KAR 5:260, Implementation of intervention options in priority schools and districts; and

(2) 703 KAR 5:190, Assistance to low-achieving schools.

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.

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 14, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2018, at 10:00 am, in the State Board Room, Fifth Floor, Sower Building, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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: 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 [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals administrative regulation 703 KAR 5:260, which established the requirements for the implementation of intervention options (which were outlined in No Child Left Behind) in priority schools and districts. This repeals administrative regulation 703 KAR 5:190, which established the requirements for the highly skilled education assistance program.

(b) The necessity of this administrative regulation: The repeal of 703 KAR 5:260 and 703 KAR 5:190 is necessary to fully align the current regulatory framework with the changes made to the Kentucky school improvement program required under the federal Every Student Succeeds Act (ESSA) and Senate Bill 1 (2017).

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 160.346 no longer outlines the specific intervention options provided in 703 KAR 5:260. This regulation also no longer aligns with the Every Student Succeeds Act and Kentucky's State Plan as submitted to the United States Department of Education. KRS 158.782 no longer specifically grants authority for 703 KAR 5:190.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 703 KAR 5:260 and 703 KAR 5:190 is necessary to fully align the current regulatory framework with the changes made to the Kentucky school improvement program required under the federal Every Student Succeeds Act (ESSA) and Senate Bill 1 (2017).

(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 will repeal 703 KAR 5:190 and 703 KAR 5:260.

(b) The necessity of the amendment to this administrative regulation: The repeal of 703 KAR 5:260 and 703 KAR 5:190 is necessary to fully align the current regulatory framework with the changes made to the Kentucky school improvement program required under the federal Every Student Succeeds Act (ESSA) and Senate Bill 1 (2017).

(c) How the amendment conforms to the content of the authorizing statute: The repeal of 703 KAR 5:260 and 703 KAR 5:190 is necessary to fully align the current regulatory framework with the changes made to the Kentucky school improvement program required under the federal Every Student Succeeds Act (ESSA) and Senate Bill 1 (2017).

(d) How the amendment will assist in the effective administration of the statutes: The repeal of 703 KAR 5:260 and 703 KAR 5:190 is necessary to fully align the current regulatory framework with the changes made to the Kentucky school improvement program required under the federal Every Student Succeeds Act (ESSA) and Senate Bill 1 (2017).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this repeal include all local school districts and the KDE.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities in (3) will no longer have to comply with 703 KAR 5:190 and 703 KAR 5:260.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No benefits will accrue as a result of this repeal.

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

(a) Initially: No cost is anticipated as this is a repeal.

(b) On a continuing basis: No cost is anticipated as this is a repeal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary as this is a repeal.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate because the impact of the repeal is on all schools and districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All schools and districts and the KDE.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 158.782, 160.346, 20 U.S.C. 6311

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue

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

(c) How much will it cost to administer this program for the first year? No cost anticipated to administer this repeal.

(d) How much will it cost to administer this program for subsequent years? No cost anticipated to administer this repeal.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

#### EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (New Administrative Regulation)

##### 703 KAR 5:280. School improvement procedures.

RELATES TO: KRS 158.6453, 158.6455, 158.782, 160.346, 20 U.S.C. 6301

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) indicates the primary function of the Kentucky Board of Education (KBE) is to adopt policies and administrative regulations by which the Kentucky Department of Education (department) shall be governed in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education, to establish policy or act on all programs, services, and other matters which are within the administrative responsibility of the department. KRS 158.6453(3)(a) vests in the KBE the responsibility to create an assessment system that measures achievement of the state learning goals, ensures compliance with Title I of the federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. sec. 6301, et seq., as amended by the Every Student Succeeds Act (2015) or its successor, and ensures school accountability. KRS 158.6455 requires the KBE to create an accountability system to classify schools and LEAs, and to establish appropriate consequences for schools failing to meet their accountability measures. KRS 158.782 requires the KBE to promulgate administrative regulations establishing the process for monitoring and periodic review of a school's turnaround for schools identified for comprehensive support and improvement under KRS 160.346. KRS 160.346 defines comprehensive and targeted support and improvement and establishes the process for the required audit and turnaround efforts for schools identified for comprehensive support and improvement. Additionally, KRS 160.346 requires the creation of state-wide exit criteria for identified schools, additional action to support schools continuously not meeting improvement goals, and additional supports for LEAs with a significant number of schools identified for comprehensive and targeted support and improvement. Section 1111(c) of Title I of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, (20 U.S.C. 6311(c) and (d)) requires the KBE to identify the state's lowest achieving schools as schools identified for comprehensive support and improvement and for those schools to follow the requirements of 20 U.S.C. 6311(c) and (d) regarding school improvement. This administrative regulation establishes the process and procedures for school improvement efforts.

Section 1. Definitions. (1) "Adequate performance progress" means:

(a) Meeting the exit criteria outlined in KRS 160.346(2)(b); and

- (b) Meeting the exit criteria outlined in KRS 160.346(2)(a).
- (2) "Advisory leadership team" means the team established in KRS 160.346(7)(g);
- (3) "Annual improvement" means a school reaches annual goals, established by the department, in the areas that led to identification for comprehensive support and improvement;
- (4) "Audit" means the process outlined in KRS 160.346(5) and (6);
- (5) "Audit team" means the team selected by the LEA pursuant to KRS 160.346(5) to complete a school and district audit;
- (6) "Charter school" means a "public charter school" as defined in KRS 160.1590(12);
- (7) "Charter school board of directors" or "governing board" has the same meaning as in KRS 160.1590(6);
- (8) "Comprehensive Support and Improvement" means the process for schools identified pursuant to KRS 160.346(3);
- (9) "District" or "school district" means the local school district governed by a local board of education;
- (10) "District audit" means an audit that:
  - (a) Reviews the functioning of the district and the district's ability to manage an intervention in a school identified for comprehensive support and improvement; and
  - (b) Meets the requirements of KRS 160.346(6);
- (11) "Evidence based interventions" has the same meaning as in the Elementary and Secondary Education Act, as reauthorized by the Every Student Succeeds Act (2015), 20 U.S.C.A. 7801;
- (12) "Local education agency" or "LEA" means a local school district as provided in KRS 160.010 and KRS 160.020 or a charter school board of directors as provided in KRS 160.1590;
- (13) "Minority" has the same meaning as in KRS 160.345(1)(a);
- (14) "School audit" means an audit that:
  - (a) Reviews the functioning of a school;
  - (b) Assesses principal capacity for leadership of school turnaround; and
  - (c) Meets the requirements of KRS 160.346(6);
- (15) "School improvement assistance" means a program designed by the department to support improved teaching and learning;
- (16) "School improvement plan" means the plan created by schools identified for targeted support and improvement pursuant to KRS 160.346(4) and is embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225;
- (17) "Targeted Support and Improvement" means the process for schools identified pursuant to KRS 160.346(2);
- (18) "Turnaround plan" means the plan created pursuant to KRS 160.346(1)(e) and is embedded in the comprehensive school improvement plan required under 703 KAR 5:225; and
- (19) "Turnaround team" means the team selected pursuant to KRS 160.346(1)(f).

Section 2. Notification of Status for Comprehensive Support and Improvement. (1) Following notification of a school's identification for comprehensive support and improvement, an LEA shall, within thirty (30) days:

- (a) Declare intent to either utilize the department for the audit team or another option available under KRS 160.346(5); and
- (b) Declare intent to either utilize the department for the turnaround team or another option available under KRS 160.346(7).
- (2) If the LEA declares intent to use any option other than the department for the audit team, the LEA shall provide the following information:
  - (a) The name(s) and address(es) of all persons included on the audit team;
  - (b) The role(s) and responsibilities of all persons included on the audit team;
  - (c) The occupations and any vendor affiliations of all persons included in the audit team; and
  - (d) The persons' or entity's documented expertise in diagnosing the causes of an organization's low performance and providing advice and strategies resulting in effective turnaround leadership.

(3) If the LEA declares intent to use any other option other than the department for the audit team, the LEA shall ensure that all audit team members report potential conflicts of interest. The LEA shall report these to the department and provide information regarding the LEAs work to remedy the conflicts of interest.

(4) If the LEA declares intent to use any option other than the department for the turnaround team, the LEA shall provide the following information:

- (a) The name(s) and address(es) of the persons or entity fulfilling the status of turnaround team;
- (b) The role(s) and responsibilities of the persons or entity fulfilling the status of turnaround team; and
- (c) The evidence-based interventions that shall be utilized by the persons or entity fulfilling the status of turnaround team.
- (5) Should the LEA utilize a private entity as the turnaround team for a school, the LEA shall submit to the department evidence of the private entity's documented success at turnaround diagnosis, training, and improved performance of organizations.
- (6) Upon receipt of the notification and appropriate information from the LEA, within fifteen (15) days the department shall review the proposals for non-department audit teams and turnaround teams and either accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.
- (7) The LEA shall provide the information required in this section utilizing the "LEA Notification of Non-Department Audit or Turnaround Team" form incorporated by reference in this administrative regulation.

Section 3. Audit Team Membership. (1) For audit teams not directed by the department:

- (a) Members of the audit team shall be selected by the LEA from qualified applicants;
- (b) The team members shall complete department approved training in any areas needed to effectively perform their duties;
- (c) Members shall hold appropriate certification or qualifications for the position being represented;
- (d) The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;
- (e) The audit team shall include the following representation:
  1. The chairperson, who shall be designated by the LEA, and shall be:
    - i. A certified administrator; or
    - ii. A similarly qualified professional approved by the department.
  2. A teacher who is actively teaching or has taught within the last three (3) years;
  3. A principal who is currently serving or has served as a principal within the last three (3) years;
  4. An LEA administrator who is currently serving or has served in an LEA administrative position within the last three (3) years;
  5. A parent or legal guardian who has or has had a school-aged child; and
  6. A university representative who is currently serving or has served in that capacity within the last three (3) years;
- (f) The chair may serve in addition to the five (5) members outlined in subsection (1)(e) of this section, or may be selected from those six (6) members who also meet the qualifications of subsection (1) of this section.
- (2) For audit teams directed by the department:
  - (a) Members shall be selected from qualified applicants by the department, and approved by the Commissioner of Education, or designee;
  - (b) Members shall complete department-provided or approved training in any areas needed to effectively perform their duties;
  - (c) Members shall hold appropriate certification or qualifications for the position being represented;
  - (d) The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;
  - (e) The team shall include the following representation:
    1. The chairperson, who shall be designated by the department



or its designee, and shall be:

- i. A certified administrator approved by the department to provide school improvement assistance;
  - ii. A certified administrator member of the review team; or
  - iii. A similarly qualified professional approved by the department;
2. An individual approved by the department to provide school improvement assistance;
3. A teacher who is actively teaching or has taught within the last three (3) years;
4. A principal who is currently serving or has served as a principal within the last three (3) years;
5. A LEA administrator who is currently serving or has served in a LEA administrative position within the last three (3) years;
6. A parent or legal guardian who has or has had a school-aged child; and
7. A university representative who is currently serving or has served in that capacity within the last three (3) years.
- (f) The chair may serve in addition to the six (6) members outlined in subsection (2)(e) of this section, or may be selected from those six (6) members who also meet the qualifications of subsection (2) of this section.

Section 4. School Audit. (1) Within forty-five (45) days of a school's identification for comprehensive support and improvement, a school audit shall be scheduled.

(2) A school audit shall consist of and incorporate the following into the report, in addition to the requirements of KRS 160.346(6):

- (a) Analysis of state and local education data;
- (b) An analysis and recommendation regarding the principal's capacity to lead turnaround in a school identified for comprehensive support and improvement and whether or not the principal should be replaced;
- (c) Review of comprehensive school improvement plans and other planning documents;
- (d) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members;
- (e) Direct observation;
- (f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;
- (g) Review of school council minutes and agendas, if applicable; and
- (h) Other information deemed necessary by the Commissioner of Education, or designee.

(3) Where the audit team is directed by the department, the recommendation of the principal's ability to lead the intervention in the school shall be based upon an assessment of whether:

- (a) The principal demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;
- (b) The principal leads and operates the school under a governance and leadership style that promotes and supports student performance and system effectiveness;
- (c) The principal establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;
- (d) The principal ensures that systems are in place for accurate collection and use of data;
- (e) The principal ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and
- (f) The principal ensures that the school implements a comprehensive assessment system that generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement.

(4) An audit team not directed by the department may utilize the criteria in subsection (3) of this section for the recommendation of principal capacity. An audit team not directed by the department shall include a recommendation as to the principal's capacity to serve as a leader in school intervention and turnaround at a school identified for comprehensive support and improvement. If that audit

team chooses not to use the criteria in subsection (3) of this section, they shall provide notification to the department as well as the framework to be used in the analysis of principal capacity and submit the criteria that shall be utilized to the department for approval.

(5) Upon identification as a school in need of comprehensive support and improvement, the authority of the school council shall be suspended.

(6) Pursuant to KRS 160.346, the authority of the school council shall be restored if the school is not classified under comprehensive support and improvement status for two (2) consecutive years.

(7) Charter schools shall be subject to a school audit which shall include an addendum providing a determination regarding the governing board's capacity to provide support for turnaround. Each addendum shall include:

- (a) Analysis of state and local education data;
- (b) A review of the governing board's level of functioning and recommendation to the Commissioner of Education as to whether the governing board has the capacity to manage the intervention in the charter school;
- (c) Interviews with governing board members, students, parents, school personnel, authorizer, and community members.
- (d) Direct observations;
- (e) Administration of teacher and principal working conditions surveys and student satisfaction surveys;
- (f) Review of charter school governing board minutes and agendas; and
- (g) Other information deemed necessary by the Commissioner of Education, or designee, to assess the functionality of the governing board to support school improvement.

(8) If the audit team chooses not to use the criteria in subsection (7) of this section, they shall provide notification to the department as well as the framework to be used in the analysis of the governing board's capacity and submit the criteria that shall be utilized to the department for approval.

Section 5. District Audit. (1) A district shall be subject to a district audit upon identification of a school within the district for comprehensive support and improvement.

(2) Within forty-five (45) days of identification by the department of a district containing a school identified for comprehensive support and improvement, an audit shall be scheduled to review the functioning of the district's administration and its specific leadership capacity related to each school identified for comprehensive support and improvement.

(3) Each district audit shall include:

- (a) Analysis of state and local education data;
- (b) A review of the district's level of functioning and recommendation to the Commissioner of Education as to whether the district has the capacity to manage the intervention in each identified school;
- (c) Review of comprehensive district improvement plan and other planning documents;
- (d) Interviews with local board members, students, parents, school and district personnel, and community members;
- (e) Direct observation;
- (f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;
- (g) Review of school board minutes and agendas; and
- (h) Other information deemed necessary by the Commissioner of Education, or designee, to assess the functionality of the district to support school improvement.

(4) Where the audit team is directed by the department, the determination of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement shall be based upon an assessment of capacity in the following areas:

- (a) The district demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;
- (b) The district leads and operates under a governance and

leadership style that promotes and supports student performance and system effectiveness;

(c) The district establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The district ensures that systems are in place for accurate collection and use of data;

(e) The district ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The district ensures that a comprehensive assessment system, which generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement, is implemented.

(5) An audit team not directed by the department may utilize the criteria in subsection (3) of this section for recommendation to the Commissioner of Education of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement, pursuant to KRS 160.346. An audit team not directed by the department shall include a recommendation as to district functioning and capacity to manage the interventions at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria in subsection (3) of this section, they shall provide notification to the department as well as the framework to be used in the analysis of district functioning and capacity to manage the intervention in each identified school to the department for approval.

(6) There shall be only one (1) district audit per district, per year, regardless of the number of schools identified for comprehensive support and improvement located in the district.

#### Section 6. Notification to Schools and LEAs of Audit Findings.

(1) Following any school audit, the audit team shall submit all findings and the principal capacity recommendation to the Commissioner of Education.

(2) Following any charter school or district audit, the district or governing board audit findings and capacity recommendations shall be submitted to Commissioner of Education who shall make a determination regarding the district or governing board's level of functioning and whether the district or governing board has the capacity to manage the intervention in each identified school.

(3) After completion of the initial school or district audits and within thirty (30) days of receiving the audit findings, the Commissioner of Education shall notify in writing the school, district, or charter governing board and the charter authorizer of the audit findings and recommendation regarding principal or school leader's leadership capacity and authority and a determination regarding district or governing board's leadership capacity and authority. The superintendent shall then make any necessary determination regarding the principal or other certified staff pursuant to KRS 160.346(7)(c)-(e).

Section 7. Turnaround Team and Development of Turnaround Plan for School Identified for Comprehensive Support and Improvement. (1)(a) Within thirty (30) days after the audit findings are released, the turnaround team shall develop a turnaround plan pursuant to KRS 160.346(7)(h). The turnaround team shall be selected pursuant to the requirements of KRS 160.346(7)(a):

(b) Should the LEA utilize a private entity to serve as the turnaround team, pursuant to KRS 160.356(7)(a)(1), the LEA shall ensure compliance with Section 2 of this administrative regulation and provide ongoing oversight of the private entity's work, functioning, and accomplishments as the turnaround team. The LEA shall provide this information to the department quarterly.

(c) Should the LEA utilize the local staff and community partners to serve as the turnaround team, pursuant to KRS 160.346(7)(a)(2), the LEA shall ensure the following:

1. Schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the turnaround team; and

2. At least one (1) parent of a student in the identified school is

selected as a member of the turnaround team.

(d) Should the LEA utilize the department to serve as the turnaround team, the turnaround team shall be comprised of team members selected and approved by the Commissioner of Education, or designee, to provide school improvement assistance.

(2) The turnaround plan shall include:

(a) Evidence-based interventions to be utilized to increase student performance and address the critical needs identified in the school audit;

(b) A comprehensive list of persons and entities involved in the turnaround efforts and the specific roles each shall play in the school's turnaround; and

(c) A review of resource inequities which shall include an analysis of school level budgeting to ensure resources are adequately channeled towards school improvement.

(3) The turnaround team shall, no later than thirty (30) days after the turnaround team is on site, present the turnaround plan to the LEA, which shall give final approval, provide the necessary support and resources for the turnaround plan, and submit the turnaround plan to the Commissioner of Education for approval.

(4)(a) Following receipt of the turnaround plan specified in this paragraph and before the beginning of the school year following the audit, the Commissioner of Education in consultation with the advisory leadership team, superintendent, and local board of education, shall determine the sufficiency of the school's turnaround plan to meet the needs of the school's turnaround effort.

(b) If the Commissioner of Education finds that the plan is not sufficient to meet the needs of the school turnaround effort for a school identified for comprehensive support and improvement, the department shall provide feedback detailing the deficiencies and advise the LEA and school to make changes to the plan.

Section 8. Advisory Leadership Team. (1) In establishing the advisory leadership team, the principal or charter school leader shall ensure that schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the advisory leadership team.

(2) Meetings of the advisory leadership team shall be open to be public;

(3) Duties of the advisory leadership team shall include:

(a) Providing support for systems that seek to build capacity in school leadership;

(b) Promoting positive school climate and culture; and

(c) Supporting the continual use of data-driven decision-making to support school improvement.

Section 9. Monitoring and Periodic Review of Plan Implementation. (1) Pursuant to the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, 20 U.S.C.A. 6301, all schools identified for comprehensive support and improvement shall be subject to monitoring and periodic review by the department.

(2) Monitoring shall include:

(a) Onsite support by department staff;

(b) Annual review of school and LEA state accountability data;

(c) Review of indicators of school quality; and

(d) Other measures deemed necessary by the department to ensure compliance with the Every Student Succeeds Act, or its successor.

(3) Periodic review of the turnaround plan shall include quarterly reporting on the implementation and results of the turnaround plan. Quarterly reporting shall be submitted to the department.

Section 10. More Rigorous Intervention. (1) Schools identified for comprehensive support and improvement that do not exit that status after three (3) years shall be subject to intervention by the department including but not limited to:

(a) A school audit conducted by the department;

(b) Onsite assistance by department staff; and

(c) Evaluation and modification of the school turnaround plan.

(2) Schools identified for comprehensive support and improvement that do not exit after three (3) years shall be subject to an audit by the department every two (2) years, or as deemed necessary by the Commissioner of Education.

(3) Schools identified for comprehensive support and improvement that do not make annual improvement for two (2) consecutive years shall be subject to intervention by the department, as described in subsections (1) and (2) in this section, after the second year;

(4) Districts serving any number of schools identified for comprehensive support and improvement that do not exit after three (3) years, or two (2) years as described in subsection (2) of this section, shall be subject to a district audit. Additional district audits for districts serving schools identified for comprehensive support and improvement that do not exit that status shall occur every two (2) years, or as deemed necessary by the Commissioner of Education. No district, regardless of the number of schools identified for comprehensive support and improvement that fail to exit that status, shall have more than one (1) district audit every two (2) years.

Section 11. Targeted Support and Improvement. (1) Upon identification as a school for targeted support and improvement, the identified school shall comply with the requirements of KRS 160.346(4). The school improvement plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225;

(2) LEAs with schools identified for targeted support and improvement shall monitor and provide support to the school so as to ensure the successful implementation of the school improvement plan.

Section 12. Significant Number of Schools. (1) In addition to providing notification to LEAs as to the identification of schools for comprehensive support and improvement or targeted support and improvement, the department shall notify LEAs as to whether or not they shall be considered a LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement.

(2) To determine whether a LEA meets this designation, the department shall calculate, based on the total number of A1 schools, as defined in 703 KAR 5:240, in the LEA, the LEA's percentage of schools identified for comprehensive support and improvement and the LEA's percentage of schools identified for targeted support and improvement. Any LEA containing two (2) or more schools identified for comprehensive support and improvement or targeted support and improvement and whose percentage of identified schools exceeds ten (10) percent for either comprehensive support and improvement or targeted support and improvement shall be designated a LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement.

Section 13. Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Comprehensive Support and Improvement. (1) LEAs supporting a significant number of schools identified for comprehensive support and improvement shall receive the following technical assistance:

(a) A district audit, or school audit if a charter school, conducted by the department; and

(b) Onsite support from department staff.

(2) The district audit, or school audit if a charter school, completed by the department under subsection (1)(a) of this section shall take the place of any district or school audit conducted under Sections 4 and 5 of this administrative regulation.

(3) Department staff shall:

(a) Coordinate with the LEA to ensure direct support of schools identified for comprehensive support and improvement;

(b) Review, via the district or school audit, if a charter school, resources and allocations to determine if they are being used effectively for school improvement;

(c) Work with the LEA to address any identified resource inequities that negatively impact schools and students; and

(d) Work with the LEA to develop sustainable systems to support school improvement.

Section 14. Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Targeted Support and Improvement. (1) LEAs supporting a significant number of schools identified for targeted support and improvement shall receive the following technical assistance:

(a) Periodic site visits; and

(b) Onsite support by department staff.

(2) Department staff shall:

(a) Review LEA resources and allocations to determine if they are being used effectively for school improvement;

(b) Provide technical assistance to the LEA regarding resource allocation to support school improvement; and

(c) Connect LEAs with professional development opportunities to build capacity for school improvement efforts.

Section 15. Exit Criteria. (1) Schools identified for comprehensive support and improvement shall exit that status when:

(a) They no longer meet the criteria for their identification; and

(b) They demonstrate continued progress on the data that were the basis for the identification.

(2) Schools identified for comprehensive support and improvement as a result of more than one (1) criteria shall exit when all relevant exit criteria are met.

(3) Schools identified for targeted support and improvement under KRS 160.346(2)(a) shall exit that status when the identified subgroup(s) is no longer below the performance of all students in the bottom five (5) percent of Title I schools or non-Title I schools within that range of Title I schools and demonstrate continued progress on the data that served as the basis for identification.

(4) Schools identified for targeted support and improvement under KRS 160.346(2)(b) shall exit that status when the identified subgroup(s) is no longer below the performance of all students in the bottom ten (10) percent of Title I schools or non-Title I schools within that range. LEAs may include additional exit criteria at their discretion.

Section 16. Incorporation by Reference. (1) "LEA Notification of Non-Department Audit or Turnaround Team Form", February 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, 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.

MARY GWEN WHEELER, Chairperson

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 14, 2018 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2018, at 10 am, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 2018. Send written notification of intent to be

heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email [regcomments@education.ky.gov](mailto:regcomments@education.ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Elementary and Secondary Education Act (ESEA), as reauthorized by the Every Student Succeeds Act (ESSA), 20 U.S.C. 6301, requires states receiving Title I Part A funding to adopt a system of accountability and support for low-achieving schools. The state is required to identify schools for comprehensive and targeted support and improvement based on state adopted criteria (that meet federal guidelines) and provide turnaround support for those schools by working with school and district leaders. SB 1 (2017) also requires the Kentucky Board of Education (KBE) to promulgate administrative regulations for the identification of schools for comprehensive and targeted support and improvement, as well as assistance and intervention. This regulation establishes that system of support and ongoing accountability in compliance with ESSA and SB 1 (2017).

(b) The necessity of this administrative regulation: The amendments to this regulation are required for alignment to the State Plan, as submitted to the United States Department of Education. This regulation reflects the essential functions and requirements under Title I Part A, as reauthorized under the ESSA.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.060 and KRS 156.070. It also aligns with the requirements under the ESEA, 20 U.S.C. 6301, as reauthorized by the ESSA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: ESSA requires states to identify schools for comprehensive and targeted support and improvement based on state adopted criteria (that meet federal guidelines) and provide turnaround support for those schools by working with school and district leaders. This regulation establishes that system of support and ongoing accountability in compliance with ESSA.

(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: NA

(b) The necessity of the amendment to this administrative regulation: NA

(c) How the amendment conforms to the content of the authorizing statute: NA

(d) How the amendment will assist in the effective administration of the statutes: NA

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include: all public schools, school districts, and the KDE as it is tasked with providing guidance, support, technical assistance, and monitoring and periodic review of school improvement plans under ESSA.

(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: School districts already receive similar support as under No Child Left Behind (NCLB), ESSA's predecessor, and the Kentucky NCLB Waiver. This regulation reflects federal requirements and districts have been part of the transition process since the federal legislation was passed in December of 2015. Schools and local education agencies that are

identified will need to develop and implement improvement plans that address the issues that led to their identification. KDE as it is tasked with providing guidance, support, technical assistance, and monitoring and periodic review of school improvement plans under ESSA.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): KDE provides the supports indicated in the regulation through the use of state and federal funding. The school and district level supports come at no charge to schools and districts if conducted by the department. However, SB 1 (2017) created flexibility for school districts and allows them to select audit teams and turnaround teams not associated with the department. The districts must bear the cost of audit and turnaround teams if they select an entity other than KDE for these services. SB 1 (2017) does provide for some reimbursement for this cost, but it is no more than what the department has budgeted for such costs. KDE has requested for the 2018-2020 biennial budget to include \$500,000 for this reimbursement allowance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The supports provided in this regulation will lead struggling schools and districts to sustainable turnaround through the implementation of systems that build capacity in school leadership, establish positive school climate and culture, and support continual use of data-driven decision-making to support school improvement.

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

(a) Initially: The KDE is required by ESSA to provide support, monitoring and technical assistance to schools and districts with low-performing schools. This requirement existed prior to the ESSA reauthorization. As a result, there is no initial cost for monitoring and support. Federal funding is utilized for this work. KDE submitted an ABR for the 2018-2020 biennial budget to include \$500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

(b) On a continuing basis: As a result of the continuing obligation in ESSA to provide support, monitoring and technical assistance to schools and districts, KDE incurs an ongoing cost of staff and resources. State and federal funding is utilized for this work. KDE submitted an ABR for the 2018-2020 biennial budget to include \$500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding under Title I Part A and state funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this point it is unclear as to whether the number of identified schools will increase as a result of the changes in the state accountability system. An increase could result in the need for additional funding or, if none exists, differentiated support.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and KDE.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301

(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. With regards to supports offered by the department, this should not have a significant impact as state and federal funding is utilized for this work. Additionally, the supports provided in this regulation are the same as those provided previously under NCLB and the Kentucky Waiver. With regards to the reimbursement available under SB 1 (2017), KDE submitted a request for the 2018-2020 biennial budget to include \$500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

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

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

(c) How much will it cost to administer this program for the first year? The KDE is required by ESSA to provide support, monitoring and technical assistance to schools and districts with low-performing schools. This requirement existed prior to the ESSA reauthorization. As a result, there is no initial cost. Federal funding is utilized for this work. However, with regards to the reimbursement available under SB 1 (2017), KDE submitted a request for the 2018-2020 biennial budget to include \$500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

(d) How much will it cost to administer this program for subsequent years? As a result of the continuing obligation in ESSA to provide support, monitoring and technical assistance to schools and districts, KDE incurs an ongoing cost of staff and resources. Federal and state funding is utilized for this work. However, with regards to the reimbursement available under SB 1 (2017), KDE submitted a request for the 2018-2020 biennial budget to include \$500,000 for the reimbursement allowance provided for in SB 1 (2017) which allows districts who do not utilize the department for the required audit or turnaround team to seek some reimbursement for those services. The reimbursable amount for those districts is subject to available funds.

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

Revenues (+/-): N/A  
Expenditures (+/-): NA  
Other Explanation: N/A

**PUBLIC PROTECTION CABINET  
Kentucky Claims Commission  
(New Administrative Regulation)**

**802 KAR 2:010. Negligence claims before the Kentucky Claims Commission.**

RELATES TO: KRS 49.020, 49.040, 49.090, 49.120

STATUTORY AUTHORITY: KRS 49.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) requires the commission to promulgate administrative regulations to carry out the provisions and purposes of the commission. This administrative regulation establishes

requirements and procedures for filing and adjudicating negligence claims under the jurisdiction of the commission and the method of pleading and practice before the commission.

**Section 1. Filing Claims. (1) A claim shall:**

(a) Be legibly written, typed, or printed;

(b) Contain:

1. The name, address, telephone number, and e-mail address of the claimant;

2. The amount of the claim; and

3. A statement of the facts that:

a. Shows that the claimant may be entitled to relief pursuant to KRS 49.010 through 49.180; and

b. Enables the respondent agency to investigate the claim and prepare its defense; and

c. Be filed by mail, electronic mail at [negligenceclaims@ky.gov](mailto:negligenceclaims@ky.gov), or delivered in person to the commission's office.

(2) An attorney representing a claimant before the commission shall enter an appearance at the time the complaint is filed or as soon thereafter as possible.

(3) Any orders related to the claim and copies shall be served on the opposing party and the hearing officer presiding over the claim.

(4) An individual who is not an attorney shall not represent any other individual or an entity party to a claim.

**Section 2. Response to Claims. (1) The commission shall submit a copy of each claim to the head of the agency against which the claim is filed.**

(2) The agency against which a claim has been filed shall answer the claim or file a responsive motion in writing to the commission and the claimant within thirty (30) days.

(3) The commission shall consider the claim at its next regular or special meeting if:

(a) The response filed by the affected agency admits liability; or

(b) The respondent agency fails to respond to the commission concerning its investigation within thirty (30) days.

(4) If the agency denies negligence in a claim requiring a hearing pursuant to KRS 49.090(3), a hearing officer shall be assigned and the commission shall notify the claimant and the head of the affected agency of the assignment.

(5) The commission may grant an extension of time to file the answer or response to the claim upon:

(a) Agreement of the parties; or

(b) A showing of good cause.

**Section 3. Prehearing or Status Conference and Hearing Schedule. (1) The hearing officer shall schedule a telephonic prehearing or status conference:**

(a) Within thirty (30) days of the assignment of the claim; and

(b) Upon reasonable notice to all parties.

(2) The hearing officer may convene the telephonic prehearing or status conference or order the affected state agency to convene the conference.

(3) A prehearing or status conference may be used to discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.

(4) The hearing officer and the parties shall set an agreed date for the hearing at the prehearing or status conference. If the hearing officer and parties cannot agree upon a hearing date, the hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference, unless the parties have otherwise agreed.

(5) Upon conclusion of the prehearing or status conference, the hearing officer shall issue an order including all matters determined at the prehearing or status conference.

(6) The hearing officer shall notify the commission of the date and time for the hearing. The executive director, or his or her

designee, shall:

- (a) Reserve a place within the proper venue to conduct the hearing;
- (b) Select a court reporter to be present at the hearing to record the proceedings; and
- (c) Notify the parties and the court reporter of the date, time, and place of the hearing.

Section 4. Conduct of Hearing. Except as otherwise established in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.

MARCUS CAREY, Chair

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 27, 2018 at 10:30 a.m. at the Kentucky Claims Commission, 130 Brighton Park Blvd., Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this proposed administrative regulation will be accepted if received on or before 11:59 PM on March 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: G. Mitchell Mattingly, Kentucky Claims Commission Attorney, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817, email [mitchell.mattingly@ky.gov](mailto:mitchell.mattingly@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: G. Mitchell Mattingly

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rules and procedures for adjudicating negligence claims against the Commonwealth of Kentucky and sets forth the method of pleading and practice before the Kentucky Claims Commission. Concurrent with the repeal of 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040, which contained rules and procedures for the Kentucky Board of Claims, this new administrative regulation establishes requirements for content and deadlines for filing claims with the commission, sets forth administrative procedures and policies for the conduct of parties and hearing officers throughout claim adjudication and resolution, and provides a formal framework for commission decision making.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish rules and procedures for adjudicating negligence claims before the Kentucky Claims Commission pursuant to KRS Chapter 49.040 to 49.180.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 49.020 and 49.030 by providing procedural rules for processing, litigating, and adjudicating claims of negligence against state government agencies brought before the Kentucky Claims Commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation will provide guidance to all parties proceeding before the commission and assist the commission's adjudication of matters.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will provide guidance to approximately 900-1,000 claimants who file negligence claims with the Kentucky Claims Commission annually and the various state government agencies who defend against those claims, as well as the commission and its hearing officers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals pursuing claims against Kentucky state agencies and their attorneys will have to comply with filing and procedural requirements set forth in this administrative regulation. Kentucky state agencies seeking to defend against claims, as well as the commission and its hearing officers, will have to comply with the practice and procedural requirements in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Claimants, attorneys, agencies, hearing officers, and commission members will have clear guidance on the submission of claims and subsequent proceedings.

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

(a) Initially: There is no initial cost associated with implementing this administrative regulation.

(b) On a continuing basis: There is no continuing basis cost associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional source of funding is necessary to implement this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all parties.

#### 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 Claims Commission and any state government agency named in a negligence claim filed with the commission will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 49.020(5) authorizes the action proposed in the administrative regulation.

(3) Estimate the effect of this administrative regulation on the



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

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

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

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

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

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

Revenues (+/-): No impact  
Expenditures (+/-): No impact  
Other Explanation: None

**PUBLIC PROTECTION CABINET  
Kentucky Claims Commission  
(New Administrative Regulation)**

**802 KAR 3:010. Crime victims compensation.**

RELATES TO: KRS 49.260 - 49.490, 216B.015, 216B.400

STATUTORY AUTHORITY: KRS 49.020, 49.300(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.300(1) requires the commission to promulgate administrative regulations that are necessary to carry out the provisions of KRS 49.270 through 49.490. This administrative regulation establishes procedures for crime victims to file claims for compensation.

Section 1. Filing Claims. (1) A claim shall be:

- (a) Legibly written, typed, or printed on the Crime Victim Compensation Claim Form;
  - (b) Signed by the claimant; and
  - (c) Filed by mail, electronic mail to [crimevictims@ky.gov](mailto:crimevictims@ky.gov), or delivered in person to the commission.
- (2) If applying for lost wages or loss of support, a claim shall be supplemented by:
- (a) A notarized Employment Verification Form; and
  - (b) If requested by commission staff:
    - 1. A Physician Statement Form; or
    - 2. A Mental Health Counselor Form.

Section 2. Kentucky Medical Assistance Program. (1) The commission shall cross-reference every claim with those claims that appear in the Kentucky Medical Assistance Program (KMAP) database maintained by the Cabinet for Health and Family Services.

(2) If a crime victim is covered by Medicare or Medicaid, the commission's staff will provide the commission a list of:

- (a) All itemized medical charges for which that victim seeks compensation; and
- (b) The victim's services covered by medical assistance as reported in KMAP.

(3) Upon making an award to a Medicaid-eligible crime victim, the commission shall not consider any medical bills submitted by or on behalf of the victim for any KMAP-covered services.

(4) If the commission makes an award to a victim who received medical assistance for a KMAP-covered service, the KMAP as final payer shall not be responsible for the payment of any portion of that claim awarded by the commission.

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

- (a) "Crime Victim Compensation Form", February 2018;
- (b) "Crime Victim Employment Verification", February 2018;
- (c) "Crime Victim Physician Statement", February 2018; and
- (d) "Crime Victim Mental Health Counselor's Report", February 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Claims Commission, 130 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://cvcb.ky.gov/Pages/default.aspx>.

MARCUS CAREY, Chairman

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 27, 2018 at 10:30 a.m. at the Kentucky Claims Commission, 130 Brighton Park Blvd., Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this proposed administrative regulation will be accepted if received on or before 11:59 PM on March 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: G. Mitchell Mattingly, Kentucky Claims Commission Attorney, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817 email [mitchell.mattingly@ky.gov](mailto:mitchell.mattingly@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: G. Mitchell Mattingly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides procedural rules and methods for filing crime victim claims before the Kentucky Claims Commission, serious financial hardship standards to determine claim eligibility, a decision making process for commission members, a limitation on attorney's fees, and prevention of duplicative payments with the Kentucky Medical Assistance Program. Concurrent with the repeal of 107 KAR 1:005, 107 KAR 1:010, 107 KAR 1:015, 107 KAR 1:025, 107 KAR 1:030, and 107 KAR 1:040, which contained rules and procedures for the Kentucky Crime Victims Compensation Board, this new administrative regulation establishes a formal framework for crime victims to file claims with the commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish rules and procedures for adjudicating crime victim claims before the Kentucky Claims Commission pursuant to KRS Chapter 49.260 to 49.490.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 49.020(3) and 49.300 by providing procedural rules for processing, investigating, and adjudicating crime victim compensation claims filed with the commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS Chapter 49 by providing guidance to claimants about how claims will proceed before the commission and by providing a streamlined approach to adjudicating these claims.



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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will provide updated and streamlined guidance to approximately 150-200 claimants who file crime victim compensation claims each year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation will provide updated and streamlined guidance to approximately 150-200 claimants who file crime victim compensation claims annually and to the commission evaluating claims.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation will create no costs for the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide updated and streamlined guidance to claimants who file crime victim compensation claims and the commission evaluating claims.

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

(a) Initially: There is no initial cost associated with implementing this administrative regulation.

(b) On a continuing basis: There is no continuing cost associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to be used for the implementation and enforcement of this administrative regulation comes from the state court cost distribution fund and federal Victims of Crime Act matching funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all parties.

#### 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 Claims Commission and the Kentucky 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 13A.310(3)(a), 49.020(5).

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

(a) How much revenue will this administrative regulation

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

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

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

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

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

Revenues (+/-): No impact

Expenditures (+/-): No impact

Other Explanation: None

#### PUBLIC PROTECTION CABINET Kentucky Claims Commission (New Administrative Regulation)

#### 802 KAR 3:020. Payment schedule for sexual assault examinations.

RELATES TO: KRS 49.020, 49.490, 216B.015, 216B.400, 403.707  
STATUTORY AUTHORITY: KRS 49.020, 49.300(1), 216B.400(8)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) requires the commission to promulgate administrative regulations to carry out the provisions and purposes of the commission. KRS 216B.400(8) requires the commission to pay the cost of a sexual assault examination. This administrative regulation establishes the reimbursement schedule for performing a sexual assault forensic medical examination.

Section 1. Sexual Assault Examination Program. (1) Reimbursement for performing a sexual assault forensic-medical examination pursuant to 502 KAR 12:010 shall be for the actual amount billed and shall not exceed:

- (a) \$200 for a physician, sexual assault nurse examiner, or other qualified medical professional performing the examination;
- (b) \$250 for an examination facility for use of an emergency or examination room;
- (c) \$100 for an examination facility or laboratory that performed diagnostic laboratory testing; and
- (d) \$100 for an examination facility where administered medications and pharmaceuticals were prescribed as a result of the examination and as part of basic treatment.

(2) Reimbursement for additional services related to a sexual assault forensic-medical examination requiring HIV post-exposure prophylaxis shall be for the actual amount billed and shall not exceed the following limitations:

- (a) \$150 for three (3) follow-up examinations, not to exceed a total of fifty (50) dollars per examination;
- (b) Laboratory testing:

- 1. \$150 for initial testing conducted during the sexual assault examination in the examination facility; and
- 2. \$215 for follow-up testing conducted during the three (3) follow-up examinations, not to exceed:

- a. Fifty (50) dollars for testing conducted during day five (5) to day seven (7) of prophylactic treatment;
- b. Ninety (90) dollars for testing conducted after day twelve (12) of prophylactic treatment; and
- c. Seventy-five (75) dollars for testing conducted near or at the end of prophylactic treatment; and

- (c) Medications:

- 1. \$800 for a twenty-eight (28) day supply of HIV prophylaxis medication, not to exceed:

- a. \$200 for the first seven (7) day supply; and
- b. \$600 for the remaining twenty-one (21) day supply; and
- 2. Thirty (30) dollars for a twenty-eight (28) day supply of anti-nausea medication.

MARCUS CAREY, Chair

DAVID A. DICKERSON, Secretary

APPROVED BY AGENCY: February 14, 2018

FILED WITH LRC: February 15, 2018 at 10 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall, if requested, be held on March 27, 2018 at 10:30 a.m. at the Kentucky Claims Commission, 130 Brighton Park Blvd., Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments regarding this proposed administrative regulation will be accepted if received on or before 11:59 p.m. on March 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

**CONTACT PERSON:** G. Mitchell Mattingly, Kentucky Claims Commission Attorney, 130 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 782-8255, fax (502) 573-4817, email [mitchell.mattingly@ky.gov](mailto:mitchell.mattingly@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: G. Mitchell Mattingly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement schedule for performing a sexual assault forensic medical examination, concurrent with the repeal of 107 KAR 2:010, which previously contained the reimbursement schedule.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish reimbursement rates for examinations, laboratory testing, and medications arising out of a sexual assault forensic medical examination.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides a reimbursement schedule consistent with the commission's authority set forth in KRS 49.020 and 49.490 to promulgate regulations and administer the sexual assault victim assistance fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation clearly specifies reimbursement rates for examinations, laboratory testing, and medications arising out of a sexual assault forensic medical examination.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will provide specific reimbursement rates for the approximately 1,000 sexual assault examination payment requests per year.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) must comply with the specific reimbursement rates.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation creates specific reimbursement rates for providers of sexual assault examinations.

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

(a) Initially: There is no additional initial cost associated with implementing this administrative regulation because the reimbursement amounts have not been amended.

(b) On a continuing basis: The continuing cost of implementing this administrative regulation depends on the number of claims made in a particular year; over the last 6 years the Crime Victims Compensation Board averaged \$274,000 in annual payments for the sexual assault examination program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding to be used for the implementation and enforcement of this administrative regulation comes from the state court cost distribution fund and federal Victims of Crime Act matching funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no additional fees or funding necessary to implement this administrative regulation, as the reimbursement amounts have not been amended.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes no additional fees or increases in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all parties.

#### 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 Claims Commission, the Kentucky Cabinet for Health and Family Services, the Kentucky Justice and Public Safety Cabinet, and the Kentucky Sexual Assault Response Team Advisory Committee 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 13A.310(3)(a), 49.020(5).

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

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

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

(c) How much will it cost to administer this program for the first year? The cost of administering this program depends on the number of reimbursement claims in a given year. For 2017, the Sexual Assault Examination fund paid out \$301,516.

(d) How much will it cost to administer this program for subsequent years? The cost of administering this program depends on the number of reimbursement claims in a given year. Over the past 6 years, the Sexual Assault Examination fund has paid out an average of \$274,700.

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

Revenues (+/-): No impact

Expenditures (+/-): No impact

Other Explanation: This administrative regulation sets the fee schedule for sexual assault examination reimbursements, and is a repromulgation of the fee schedule previously enacted at 107 KAR 2:010. The reimbursement amounts have not been amended, so there is no anticipated change in revenues or expenditures at this time.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Health Policy**  
**(Repealer)**

**900 KAR 6:121. Repeal of 900 KAR 6:120.**

RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Policy, has responsibility to administer the Certificate of Need Program. KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. 900 KAR 5:020 establishes the State Health Plan, which includes review criteria for the establishment and expansion of specific health services and is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. The 2017-2019 State Health Plan does not include review criteria for a pilot program included in prior plans and effectively terminates the program through which hospitals without on-site open heart surgery obtained limited certificate of need authority to perform angioplasty services. Because the program has been terminated, program requirements are no longer necessary and repeal of 900 KAR 6:120 is appropriate. This administrative regulation repeals 900 KAR 6:120.

Section 1. 900 KAR 6:120, Certificate of need angioplasty two (2) year trial program, is hereby repealed.

MOLLY NICOL LEWIS, Acting Director  
 SCOTT W. BRINKMAN, Acting Secretary

APPROVED BY AGENCY: February 8, 2018

FILED WITH LRC: February 13, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 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](mailto:Laura.Begin@ky.gov).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Persons: Molly Lewis, (502) 564-7905, ext. 3439, [molly.lewis@ky.gov](mailto:molly.lewis@ky.gov); or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 900 KAR 6:120.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because the program terminated pursuant to 900 KAR 5:020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.310 requires an administrative body to repeal an administrative regulation if it is desired that the administrative regulation no longer be effective. The Cabinet for Health and Family Services, Office of Health Policy, has responsibility to administer the Certificate of Need Program. KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. 900 KAR 5:020 establishes the State Health Plan, which includes review criteria for the establishment and expansion of specific health services and is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. The 2017-2019 State Health Plan does not include review criteria for a pilot program included in prior plans and effectively terminates the program through which hospitals without on-site open heart surgery obtained limited certificate of need authority to perform angioplasty services. Because the program has been terminated, program requirements are no longer necessary and repeal of 900 KAR 6:120 is appropriate. This administrative regulation repeals 900 KAR 6:120.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by repealing one (1) administrative regulation because the program it addresses has been terminated.

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

(a) How the amendment will change this existing administrative regulation: This is a new repealer administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new repealer administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new repealer administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new repealer administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Four (4) hospitals currently participate in the two (2) year angioplasty trial program and the Office of Health Policy, Division of Certificate of Need will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not any actions that regulated entities will have to take to comply with this administrative regulation as it is a repealer administrative regulation. The provisions in the repealed administrative regulation included program reporting requirements that the current participants will be relieved of satisfying. Participants of the two (2) year angioplasty trial program will be issued a new certificate of need that removed the trial status designation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not any costs to complying with this repealer administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The hospitals holding certificates of need to provide angioplasty on a trial basis will be able to provide the services on a permanent basis and the trial status will be removed from their certificates of need. The hospitals will be relieved of the reporting requirements of the trial program. The Office of Health Policy will be relieved of the duty and expense of contracting with an outside expert to review and evaluate the data submitted by the trial participants.

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

(a) Initially: There are no costs to implementing this administrative regulation either initially or on a continuing basis. Additionally, there are not any costs for repealing existing administrative regulations.

(b) On a continuing basis: There are no costs to implementing this administrative regulation either initially or on a continuing basis. Additionally, there are not any costs for repealing existing administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of 900 KAR Chapter 6 are state funds of general and agency appropriations and fees collected by the Office of Health Policy.

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

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

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

Expenditures (+/-):

Other Explanation:

#### 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? Cabinet for Health and Family Services, Office of Health Policy

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040 and 13A.310

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. It will create a savings of about \$10,000 per year in services contracted by the Cabinet for Health and Family Services, Office of Health Policy.

(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? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

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

Revenues (+/-):

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of January 8, 2018

**Call to Order and Roll Call**

The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 12, 2018, at 1:00 p.m. In Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the January 2018 meeting were approved.

**Present were:**

**Members:** Senators Perry Clark and Alice Forgy Kerr; 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:** John Fields, Lauren Graves, Education Professional Standards Board; Tom Crawford, Lisa Swiger, Department of Revenue; Joseph Bowman, Katherine Rupinen, Retirement Systems; Steve Bullard, Wayne Burd, Department of Military Affairs Emergency Management; Leanne Diakov, Board of Medical Licensure; Julie Campbell, Board of Hairdressers and Cosmetologists; Louis Kelly, Board of Physical Therapy; Mary Harville, Rick Kelley, Lottery Corporation; Amber Arnett, Steve Beam, Karen Waldrop, Department of Fish and Wildlife Resources; Joe Bilby, Brent Burchett, Doris Hamilton, Clint Quarles, Department of Agriculture; Amy Barker, Department of Corrections; Todd Allen, Kelly Foster, Department of Education; Mike Pettit, Kristi Redmon, Brooken Smith, Labor Cabinet; Joseph Donohue, Shonita Bossier, Department of Financial Institutions; Drew Conners, Marc Guilfoil, Horse Racing Commission; Stephanie Brammer-Barnes, Donna Little, Alan Sisk, Office of Human Resource Management; Melea Rivera, John Watkins, Office of Health Benefit Exchange; Christa Bell, Doug Decker, Keitha Harris, Phillip Smith, Department for Community Based Services.

**The Administrative Regulation Review Subcommittee met on Monday, February 12, 2018, and submits this report:**

**Administrative Regulations Reviewed by the subcommittee:**

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: General Administration**

16 KAR 1:016. Standards for certified teacher leader. John Fields, deputy executive director, and Lauren Graves, executive staff advisor, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add a new section incorporating by reference the Teacher Leader Model Standards. Without objection, and with agreement of the agency, the amendments were approved.

**Administrative Certificates**

16 KAR 5:040. Admission, placement, and supervision in student teaching.

A motion was made and seconded to approve the following amendment: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

**FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Ad Valorem Tax; Administration**

103 KAR 5:230. Information to be provided by the sheriff when transferring delinquent property tax bills to the county clerk. Tom Crawford, director, and Lisa Swiger, tax policy consultant and regulation coordinator, represented the department.

In response to a question by Representative Petrie, Mr. Crawford stated that there had been conflict regarding tax bill

processing between vendors that served sheriff's offices and vendors that served county clerks. This administrative regulation established consistency with tax bill processing as delinquent bills moved from sheriff's offices to county clerks.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Kentucky Retirement Systems: General Rules**

105 KAR 1:140 & E. Employer's administrative duties. Joseph Bowman, general counsel, and Katherine Rupinen, general counsel, represented the systems.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 7, 9, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**DEPARTMENT OF MILITARY AFFAIRS: Division of Emergency Management: Disaster and Emergency Services**

106 KAR 1:350. Rescue squad minimum equipment. Wayne Bird, Colonel, retired, Assistant Director of Operations for Kentucky Emergency Management, and Brigadier General, retired, Steve Bullard, director of administrative services and legislative liaison, represented the division.

In response to questions by Co-Chair Hale, Mr. Bird stated that rescue squad equipment was inspected annually to assess compliance with these administrative regulations. There was also a quarterly inventory report. There were currently 114 approved, affiliated teams in Kentucky.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 7, 8, 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.

106 KAR 1:390. Search and rescue training requirements.

A motion was made and seconded to approve the following amendments: to amend Section 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT: Board of Medical Licensure**

201 KAR 9:480. Fee schedule regarding genetic counselors. Leanne Diakov, general counsel, represented the board.

In response to a question by Senator Clark, Ms. Diakov stated that genetic counselors were a new category of licensees. Genetic counselors were not physicians, but often worked with physicians in affiliation with university medical systems.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to establish the temporary licensure fee as required by KRS 311.695(2)(a)2. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Hairdressers and Cosmetologists**

201 KAR 12:030. Licensing, permits, and examinations. Julie Campbell, board administrator, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to clarify that the 1,000 hours of curriculum shall apply to all instructors; (2) to amend Section 4 to clarify that a student shall register with the board for the examination date for the given time periods prior to graduation of: (a) eight (8) months for a cosmetology student; (b) seventy-five (75) days for a nail technician student; and (c) six (6) months for an esthetician student; (3) to amend Section 12 to clarify what constitutes good cause for

extending the time period of completing an inspection; (4) to amend Section 17 to: (a) add provisions pertaining to demonstration permits removed from 201 KAR 12:060; (b) incorporate by reference the Demonstration Permit Application; and (c) update the Salon Application form; and (5) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 4, 8 through 12, and 17 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 12:041. Repeal of 201 KAR 12:020, 201 KAR 12:025, 201 KAR 12:031, 201 KAR 12:040, 201 KAR 12:045, 201 KAR 12:050, 201 KAR 12:055, 201 KAR 12:065, 201 KAR 12:070, 201 KAR 12:080; 201 KAR 12:083; 201 KAR 12:085, 201 KAR 12:088, 201 KAR 12:101, 201 KAR 12:105, 201 KAR 12:110, 201 KAR 12:120, 201 KAR 12:125, 201 KAR 12:130, 201 KAR 12:140, 201 KAR 12:150, 201 KAR 12:180, 201 KAR 12:190, 201 KAR 12:220, 201 KAR 12:230, 201 KAR 12:250, and 201 KAR 12:270.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Section 1 to delete the repeal of 201 KAR 12:085, 201 KAR 12:088, 201 KAR 12:120, 201 KAR 12:140, 201 KAR 12:180, 201 KAR 12:190, 201 KAR 12:230 and 201 KAR 12:250. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:060. Compliance.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to comply with KRS 13A.221; (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to delete Section 4 pertaining to demonstration permits because those provisions have been added to 201 KAR 12:030; and (4) to delete Sections 6 through 10 containing provisions on different topical areas. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:260. Fees.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 2, 5, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 5 to establish the apprentice instructor restoration fee of seventy-five (75) dollars. Without objection, and with agreement of the agency, the amendments were approved.

#### **Board of Physical Therapy**

201 KAR 22:170. Physical Therapy Compact Commission. Louis Kelly, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, and CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to incorporate by reference the Physical Therapy Compact Commission Rules and Bylaws. Without objection, and with agreement of the agency, the amendments were approved.

#### **LOTTERY CORPORATION**

202 KAR 3:030. Retailers. Mary Harville, general counsel, and Rick Kelley, vice president of finance and administration, represented the corporation.

In response to a question by Representative Petrie, Ms. Harville stated that this administrative regulation was being amended to make technical corrections and for compliance with the Red Tape Reduction Initiative. Representative Petrie requested to be recorded as voting in opposition to this administrative regulation.

In response to a question by Co-Chair Hale, Mr. Kelley stated that this administrative regulation gave retailers the ability to pay larger cash outs of up to \$25,000 for certain retailers. Consumers would have less distance to travel to collect cash outs.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 6, 8, 9, and 12 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: Game**

301 KAR 2:195. Falconry, raptor take, and raptor propagation. Amber Arnett, counsel, and Karen Waldrop, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **GENERAL GOVERNMENT: Department of Agriculture: Office of Agricultural Marketing**

302 KAR 50:011. Repeal of 302 KAR 50:010. Joe Bilby, general counsel; Brent Burchett, director; and Clint Quarles, staff attorney, represented the department.

In response to questions by Senator Clark, Mr. Bilby stated that the department currently had approximately 250 licensed industrial hemp growers and fifty-seven (57) licensed industrial hemp processors, all licensed pursuant to Senate Bill 218 of the Regular Session of the 2017 General Assembly.

302 KAR 50:020. Policies and procedures for growers.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 31 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 50:030. Policies and procedures for processors and handlers.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 25 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 50:040. Affiliated universities and colleges.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 50:050. THC sampling and testing; post-testing actions.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 50:060. Fees and forms.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 50:070. Prohibited products.

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.

302 KAR 50:080. Materials incorporated by reference.



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.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary**

501 KAR 6:280. Risk and needs assessment. Amy Barker, assistant general counsel, represented the department.

In response to questions by Representative Petrie, Ms. Barker stated that an assessment was established in 2012 to address issues associated with inmate reentry. This administrative regulation revised assessment tools and included matters related to home incarceration.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Instruction**

704 KAR 3:540. Uniform academic course codes. Todd Allen, deputy general counsel; Amanda Ellis, associate commissioner, Office of Teaching and Learning; and Kelly Foster, associate commissioner, Office of Continuous Improvement Support, represented the department.

In response to a question by Senator Clark, Ms. Ellis stated that this administrative regulation applied to traditional public and charter schools.

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.

**Office of Learning Support Services**

704 KAR 7:090. Homeless Children and Youth Education Program.

In response to questions by Senator Clark, Ms. Foster stated that the McKinney – Vento Homeless Education Act was a federal program. For the 2016 – 2017 academic year, Kentucky had 26,826 students who met the definition for homelessness.

In response to questions by Representative Petrie, Ms. Foster stated that the department would follow up with information regarding the percentage of Kentucky students who met the definition for homelessness.

In response to questions by Co-Chair Hale, Ms. Foster stated that the homeless census was based on numbers from the local school districts. The department believed the census was accurate because there were criteria and training for the counting.

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 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 WORKPLACE STANDARDS: Division of Occupational Health and Safety Compliance: Division of Occupation Safety and Health Education and Training: Occupational Safety and Health**

803 KAR 2:505 & E. Cranes and derricks in construction. Mike Pettit, standards safety specialist, and Brooken Smith, chief of staff, represented the division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Department of Financial Institutions: Division of Securities**

808 KAR 10:082. Repeal of 808 KAR 10:080 and 808 KAR 10:310. Shonita Bossier, director, and Joseph Donohue, general counsel, represented the division.

**Kentucky Horse Racing Commission: Harness Racing**

811 KAR 1:215. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund. Drew Conners, program coordinator, and Marc Guilfoil, executive director, represented the commission.

Representative Petrie requested to be recorded as voting in opposition to this administrative regulation and 811 KAR 1:220.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 5, 8, 11, 12, 15, 16, 18, 19, and 21 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

811 KAR 1:220. Harness racing at county fairs.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 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.

**CABINET FOR HEALTH AND FAMILY SERVICES: Office of Human Resource Management: Administration**

900 KAR 1:009. Employee Access to Federal Tax Information (FTI). Stephanie Brammer-Barnes, regulation coordinator, and Alan Sisk, executive director, represented the office.

In response to a question by Representative Petrie, Ms. Brammer-Barnes stated that this administrative regulation was not being amended in response to a particular problem, but for compliance with a federal mandate.

**Office of Health Policy: Certificate of Need**

900 KAR 6:130. Certificate of Need criteria for physician exemption. Stephanie Brammer-Barnes, regulation coordinator, represented the office.

**Office of Health Benefit Exchange: Kentucky Health Benefit Exchange**

900 KAR 10:031. Repeal of 900 KAR 10:030 and 900 KAR 10:100. Melea Rivera, assistant director, and John Watkins, acting executive director, represented the office.

**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. Christa Bell, director, Division of Childcare, and Deck Decker, director, Office of Technology Services, represented the division.

**Division of Family Support: Division of Child Care: Daycare**

922 KAR 2:160 & E. Child Care Assistance Program. Christa Bell, director, and Phillip Smith, branch manager, represented the division.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 2:260 & E. Child care service appeals.

**The following administrative regulations were deferred or removed from the February 12, 2018, subcommittee agenda:**

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Teaching Certificates**

16 KAR 2:010. Kentucky Professional and Provisional Teacher Certificates.

**Administrative Certificates**

16 KAR 5:030. Proficiency evaluation.

**VOLUME 44, NUMBER 9 – MARCH 1, 2018**

**FINANCE AND ADMINISTRATION CABINET: Department of Revenue: General Administration**

103 KAR 1:010. Protests and appeals.

**Board of Podiatry**

201 KAR 25:090. Prescribing and dispensing controlled substances.

**COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Servicers**

202 KAR 7:501. Ambulance agency licensure.

202 KAR 7:545. License classifications.

202 KAR 7:550. Required equipment and vehicle standards.

202 KAR 7:555. Ground agencies.

202 KAR 7:560. Ground vehicle staff.

202 KAR 7:565. Clinical pilot programs.

**TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration**

601 KAR 2:030 & E. Ignition interlock.

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

804 KAR 9:051. Repeal of 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050.

**PUBLIC PROTECTION CABINET: Department of Insurance: Commissioner's Office: Insurance Contract**

806 KAR 14:006. Property and casualty insurance form filings.

**Casualty Insurance Contracts**

806 KAR 20:010. Declination, cancellation, and nonrenewal of property and casualty insurance.

806 KAR 20:021. Repeal of 806 KAR 20:020.

**ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities**

807 KAR 5:022. Gas service.

807 KAR 5:026. Gas service; gathering systems.

807 KAR 5:027. Gas pipeline safety; reports of leaks; drug testing.

807 KAR 5:081. Repeal of 807 KAR 5:023 and 807 KAR 5:031.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Office of Inspector General: Division of Healthcare: Health Services and Facilities**

902 KAR 20:016. Hospitals; operations and services.

902 KAR 20:058. Operation and services; primary care center.

902 KAR 20:145. Operations and services; rural health clinics.

**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 17:026 and 907 KAR 17:030.

907 KAR 17:035. External independent third-party.

**Division of Family Support: Division of Child Care: Daycare**

922 KAR 2:280 & E. Background checks for child care staff members, reporting requirements, and appeals.

The subcommittee adjourned at 1:45 p.m. until March 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 STATE AND  
LOCAL GOVERNMENT  
Meeting of January 24, 2018**

The following administrative regulation was available for consideration and placed on the agenda of the Senate Standing Committee on State & Local Government for its meeting on 01/24/2018, having been referred to the Committee on 01/03/2018, pursuant to KRS 13A.290(6):

32 KAR 1:045 & E

The Senate Standing Committee on Senate State & Local Government found no deficiency with the Regulation and recommended no amendments.

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the 01/24/2018 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**SENATE AND HOUSE STANDING COMMITTEES ON  
TRANSPORTATION**

**Senate meeting of 1/24/2018 and House meeting of 1/30/2018**

The following administrative regulations were available for consideration and placed on the agenda of the Senate and House Standing Committees on Transportation for meeting on 1/30/18 for House and 1/24/18 for Senate, having been referred to the Committee on January 3, 2018, pursuant to KRS 13A.290(6):

601 KAR 23:20 and 602 KAR 15:030

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

**The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.**

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

**The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.**

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 1/30/18 for House and 1/24/18 for Senate meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**HOUSE STANDING COMMITTEE ON HEALTH AND  
FAMILY SERVICES  
Meeting of February 7, 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 February 15, 2018, having been referred to the Committee on February 7, 2018, pursuant to KRS 13A.290(6):

201 KAR 20:095  
201 KAR 20:400  
201 KAR 46:010  
201 KAR 46:020  
201 KAR 46:035  
201 KAR 46:081  
201 KAR 46:095

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 15, 2018 meeting, which are hereby incorporated by reference.

**SENATE STANDING COMMITTEE ON HEALTH AND WELFARE  
Meeting of February 14, 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 February 14, 2018, having been referred to the Committee on February 7, 2018, pursuant to KRS 13A.290(6):

201 KAR 20:095  
201 KAR 20:400  
201 KAR 46:010  
201 KAR 46:020  
201 KAR 46:035  
201 KAR 46:081  
201 KAR 46:095

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 14, 2018 meeting, which are hereby incorporated by reference.

**EDUCATION ASSESSMENT AND ACCOUNTABILITY  
REVIEW SUBCOMMITTEE  
Meeting of February 26, 2018**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education Assessment and Accountability Review Subcommittee for its meeting of February 26, 2018.

703 KAR 5:270

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

**VOLUME 44, NUMBER 9 – MARCH 1, 2018**

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

703 KAR 5:270

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 26, 2018 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates

I - 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

I - 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

I - 28

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

I - 29

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<br>Number   | 43 Ky.R.<br>Page No. | Effective<br>Date | Regulation<br>Number | 43 Ky.R.<br>Page No. | Effective<br>Date |
|--|----------------------|-------------------|----------------------|----------------------|-------------------|
| <b>VOLUME 43</b>   |                      |                   |                      |                      |                   |
| 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. |                      |                   |                      |                      |                   |
| <b>SYMBOL KEY:</b>   |                      |                   | 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.      |                      |                      |                   |
|  |                      |                   |                      |                      |                   |
| <b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>  |                      |                   |                      |                      |                   |
| 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**

| <b>Regulation<br/>Number</b> | <b>43 Ky.R.<br/>Page No.</b> | <b>Effective<br/>Date</b> | <b>Regulation<br/>Number</b> | <b>43 Ky.R.<br/>Page No.</b> | <b>Effective<br/>Date</b> |
|------------------------------|------------------------------|---------------------------|------------------------------|------------------------------|---------------------------|
| 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                  |
| 201 KAR 39:070               |                              |                           | 401 KAR 49:091(r)            | 2241                         | 9-8-2017                  |
| Amended                      | 1640                         |                           | 401 KAR 49:210               |                              |                           |
| Am Comments                  | 2162                         | See 44 Ky.R.              | Repealed                     | 2205                         | 9-8-2017                  |
| 201 KAR 44:090               |                              |                           | 401 KAR 100:010              |                              |                           |
| Amended                      | 2031                         | See 44 Ky.R.              | Repealed                     | 1906                         | 8-4-2017                  |
| 201 KAR 46:035               | 2077                         | See 44 Ky.R.              | 401 KAR 100:011(r)           | 1906                         | 8-4-2017                  |
| 201 KAR 46:040               |                              |                           | 405 KAR 5:095                |                              |                           |
| Amended                      | 1648                         |                           | Amended                      | 1869                         | See 44 Ky.R.              |
| Am Comments                  | 1987                         | See 44 Ky.R.              | 405 KAR 7:091                |                              |                           |
| 201 KAR 46:060               |                              |                           | Repealed                     | 1907                         | 8-4-2017                  |
| Amended                      | 1651                         | 7-17-2017                 | 405 KAR 7:092                |                              |                           |
| 201 KAR 46:070               |                              |                           | Amended                      | 1876                         | See 44 Ky.R.              |
| Amended                      | 1653                         | See 44 Ky.R.              | 405 KAR 7:093(r)             | 1907                         | 8-4-2017                  |
| 201 KAR 46:090               |                              |                           | 501 KAR 1:030                |                              |                           |
| Amended                      | 1654                         | See 44 Ky.R.              | Amended                      | 2209                         | See 44 Ky.R.              |
| 301 KAR 2:075                |                              |                           | 501 KAR 6:040                |                              |                           |
| Amended                      | 1848                         |                           | Amended                      | 1889                         |                           |
| As Amended                   | 2127                         | 7-6-2017                  | As Amended                   | 2134                         | 7-7-2017                  |
| 301 KAR 2:083                |                              |                           | 501 KAR 6:140                |                              |                           |
| Amended                      | 1850                         | 7-6-2017                  | Amended                      | 2212                         | See 44 Ky.R.              |
| 301 KAR 2:178                |                              |                           | 505 KAR 1:130                |                              |                           |
| Amended                      | 1661                         |                           | Amended                      | 2214                         | See 44 Ky.R.              |
| As Amended                   | 2128                         | 7-6-2017                  | 601 KAR 1:018                |                              |                           |
| 301 KAR 2:221                |                              |                           | Amended                      | 1890                         | 7-7-2017                  |
| Amended                      | 2032                         | 7-6-2017                  | 601 KAR 1:113                |                              |                           |
| 301 KAR 2:222                |                              |                           | Amended                      | 2056                         | See 44 Ky.R.              |
| Amended                      | 2195                         | 8-3-2017                  | 601 KAR 2:030                |                              |                           |
| 301 KAR 2:225                |                              |                           | Amended                      | 2216                         |                           |
| Amended                      | 2199                         | 8-3-2017                  | Withdrawn                    |                              | 11-15-2017                |
| 301 KAR 2:300                |                              |                           | 725 KAR 2:060                |                              |                           |
| Amended                      | 2034                         | See 44 Ky.R.              | Amended                      | 2060                         |                           |
| 301 KAR 3:022                |                              |                           | Withdrawn                    | **                           | 6-5-2017                  |
| Amended                      | 2038                         | See 44 Ky.R.              | 725 KAR 2:070                |                              |                           |
| 400 KAR 1:001                |                              |                           | Amended                      | 2063                         | See 44 Ky.R.              |
| Amended                      | 1853                         | See 44 Ky.R.              | 787 KAR 1:070                |                              |                           |
| 400 KAR 1:030                |                              |                           | Amended                      | 612                          | See 44 Ky.R.              |
| Repealed                     | 1901                         | 8-4-2017                  | 787 KAR 2:040                |                              |                           |
| 400 KAR 1:031(r)             | 1901                         | 8-4-2017                  | Amended                      | 2065                         | See 44 Ky.R.              |
| 400 KAR 1:090                |                              |                           | 804 KAR 4:230                |                              |                           |
| Amended                      | 1855                         |                           | Amended                      | 2222                         | See 44 Ky.R.              |
| Am Comments                  | 2164                         | See 44 Ky.R.              | 804 KAR 10:010               |                              |                           |
| 400 KAR 1:100                | 1902                         | See 44 Ky.R.              | Amended                      | 2224                         |                           |
| 401 KAR 8:010                |                              |                           | As Amended                   |                              | See 44 Ky.R.              |
| Amended                      | 2040                         | 9-8-2017                  | 806 KAR 17:575               | 2079                         | See 44 Ky.R.              |
| 401 KAR 8:011(r)             | 2078                         | 9-8-2017                  | 815 KAR 7:120                |                              |                           |
| 401 KAR 8:020                |                              |                           | Amended                      | 2067                         | See 44 Ky.R.              |
| Amended                      | 2043                         | See 44 Ky.R.              | 900 KAR 6:125                |                              |                           |
| 401 KAR 8:040                |                              |                           | Amended                      | 2225                         | See 44 Ky.R.              |
| Amended                      | 2047                         | 9-8-2017                  | 900 KAR 7:030                |                              |                           |
| 401 KAR 8:070                |                              |                           | Amended                      | 2228                         | See 44 Ky.R.              |
| Repealed                     | 2078                         | 9-8-2017                  | 900 KAR 7:040                |                              |                           |
| 401 KAR 8:075                |                              |                           | Amended                      | 2232                         | See 44 Ky.R.              |
| Amended                      | 2049                         | See 44 Ky.R.              | 900 KAR 10:041(r)            | 1908                         | 6-21-2017                 |
| 401 KAR 8:100                |                              |                           | 900 KAR 10:050               |                              |                           |
| Amended                      | 2051                         | See 44 Ky.R.              | Repealed                     | 1908                         | 6-21-2017                 |
| 401 KAR 8:101                |                              |                           | 900 KAR 10:060               |                              |                           |
| Repealed                     | 2078                         | 9-8-2017                  | Repealed                     | 1908                         | 6-21-2017                 |
| 401 KAR 8:250                |                              |                           | 901 KAR 5:060                |                              |                           |
| Amended                      | 2055                         | 9-8-2017                  | Repealed                     | 2242                         | 8-16-2017                 |
| 401 KAR 8:550                |                              |                           | 901 KAR 5:061(r)             | 2242                         | 8-16-2017                 |
| Repealed                     | 2078                         | 9-8-2017                  | 901 KAR 5:120                | 2243                         | See 44 Ky.R.              |
| 401 KAR 8:600                |                              |                           | 902 KAR 2:060                |                              |                           |
| Repealed                     | 2078                         | 9-8-2017                  | Amended                      | 1454                         |                           |
| 401 KAR 49:011               |                              |                           | Am Comments                  | 1989                         |                           |

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation<br>Number | 43 Ky.R.<br>Page No. | Effective<br>Date | Regulation<br>Number | 43 Ky.R.<br>Page No. | Effective<br>Date |
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| As Amended           | 2143                 | See 44 Ky.R.      | 907 KAR 1:065        |                      |                   |
| 902 KAR 20:053(r)    | 2082                 | 7-17-2017         | Amended              | 1485                 |                   |
| 902 KAR 20:054       |                      |                   | Am Comments          | 1997                 |                   |
| Repealed             | 2082                 | 7-17-2017         | As Amended           | 2149                 | 7-7-2017          |
| 902 KAR 21:030       | 1910                 |                   | 907 KAR 23:001       | 2088                 | 10-6-2017         |
| As Amended           | 2148                 | 6-21-2017         | 907 KAR 23:010       | 2091                 | See 44 Ky.R.      |
| 902 KAR 22:010       |                      |                   | 907 KAR 23:020       | 2096                 | See 44 Ky.R.      |
| Repealed             | 2084                 | 7-17-2017         | 910 KAR 1:210        |                      |                   |
| 902 KAR 22:011(r)    | 2084                 | 7-17-2017         | Amended              | 2070                 | 7-17-2017         |
| 902 KAR 22:030       |                      |                   |                      |                      |                   |
| Repealed             | 2084                 | 7-17-2017         |                      |                      |                   |
| 902 KAR 55:075       |                      |                   |                      |                      |                   |
| Repealed             | 2085                 | 7-17-2017         |                      |                      |                   |
| 902 KAR 55:076(r)    | 2085                 | 7-17-2017         |                      |                      |                   |
| 902 KAR 55:100       |                      |                   |                      |                      |                   |
| Repealed             | 2085                 | 7-17-2017         |                      |                      |                   |
| 902 KAR 95:040       |                      |                   |                      |                      |                   |
| Amended              | 2234                 | See 44 Ky.R.      |                      |                      |                   |
| 906 KAR 1:080        |                      |                   |                      |                      |                   |
| Repealed             | 2086                 | 7-17-2017         |                      |                      |                   |
| 906 KAR 1:081(r)     | 2086                 | 7-17-2017         |                      |                      |                   |
| 906 KAR 1:090        |                      |                   |                      |                      |                   |
| Repealed             | 2087                 | 7-17-2017         |                      |                      |                   |
| 906 KAR 1:091(r)     | 2087                 | 7-17-2017         |                      |                      |                   |

## ----- SYMBOL KEY:

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- \*\*\* 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.

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation<br>Number  | 44 Ky.R.<br>Page No. | Effective<br>Date | Regulation<br>Number | 44 Ky.R.<br>Page No. | Effective<br>Date |
|---|----------------------|-------------------|----------------------|----------------------|-------------------|
| <b>VOLUME 44</b>  |                      |                   |                      |                      |                   |
| <b>EMERGENCY ADMINISTRATIVE REGULATIONS</b>   |                      |                   | 4 KAR 1:050          |                      | See 43 Ky.R.      |
| (Note: Emergency regulations expire 180 days from the date filed;<br>or 180 days from the date filed plus number of days of requested<br>extension, or upon replacement or repeal, whichever occurs first.) |                      |                   | As Amended           | 212                  | 9-1-2017          |
| 17 KAR 3:020E   | 494                  | 8-1-2017          | 11 KAR 4:080         |                      |                   |
| Replaced  | 902                  | 12-1-2017         | Amended              | 1367                 |                   |
| 31 KAR 3:010E   | 1914                 | 1-23-2018         | 11 KAR 15:090        |                      |                   |
| 32 KAR 1:020E   | 496                  | 8-15-2017         | Amended              | 107                  |                   |
| Replaced  | 1209                 | 1-5-2018          | As Amended           | 502                  | 10-6-2017         |
| 32 KAR 1:045E   | 876                  | 9-29-2017         | Amended              | 1368                 |                   |
| 101 KAR 2:210E  | 725                  | 9-15-2017         | As Amended           | 1805                 |                   |
| Replaced  | 769                  | 1-5-2018          | 13 KAR 2:120         | 443                  |                   |
| 105 KAR 1:140E  | 1474                 | 12-15-2017        | As Amended           | 899                  | 12-1-2017         |
| 201 KAR 2:390E  | 498                  | 8-15-2017         | 13 KAR 2:130         | 445                  |                   |
| Replaced  | 1501                 | 1-18-2018         | As Amended           | 900                  | 12-1-2017         |
| 201 KAR 2:400E  | 500                  | 8-15-2017         | 13 KAR 3:050         |                      |                   |
| Replaced  | 1502                 | 1-18-2018         | Amended              | 257                  |                   |
| 201 KAR 12:082E   | 877                  | 10-13-2017        | As Amended           | 901                  | 12-1-2017         |
| Replaced  | 1502                 | 2-2-2018          | 16 KAR 1:015         | 698                  |                   |
| 201 KAR 20:505E   | 727                  | 1-5-2018          | Withdrawn            | *                    | 10-13-2017        |
| 301 KAR 1:152E  | 4                    | 5-26-2017         | 16 KAR 1:016         | 1453                 |                   |
| Replaced  | 132                  | 9-8-2017          | As Amended           | 1956                 |                   |
| 501 KAR 1:030E  | See 43 Ky.R.         | 4-17-2017         | 16 KAR 2:010         |                      |                   |
| Replaced  | 218                  | 9-1-2017          | Amended              | 1584                 |                   |
| 501 KAR 6:270E  | 183                  | 6-28-2017         | Am Comments          | 2033                 |                   |
| Replaced  | 731                  | 11-3-2017         | 16 KAR 2:020         |                      | See 43 Ky.R.      |
| 601 KAR 2:030E  | 1479                 | 11-15-2017        | Am Comments          | 225                  |                   |
| 803 KAR 2:425E  | 185                  | 6-26-2017         | As Amended           | 505                  | 10-6-2017         |
| Replaced  | 337                  | 11-3-2017         | 16 KAR 5:020         | 228                  | See 43 Ky.R.      |
| 803 KAR 2:505E  | 1485                 | 12-4-2017         | As Amended           | 508                  | 10-6-2017         |
| 900 KAR 11:010E   | 187                  | 6-29-2017         | 16 KAR 5:030         |                      |                   |
| Replaced  | 956                  | 11-15-2017        | Amended              | 1589                 |                   |
| 902 KAR 20:360E   | 191                  | 6-16-2017         | Am Comments          | 2039                 |                   |
| Replaced  |                      | 10-11-2017        | 16 KAR 5:040         |                      |                   |
| 907 KAR 3:066E  | 6                    | 6-14-2017         | Amended              | 1591                 |                   |
| Replaced  | 152                  | 10-6-2017         | As Amended           | 1956                 |                   |
| 907 KAR 23:010E   | See 43 Ky.R.         | 3-31-2017         | 16 KAR 8:040         |                      | See 43 Ky.R.      |
| Replaced  |                      | 10-6-2017         | Am Comments          | 231                  | 10-6-2017         |
| 907 KAR 23:020E   | See 43 Ky.R.         | 3-31-2017         | 17 KAR 3:020         |                      |                   |
| Replaced  |                      | 10-6-2017         | Amended              | 548                  |                   |
| 921 KAR 2:015E  | 1799                 | 12-28-2017        | As Amended           | 902                  | 12-1-2017         |
| 921 KAR 2:040E  | 881                  | 9-29-2017         | 30 KAR 2:010         |                      | See 43 Ky.R.      |
| 921 KAR 3:090E  | 883                  | 9-29-2017         | As Amended           | 213                  | 9-1-2017          |
| Replaced  | 1155                 | 1-18-2018         | 30 KAR 5:060         |                      | See 43 Ky.R.      |
| 922 KAR 1:140E  | 199                  | 6-29-2017         | As Amended           | 214                  | 9-1-2017          |
| Replaced  | 1060                 | 1-5-2018          | 31 KAR 3:010         |                      |                   |
| 922 KAR 1:490E  | 203                  | 6-29-2017         | Withdrawn            | ***                  | 1-23-2018         |
| Replaced  | 1082                 | 1-5-2018          | Amended              | 2086                 |                   |
| 922 KAR 1:550E  | 207                  | 6-29-2017         | 31 KAR 4:010         |                      |                   |
| Replaced  | 1086                 | 1-5-2018          | Amended              | 112                  |                   |
| 922 KAR 2:090E  | 1916                 | 2-14-2018         | As Amended           | 510                  | 10-6-2017         |
| 922 KAR 2:100E  | 1925                 | 2-14-2018         | 31 KAR 4:040         |                      |                   |
| 922 KAR 2:111E  | 1936                 | 2-14-2018         | Amended              | 113                  | 10-6-2017         |
| 922 KAR 2:120E  | 1937                 | 2-14-2018         | 31 KAR 6:020         |                      |                   |
| 922 KAR 2:160E  | 886                  | 9-29-2017         | Amended              | 114                  | 10-6-2017         |
| 922 KAR 2:180E  | 1946                 | 2-14-2018         | 32 KAR 1:020         |                      |                   |
| 922 KAR 2:190E  | 1952                 | 2-14-2018         | Amended              | 550                  |                   |
| 922 KAR 2:260E  | 895                  | 9-29-2017         | As Amended           | 1209                 | 1-5-2018          |
| 922 KAR 2:280E  | 1487                 | 12-14-2017        | 32 KAR 1:045         | 1170                 |                   |
|   |                      |                   | As Amended           | 1493                 |                   |
|   |                      |                   | 40 KAR 2:145         |                      | See 43 Ky.R.      |
|   |                      |                   | As Amended           | 9                    | 8-4-2017          |
|   |                      |                   | 40 KAR 2:150         |                      | See 43 Ky.R.      |
|   |                      |                   | As Amended           | 10                   | 8-4-2017          |
|   |                      |                   | 45 KAR 1:030         |                      |                   |
|   |                      |                   | Amended              | 258                  | 11-3-2017         |
|   |                      |                   | 45 KAR 1:040         |                      |                   |
|   |                      |                   | Amended              | 260                  | 11-3-2017         |
|   |                      |                   | 45 KAR 1:050         |                      |                   |
| <b>ORDINARY ADMINISTRATIVE REGULATIONS</b>  |                      |                   |                      |                      |                   |
| 4 KAR 1:010   |                      | See 43 Ky.R.      |                      |                      |                   |
| As Amended  | 210                  | 9-1-2017          |                      |                      |                   |
| 4 KAR 1:040   |                      | See 43 Ky.R.      |                      |                      |                   |
| As Amended  | 211                  | 9-1-2017          |                      |                      |                   |

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation<br>Number | 44 Ky.R.<br>Page No. | Effective<br>Date | Regulation<br>Number | 44 Ky.R.<br>Page No. | Effective<br>Date         |
|----------------------|----------------------|-------------------|----------------------|----------------------|---------------------------|
| Amended              | 262                  |                   | Amended              | 778                  |                           |
| As Amended           | 729                  | 11-3-2017         | As Amended           | 1212                 | 1-5-2018                  |
| 101 KAR 1:325        |                      |                   | 103 KAR 41:120       |                      |                           |
| Amended              | 1374                 |                   | Amended              | 1112                 |                           |
| As Amended           | 1809                 |                   | 103 KAR 44:060       |                      |                           |
| 101 KAR 2:210        |                      |                   | Amended              | 780                  |                           |
| Amended              | 769                  | 1-5-2018          | As Amended           | 1212                 | 1-5-2018                  |
| 102 KAR 1:070        |                      |                   | 103 KAR 44:070       |                      |                           |
| Amended              | 264                  |                   | Amended              | 782                  |                           |
| As Amended           | 903                  | 12-1-2017         | As Amended           | 1211                 | 1-5-2018                  |
| 103 KAR 1:010        |                      |                   | 103 KAR 44:100       |                      |                           |
| Amended              | 1595                 |                   | Amended              | 783                  |                           |
| 103 KAR 1:120        | 833                  |                   | As Amended           | 1214                 | 1-5-2018                  |
| As Amended           | 1209                 | 1-5-2018          | 103 KAR 44:120       |                      |                           |
| 103 KAR 5:230        | 1724                 |                   | Amended              | 785                  | 1-5-2018                  |
| As Amended           | 1959                 |                   | 103 KAR 50:020       |                      |                           |
| 103 KAR 15:050       |                      |                   | Repealed             | 837                  | 1-5-2018                  |
| Amended              | 1089                 |                   | 103 KAR 50:021(r)    | 837                  | 1-5-2018                  |
| As Amended           | 1493                 | 2-2-2018          | 103 KAR 50:030       |                      |                           |
| 103 KAR 16:020       |                      |                   | Repealed             | 837                  | 1-5-2018                  |
| Repealed             | 835                  | 1-5-2018          | 103 KAR 50:040       |                      |                           |
| 103 KAR 16:240       |                      |                   | Repealed             | 837                  | 1-5-2018                  |
| Amended              | 1091                 |                   | 105 KAR 1:140        |                      |                           |
| As Amended           | 1810                 |                   | Amended              | 1598                 |                           |
| 103 KAR 16:360       |                      |                   | As Amended           | 1959                 |                           |
| Amended              | 1094                 |                   | 106 KAR 1:350        |                      |                           |
| 103 KAR 16:390       |                      |                   | Amended              | 1603                 |                           |
| Repealed             | 835                  | 1-5-2018          | As Amended           | 1963                 |                           |
| 103 KAR 16:391(r)    | 835                  | 1-5-2018          | 106 KAR 1:390        |                      |                           |
| 103 KAR 17:150       |                      |                   | Amended              | 1610                 |                           |
| Repealed             | 836                  | 1-5-2018          | As Amended           | 1968                 |                           |
| 103 KAR 17:151(r)    | 836                  | 1-5-2018          | 106 KAR 2:040        | 162                  |                           |
| 103 KAR 18:070       |                      |                   | As Amended           | 904                  | 12-1-2017                 |
| Amended              | 1096                 | 2-2-2018          | 107 KAR 1:011(r)     | 2147                 |                           |
| 103 KAR 26:110       |                      |                   | 107 KAR 2:011(r)     | 2148                 |                           |
| Amended              | 770                  | 1-5-2018          | 108 KAR 1:011(r)     | 2149                 |                           |
| 103 KAR 26:120       |                      |                   | 200 KAR 38:020       |                      |                           |
| Amended              | 1097                 | 2-2-2018          | Repealed             | 839                  | 1-5-2018                  |
| As Amended           | 1494                 |                   | 200 KAR 38:021(r)    | 839                  | 1-5-2018                  |
| 103 KAR 27:180       |                      |                   | 200 KAR 38:030       |                      |                           |
| Amended              | 1100                 |                   | Repealed             | 839                  | 1-5-2018                  |
| As Amended           | 1495                 | 2-2-2018          | 201 KAR 2:074        |                      | See 43 Ky.R.<br>7-17-2017 |
| 103 KAR 28:051       |                      |                   | As Amended           | 15                   | See 43 Ky.R.<br>9-20-2017 |
| Amended              | 1101                 |                   | 201 KAR 2:076        |                      |                           |
| As Amended           | 1496                 | 2-2-2018          | As Amended           | 510                  |                           |
| 103 KAR 28:150       |                      |                   | 201 KAR 2:380        | 447                  |                           |
| Amended              | 772                  | 1-5-2018          | Am Comments          | 961                  |                           |
| 103 KAR 30:235       |                      |                   | As Amended           | 1215                 |                           |
| Amended              | 1103                 |                   | As Amended IJC       | 1813                 | 12-13-2017                |
| As Amended           | 1497                 | 2-2-2018          | 201 KAR 2:390        | 699                  |                           |
| 103 KAR 31:030       |                      |                   | Am Comments          | 1363                 |                           |
| Amended              | 1105                 |                   | As Amended           | 1501                 | 1-18-2018                 |
| As Amended           | 1498                 | 2-2-2018          | 201 KAR 2:400        | 701                  |                           |
| 103 KAR 31:050       |                      |                   | As Amended           | 1502                 | 1-18-2018                 |
| Amended              | 774                  |                   | 201 KAR 5:130        |                      |                           |
| As Amended           | 1211                 | 1-5-2018          | Amended              | 1613                 |                           |
| 103 KAR 31:102       |                      |                   | Withdrawn            |                      | 2-12-2018                 |
| Amended              | 1107                 | 2-2-2018          | 201 KAR 9:260        |                      |                           |
| 103 KAR 31:111       |                      |                   | Amended              | 265                  |                           |
| Amended              | 1109                 |                   | Am Comments          | 736                  |                           |
| As Amended           | 1499                 | 2-2-2018          | As Amended           | 905                  | 11-15-2017                |
| 103 KAR 31:170       |                      |                   | 201 KAR 9:310        |                      |                           |
| Amended              | 1110                 |                   | Amended              | 1871                 |                           |
| As Amended           | 1500                 | 2-2-2018          | 201 KAR 9:480        | 1725                 |                           |
| 103 KAR 31:180       |                      |                   | As Amended           | 1970                 |                           |
| Amended              | 775                  |                   | 201 KAR 12:010       |                      |                           |
| As Amended           | 1211                 | 1-5-2018          | Amended              | 1376                 |                           |
| 103 KAR 31:190       |                      |                   | Withdrawn            |                      | 1-2-2018                  |
| Amended              | 777                  | 1-5-2018          | 201 KAR 12:030       |                      |                           |
| 103 KAR 31:200       |                      |                   | Amended              | 1615                 |                           |

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 44 Ky.R. Page No. | Effective Date | Regulation Number | 44 Ky.R. Page No. | Effective Date |
|-------------------|-------------------|----------------|-------------------|-------------------|----------------|
| As Amended        | 1970              |                | 201 KAR 26:155    |                   | See 43 Ky.R.   |
| 201 KAR 12:041(r) | 1726              |                | As Amended        | 24                | 7-17-2017      |
| As Amended        | 1972              |                | 201 KAR 26:160    |                   | See 43 Ky.R.   |
| 201 KAR 12:060    |                   |                | As Amended        | 25                | 7-17-2017      |
| Amended           | 1618              |                | 201 KAR 26:165    |                   | See 43 Ky.R.   |
| As Amended        | 1973              |                | As Amended        | 26                | 7-17-2017      |
| 201 KAR 12:082    |                   |                | 201 KAR 26:171    |                   | See 43 Ky.R.   |
| Amended           | 1113              |                | As Amended        | 26                | 7-17-2017      |
| As Amended        | 1502              | 2-2-2018       | 201 KAR 26:175    |                   | See 43 Ky.R.   |
| 201 KAR 12:100    |                   |                | As Amended        | 29                | 7-17-2017      |
| Amended           | 1378              |                | 201 KAR 26:180    |                   | See 43 Ky.R.   |
| As Amended        | 1814              |                | As Amended        | 31                | 7-17-2017      |
| 201 KAR 12:260    |                   |                | 201 KAR 26:185    |                   | See 43 Ky.R.   |
| Amended           | 1621              |                | As Amended        | 32                | 7-17-2017      |
| As Amended        | 1975              |                | 201 KAR 26:190    |                   | See 43 Ky.R.   |
| 201 KAR 13:040    |                   |                | As Amended        | 32                | 7-17-2017      |
| Amended           | 552               |                | 201 KAR 26:200    |                   | See 43 Ky.R.   |
| As Amended        | 909               | 11-15-2017     | As Amended        | 34                | 7-17-2017      |
| 201 KAR 13:060    |                   |                | 201 KAR 26:210    |                   | See 43 Ky.R.   |
| Amended           | 554               |                | As Amended        | 35                | 7-17-2017      |
| As Amended        | 910               | 11-15-2017     | 201 KAR 26:215    |                   | See 43 Ky.R.   |
| 201 KAR 15:030    |                   |                | As Amended        | 36                | 7-17-2017      |
| Amended           | 117               |                | 201 KAR 26:225    |                   | See 43 Ky.R.   |
| As Amended        | 911               | 12-1-2017      | As Amended        | 37                | 7-17-2017      |
| 201 KAR 15:050    |                   |                | 201 KAR 26:250    |                   | See 43 Ky.R.   |
| Amended           | 118               |                | As Amended        | 38                | 7-17-2017      |
| As Amended        | 912               | 12-1-2017      | 201 KAR 26:280    |                   | See 43 Ky.R.   |
| 201 KAR 15:110    |                   |                | As Amended        | 38                | 7-17-2017      |
| Amended           | 121               |                | 201 KAR 26:290    |                   | See 43 Ky.R.   |
| As Amended        | 914               | 12-1-2017      | As Amended        | 39                | 7-17-2017      |
| 201 KAR 20:057    |                   |                | 201 KAR 28:200    |                   |                |
| Amended           | 270               |                | Amended           | 124               |                |
| Am Comments       | 740               |                | As Amended        | 1216              | 1-5-2018       |
| As Amended        | 916               | 11-15-2017     | 201 KAR 28:235    | 164               |                |
| 201 KAR 20:065    | 840               |                | As Amended        | 1219              | 1-5-2018       |
| Am Comments       | 1364              |                | 201 KAR 31:010    |                   |                |
| As Amended        | 1507              | 1-18-2018      | Amended           | 127               |                |
| 201 KAR 20:070    |                   | See 43 Ky.R.   | As Amended        | 729               | 11-3-2017      |
| As Amended        | 216               | 8-16-2017      | 201 KAR 32:050    |                   | See 43 Ky.R.   |
| 201 KAR 20:095    |                   |                | As Amended        | 40                | 7-17-2017      |
| Amended           | 1381              | 2-14-2018      | 201 KAR 32:060    |                   | See 43 Ky.R.   |
| 201 KAR 20:110    |                   | See 43 Ky.R.   | As Amended        | 41                | 7-17-2017      |
| As Amended        | 217               | 8-16-2017      | 201 KAR 33:015    |                   |                |
| 201 KAR 20:400    |                   |                | Amended           | 561               |                |
| Amended           | 1382              |                | Withdrawn         | **                | 9-27-2017      |
| As Amended        | 1816              | 2-14-2018      | 201 KAR 33:070    |                   |                |
| 201 KAR 20:501(r) | 2150              |                | Amended           | 1625              |                |
| 201 KAR 20:506    | 2151              |                | Withdrawn         |                   | 2-2-2018       |
| 201 KAR 22:020    |                   |                | Amended           | 2087              |                |
| Amended           | 556               |                | 201 KAR 33:080    | 2154              |                |
| As Amended        | 919               | 11-15-2017     | 201 KAR 34:020    |                   | See 43 Ky.R.   |
| 201 KAR 22:040    |                   |                | As Amended        | 43                | 8-4-2017       |
| Amended           | 248               |                | 201 KAR 34:030    |                   | See 43 Ky.R.   |
| As Amended        | 920               | 11-15-2017     | As Amended        | 43                | 8-4-2017       |
| 201 KAR 22:070    |                   | See 43 Ky.R.   | 201 KAR 34:050    |                   | See 43 Ky.R.   |
| As Amended        | 17                | 7-17-2017      | As Amended        | 46                | 8-4-2017       |
| Amended           | 560               |                | 201 KAR 35:040    |                   |                |
| As Amended        | 920               | 11-15-2017     | Amended           | 1119              |                |
| 201 KAR 22:170    | 1728              |                | As Amended        | 1509              | 1-18-2018      |
| As Amended        | 1976              |                | 201 KAR 35:055    |                   |                |
| 201 KAR 25:090    |                   |                | Amended           | 1122              |                |
| Amended           | 1623              |                | As Amended        | 1511              | 1-18-2018      |
| 201 KAR 26:125    |                   | See 43 Ky.R.   | 201 KAR 35:070    |                   |                |
| As Amended        | 18                | 7-17-2017      | Amended           | 1124              | 1-18-2018      |
| 201 KAR 26:130    |                   | See 43 Ky.R.   | 201 KAR 35:080    |                   |                |
| As Amended        | 19                | 7-17-2017      | Amended           | 128               |                |
| 201 KAR 26:140    |                   | See 43 Ky.R.   | As Amended        | 512               | 9-20-2017      |
| As Amended        | 21                | 7-17-2017      | 201 KAR 36:030    |                   |                |
| 201 KAR 26:145    |                   | See 43 Ky.R.   | Amended           | 787               |                |
| As Amended        | 22                | 7-17-2017      | As Amended        | 1220              | 1-5-2018       |

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 44 Ky.R. Page No. | Effective Date | Regulation Number | 44 Ky.R. Page No. | Effective Date |
|-------------------|-------------------|----------------|-------------------|-------------------|----------------|
| 201 KAR 36:050    |                   |                | 202 KAR 7:560     | 1745              |                |
| Amended           | 790               |                | Am Comments       | 2052              |                |
| As Amended        | 1222              | 1-5-2018       | 202 KAR 7:565     | 1747              |                |
| 201 KAR 36:060    |                   |                | 301 KAR 1:015     |                   |                |
| Amended           | 792               |                | Amended           | 1873              |                |
| As Amended        | 1223              | 1-5-2018       | 301 KAR 1:085     |                   |                |
| 201 KAR 36:065    |                   |                | Repealed          |                   | 12-7-2017      |
| Amended           | 130               |                | 301 KAR 1:086(r)  | 844               | 12-7-2017      |
| Withdrawn         |                   | 7-13-2017      | 301 KAR 1:130     |                   |                |
| Amended           | 274               |                | Amended           | 568               | 12-7-2017      |
| As Amended        | 1224              | 1-5-2018       | 301 KAR 1:152     |                   |                |
| 201 KAR 36:070    |                   |                | Amended           | 132               | 9-8-2017       |
| Amended           | 275               |                | 301 KAR 1:155     |                   |                |
| As Amended        | 1225              | 1-5-2018       | Amended           | 570               | 12-7-2017      |
| 201 KAR 36:072    | 842               |                | 301 KAR 1:192     |                   |                |
| As Amended        | 1228              | 1-5-2018       | Repealed          | 166               | 9-8-2017       |
| 201 KAR 39:001    |                   | See 43 Ky.R.   | 301 KAR 1:195(r)  | 166               | 9-8-2017       |
| As Amended        | 47                | 8-4-2017       | 301 KAR 1:201     |                   |                |
| 201 KAR 39:030    |                   | See 43 Ky.R.   | Amended           | 279               | 10-5-2017      |
| As Amended        | 48                | 8-4-2017       | 301 KAR 1:410     |                   |                |
| 201 KAR 39:050    |                   | See 43 Ky.R.   | Amended           | 574               | 1-5-2018       |
| As Amended        | 49                | 8-4-2017       | 301 KAR 2:049     |                   |                |
| 201 KAR 39:070    |                   | See 43 Ky.R.   | As Amended        | 203               |                |
| As Amended        | 50                | 8-4-2017       | Amended           | 513               | 9-8-2017       |
| 201 KAR 44:090    |                   | See 43 Ky.R.   | 301 KAR 2:075     |                   |                |
| As Amended        | 50                | 8-4-2017       | Amended           | 1128              |                |
| 201 KAR 45:001    |                   |                | As Amended        | 1512              | 2-2-2018       |
| Amended           | 2089              |                | 301 KAR 2:081     |                   |                |
| 201 KAR 45:070    |                   |                | Amended           | 1130              |                |
| Repealed          | 921               | 12-1-2017      | As Amended        | 1513              | 2-2-2018       |
| 201 KAR 45:071(r) | 702               |                | 301 KAR 2:132     |                   |                |
| As Amended        | 921               | 12-1-2017      | Amended           | 1875              |                |
| 201 KAR 45:110    |                   |                | 301 KAR 2:178     |                   |                |
| Amended           | 563               | 12-1-2017      | Amended           | 2091              |                |
| 201 KAR 45:120    |                   |                | 301 KAR 2:195     |                   |                |
| Amended           | 565               | 12-1-2017      | Amended           | 1646              |                |
| 201 KAR 45:170    |                   |                | As Amended        | 1989              |                |
| Amended           | 566               |                | 301 KAR 2:300     |                   | See 43 Ky.R.   |
| As Amended        | 921               | 12-1-2017      | As Amended        | 56                | 7-6-2017       |
| 201 KAR 46:010    |                   |                | 301 KAR 3:022     |                   | See 43 Ky.R.   |
| Amended           | 1384              |                | As Amended        | 58                | 7-6-2017       |
| As Amended        | 1817              | 2-14-2018      | Amended           | 794               |                |
| 201 KAR 46:020    |                   |                | As Amended        | 1516              | 2-2-2018       |
| Amended           | 1386              | 2-14-2018      | 301 KAR 3:120     |                   |                |
| 201 KAR 46:035    |                   | See 43 Ky.R.   | Amended           | 1134              |                |
| As Amended        | 51                | 7-17-2017      | As Amended        | 1518              | 2-2-2018       |
| Amended           | 1388              |                | 301 KAR 5:010     |                   |                |
| As Amended        | 1818              | 2-14-2018      | Amended           | 1393              |                |
| 201 KAR 46:040    |                   | See 43 Ky.R.   | As Amended        | 1822              |                |
| As Amended        | 52                | 7-17-2017      | 301 KAR 5:020     |                   |                |
| 201 KAR 46:070    |                   | See 43 Ky.R.   | Amended           | 1394              |                |
| As Amended        | 54                | 7-17-2017      | As Amended        | 1822              |                |
| 201 KAR 46:081    |                   |                | 301 KAR 6:005     |                   |                |
| Amended           | 1390              |                | Amended           |                   | 9-8-2017       |
| As Amended        | 1819              | 2-14-2018      | 302 KAR 17:010    | 845               |                |
| 201 KAR 46:090    |                   | See 43 Ky.R.   | As Amended        | 1229              | 12-7-2017      |
| As Amended        | 55                | 7-17-2017      | 302 KAR 38:011(r) | 2155              |                |
| 201 KAR 46:095    | 1454              |                | 302 KAR 39:011(r) | 2156              |                |
| As Amended        | 1821              | 2-14-2018      | 302 KAR 50:011(r) | 1749              |                |
| 202 KAR 3:030     |                   |                | 302 KAR 50:020    | 1750              |                |
| Amended           | 1627              |                | As Amended        | 1993              |                |
| As Amended        | 1982              |                | 302 KAR 50:030    | 1758              |                |
| 202 KAR 7:501     |                   |                | As Amended        | 2000              |                |
| Amended           | 1637              |                | 302 KAR 50:040    | 1765              |                |
| 202 KAR 7:545     | 1734              |                | As Amended        | 2005              |                |
| Am Comments       | 2041              |                | 302 KAR 50:050    | 1768              |                |
| 202 KAR 7:550     | 1736              |                | As Amended        | 2007              |                |
| Am Comments       | 2042              |                | 302 KAR 50:060    | 1770              |                |
| 202 KAR 7:555     | 1742              |                | As Amended        | 2007              |                |
| Am Comments       | 2049              |                | 302 KAR 50:070    | 1771              |                |

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation<br>Number          | 44 Ky.R.<br>Page No. | Effective<br>Date | Regulation<br>Number | 44 Ky.R.<br>Page No. | Effective<br>Date |
|-------------------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| As Amended                    | 2008                 |                   | 401 KAR 32:010       |                      |                   |
| 302 KAR 50:080                | 1772                 |                   | Repealed             | 450                  | 12-7-2017         |
| As Amended                    | 2008                 |                   | 401 KAR 32:020       |                      |                   |
| 400 KAR 1:001                 |                      | See 43 Ky.R.      | Repealed             | 450                  | 12-7-2017         |
| As Amended                    | 60                   | 8-4-2017          | 401 KAR 32:030       |                      |                   |
| 400 KAR 1:090                 |                      | See 43 Ky.R.      | Repealed             | 450                  | 12-7-2017         |
| As Amended                    | 61                   | 8-4-2017          | 401 KAR 32:040       |                      |                   |
| 400 KAR 1:100                 |                      | See 43 Ky.R.      | Repealed             | 450                  | 12-7-2017         |
| As Amended                    | 71                   | 8-4-2017          | 401 KAR 32:050       |                      |                   |
| 400 KAR 1:110                 |                      |                   | Repealed             | 450                  | 12-7-2017         |
| Recodified from 405 KAR 7:092 |                      | 8-4-2017          | 401 KAR 32:60        |                      |                   |
| 400 KAR 1:120                 |                      |                   | Repealed             | 450                  | 12-7-2017         |
| Recodified from 405 KAR 5:095 |                      | 8-4-2017          | 401 KAR 32:065       |                      |                   |
| 400 KAR 4:100                 |                      |                   | Repealed             | 450                  | 12-7-2017         |
| Recodified from 401 KAR 4:100 |                      | 12-21-2017        | 401 KAR 32:100       |                      |                   |
| 400 KAR 4:110                 |                      |                   | Repealed             | 450                  | 12-7-2017         |
| Recodified from 401 KAR 4:110 |                      | 12-21-2017        | 401 KAR 33:002(r)    | 451                  | 12-7-2017         |
| 400 KAR 4:125                 |                      |                   | 401 KAR 33:005       |                      |                   |
| Recodified from 401 KAR 4:125 |                      | 12-21-2017        | Repealed             | 451                  | 12-7-2017         |
| 400 KAR 4:130                 |                      |                   | 401 KAR 33:010       |                      |                   |
| Recodified from 401 KAR 4:130 |                      | 12-21-2017        | Repealed             | 451                  | 12-7-2017         |
| 400 KAR 4:140                 |                      |                   | 401 KAR 33:020       |                      |                   |
| Recodified from 401 KAR 4:140 |                      | 12-21-2017        | Repealed             | 451                  | 12-7-2017         |
| 401 KAR 4:100                 |                      |                   | 401 KAR 33:030       |                      |                   |
| Recodified as 400 KAR 4:100   |                      | 12-21-2017        | Repealed             | 451                  | 12-7-2017         |
| 401 KAR 4:110                 |                      |                   | 401 KAR 34:002(r)    | 452                  | 12-7-2017         |
| Recodified as 400 KAR 4:110   |                      | 12-21-2017        | 401 KAR 34:005       |                      |                   |
| 401 KAR 4:125                 |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Recodified as 400 KAR 4:125   |                      | 12-21-2017        | 401 KAR 34:010       |                      |                   |
| 401 KAR 4:130                 |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Recodified as 400 KAR 4:130   |                      | 12-21-2017        | 401 KAR 34:020       |                      |                   |
| 401 KAR 4:140                 |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Recodified as 400 KAR 4:140   |                      | 12-21-2017        | 401 KAR 34:030       |                      |                   |
| 401 KAR 8:020                 |                      | See 43 Ky.R.      | Repealed             | 452                  | 12-7-2017         |
| Am Comments                   | 233                  |                   | 401 KAR 34:040       |                      |                   |
| As Amended                    | 516                  | 9-8-2017          | Repealed             | 452                  | 12-7-2017         |
| 401 KAR 8:075                 |                      | See 43 Ky.R.      | 401 KAR 34:050       |                      |                   |
| Am Comments                   | 237                  | 9-8-2017          | Repealed             | 452                  | 12-7-2017         |
| 401 KAR 8:100                 |                      | See 43 Ky.R.      | 401 KAR 34:060       |                      |                   |
| As Amended                    | 519                  | 9-8-2017          | Repealed             | 452                  | 12-7-2017         |
| 401 KAR 8:510                 |                      |                   | 401 KAR 34:070       |                      |                   |
| Amended                       | 1880                 |                   | Repealed             | 452                  | 12-7-2017         |
| 401 KAR 31:002(r)             | 449                  | 12-7-2017         | 401 KAR 34:080       |                      |                   |
| 401 KAR 31:005                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:090       |                      |                   |
| 401 KAR 31:010                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:100       |                      |                   |
| 401 KAR 31:020                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:110       |                      |                   |
| 401 KAR 31:030                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:120       |                      |                   |
| 401 KAR 31:035                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:130       |                      |                   |
| 401 KAR 31:040                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:180       |                      |                   |
| 401 KAR 31:050                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:190       |                      |                   |
| 401 KAR 31:070                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:200       |                      |                   |
| 401 KAR 31:100                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:210       |                      |                   |
| 401 KAR 31:110                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:220       |                      |                   |
| 401 KAR 31:160                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:230       |                      |                   |
| 401 KAR 31:170                |                      |                   | Repealed             | 452                  | 12-7-2017         |
| Repealed                      | 450                  | 12-7-2017         | 401 KAR 34:240       |                      |                   |
| 401 KAR 32:002(r)             | 450                  | 12-7-2017         | Repealed             | 452                  | 12-7-2017         |
| 401 KAR 32:005                |                      |                   | 401 KAR 34:250       |                      |                   |
| Repealed                      | 450                  | 12-7-2017         | Repealed             | 452                  | 12-7-2017         |



# LOCATOR INDEX - EFFECTIVE DATES

| Regulation<br>Number | 44 Ky.R.<br>Page No. | Effective<br>Date | Regulation<br>Number | 44 Ky.R.<br>Page No. | Effective<br>Date |
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| 401 KAR 34:275       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:280       |                      |                   |
| 401 KAR 34:280       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:281       |                      |                   |
| 401 KAR 34:281       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:285       |                      |                   |
| 401 KAR 34:285       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:287       |                      |                   |
| 401 KAR 34:287       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:290       |                      |                   |
| 401 KAR 34:290       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:290       |                      |                   |
| 401 KAR 34:320       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:320       |                      |                   |
| 401 KAR 34:330       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:330       |                      |                   |
| 401 KAR 34:340       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:340       |                      |                   |
| 401 KAR 34:350       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:350       |                      |                   |
| 401 KAR 34:360       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:360       |                      |                   |
| 401 KAR 34:370       |                      |                   | Repealed             | 454                  | 12-7-2017         |
| Repealed             | 452                  | 12-7-2017         | 401 KAR 35:370       |                      |                   |
| 401 KAR 35:002(r)    | 454                  | 12-7-2017         | Repealed             | 454                  | 12-7-2017         |
| 401 KAR 35:005       |                      |                   | 401 KAR 36:002(r)    | 455                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 36:005       |                      |                   |
| 401 KAR 35:010       |                      |                   | Repealed             | 455                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 36:020       |                      |                   |
| 401 KAR 35:020       |                      |                   | Repealed             | 455                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 36:025       |                      |                   |
| 401 KAR 35:030       |                      |                   | Repealed             | 455                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 36:030       |                      |                   |
| 401 KAR 35:040       |                      |                   | Repealed             | 455                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 36:060       |                      |                   |
| 401 KAR 35:050       |                      |                   | Repealed             | 455                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 36:070       |                      |                   |
| 401 KAR 35:060       |                      |                   | Repealed             | 455                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 36:080       |                      |                   |
| 401 KAR 35:080       |                      |                   | Repealed             | 455                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 36:090       |                      |                   |
| 401 KAR 35:090       |                      |                   | Repealed             | 455                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 37:002(r)    | 457                  | 12-7-2017         |
| 401 KAR 35:100       |                      |                   | 401 KAR 37:005       |                      |                   |
| Repealed             | 454                  | 12-7-2017         | Repealed             | 457                  | 12-7-2017         |
| 401 KAR 35:110       |                      |                   | 401 KAR 37:010       |                      |                   |
| Repealed             | 454                  | 12-7-2017         | Repealed             | 457                  | 12-7-2017         |
| 401 KAR 35:120       |                      |                   | 401 KAR 37:020       |                      |                   |
| Repealed             | 454                  | 12-7-2017         | Repealed             | 457                  | 12-7-2017         |
| 401 KAR 35:130       |                      |                   | 401 KAR 37:030       |                      |                   |
| Repealed             | 454                  | 12-7-2017         | Repealed             | 457                  | 12-7-2017         |
| 401 KAR 35:180       |                      |                   | 401 KAR 37:040       |                      |                   |
| Repealed             | 454                  | 12-7-2017         | Repealed             | 457                  | 12-7-2017         |
| 401 KAR 35:190       |                      |                   | 401 KAR 37:050       |                      |                   |
| Repealed             | 454                  | 12-7-2017         | Repealed             | 457                  | 12-7-2017         |
| 401 KAR 35:200       |                      |                   | 401 KAR 37:060       |                      |                   |
| Repealed             | 454                  | 12-7-2017         | Repealed             | 457                  | 12-7-2017         |
| 401 KAR 35:210       |                      |                   | 401 KAR 37:110       |                      |                   |
| Repealed             | 454                  | 12-7-2017         | Repealed             | 457                  | 12-7-2017         |
| 401 KAR 35:220       |                      |                   | 401 KAR 38:002(r)    | 458                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 38:005       |                      |                   |
| 401 KAR 35:230       |                      |                   | Repealed             | 458                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 38:010       |                      |                   |
| 401 KAR 35:240       |                      |                   | Repealed             | 458                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 38:020       |                      |                   |
| 401 KAR 35:245       |                      |                   | Repealed             | 458                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 38:025       |                      |                   |
| 401 KAR 35:250       |                      |                   | Repealed             | 458                  | 12-7-2017         |
| Repealed             | 454                  | 12-7-2017         | 401 KAR 38:030       |                      |                   |
| 401 KAR 35:275       |                      |                   | Repealed             | 458                  | 12-7-2017         |

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation<br>Number | 44 Ky.R.<br>Page No. | Effective<br>Date | Regulation<br>Number        | 44 Ky.R.<br>Page No. | Effective<br>Date |
|----------------------|----------------------|-------------------|-----------------------------|----------------------|-------------------|
| 401 KAR 38:040       |                      |                   | As Amended                  | 1256                 | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 43:002(r)           | 460                  | 12-7-2017         |
| 401 KAR 38:050       |                      |                   | 401 KAR 43:005              |                      |                   |
| Repealed             | 458                  | 12-7-2017         | Repealed                    | 460                  | 12-7-2017         |
| 401 KAR 38:060       |                      |                   | 401 KAR 43:010              |                      |                   |
| Repealed             | 458                  | 12-7-2017         | Repealed                    | 460                  | 12-7-2017         |
| 401 KAR 38:070       |                      |                   | 401 KAR 43:020              |                      |                   |
| Repealed             | 458                  | 12-7-2017         | Repealed                    | 460                  | 12-7-2017         |
| 401 KAR 38:080       |                      |                   | 401 KAR 43:030              |                      |                   |
| Repealed             | 458                  | 12-7-2017         | Repealed                    | 460                  | 12-7-2017         |
| 401 KAR 38:090       |                      |                   | 401 KAR 43:040              |                      |                   |
| Repealed             | 458                  | 12-7-2017         | Repealed                    | 460                  | 12-7-2017         |
| 401 KAR 38:150       |                      |                   | 401 KAR 43:050              |                      |                   |
| Repealed             | 458                  | 12-7-2017         | Repealed                    | 460                  | 12-7-2017         |
| 401 KAR 38:160       |                      |                   | 401 KAR 43:060              |                      |                   |
| Repealed             | 458                  | 12-7-2017         | Repealed                    | 460                  | 12-7-2017         |
| 401 KAR 38:170       |                      |                   | 401 KAR 43:070              |                      |                   |
| Repealed             | 458                  | 12-7-2017         | Repealed                    | 460                  | 12-7-2017         |
| 401 KAR 38:180       |                      |                   | 401 KAR 44:002(r)           | 462                  | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 44:005              |                      |                   |
| 401 KAR 38:190       |                      |                   | Repealed                    | 462                  | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 44:010              |                      |                   |
| 401 KAR 38:200       |                      |                   | Repealed                    | 462                  | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 44:020              |                      |                   |
| 401 KAR 38:210       |                      |                   | Repealed                    | 462                  | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 44:030              |                      |                   |
| 401 KAR 38:230       |                      |                   | Repealed                    | 462                  | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 44:040              |                      |                   |
| 401 KAR 38:240       |                      |                   | Repealed                    | 462                  | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 44:050              |                      |                   |
| 401 KAR 38:250       |                      |                   | Repealed                    | 462                  | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 44:060              |                      |                   |
| 401 KAR 38:260       |                      |                   | Repealed                    | 462                  | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 44:070              |                      |                   |
| 401 KAR 38:270       |                      |                   | Repealed                    | 462                  | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 44:080              |                      |                   |
| 401 KAR 38:290       |                      |                   | Repealed                    | 462                  | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 45:060              |                      |                   |
| 401 KAR 38:300       |                      |                   | Amended                     | 319                  |                   |
| Repealed             | 458                  | 12-7-2017         | As Amended                  | 1258                 | 12-7-2017         |
| 401 KAR 38:310       |                      |                   | 401 KAR 48:005              |                      |                   |
| Repealed             | 458                  | 12-7-2017         | Amended                     | 320                  |                   |
| 401 KAR 38:320       |                      |                   | As Amended                  | 1259                 | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 48:090              |                      |                   |
| 401 KAR 38:330       |                      |                   | Amended                     | 327                  |                   |
| Repealed             | 458                  | 12-7-2017         | Am Comments                 | 977                  |                   |
| 401 KAR 38:500       |                      |                   | As Amended                  | 1265                 | 12-7-2017         |
| Repealed             | 458                  | 12-7-2017         | 401 KAR 49:011              |                      | See 43 Ky.R.      |
| 401 KAR 39:005       |                      |                   | Am Comments                 | 521                  | 9-8-2017          |
| Amended              | 285                  |                   | 401 KAR 59:015              |                      |                   |
| As Amended           | 1232                 | 12-7-2017         | Amended                     | 797                  |                   |
| 401 KAR 39:011(r)    | 459                  | 12-7-2017         | Am Comments                 | 1534                 |                   |
| 401 KAR 39:100       |                      |                   | 401 KAR 61:015              |                      |                   |
| Repealed             | 459                  | 12-7-2017         | Amended                     | 803                  |                   |
| 401 KAR 39:110       |                      |                   | Am Comments                 | 1539                 |                   |
| Repealed             | 459                  | 12-7-2017         | 402 KAR 3:010               |                      |                   |
| 401 KAR 39:060       |                      |                   | Amended                     | 577                  |                   |
| Amended              | 299                  |                   | As Amended                  | 922                  | 11-2-2017         |
| As Amended           | 1244                 | 12-7-2017         | 402 KAR 3:030               |                      |                   |
| 401 KAR 39:080       |                      |                   | Amended                     | 579                  | 11-2-2017         |
| Amended              | 304                  |                   | 405 KAR 5:095               |                      | See 43 Ky.R.      |
| Am Comments          | 962                  |                   | As Amended                  | 74                   | 8-4-2017          |
| As Amended           | 1249                 | 12-7-2017         | Recodified as 400 KAR 1:120 |                      | 8-4-2017          |
| 401 KAR 39:090       |                      |                   | 405 KAR 7:001               |                      |                   |
| Amended              | 308                  |                   | Amended                     | 580                  |                   |
| Am Comments          | 966                  |                   | Am Comments                 | 981                  |                   |
| As Amended           | 1250                 | 12-7-2017         | As Amended                  | 1268                 | 1-5-2018          |
| 401 KAR 39:120       |                      |                   | 405 KAR 7:092               |                      | See 43 Ky.R.      |
| Amended              | 315                  |                   | As Amended                  | 80                   | 8-4-2017          |
| Am Comments          | 973                  |                   | Recodified as 400 KAR 1:110 |                      | 8-4-2017          |

# **LOCATOR INDEX - EFFECTIVE DATES**

| <b>Regulation<br/>Number</b> | <b>44 Ky.R.<br/>Page No.</b> | <b>Effective<br/>Date</b> | <b>Regulation<br/>Number</b> | <b>44 Ky.R.<br/>Page No.</b> | <b>Effective<br/>Date</b> |
|------------------------------|------------------------------|---------------------------|------------------------------|------------------------------|---------------------------|
| 405 KAR 7:095                |                              |                           | 501 KAR 6:110                |                              |                           |
| Amended                      | 585                          |                           | Amended                      | 332                          |                           |
| As Amended                   | 1272                         | 1-5-2018                  | As Amended                   | 924                          | 12-1-2017                 |
| 405 KAR 8:001                |                              |                           | 501 KAR 6:140                |                              | See 43 Ky.R.              |
| Amended                      | 588                          |                           | As Amended                   | 220                          | 9-1-2017                  |
| Am Comments                  | 993                          |                           | 501 KAR 6:230                |                              |                           |
| As Amended                   | 1274                         | 1-5-2018                  | Amended                      | 334                          |                           |
| 405 KAR 8:010                |                              |                           | As Amended                   | 730                          | 11-3-2017                 |
| Amended                      | 595                          |                           | 501 KAR 6:270                |                              |                           |
| As Amended                   | 1280                         | 1-5-2018                  | Amended                      | 335                          |                           |
| 405 KAR 8:040                |                              |                           | As Amended                   | 731                          | 11-3-2017                 |
| Amended                      | 607                          |                           | Amended                      | 2097                         |                           |
| As Amended                   | 1291                         | 1-5-2018                  | 501 KAR 6:280                |                              |                           |
| 405 KAR 8:050                |                              |                           | Amended                      | 1396                         |                           |
| Amended                      | 620                          |                           | AmComments                   | 1860                         |                           |
| As Amended                   | 1303                         | 1-5-2018                  | 501 KAR 16:290               |                              |                           |
| 405 KAR 10:001               |                              |                           | Amended                      | 1884                         |                           |
| Amended                      | 625                          |                           | 501 KAR 16:300               |                              |                           |
| As Amended                   | 1307                         | 1-5-2018                  | Amended                      | 1887                         |                           |
| 405 KAR 12:001               |                              |                           | 501 KAR 16:310               |                              |                           |
| Amended                      | 628                          |                           | Amended                      | 1891                         |                           |
| As Amended                   | 1309                         | 1-5-2018                  | 501 KAR 16:330               |                              |                           |
| 405 KAR 16:001               |                              |                           | Amended                      | 1893                         |                           |
| Amended                      | 630                          |                           | 501 KAR 16:340               |                              |                           |
| Am Comments                  | 1005                         |                           | Amended                      | 1897                         |                           |
| As Amended                   | 1310                         | 1-5-2018                  | 503 KAR 1:140                |                              |                           |
| 405 KAR 16:110               |                              |                           | Amended                      | 1398                         |                           |
| Amended                      | 636                          |                           | As Amended                   | 1824                         |                           |
| As Amended                   | 1315                         | 1-5-2018                  | 505 KAR 1:130                |                              | See 43 Ky.R.              |
| 405 KAR 18:001               |                              |                           | Am Comments                  | 241                          | 10-6-2017                 |
| Amended                      | 638                          |                           | Amended                      | 1137                         | 2-2-2018                  |
| Am Comments                  | 1011                         |                           | 505 KAR 1:170                |                              |                           |
| As Amended                   | 1316                         | 1-5-2018                  | Amended                      | 809                          |                           |
| 405 KAR 18:010               |                              |                           | Am Comments                  | 1546                         |                           |
| Amended                      | 644                          |                           | As Amended                   | 1830                         |                           |
| As Amended                   | 1321                         | 1-5-2018                  | 601 KAR 1:113                |                              | See 43 Ky.R.              |
| 405 KAR 18:040               |                              |                           | As Amended                   | 92                           | 7-6-2017                  |
| Amended                      | 646                          |                           | 601 KAR 2:030                |                              |                           |
| As Amended                   | 1322                         | 1-5-2018                  | Amended                      | 1651                         |                           |
| 405 KAR 18:060               |                              |                           | 601 KAR 23:020               | 1171                         |                           |
| Amended                      | 648                          |                           | As Amended                   | 1520                         | 1-30-2018                 |
| As Amended                   | 1323                         | 1-5-2018                  | 602 KAR 15:030               | 705                          |                           |
| 405 KAR 18:110               |                              |                           | As Amended                   | 1520                         | 1-30-2018                 |
| Amended                      | 652                          |                           | 603 KAR 5:025                |                              |                           |
| As Amended                   | 1326                         | 1-5-2018                  | Amended                      | 1405                         |                           |
| 405 KAR 18:260               |                              |                           | As Amended                   | 1830                         |                           |
| Amended                      | 655                          |                           | 701 KAR 5:110                |                              |                           |
| As Amended                   | 1327                         | 1-5-2018                  | Amended                      | 2099                         |                           |
| 405 KAR 20:001               |                              |                           | 701 KAR 8:010                | 1172                         |                           |
| Amended                      | 656                          |                           | Am Comments                  | 1547                         |                           |
| Am Comments                  | 1017                         |                           | As Amended                   | 1831                         |                           |
| As Amended                   | 1327                         | 1-5-2018                  | 701 KAR 8:020                | 1177                         |                           |
| 405 KAR 20:080               |                              |                           | Am Comments                  | 1552                         |                           |
| Amended                      | 660                          |                           | As Amended                   | 1835                         |                           |
| As Amended                   | 1330                         | 1-5-2018                  | 701 KAR 8:030                | 1185                         |                           |
| 405 KAR 20:090               |                              |                           | Am Comments                  | 1561                         |                           |
| As Amended                   | 1331                         | 1-5-2018                  | As Amended                   | 1843                         |                           |
| 410 KAR 1:002(r)             | 463                          | 12-7-2017                 | 701 KAR 8:040                | 1188                         |                           |
| 410 KAR 1:010                |                              |                           | Am Comments                  | 1563                         |                           |
| Repealed                     | 463                          | 12-7-2017                 | As Amended                   | 1845                         |                           |
| 410 KAR 1:020                |                              |                           | 702 KAR 7:065                |                              |                           |
| Repealed                     | 463                          | 12-7-2017                 | Amended                      | 666                          |                           |
| 500 KAR 8:010                |                              |                           | As Amended                   | 925                          | 11-13-2017                |
| Amended                      | 662                          | 12-1-2017                 | 703 KAR 5:191 (r)            | 2157                         |                           |
| 500 KAR 8:030                |                              |                           | 703 KAR 5:225                |                              |                           |
| Amended                      | 664                          | 12-1-2017                 | Amended                      | 2101                         |                           |
| 501 KAR 1:030                |                              | See 43 Ky.R.              | 703 KAR 5:270                | 849                          |                           |
| As Amended                   | 218                          | 9-1-2017                  | Am Comments                  | 1567                         |                           |
| 501 KAR 6:020                |                              |                           | As Amended                   | 2008                         |                           |
| Amended                      | 1882                         |                           | 703 KAR 5:280                | 2158                         |                           |

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation<br>Number | 44 Ky.R.<br>Page No. | Effective<br>Date | Regulation<br>Number | 44 Ky.R.<br>Page No. | Effective<br>Date |
|----------------------|----------------------|-------------------|----------------------|----------------------|-------------------|
| 704 KAR 3:370        |                      |                   | 804 KAR 8:050        |                      |                   |
| Amended              | 1139                 |                   | Amended              | 345                  | 11-3-2017         |
| Am Comments          | 1575                 |                   | 804 KAR 9:051(r)     | 1774                 |                   |
| As Amended           | 1847                 |                   | 804 KAR 10:010       |                      | See 43 Ky.R.      |
| 704 KAR 3:540        |                      |                   | As Amended           | 524                  | 10-6-2017         |
| Amended              | 1657                 |                   | 804 KAR 11:010       |                      |                   |
| As Amended           | 2015                 |                   | Amended              | 1147                 |                   |
| 704 KAR 7:050        |                      |                   | As Amended           | 1854                 |                   |
| Repealed             | 167                  | 10-6-2017         | 805 KAR 1:060        |                      |                   |
| 704 KAR 7:051(r)     | 167                  | 10-6-2017         | Amended              | 346                  |                   |
| 704 KAR 7:090        |                      |                   | Am Comments          | 1021                 |                   |
| Amended              | 1658                 |                   | As Amended           | 1331                 | 12-7-2017         |
| As Amended           | 2015                 |                   | 805 KAR 1:070        |                      |                   |
| 725 KAR 2:070        |                      | See 43 Ky.R.      | Repealed             | 464                  | 12-7-2017         |
| Am Comments          | 104                  |                   | 805 KAR 1:071(r)     | 464                  | 12-7-2017         |
| As Amended           | 221                  | 8-28-2017         | 805 KAR 7:020        |                      |                   |
| 739 KAR 2:050        |                      |                   | Amended              | 685                  |                   |
| Amended              | 670                  |                   | As Amended           | 1522                 | 2-2-2018          |
| As Amended           | 928                  | 12-1-2017         | 805 KAR 7:030        |                      |                   |
| 780 KAR 3:072        |                      |                   | Amended              | 686                  |                   |
| Amended              | 672                  |                   | As Amended           | 1523                 | 2-2-2018          |
| As Amended           | 929                  | 12-1-2017         | 805 KAR 7:040        |                      |                   |
| 780 KAR 3:080        |                      |                   | Amended              | 688                  |                   |
| Amended              | 677                  |                   | As Amended           | 1523                 | 2-2-2018          |
| As Amended           | 933                  | 12-1-2017         | 805 KAR 7:050        |                      |                   |
| 787 KAR 1:070        |                      | See 43 Ky.R.      | Amended              | 689                  |                   |
| As Amended           | 934                  | 12-1-2017         | As Amended           | 1524                 | 2-2-2018          |
| 787 KAR 2:040        |                      | See 43 Ky.R.      | 805 KAR 7:060        |                      |                   |
| As Amended           | 223                  | 8-17-2017         | Amended              | 691                  |                   |
| 802 KAR 1:010        |                      |                   | As Amended           | 1525                 | 2-2-2018          |
| Amended              | 2106                 |                   | 805 KAR 8:030        |                      |                   |
| 802 KAR 2:010        | 2164                 |                   | Amended              | 692                  |                   |
| 802 KAR 3:010        | 2166                 |                   | As Amended           | 1525                 | 2-2-2018          |
| 802 KAR 3:020        | 2167                 |                   | 805 KAR 8:040        |                      |                   |
| 803 KAR 1:100        |                      |                   | Amended              | 694                  |                   |
| Amended              | 680                  |                   | As Amended           | 1526                 | 2-2-2018          |
| As Amended           | 935                  | 12-1-2017         | 805 KAR 8:050        |                      |                   |
| 803 KAR 1:030        |                      |                   | Amended              | 696                  |                   |
| Repealed             | 707                  | 12-1-2017         | As Amended           | 1527                 | 2-2-2018          |
| 803 KAR 1:040        |                      |                   | 805 KAR 9:040        |                      |                   |
| Repealed             | 707                  | 12-1-2017         | Repealed             | 465                  | 12-7-2017         |
| 803 KAR 1:121(r)     | 707                  | 12-1-2017         | 805 KAR 9:041(r)     | 465                  | 12-7-2017         |
| 803 KAR 2:425        |                      |                   | 806 KAR 3:010        |                      |                   |
| Amended              | 337                  | 11-3-2017         | Repealed             | 466                  | 12-1-2017         |
| 803 KAR 2:505        |                      |                   | 806 KAR 3:011(r)     | 466                  | 12-1-2017         |
| Amended              | 1663                 |                   | 806 KAR 3:020        |                      |                   |
| As Amended           | 2018                 |                   | Repealed             | 466                  | 12-1-2017         |
| 803 KAR 3:050        |                      |                   | 806 KAR 3:210        |                      |                   |
| Repealed             | 1192                 | 2-2-2018          | Amended              | 350                  |                   |
| 803 KAR 3:051(r)     | 1192                 | 2-2-2018          | Am Comments          | 744                  |                   |
| 803 KAR 6:010        |                      |                   | As Amended           | 938                  | 12-1-2017         |
| Repealed             | 708                  | 12-1-2017         | 806 KAR 3:220        |                      |                   |
| 803 KAR 6:011(r)     | 708                  | 12-1-2017         | Repealed             | 466                  | 12-1-2017         |
| 804 KAR 4:230        |                      | See 43 Ky.R.      | 806 KAR 5:030        |                      |                   |
| As Amended           | 523                  | 10-6-2017         | Repealed             | 468                  | 10-24-2017        |
| 804 KAR 4:241(r)     | 1455                 |                   | 806 KAR 5:031(r)     | 468                  | 10-24-2017        |
| 804 KAR 4:390        |                      |                   | 806 KAR 5:040        |                      |                   |
| Amended              | 339                  | 11-3-2017         | Repealed             | 468                  | 10-24-2017        |
| 804 KAR 4:400        |                      |                   | 806 KAR 7:010        |                      |                   |
| Amended              | 341                  |                   | Repealed             | 733                  | 10-24-2017        |
| As Amended           | 731                  | 11-3-2017         | 806 KAR 7:011(r)     | 469                  |                   |
| 804 KAR 4:410        |                      |                   | As Amended           | 733                  | 10-24-2017        |
| Amended              | 343                  |                   | 806 KAR 9:050        |                      |                   |
| As Amended           | 732                  | 11-3-2017         | Repealed             | 733                  | 10-24-2017        |
| 804 KAR 5:070        |                      |                   | 806 KAR 9:051(r)     | 470                  |                   |
| Amended              | 682                  |                   | As Amended           | 733                  | 10-24-2017        |
| As Amended           | 936                  | 12-1-2017         | 806 KAR 9:300        |                      |                   |
| 804 KAR 6:011(r)     | 1457                 |                   | Repealed             | 733                  | 10-24-2017        |
| 804 KAR 6:020        | 709                  |                   | 806 KAR 14:006       |                      |                   |
| As Amended           | 937                  | 12-1-2017         | Amended              | 1665                 |                   |

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 44 Ky.R. Page No. | Effective Date | Regulation Number | 44 Ky.R. Page No. | Effective Date |
|-------------------|-------------------|----------------|-------------------|-------------------|----------------|
| 806 KAR 17:575    |                   | See 43 Ky.R.   | Amended           | 1413              |                |
| Am Comments       | 243               |                | 900 KAR 7:030     |                   | See 43 Ky.R.   |
| As Amended        | 733               | 10-24-2017     | As Amended        | 527               | 9-20-2017      |
| 806 KAR 18:011(r) | 1458              |                | 900 KAR 7:040     |                   | See 43 Ky.R.   |
| 806 KAR 18:030    |                   |                | As Amended        | 530               | 9-20-2017      |
| Amended           | 1407              |                | 900 KAR 10:031(r) | 858               |                |
| As Amended        | 1855              |                | 900 KAR 11:010    | 472               |                |
| 806 KAR 20:010    |                   |                | Am Comments       | 763               |                |
| Amended           | 1667              |                | As Amended        | 956               | 11-15-2017     |
| 806 KAR 20:021(r) | 1776              |                | 901 KAR 5:120     |                   | See 43 Ky.R.   |
| 806 KAR 24:020    |                   |                | As Amended        | 223               | 8-16-2017      |
| Repealed          | 471               | 10-24-2017     | 902 KAR 2:060     |                   | See 43 Ky.R.   |
| 806 KAR 24:022(r) | 471               | 10-24-2017     | As Amended IJC    | 97                | 6-21-2017      |
| 806 KAR 39:030    |                   |                | 902 KAR 20:016    |                   |                |
| Amended           | 1149              |                | Amended           | 1415              |                |
| As Amended        | 1527              | 2-2-2018       | Am Comments       | 2054              |                |
| 807 KAR 5:022     |                   |                | 902 KAR 20:058    |                   |                |
| Amended           | 1669              |                | Amended           | 1714              |                |
| Withdrawn         |                   | 2-15-2018      | 902 KAR 20:145    |                   |                |
| 807 KAR 5:026     |                   |                | Amended           | 1721              |                |
| Amended           | 1699              |                | 902 KAR 20:360    |                   |                |
| Withdrawn         |                   | 2-15-2018      | Amended           | 371               | 10-11-2017     |
| 807 KAR 5:027     |                   |                | 902 KAR 55:015    |                   |                |
| Amended           | 1702              |                | Amended           | 143               |                |
| 807 KAR 5:081(r)  | 1777              |                | As Amended        | 531               | 9-20-2017      |
| 808 KAR 3:050     |                   |                | 902 KAR 55:020    |                   |                |
| Amended           | 1410              |                | Repealed          | 169               | 9-20-2017      |
| As Amended        | 1858              |                | 902 KAR 55:025    |                   |                |
| 808 KAR 10:081(r) | 168               |                | Repealed          | 169               | 9-20-2017      |
| Withdrawn         |                   | 7-17-2017      | 902 KAR 55:030    |                   |                |
| 808 KAR 10:082(r) | 1778              |                | Repealed          | 169               | 9-20-2017      |
| 811 KAR 1:215     |                   |                | 902 KAR 55:035    |                   |                |
| Amended           | 1705              |                | Repealed          | 169               | 9-20-2017      |
| As Amended        | 2019              |                | 902 KAR 55:040    |                   |                |
| 811 KAR 1:220     |                   |                | Amended           | 147               |                |
| Amended           | 1710              |                | As Amended        | 534               | 9-20-2017      |
| As Amended        | 2023              |                | 902 KAR 55:041(r) | 169               | 9-20-2017      |
| 815 KAR 7:120     |                   | See 43 Ky.R.   | 902 KAR 55:095    |                   |                |
| As Amended        | 95                | 7-26-2017      | Amended           | 149               |                |
| 815 KAR 15:010    |                   |                | As Amended        | 534               | 9-20-2017      |
| Amended           | 810               |                | 902 KAR 55:110    |                   |                |
| As Amended        | 1334              | 1-5-2018       | Amended           | 378               |                |
| 815 KAR 15:025    |                   |                | Am Comments       | 1026              |                |
| Amended           | 813               |                | As Amended        | 1346              | 1-5-2018       |
| As Amended        | 1335              | 1-5-2018       | 902 KAR 95:040    |                   | See 43 Ky.R.   |
| 815 KAR 15:026    |                   |                | Am Comments       | 541               |                |
| Amended           | 819               |                | As Amended        | 1348              | 1-5-2018       |
| As Amended        | 1341              | 1-5-2018       | 902 KAR 100:180   | 477               |                |
| 815 KAR 15:027    |                   |                | Am Comments       | 1029              |                |
| Amended           | 823               |                | As Amended        | 1350              | 12-7-2017      |
| As Amended        | 1343              | 1-5-2018       | 907 KAR 1:045     |                   |                |
| 815 KAR 15:040    |                   |                | Amended           | 382               |                |
| Repealed          | 857               | 1-5-2018       | Am Comments       | 1033              | 1-5-2018       |
| 815 KAR 15:041(r) | 857               | 1-5-2018       | 907 KAR 1:047     |                   |                |
| 815 KAR 15:051    |                   |                | Amended           | 387               |                |
| Repealed          | 857               | 1-5-2018       | Am Comments       | 1038              | 1-5-2018       |
| 815 KAR 15:060    |                   |                | 907 KAR 1:102     |                   |                |
| Repealed          | 857               | 1-5-2018       | Amended           | 391               |                |
| 900 KAR 1:009     | 1779              |                | As Amended        | 1352              | 1-5-2018       |
| 900 KAR 5:020     |                   |                | 907 KAR 1:104     |                   |                |
| Amended           | 369               |                | Amended           | 395               |                |
| Am Comments       | 1025              |                | As Amended        | 1355              | 1-5-2018       |
| As Amended        | 1345              | 1-5-2018       | 907 KAR 1:479     |                   |                |
| 900 KAR 6:090     |                   |                | Amended           | 398               |                |
| Amended           | 140               |                | Am Comments       | 1042              | 1-5-2018       |
| As Amended        | 524               | 9-20-2017      | 907 KAR 3:005     |                   |                |
| 900 KAR 6:121(r)  | 2169              |                | Amended           | 405               |                |
| 900 KAR 6:125     |                   | See 43 Ky.R.   | Am Comments       | 1048              | 2-2-2018       |
| Am Comments       | 246               | 9-20-2017      | 907 KAR 3:010     |                   |                |
| 900 KAR 6:130     |                   |                | Amended           | 410               |                |

# LOCATOR INDEX - EFFECTIVE DATES

| Regulation Number | 44 Ky.R. Page No. | Effective Date | Regulation Number | 44 Ky.R. Page No. | Effective Date |
|-------------------|-------------------|----------------|-------------------|-------------------|----------------|
| Am Comments       | 1054              |                | Amended           | 2129              |                |
| As Amended        | 1528              | 2-2-2018       | 922 KAR 2:160     |                   |                |
| 907 KAR 3:066     |                   |                | Amended           | 1157              |                |
| Amended           | 152               | 10-6-2017      | AmComments        | 1861              |                |
| 907 KAR 17:005    |                   |                | As Amended        | 2025              |                |
| Amended           | 1428              |                | 922 KAR 2:180     |                   |                |
| 907 KAR 17:010    |                   |                | Amended           | 2138              |                |
| Amended           | 1432              |                | 922 KAR 2:190     |                   |                |
| Am Comments       | 2067              |                | Amended           | 2144              |                |
| 907 KAR 17:015    |                   |                | 922 KAR 2:260     |                   |                |
| Amended           | 1441              |                | Amended           | 1166              |                |
| Am Comments       | 2075              |                | 922 KAR 2:280     | 1782              |                |
| 907 KAR 17:020    |                   |                | 922 KAR 5:040     |                   |                |
| Amended           | 1446              |                | Amended           | 826               |                |
| Am Comments       | 2081              |                | As Amended        | 1359              | 1-5-2018       |
| 907 KAR 17:026(r) | 1459              |                | 922 KAR 5:090     |                   |                |
| 907 KAR 17:035    |                   |                | Amended           | 830               |                |
| Amended           | 1450              |                | As Amended        | 1361              | 1-5-2018       |
| 907 KAR 23:010    |                   | See 43 Ky.R.   | 922 KAR 5:100     |                   |                |
| Am Comments       | 248               |                | Repealed          | 859               | 1-5-2018       |
| As Amended        | 536               | 10-6-2017      | 922 KAR 5:102     |                   |                |
| 907 KAR 23:020    |                   | See 43 Ky.R.   | Repealed          | 859               | 1-5-2018       |
| Am Comments       | 253               | 10-6-2017      | 922 KAR 5:111(r)  | 859               | 1-5-2018       |
| 921 KAR 2:015     |                   |                |                   |                   |                |
| Amended           | 1899              |                |                   |                   |                |
| 921 KAR 2:040     |                   |                |                   |                   |                |
| Amended           | 1150              |                |                   |                   |                |
| 921 KAR 3:025     |                   |                |                   |                   |                |
| Amended           | 154               | 10-11-2017     |                   |                   |                |
| 921 KAR 3:042     |                   |                |                   |                   |                |
| Amended           | 158               |                |                   |                   |                |
| Am Comments       | 544               | 10-11-2017     |                   |                   |                |
| 921 KAR 3:045     |                   |                |                   |                   |                |
| Amended           | 1152              |                |                   |                   |                |
| As Amended        | 1532              | 1-18-2018      |                   |                   |                |
| 921 KAR 3:090     |                   |                |                   |                   |                |
| Amended           | 1155              | 1-18-2018      |                   |                   |                |
| 922 KAR 1:140     |                   |                |                   |                   |                |
| Amended           | 416               |                |                   |                   |                |
| Am Comments       | 1060              | 1-5-2018       |                   |                   |                |
| 922 KAR 1:320     |                   |                |                   |                   |                |
| Amended           | 420               |                |                   |                   |                |
| Am Comments       | 1064              | 1-5-2018       |                   |                   |                |
| 922 KAR 1:330     |                   |                |                   |                   |                |
| Amended           | 425               |                |                   |                   |                |
| Am Comments       | 1068              | 1-5-2018       |                   |                   |                |
| 922 KAR 1:420     |                   |                |                   |                   |                |
| Repealed          | 480               | 1-5-2018       |                   |                   |                |
| 922 KAR 1:421(r)  | 480               | 1-5-2018       |                   |                   |                |
| 922 KAR 1:430     |                   |                |                   |                   |                |
| Amended           | 431               |                |                   |                   |                |
| Am Comments       | 1075              |                |                   |                   |                |
| As Amended        | 1357              | 1-5-2018       |                   |                   |                |
| 922 KAR 1:470     |                   |                |                   |                   |                |
| Amended           | 433               |                |                   |                   |                |
| Am Comments       | 1077              |                |                   |                   |                |
| As Amended        | 1358              | 1-5-2018       |                   |                   |                |
| 922 KAR 1:480     |                   |                |                   |                   |                |
| Amended           | 436               |                |                   |                   |                |
| Am Comments       | 1079              | 1-5-2018       |                   |                   |                |
| 922 KAR 1:490     |                   |                |                   |                   |                |
| Amended           | 439               |                |                   |                   |                |
| Am Comments       | 1082              | 1-5-2018       |                   |                   |                |
| 922 KAR 1:550     | 482               |                |                   |                   |                |
| Am Comments       | 1086              | 1-5-2018       |                   |                   |                |
| 922 KAR 2:090     |                   |                |                   |                   |                |
| Amended           | 2109              |                |                   |                   |                |
| 922 KAR 2:100     |                   |                |                   |                   |                |
| Amended           | 2118              |                |                   |                   |                |
| 922 KAR 2:120     |                   |                |                   |                   |                |

## 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.

# KRS INDEX

| KRS SECTION     | REGULATION     | KRS SECTION     | REGULATION     |
|-----------------|----------------|-----------------|----------------|
| 2.015           | 922 KAR 1:140  | 39F.050         | 106 KAR 1:350  |
| 13A.110         | 804 KAR 4:410  |                 | 106 KAR 1:390  |
| 13B             | 103 KAR 1:010  | 39F.070         | 106 KAR 1:350  |
|                 | 201 KAR 36:030 |                 | 106 KAR 1:390  |
|                 | 503 KAR 1:140  | 39F.120         | 106 KAR 1:350  |
|                 | 602 KAR 15:030 | 39F.200         | 106 KAR 1:390  |
|                 | 701 KAR 8:030  | 39F.210         | 106 KAR 1:390  |
|                 | 802 KAR 1:010  |                 | 106 KAR 1:390  |
|                 | 902 KAR 20:360 | 40.320          | 17 KAR 3:020   |
|                 | 907 KAR 17:005 | 40.325          | 17 KAR 3:020   |
|                 | 907 KAR 17:010 | 42.320          | 200 KAR 38:021 |
|                 | 922 KAR 1:320  | 43.070          | 45 KAR 1:030   |
|                 | 922 KAR 1:480  | 42.739          | 106 KAR 1:350  |
|                 | 922 KAR 2:090  |                 | 45 KAR 1:040   |
|                 | 922 KAR 2:100  |                 | 45 KAR 1:050   |
|                 | 922 KAR 2:190  | 43.075          | 45 KAR 1:030   |
|                 | 922 KAR 2:260  |                 | 45 KAR 1:040   |
| 13B.010         | 922 KAR 1:480  |                 | 45 KAR 1:050   |
| 13B.050         | 922 KAR 1:330  | 45.313          | 922 KAR 5:040  |
| 13B.120         | 922 KAR 1:330  | 45.453          | 602 KAR 15:030 |
| 13B.140         | 922 KAR 1:330  | 45A             | 601 KAR 2:030  |
| 13B.150         | 922 KAR 1:330  | 45A.340         | 900 KAR 6:090  |
| 15.241          | 902 KAR 20:360 | 48.600 – 48.630 | 13 KAR 2:120   |
| 15.330          | 503 KAR 1:140  |                 | 13 KAR 2:130   |
| 15.380          | 503 KAR 1:140  | 49.020          | 802 KAR 2:010  |
| 15.382          | 503 KAR 1:140  |                 | 802 KAR 3:020  |
| 15.384          | 503 KAR 1:140  | 49.030          | 108 KAR 1:011  |
| 15.392          | 503 KAR 1:140  | 49.040          | 108 KAR 1:011  |
| 15.394          | 503 KAR 1:140  |                 | 802 KAR 2:010  |
| 15.396          | 503 KAR 1:140  | 49.080          | 108 KAR 1:011  |
| 15.400          | 503 KAR 1:140  | 49.090          | 802 KAR 2:010  |
| 15.440          | 503 KAR 1:140  | 49.100          | 108 KAR 1:011  |
| 15.540          | 503 KAR 1:140  | 49.120          | 108 KAR 1:011  |
| 15.565          | 503 KAR 1:140  |                 | 802 KAR 2:010  |
| 15.580          | 503 KAR 1:140  | 49.130          | 108 KAR 1:011  |
| 15.3971         | 503 KAR 1:140  | 49.140          | 108 KAR 1:011  |
| 15A.065         | 505 KAR 1:130  | 49.150          | 108 KAR 1:011  |
|                 | 505 KAR 1:170  | 49.160          | 108 KAR 1:011  |
| 15A.0652        | 505 KAR 1:130  | 49.220          | 103 KAR 1:010  |
| 15A.067         | 505 KAR 1:130  |                 | 802 KAR 1:010  |
|                 | 505 KAR 1:170  | 49.230          | 802 KAR 1:010  |
| 15A.070         | 500 KAR 8:010  | 49.240          | 802 KAR 1:010  |
| 16.583          | 105 KAR 1:140  | 49.250          | 103 KAR 1:010  |
| 16.645          | 105 KAR 1:140  |                 | 802 KAR 1:010  |
| 17.165          | 922 KAR 1:470  | 49.260          | 107 KAR 2:011  |
|                 | 922 KAR 2:280  | 49.260 – 49.490 | 802 KAR 3:010  |
| 17.500 – 17.580 | 922 KAR 1:490  | 49.270          | 107 KAR 1:011  |
|                 | 922 KAR 2:280  | 49.280          | 107 KAR 2:011  |
| 18A.005         | 101 KAR 1:325  | 49.300          | 107 KAR 1:011  |
| 18A.030         | 101 KAR 2:210  | 49.300 – 49.340 | 107 KAR 2:011  |
| 18A.095         | 103 KAR 1:120  | 49.330          | 107 KAR 1:011  |
|                 | 900 KAR 1:009  | 49.340          | 107 KAR 1:011  |
| 18A.105         | 105 KAR 1:140  | 49.370          | 107 KAR 1:011  |
| 18A.111         | 101 KAR 1:325  |                 | 107 KAR 2:011  |
| 18A.225         | 101 KAR 2:210  | 49.390          | 107 KAR 1:011  |
| 18A.0751        | 101 KAR 1:325  |                 | 107 KAR 2:011  |
| 18A.2254        | 101 KAR 2:210  | 49.410          | 107 KAR 2:011  |
| 23A.010         | 922 KAR 1:320  | 49.460          | 107 KAR 2:011  |
|                 | 922 KAR 1:480  | 49.470          | 107 KAR 2:011  |
|                 | 922 KAR 2:260  | 49.490          | 802 KAR 3:020  |
| 23A.205         | 200 KAR 38:021 | 61.315          | 106 KAR 2:040  |
| 23A.206         | 200 KAR 38:021 | 61.546          | 105 KAR 1:140  |
| 23A.215         | 200 KAR 38:021 | 61.552          | 105 KAR 1:140  |
| 23A.2065        | 200 KAR 38:021 | 61.560          | 105 KAR 1:140  |
| 24A.175         | 200 KAR 38:021 | 61.565          | 105 KAR 1:140  |
| 24A.176         | 200 KAR 38:021 | 61.569          | 105 KAR 1:140  |
| 24A.180         | 200 KAR 38:021 | 61.597          | 105 KAR 1:140  |
| 24A.1765        | 200 KAR 38:021 | 61.598          | 105 KAR 1:140  |
| 39F.030         | 106 KAR 1:350  | 61.637          | 105 KAR 1:140  |
| 39F.040         | 106 KAR 1:350  | 61.675          | 105 KAR 1:140  |
|                 | 106 KAR 1:390  | 61.685          | 105 KAR 1:140  |



| KRS SECTION       | REGULATION     | KRS SECTION | REGULATION     |
|-------------------|----------------|-------------|----------------|
| 61.702            | 105 KAR 1:140  |             | 103 KAR 28:051 |
| 61.805 – 61.850   | 702 KAR 7:065  |             | 103 KAR 28:150 |
| 61.870 – 61.884   | 405 KAR 8:010  |             | 103 KAR 31:030 |
|                   | 922 KAR 5:040  |             | 103 KAR 31:050 |
| 61.876            | 922 KAR 1:470  |             | 103 KAR 31:102 |
| 64.530            | 45 KAR 1:040   |             | 103 KAR 31:200 |
| 64.810            | 45 KAR 1:030   | 139.105     | 103 KAR 28:051 |
|                   | 45 KAR 1:040   | 139.200     | 103 KAR 26:110 |
|                   | 45 KAR 1:050   |             | 103 KAR 26:120 |
| 61.870            | 401 KAR 39:060 |             | 103 KAR 28:051 |
| 61.884            | 401 KAR 39:060 |             | 103 KAR 28:150 |
| 65.7045           | 103 KAR 31:180 |             | 103 KAR 31:102 |
|                   | 103 KAR 50:021 | 139.210     | 103 KAR 28:051 |
| 65.7069           | 103 KAR 50:021 | 139.260     | 103 KAR 26:110 |
| 65.7073           | 103 KAR 50:021 |             | 103 KAR 26:120 |
| 65.7075           | 103 KAR 50:021 |             | 103 KAR 28:150 |
| 65.7083           | 103 KAR 50:021 |             | 103 KAR 30:235 |
| 68.210            | 45 KAR 1:030   |             | 103 KAR 31:030 |
|                   | 45 KAR 1:040   |             | 103 KAR 31:111 |
|                   | 45 KAR 1:050   | 139.270     | 103 KAR 26:110 |
| 75.400            | 739 KAR 2:050  |             | 103 KAR 26:120 |
| 75.410            | 739 KAR 2:050  |             | 103 KAR 28:051 |
| 75.440            | 739 KAR 2:050  |             | 103 KAR 31:111 |
| 78.545            | 105 KAR 1:140  | 139.280     | 103 KAR 26:120 |
| 78.616            | 105 KAR 1:140  |             | 103 KAR 28:051 |
| 78.625            | 105 KAR 1:140  |             | 103 KAR 31:111 |
| 78.652            | 105 KAR 1:140  | 139.290     | 103 KAR 28:051 |
| 95A.210           | 739 KAR 2:050  |             | 103 KAR 31:111 |
| 95A.262           | 739 KAR 2:050  | 139.300     | 103 KAR 31:111 |
| 96A.095           | 907 KAR 3:066  | 139.310     | 103 KAR 26:110 |
| 116.085           | 31 KAR 3:010   |             | 103 KAR 26:120 |
| 116.155           | 31 KAR 3:010   |             | 103 KAR 28:051 |
| 117.015           | 31 KAR 6:020   | 139.330     | 103 KAR 26:110 |
| 117.025           | 31 KAR 3:010   |             | 103 KAR 26:120 |
| 117.086           | 31 KAR 4:040   |             | 103 KAR 28:051 |
| 117.225           | 31 KAR 3:010   | 139.340     | 103 KAR 28:051 |
| 117.227           | 31 KAR 4:010   | 139.430     | 103 KAR 28:051 |
| 117.235           | 31 KAR 4:040   |             | 103 KAR 31:111 |
| 117.255           | 31 KAR 4:040   | 139.440     | 103 KAR 31:111 |
| 117.275           | 31 KAR 6:020   | 139.470     | 103 KAR 27:180 |
| 117.305           | 31 KAR 6:020   |             | 103 KAR 28:150 |
| 121.160           | 32 KAR 1:020   |             | 103 KAR 30:235 |
| 121.172           | 32 KAR 1:045   | 139.471     | 103 KAR 28:051 |
| 121.180           | 32 KAR 1:020   | 139.480     | 103 KAR 26:110 |
|                   | 32 KAR 1:045   | 139.484     | 103 KAR 28:051 |
| 131.032           | 103 KAR 1:120  | 139.515     | 103 KAR 31:180 |
| 131.081           | 103 KAR 1:120  | 139.517     | 103 KAR 31:190 |
|                   | 103 KAR 15:050 | 139.518     | 103 KAR 31:200 |
| 131.010           | 103 KAR 1:010  | 139.519     | 103 KAR 31:170 |
| 131.081           | 103 KAR 1:010  | 139.533     | 103 KAR 31:102 |
| 131.110           | 103 KAR 26:110 | 139.540     | 103 KAR 26:110 |
| 131.130           | 103 KAR 1:010  | 139.550     | 103 KAR 26:110 |
|                   | 103 KAR 1:120  | 139.590     | 103 KAR 26:110 |
|                   | 103 KAR 16:391 | 139.600     | 103 KAR 28:051 |
| 131.170           | 103 KAR 15:050 | 139.620     | 103 KAR 28:051 |
| 131.180           | 103 KAR 1:010  | 139.710     | 103 KAR 31:030 |
|                   | 103 KAR 44:070 | 139.720     | 103 KAR 26:110 |
| 131.190           | 103 KAR 1:120  |             | 103 KAR 28:150 |
| 131.990           | 103 KAR 1:120  |             | 103 KAR 31:170 |
| 131.122           | 103 KAR 5:230  |             | 103 KAR 31:190 |
| 136.100           | 103 KAR 15:050 | 139.760     | 103 KAR 31:111 |
| 136.392           | 739 KAR 2:050  | 139.770     | 103 KAR 31:170 |
| 138.135           | 103 KAR 41:120 | 139.990     | 103 KAR 31:111 |
| 138.195           | 103 KAR 41:120 | 141.010     | 103 KAR 16:240 |
| 138.450 – 138.470 | 103 KAR 44:060 |             | 103 KAR 16:360 |
|                   | 103 KAR 44:070 |             | 103 KAR 17:151 |
|                   | 103 KAR 44:100 |             | 103 KAR 18:070 |
| 138.460           | 103 KAR 28:051 | 141.020     | 103 KAR 18:070 |
|                   | 103 KAR 44:120 | 141.040     | 103 KAR 16:240 |
| 138.463           | 103 KAR 28:051 |             | 103 KAR 16:360 |
| 138.990           | 103 KAR 44:070 | 141.042     | 103 KAR 15:050 |
| 139.010           | 103 KAR 26:110 | 141.160     | 103 KAR 15:050 |
|                   | 103 KAR 26:120 | 141.170     | 103 KAR 15:050 |
|                   | 103 KAR 27:180 | 141.180     | 103 KAR 17:151 |

| KRS SECTION       | REGULATION     | KRS SECTION | REGULATION     |
|-------------------|----------------|-------------|----------------|
| 141.206           | 103 KAR 16:240 | 150.330     | 301 KAR 2:081  |
| 141.210           | 103 KAR 17:151 |             | 301 KAR 2:195  |
| 141.300           | 103 KAR 15:050 | 150.340     | 301 KAR 1:130  |
| 141.310           | 103 KAR 18:070 |             | 301 KAR 1:201  |
| 141.315           | 103 KAR 18:070 |             | 301 KAR 2:178  |
| 141.388           | 103 KAR 17:151 | 150.360     | 301 KAR 2:081  |
| 141.0205          | 103 KAR 17:151 |             | 301 KAR 2:195  |
| 141.040           | 103 KAR 16:391 | 150.370     | 301 KAR 2:049  |
| 146.200 – 146.360 | 405 KAR 8:010  |             | 301 KAR 2:081  |
| 149.010           | 402 KAR 3:010  |             | 301 KAR 2:178  |
| 149.020           | 402 KAR 3:010  | 150.399     | 301 KAR 2:049  |
| 149.330           | 402 KAR 3:030  | 150.410     | 301 KAR 3:120  |
| 149.332           | 402 KAR 3:030  | 150.445     | 301 KAR 1:152  |
| 149.334           | 402 KAR 3:030  |             | 301 KAR 1:155  |
| 149.344           | 402 KAR 3:030  |             | 301 KAR 1:410  |
| 149.346           | 402 KAR 3:030  | 150.450     | 301 KAR 1:130  |
| 149.348           | 402 KAR 3:030  |             | 301 KAR 1:152  |
| 149.350           | 402 KAR 3:030  |             | 301 KAR 1:155  |
| 149.355           | 402 KAR 3:030  |             | 301 KAR 3:022  |
| 150.010           | 301 KAR 1:130  | 150.485     | 301 KAR 3:022  |
|                   | 301 KAR 1:152  | 150.520     | 301 KAR 1:086  |
|                   | 301 KAR 1:155  |             | 301 KAR 3:022  |
|                   | 301 KAR 1:201  | 150.525     | 301 KAR 3:022  |
|                   | 301 KAR 1:410  | 150.600     | 301 KAR 3:022  |
|                   | 301 KAR 2:049  | 150.603     | 301 KAR 3:022  |
|                   | 301 KAR 2:132  | 150.620     | 301 KAR 1:195  |
|                   | 301 KAR 2:178  |             | 301 KAR 1:201  |
|                   | 301 KAR 2:195  |             | 301 KAR 1:410  |
| 150.015           | 301 KAR 2:075  | 150.660     | 301 KAR 3:022  |
|                   | 301 KAR 2:081  | 150.720     | 301 KAR 3:022  |
| 150.021           | 301 KAR 2:075  | 150.990     | 301 KAR 1:015  |
| 150.025           | 301 KAR 1:086  |             | 301 KAR 1:130  |
|                   | 301 KAR 3:022  |             | 301 KAR 1:152  |
| 150.090           | 301 KAR 1:015  |             | 301 KAR 1:155  |
| 150.092           | 301 KAR 2:049  |             | 301 KAR 1:201  |
| 150.110           | 301 KAR 1:086  |             | 301 KAR 1:410  |
| 150.120           | 301 KAR 1:155  |             | 301 KAR 2:049  |
| 150.625           | 301 KAR 1:015  |             | 301 KAR 2:081  |
| 150.170           | 301 KAR 1:086  |             | 301 KAR 2:132  |
|                   | 301 KAR 1:130  |             | 301 KAR 2:178  |
|                   | 301 KAR 1:152  |             | 301 KAR 5:020  |
|                   | 301 KAR 1:155  | 150.995     | 301 KAR 2:049  |
|                   | 301 KAR 1:201  | 151         | 922 KAR 2:120  |
|                   | 301 KAR 1:410  | 154.27-010  | 103 KAR 31:190 |
|                   | 301 KAR 2:049  | 154.27-070  | 103 KAR 31:190 |
|                   | 301 KAR 2:132  | 154.030-010 | 103 KAR 31:180 |
|                   | 301 KAR 2:178  | 154A        | 202 KAR 3:030  |
| 150.175           | 301 KAR 1:086  | 154A.130    | 11 KAR 15:090  |
|                   | 301 KAR 1:130  | 156.010     | 11 KAR 15:090  |
|                   | 301 KAR 1:152  | 156.029     | 704 KAR 7:090  |
|                   | 301 KAR 1:201  | 165.035     | 704 KAR 7:090  |
|                   | 301 KAR 1:410  | 156.070     | 702 KAR 7:065  |
|                   | 301 KAR 5:010  |             | 704 KAR 3:540  |
|                   | 301 KAR 5:020  | 156.160     | 704 KAR 3:540  |
| 150.180           | 301 KAR 2:132  | 156.557     | 704 KAR 3:370  |
|                   | 301 KAR 2:195  | 156.670     | 701 KAR 5:110  |
|                   | 301 KAR 3:022  | 156.800     | 704 KAR 3:370  |
| 150.183           | 301 KAR 2:075  | 156.808     | 780 KAR 3:072  |
|                   | 301 KAR 2:195  |             | 780 KAR 3:080  |
|                   | 301 KAR 3:022  | 157         | 922 KAR 2:090  |
|                   | 301 KAR 3:120  | 157.650     | 701 KAR 5:110  |
| 150.195           | 301 KAR 2:075  | 157.655     | 701 KAR 5:110  |
| 150.235           | 301 KAR 1:410  | 157.660     | 701 KAR 5:110  |
| 150.240           | 301 KAR 3:022  | 157.665     | 701 KAR 5:110  |
| 150.275           | 301 KAR 3:022  | 158.007     | 11 KAR 15:090  |
|                   | 301 KAR 3:120  | 158.030     | 922 KAR 2:090  |
| 150.280           | 301 KAR 3:022  |             | 922 KAR 2:100  |
| 150.290           | 301 KAR 2:081  |             | 922 KAR 2:120  |
|                   | 301 KAR 2:195  | 158.135     | 13 KAR 3:050   |
|                   | 301 KAR 3:022  | 158.143     | 13 KAR 3:050   |
| 150.305           | 301 KAR 2:081  | 158.148     | 704 KAR 7:051  |
|                   | 301 KAR 2:195  | 158.150     | 704 KAR 7:051  |
| 150.320           | 301 KAR 2:081  | 158.645     | 703 KAR 5:225  |
|                   | 301 KAR 2:195  |             | 703 KAR 5:270  |

| KRS SECTION | REGULATION    | KRS SECTION       | REGULATION      |
|-------------|---------------|-------------------|-----------------|
| 158.649     | 703 KAR 5:225 | 161.042           | 16 KAR 5:040    |
| 158.6451    | 703 KAR 5:225 | 161.141           | 701 KAR 8:010   |
|             | 703 KAR 5:270 |                   | 701 KAR 8:020   |
| 158.6453    | 703 KAR 5:191 |                   | 701 KAR 8:040   |
|             | 703 KAR 5:225 | 161.600           | 102 KAR 1:070   |
|             | 703 KAR 5:270 | 161.605           | 102 KAR 1:070   |
|             | 703 KAR 5:280 | 161.640           | 102 KAR 1:070   |
| 158.6455    | 13 KAR 3:050  | 161.675           | 102 KAR 1:070   |
|             | 703 KAR 5:191 | 161.740           | 704 KAR 3:370   |
|             | 703 KAR 5:225 | 164.001           | 13 KAR 2:120    |
|             | 703 KAR 5:270 |                   | 13 KAR 2:130    |
|             | 703 KAR 5:280 | 164.002           | 11 KAR 15:090   |
| 158.782     | 703 KAR 5:191 | 164.092           | 13 KAR 2:120    |
|             | 703 KAR 5:280 |                   | 13 KAR 2:130    |
| 159.140     | 922 KAR 1:330 | 164.0064          | 13 KAR 3:050    |
| 160.151     | 922 KAR 1:470 | 164.518           | 11 KAR 4:080    |
| 160.1590    | 701 KAR 8:010 | 164.772           | 201 KAR 22:020  |
|             | 701 KAR 8:020 |                   | 201 KAR 22:040  |
|             | 701 KAR 8:030 | 164.744           | 11 KAR 4:080    |
|             | 701 KAR 8:040 | 164.748           | 11 KAR 4:080    |
| 160.1591    | 701 KAR 8:010 | 164.753           | 11 KAR 4:080    |
|             | 701 KAR 8:020 | 164.769           | 11 KAR 4:080    |
|             | 701 KAR 8:030 | 164.780           | 11 KAR 4:080    |
|             | 701 KAR 8:040 | 164.785           | 11 KAR 4:080    |
| 160.1592    | 701 KAR 8:010 | 164.7535          | 11 KAR 4:080    |
|             | 701 KAR 8:020 | 164.7871          | 11 KAR 15:090   |
|             | 701 KAR 8:030 | 164.7874          | 11 KAR 15:090   |
|             | 701 KAR 8:040 | 164.7877          | 11 KAR 15:090   |
| 160.1593    | 701 KAR 8:010 | 164.7879          | 11 KAR 15:090   |
|             | 701 KAR 8:020 | 164.7881          | 11 KAR 15:090   |
|             | 701 KAR 8:030 | 164.7885          | 11 KAR 15:090   |
|             | 701 KAR 8:040 | 164.7889          | 11 KAR 15:090   |
| 160.1594    | 701 KAR 8:010 | 164.7890          | 11 KAR 4:080    |
|             | 701 KAR 8:020 | 164.7894          | 11 KAR 4:080    |
|             | 701 KAR 8:030 | 171.250           | 725 KAR 2:070   |
|             | 701 KAR 8:040 | 171.260           | 725 KAR 2:070   |
| 160.1595    | 701 KAR 8:010 | 171.270           | 725 KAR 2:070   |
|             | 701 KAR 8:020 | 174.504           | 602 KAR 15:030  |
|             | 701 KAR 8:030 | 183.011           | 602 KAR 15:030  |
|             | 701 KAR 8:040 | 186               | 922 KAR 2:120   |
| 160.1596    | 701 KAR 8:010 | 186.010           | 601 KAR 2:030   |
|             | 701 KAR 8:020 |                   | 601 KAR 23:020  |
|             | 701 KAR 8:030 | 186.020           | 601 KAR 23:020  |
|             | 701 KAR 8:040 |                   | 922 KAR 2:100   |
| 160.1597    | 701 KAR 8:010 | 186.440           | 601 KAR 2:030   |
|             | 701 KAR 8:020 | 186.442           | 601 KAR 2:030   |
|             | 701 KAR 8:030 | 186.450           | 922 KAR 1:550   |
|             | 701 KAR 8:040 | 186.470           | 922 KAR 1:550   |
| 160.1598    | 701 KAR 8:010 | 186.480           | 601 KAR 2:030   |
|             | 701 KAR 8:020 |                   | 922 KAR 1:550   |
|             | 701 KAR 8:030 | 186.531           | 601 KAR 2:030   |
|             | 701 KAR 8:040 | 186.560           | 601 KAR 2:030   |
| 160.1599    | 701 KAR 8:010 | 186.570           | 601 KAR 2:030   |
|             | 701 KAR 8:020 | 186.590           | 922 KAR 1:550   |
|             | 701 KAR 8:030 | 186.650           | 106 KAR 1:350   |
|             | 701 KAR 8:040 | 186A.070          | 601 KAR 23:020  |
| 160.160     | 701 KAR 5:110 | 186A.073          | 601 KAR 23:020  |
| 160.346     | 703 KAR 5:191 | 186A.115          | 601 KAR 23:020  |
|             | 703 KAR 5:225 | 186A.170          | 601 KAR 23:020  |
|             | 703 KAR 5:280 | 189.010           | 106 KAR 1:350   |
| 160.380     | 702 KAR 7:065 | 189.125           | 922 KAR 2:100   |
|             | 922 KAR 1:470 |                   | 922 KAR 2:120   |
| 160.445     | 702 KAR 7:065 |                   | 922 KAR 2:180   |
| 161.020     | 16 KAR 1:015  | 189.150           | 902 KAR 100:180 |
|             | 16 KAR 2:010  | 189.231           | 603 KAR 5:025   |
|             | 16 KAR 5:030  | 189.340           | 603 KAR 5:025   |
|             | 16 KAR 5:040  | 189.910 – 189.950 | 202 KAR 7:560   |
| 161.028     | 16 KAR 1:015  | 189A.005          | 601 KAR 2:030   |
|             | 16 KAR 2:010  | 189A.010          | 601 KAR 2:030   |
|             | 16 KAR 5:040  | 189A.040          | 601 KAR 2:030   |
| 161.030     | 16 KAR 1:015  | 189A.050          | 200 KAR 38:021  |
|             | 16 KAR 2:010  | 189A.070          | 601 KAR 2:030   |
|             | 16 KAR 5:030  | 189A.085          | 601 KAR 2:030   |
|             | 16 KAR 5:040  | 189A.090          | 601 KAR 2:030   |

| KRS SECTION | REGULATION     | KRS SECTION        | REGULATION     |
|-------------|----------------|--------------------|----------------|
| 189A.103    | 500 KAR 8:010  |                    | 922 KAR 2:190  |
|             | 500 KAR 8:030  |                    | 922 KAR 2:280  |
|             | 601 KAR 2:030  | 199.462            | 922 KAR 1:140  |
| 189A.105    | 601 KAR 2:030  |                    | 922 KAR 1:490  |
| 189A.107    | 601 KAR 2:030  | 199.466            | 922 KAR 1:470  |
| 189A.200    | 601 KAR 2:030  |                    | 922 KAR 2:280  |
| 189A.240    | 601 KAR 2:030  | 199.555            | 907 KAR 17:005 |
| 189A.250    | 601 KAR 2:030  |                    | 922 KAR 1:140  |
| 189A.340    | 601 KAR 2:030  |                    | 922 KAR 1:320  |
| 189A.345    | 601 KAR 2:030  | 199.557            | 922 KAR 1:140  |
| 189A.400    | 601 KAR 2:030  |                    | 922 KAR 1:320  |
| 189A.410    | 601 KAR 2:030  | 199.801            | 922 KAR 1:140  |
| 189A.420    | 601 KAR 2:030  | 199.892            | 922 KAR 2:090  |
| 189A.440    | 601 KAR 2:030  |                    | 922 KAR 2:160  |
| 189A.500    | 601 KAR 2:030  | 199.892 – 199.8996 | 922 KAR 2:111  |
| 194A        | 921 KAR 2:015  | 199.894            | 922 KAR 2:090  |
|             | 922 KAR 5:111  |                    | 922 KAR 2:100  |
| 194A.005    | 900 KAR 1:009  |                    | 922 KAR 2:120  |
|             | 922 KAR 1:320  |                    | 922 KAR 2:160  |
|             | 922 KAR 1:330  |                    | 922 KAR 2:180  |
|             | 922 KAR 1:480  |                    | 922 KAR 2:190  |
|             | 922 KAR 2:260  |                    | 922 KAR 2:280  |
| 194A.025    | 907 KAR 17:005 | 199.895            | 922 KAR 2:090  |
|             | 907 KAR 17:010 |                    | 922 KAR 2:100  |
|             | 907 KAR 17:015 | 199.896            | 922 KAR 1:470  |
|             | 907 KAR 17:020 |                    | 922 KAR 2:090  |
|             | 907 KAR 17:026 |                    | 922 KAR 2:100  |
|             | 907 KAR 17:035 |                    | 922 KAR 2:120  |
| 194A.030    | 922 KAR 1:320  |                    | 922 KAR 2:160  |
|             | 922 KAR 2:190  |                    | 922 KAR 2:180  |
|             | 922 KAR 2:260  |                    | 922 KAR 2:190  |
| 194A.050    | 900 KAR 10:031 | 199.897            | 922 KAR 2:100  |
|             | 922 KAR 2:100  | 199.898            | 922 KAR 2:090  |
| 194A.060    | 922 KAR 2:160  |                    | 922 KAR 2:100  |
|             | 922 KAR 5:040  |                    | 922 KAR 2:120  |
| 194A.062    | 900 KAR 1:009  |                    | 922 KAR 2:160  |
| 194A.209    | 922 KAR 5:090  |                    | 922 KAR 2:180  |
| 194A.540    | 201 KAR 36:030 | 199.8982           | 922 KAR 1:470  |
| 194A.550    | 922 KAR 5:040  |                    | 922 KAR 2:100  |
| 196         | 501 KAR 6:020  |                    | 922 KAR 2:160  |
|             | 501 KAR 6:110  |                    | 922 KAR 2:180  |
|             | 501 KAR 6:230  | 199.899            | 922 KAR 2:160  |
|             | 501 KAR 6:270  | 199.8994           | 922 KAR 2:160  |
| 196.030     | 501 KAR 16:290 |                    | 922 KAR 2:180  |
|             | 501 KAR 16:300 | 199.990            | 922 KAR 2:190  |
|             | 501 KAR 16:310 | 200.080 – 200.120  | 505 KAR 1:130  |
|             | 501 KAR 16:330 | 202A               | 907 KAR 17:005 |
|             | 501 KAR 16:340 |                    | 907 KAR 17:020 |
| 196.035     | 501 KAR 6:280  | 202A.011           | 921 KAR 2:015  |
| 196.070     | 501 KAR 16:290 |                    | 922 KAR 1:330  |
|             | 501 KAR 16:300 | 205.455            | 922 KAR 5:040  |
|             | 501 KAR 16:310 | 205.510            | 907 KAR 3:005  |
|             | 501 KAR 16:330 | 205.520            | 907 KAR 1:045  |
|             | 501 KAR 16:340 |                    | 907 KAR 1:047  |
| 196.180     | 501 KAR 16:290 |                    | 907 KAR 1:102  |
|             | 501 KAR 16:300 |                    | 907 KAR 1:104  |
|             | 501 KAR 16:310 |                    | 907 KAR 1:479  |
|             | 501 KAR 16:330 |                    | 907 KAR 3:005  |
|             | 501 KAR 16:340 |                    | 907 KAR 3:066  |
| 197         | 501 KAR 6:020  | 205.560            | 907 KAR 1:479  |
|             | 501 KAR 6:110  |                    | 907 KAR 3:005  |
|             | 501 KAR 6:230  |                    | 907 KAR 3:010  |
|             | 501 KAR 6:270  | 205.565            | 907 KAR 3:010  |
| 197.020     | 501 KAR 6:280  | 205.593            | 907 KAR 17:015 |
| 198B.050    | 922 KAR 5:040  | 205.622            | 907 KAR 1:047  |
| 198B.260    | 902 KAR 20:016 |                    | 907 KAR 1:102  |
| 199.011     | 922 KAR 1:140  |                    | 907 KAR 3:005  |
|             | 922 KAR 1:320  | 205.624            | 907 KAR 17:010 |
|             | 922 KAR 1:490  | 205.646            | 907 KAR 17:035 |
|             | 922 KAR 1:550  | 205.712            | 601 KAR 2:030  |
|             | 922 KAR 2:090  | 205.2005           | 921 KAR 3:025  |
|             | 922 KAR 2:100  | 205.8451           | 907 KAR 1:045  |
|             | 922 KAR 2:120  |                    | 907 KAR 1:047  |
|             | 922 KAR 2:180  |                    | 907 KAR 1:102  |

| KRS SECTION         | REGULATION      | KRS SECTION         | REGULATION      |
|---------------------|-----------------|---------------------|-----------------|
|                     | 907 KAR 3:005   | 216B.095            | 900 KAR 6:090   |
| 205.8451 – 205.8483 | 907 KAR 17:005  |                     | 900 KAR 6:130   |
| 209                 | 902 KAR 20:016  | 216B.105 – 216B.125 | 902 KAR 20:016  |
|                     | 922 KAR 5:090   | 216B.140 – 216B.175 | 902 KAR 20:016  |
|                     | 922 KAR 5:111   | 216B.185            | 902 KAR 20:016  |
| 209.020             | 921 KAR 2:015   | 216B.190            | 902 KAR 20:016  |
|                     | 922 KAR 1:320   | 216B.230 – 216B.239 | 902 KAR 20:016  |
|                     | 922 KAR 5:040   | 216B.250            | 902 KAR 20:016  |
| 209.030             | 922 KAR 5:040   | 216B.330 - 216B.339 | 900 KAR 6:121   |
| 209.140             | 922 KAR 5:040   | 216B.400            | 107 KAR 2:011   |
| 209A                | 922 KAR 5:040   |                     | 802 KAR 3:010   |
|                     | 922 KAR 5:111   |                     | 802 KAR 3:020   |
| 209A.020            | 922 KAR 1:320   | 216B.400 – 216B.402 | 902 KAR 20:016  |
|                     | 922 KAR 5:090   | 216B.990            | 900 KAR 6:090   |
| 210.366             | 201 KAR 28:200  |                     | 900 KAR 6:121   |
|                     | 201 KAR 36:030  |                     | 900 KAR 6:130   |
| 210.370 – 210.485   | 907 KAR 1:045   |                     | 902 KAR 20:016  |
|                     | 907 KAR 1:047   |                     | 902 KAR 20:145  |
|                     | 907 KAR 3:010   |                     | 902 KAR 20:360  |
| 211.350 – 211.380   | 922 KAR 2:120   | 216C.010            | 900 KAR 11:010  |
|                     | 922 KAR 5:040   | 216C.030            | 900 KAR 11:010  |
| 211.680 – 211.686   | 922 KAR 1:421   | 216C.040            | 900 KAR 11:010  |
| 211.684             | 922 KAR 1:330   | 216C.050            | 900 KAR 11:010  |
|                     | 922 KAR 1:490   | 216C.060            | 900 KAR 11:010  |
| 211.842 – 211.852   | 902 KAR 20:016  | 216C.070            | 900 KAR 11:010  |
| 211.842 – 211.990   | 902 KAR 100:180 | 216C.080            | 900 KAR 11:010  |
| 211.892             | 805 KAR 1:060   | 216C.090            | 900 KAR 11:010  |
| 211.893             | 805 KAR 1:060   | 216C.100            | 900 KAR 11:010  |
| 213.101             | 902 KAR 20:360  | 216C.110            | 900 KAR 11:010  |
| 214                 | 902 KAR 20:016  | 216C.120            | 900 KAR 11:010  |
| 214.010             | 922 KAR 2:090   | 216C.160            | 900 KAR 11:010  |
|                     | 922 KAR 2:100   | 216C.170            | 900 KAR 11:010  |
|                     | 922 KAR 2:180   | 216C.180            | 900 KAR 11:010  |
| 214.036             | 922 KAR 1:330   | 216C.200            | 900 KAR 11:010  |
|                     | 922 KAR 2:100   | 216C.210            | 900 KAR 11:010  |
|                     | 922 KAR 2:160   | 216C.220            | 900 KAR 11:010  |
| 214.610             | 201 KAR 9:310   | 216C.230            | 900 KAR 11:010  |
| 214.620             | 201 KAR 9:310   | 217                 | 922 KAR 2:120   |
| 216.510             | 902 KAR 55:095  | 217.005 – 217.215   | 902 KAR 55:015  |
| 216.530             | 921 KAR 2:015   |                     | 902 KAR 55:041  |
| 216.557             | 921 KAR 2:015   | 217.015             | 301 KAR 1:155   |
| 216.750             | 921 KAR 2:015   | 218A.010            | 902 KAR 55:015  |
| 216.755             | 921 KAR 2:015   |                     | 902 KAR 55:110  |
| 216.2970            | 902 KAR 20:016  | 218A.020            | 902 KAR 55:015  |
| 216B                | 921 KAR 2:015   | 218A.020 – 218A.130 | 902 KAR 55:040  |
| 216B.010            | 900 KAR 6:130   |                     | 902 KAR 55:041  |
|                     | 902 KAR 20:016  | 218A.040            | 902 KAR 55:015  |
| 216B.010 – 216B.130 | 900 KAR 5:020   | 218A.060            | 902 KAR 55:015  |
|                     | 900 KAR 6:121   | 218A.070            | 902 KAR 55:095  |
|                     | 902 KAR 20:145  | 218A.080            | 902 KAR 55:015  |
|                     | 902 KAR 20:360  | 218A.100            | 902 KAR 55:015  |
| 216B.015            | 802 KAR 3:010   | 218A.120            | 902 KAR 55:015  |
|                     | 802 KAR 3:020   | 218A.175            | 902 KAR 20:145  |
|                     | 900 KAR 6:090   | 218A.180            | 902 KAR 55:095  |
|                     | 900 KAR 6:130   | 218A.200            | 902 KAR 55:095  |
|                     | 902 KAR 20:016  | 218A.202            | 902 KAR 55:110  |
| 216B.020            | 202 KAR 7:501   |                     | 201 KAR 9:260   |
|                     | 202 KAR 7:565   |                     | 201 KAR 9:310   |
|                     | 900 KAR 6:090   |                     | 201 KAR 20:057  |
|                     | 900 KAR 6:130   | 218A.205            | 201 KAR 25:090  |
| 216B.040            | 900 KAR 6:090   | 218.172             | 201 KAR 25:090  |
|                     | 900 KAR 6:130   | 218A.240            | 902 KAR 55:110  |
|                     | 902 KAR 20:016  | 219.011 – 219.081   | 902 KAR 20:016  |
| 216B.042            | 902 KAR 20:016  | 224                 | 401 KAR 61:015  |
|                     | 902 KAR 55:095  |                     | 902 KAR 100:180 |
| 216B.045            | 902 KAR 20:016  | 224.1               | 401 KAR 31:002  |
| 216B.0425           | 902 KAR 20:016  |                     | 401 KAR 32:002  |
| 216B.050            | 107 KAR 2:011   |                     | 401 KAR 33:002  |
|                     | 902 KAR 20:016  |                     | 401 KAR 34:002  |
|                     | 902 KAR 100:180 |                     | 401 KAR 35:002  |
| 216B.055            | 902 KAR 20:016  |                     | 401 KAR 36:002  |
| 216B.062            | 900 KAR 6:090   |                     | 401 KAR 37:002  |
| 216B.075            | 902 KAR 20:016  |                     | 401 KAR 38:002  |
| 216B.085            | 902 KAR 20:016  |                     | 401 KAR 39:005  |

| KRS SECTION | REGULATION     | KRS SECTION | REGULATION     |
|-------------|----------------|-------------|----------------|
|             | 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  |
| 224.10      | 401 KAR 48:090 | 224.46-840  | 410 KAR 1:002  |
|             | 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 |
|             | 401 KAR 48:090 |             | 401 KAR 33:002 |
|             | 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 | 227.220     | 922 KAR 2:120  |
|             | 401 KAR 48:005 | 230.215     | 811 KAR 1:215  |
|             | 401 KAR 48:090 |             | 811 KAR 1:220  |
| 224.40-310  | 410 KAR 1:002  | 230.260     | 811 KAR 1:215  |
| 224.43      | 401 KAR 31:002 |             | 811 KAR 1:220  |
|             | 401 KAR 34:002 | 230.280     | 811 KAR 1:220  |
|             | 401 KAR 35:002 | 230.290     | 811 KAR 1:220  |
|             | 401 KAR 36:002 | 230.310     | 811 KAR 1:220  |
|             | 401 KAR 37:002 | 230.398     | 811 KAR 1:220  |
|             | 401 KAR 38:002 | 230.770     | 811 KAR 1:215  |
|             | 401 KAR 43:002 | 230.802     | 811 KAR 1:215  |
|             | 401 KAR 44:002 | 230.990     | 811 KAR 1:215  |
|             | 401 KAR 48:005 | 235.010     | 301 KAR 1:015  |
| 224.43-815  | 401 KAR 48:090 | 235.040     | 301 KAR 6:005  |
| 224.46      | 410 KAR 1:002  | 235.050     | 301 KAR 6:005  |
|             | 401 KAR 31:002 | 235.070     | 301 KAR 6:005  |
|             | 401 KAR 32:002 | 235.080     | 301 KAR 6:005  |
|             | 401 KAR 33:002 | 235.990     | 301 KAR 1:015  |
|             | 401 KAR 34:002 | 236         | 815 KAR 15:010 |
|             | 401 KAR 35:002 |             | 815 KAR 15:025 |
|             | 401 KAR 36:002 |             | 815 KAR 15:027 |
|             | 401 KAR 37:002 |             | 815 KAR 15:041 |
|             | 401 KAR 38:002 | 236.010     | 815 KAR 15:026 |
|             | 401 KAR 39:005 | 236.030     | 815 KAR 15:026 |
|             | 401 KAR 39:011 | 236.110     | 815 KAR 15:026 |
|             | 401 KAR 39:060 | 236.240     | 815 KAR 15:026 |
|             | 401 KAR 39:080 | 236.250     | 815 KAR 15:026 |
|             | 401 KAR 39:090 | 236.990     | 815 KAR 15:026 |
|             | 401 KAR 39:120 | 241.020     | 804 KAR 6:020  |
|             | 401 KAR 43:002 | 241.060     | 804 KAR 4:241  |
|             | 401 KAR 44:002 |             | 804 KAR 4:400  |
|             | 401 KAR 45:060 |             | 804 KAR 4:410  |
| 224.46-505  | 410 KAR 1:002  |             | 804 KAR 6:011  |
| 224.46-510  | 410 KAR 1:002  |             | 804 KAR 9:051  |
| 224.46-520  | 410 KAR 1:002  | 241.065     | 804 KAR 9:051  |

| KRS SECTION               | REGULATION     | KRS SECTION             | REGULATION     |
|---------------------------|----------------|-------------------------|----------------|
| 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 |
| 247.800 – 247.810         | 302 KAR 39:011 | 309.0832                | 201 KAR 35:070 |
| 260.010                   | 302 KAR 38:011 | 309.0833                | 201 KAR 35:070 |
| 260.850 – 260.869         | 302 KAR 50:011 | 309.085                 | 201 KAR 35:040 |
|                           | 302 KAR 50:020 | 309.331                 | 201 KAR 45:110 |
|                           | 302 KAR 50:030 |                         | 201 KAR 45:120 |
|                           | 302 KAR 50:040 |                         | 201 KAR 45:170 |
|                           | 302 KAR 50:050 | 309.334                 | 201 KAR 45:120 |
|                           | 302 KAR 50:060 |                         | 201 KAR 45:170 |
|                           | 302 KAR 50:070 | 309.335                 | 201 KAR 45:001 |
|                           | 302 KAR 50:080 |                         | 201 KAR 45:071 |
| 275.015                   | 202 KAR 3:030  |                         | 201 KAR 45:120 |
|                           | 807 KAR 5:027  |                         | 201 KAR 45:170 |
|                           | 807 KAR 5:081  | 309.336                 | 201 KAR 45:170 |
| 281.010                   | 907 KAR 3:066  | 309.0813                | 201 KAR 35:080 |
| 281.605                   | 907 KAR 3:066  | 310                     | 902 KAR 20:016 |
| 281.635                   | 907 KAR 3:066  | 310.005                 | 201 KAR 33:080 |
| 281.872                   | 907 KAR 3:066  | 310.021                 | 201 KAR 33:080 |
| 281.875                   | 907 KAR 3:066  | 310.031                 | 201 KAR 33:080 |
| 286.6-100                 | 808 KAR 3:050  | 310.041                 | 201 KAR 33:080 |
| 286.6-225                 | 808 KAR 3:050  | 310.070                 | 201 KAR 33:070 |
| 286.6-585                 | 808 KAR 3:050  | 310.200                 | 201 KAR 33:070 |
| 286.6-715                 | 808 KAR 3:050  | 311.271                 | 900 KAR 6:130  |
| 292.330                   | 808 KAR 10:082 | 311.530 – 311.620       | 201 KAR 9:260  |
| 292.370                   | 808 KAR 10:082 | 311.550                 | 907 KAR 17:005 |
| 292.390                   | 808 KAR 10:082 | 311.560                 | 902 KAR 20:016 |
| 292.410                   | 808 KAR 10:082 | 311.565                 | 201 KAR 9:310  |
| 304.1-050                 | 806 KAR 14:006 | 311.601                 | 201 KAR 9:310  |
| 304.2-105                 | 806 KAR 3:210  | 311.621 – 311.643       | 907 KAR 17:010 |
| 304.2-180                 | 806 KAR:011    | 311.646                 | 922 KAR 2:100  |
| 304.3-100                 | 806 KAR:011    |                         | 922 KAR 2:120  |
| 304.3-240                 | 806 KAR:011    | 311.695                 | 201 KAR 9:480  |
| 304.4-010                 | 806 KAR 14:006 | 311.697                 | 201 KAR 9:480  |
| 304.5-010                 | 806 KAR 5:031  | 311.699                 | 201 KAR 9:480  |
| 304.5-080                 | 806 KAR 5:031  | 311.710 – 311.830       | 902 KAR 20:360 |
| 304.7-340                 | 806 KAR 7:011  | 311.840                 | 907 KAR 3:010  |
| 304-9                     | 806 KAR 9:051  | 311.840 – 311.862       | 907 KAR 3:005  |
| 304.9-030                 | 806 KAR 5:031  | 311.990                 | 201 KAR 9:260  |
| 304.9-390                 | 806 KAR 9:051  | 311.992                 | 902 KAR 20:016 |
| 304.12-020                | 806 KAR 20:010 | 311A.030                | 202 KAR 7:501  |
|                           | 806 KAR 20:021 |                         | 202 KAR 7:545  |
| 304.14-120                | 806 KAR 14:006 |                         | 202 KAR 7:550  |
|                           | 806 KAR 20:010 |                         | 202 KAR 7:555  |
| 304.14-135                | 907 KAR 17:015 |                         | 202 KAR 7:560  |
| 304.14-190                | 806 KAR 14:006 |                         | 202 KAR 7:565  |
| 304.14-210                | 806 KAR 20:010 | 311A.060                | 202 KAR 7:565  |
| 304.17-042                | 806 KAR 18:030 | 311A.170                | 201 KAR 20:400 |
| 304.17A-250               | 806 KAR 18:030 | 311A.180                | 202 KAR 7:550  |
| 304.17A-700 – 304.17A-730 | 907 KAR 17:015 |                         | 202 KAR 7:565  |
| 304.18-032                | 806 KAR 18:030 | 311A.190                | 202 KAR 7:501  |
| 304.18-085                | 806 KAR 18:030 |                         | 202 KAR 7:545  |
| 304.18-130                | 806 KAR 18:011 |                         | 202 KAR 7:550  |
| 304.18-140                | 806 KAR 18:011 |                         | 202 KAR 7:555  |
| 304.18-150                | 806 KAR 18:011 |                         | 202 KAR 7:560  |
| 304.18-160                | 806 KAR 18:011 |                         | 202 KAR 7:565  |
| 304.18-170                | 806 KAR 18:011 | 311B                    | 902 KAR 20:016 |
| 304.20-040                | 806 KAR 20:010 | 311B.020                | 201 KAR 46:010 |
|                           | 806 KAR 20:021 |                         | 201 KAR 46:081 |
| 304.20-160                | 806 KAR 20:010 | 311B.050                | 201 KAR 46:020 |



| KRS SECTION | REGULATION      | KRS SECTION       | REGULATION     |
|-------------|-----------------|-------------------|----------------|
| 311B.080    | 201 KAR 46:095  | 317A.050          | 201 KAR 12:030 |
| 311B.100    | 201 KAR 46:035  |                   | 201 KAR 12:082 |
|             | 201 KAR 46:020  |                   | 201 KAR 12:260 |
|             | 201 KAR 46:081  | 317A.060          | 201 KAR 12:041 |
| 311B.110    | 201 KAR 46:020  |                   | 201 KAR 12:060 |
|             | 201 KAR 46:081  | 317A.062          | 201 KAR 12:030 |
| 311B.120    | 201 KAR 46:020  |                   | 201 KAR 12:260 |
|             | 201 KAR 46:081  | 317A.070          | 201 KAR 12:060 |
| 311B.130    | 201 KAR 46:020  | 317A.100          | 201 KAR 12:030 |
| 311B.140    | 201 KAR 46:020  | 317A.130          | 201 KAR 12:100 |
| 311B.150    | 201 KAR 46:081  | 317A.140          | 201 KAR 12:060 |
| 311B.160    | 201 KAR 46:095  | 317A.145          | 201 KAR 12:060 |
| 311B.170    | 201 KAR 46:095  | 317B.020          | 201 KAR 12:060 |
| 311B.180    | 201 KAR 46:020  |                   | 201 KAR 12:100 |
|             | 201 KAR 46:081  |                   | 201 KAR 12:260 |
| 311B.190    | 201 KAR 46:020  | 317B.025          | 201 KAR 12:030 |
|             | 201 KAR 46:081  |                   | 201 KAR 12:260 |
| 314         | 902 KAR 20:058  | 317B.045          | 201 KAR 12:060 |
| 314.011     | 201 KAR 20:057  | 317B.050          | 201 KAR 12:060 |
|             | 201 KAR 20:065  | 317B.055          | 201 KAR 12:060 |
|             | 201 KAR 20:400  | 318               | 922 KAR 2:120  |
|             | 902 KAR 20:016  | 319.050           | 902 KAR 20:058 |
|             | 902 KAR 20:360  | 319.056           | 902 KAR 20:058 |
|             | 907 KAR 1:102   | 319.064           | 902 KAR 20:058 |
|             | 907 KAR 1:104   | 319A.010          | 907 KAR 1:047  |
|             | 907 KAR 3:005   | 319A.070          | 201 KAR 28:200 |
|             | 907 KAR 17:005  | 319A.080          | 201 KAR 28:235 |
|             | 922 KAR 2:090   | 319A.160          | 201 KAR 28:200 |
|             | 922 KAR 2:120   | 319A.300          | 201 KAR 28:235 |
|             | 922 KAR 2:160   | 320.210           | 902 KAR 20:016 |
|             | 922 KAR 2:180   | 322.010           | 401 KAR 34:002 |
| 314.021     | 201 KAR 20:400  |                   | 401 KAR 35:002 |
| 314.041     | 201 KAR 20:095  |                   | 401 KAR 39:005 |
| 314.042     | 201 KAR 20:057  |                   | 405 KAR 8:010  |
|             | 201 KAR 20:065  | 322.340           | 405 KAR 8:010  |
|             | 902 KAR 20:016  | 322A.050          | 201 KAR 31:010 |
|             | 902 KAR 20:360  | 322A.060          | 201 KAR 31:010 |
| 314.051     | 201 KAR 20:095  | 322A.070          | 201 KAR 31:010 |
| 314.091     | 201 KAR 20:400  | 326.020           | 201 KAR 13:040 |
| 314.142     | 107 KAR 2:011   |                   | 201 KAR 13:060 |
| 314.175     | 201 KAR 20:505E | 326.035           | 201 KAR 13:040 |
| 314.193     | 201 KAR 20:057  | 326.040           | 201 KAR 13:040 |
| 314.196     | 201 KAR 20:057  |                   | 201 KAR 13:060 |
| 314.470     | 201 KAR 20:501  | 326.080           | 201 KAR 13:040 |
| 314.475     | 201 KAR 20:506  | 327.010           | 201 KAR 22:020 |
| 315.002     | 201 KAR 2:390   |                   | 907 KAR 1:047  |
|             | 201 KAR 2:400   | 327.050           | 201 KAR 22:020 |
| 315.005     | 201 KAR 2:390   |                   | 201 KAR 22:040 |
|             | 201 KAR 2:400   |                   | 201 KAR 22:070 |
| 315.010     | 201 KAR 2:380   | 327.060           | 201 KAR 22:070 |
|             | 201 KAR 2:400   | 327.070           | 201 KAR 22:040 |
| 315.191     | 201 KAR 2:380   | 327.075           | 201 KAR 22:020 |
|             | 201 KAR 2:390   | 327.080           | 201 KAR 22:020 |
|             | 201 KAR 2:400   | 327.300           | 201 KAR 22:170 |
| 315.340     | 201 KAR 2:400   | 327.310           | 201 KAR 22:020 |
| 315.342     | 201 KAR 2:400   | 333               | 902 KAR 20:360 |
| 315.400     | 201 KAR 2:390   | 333.030           | 902 KAR 20:016 |
| 315.4102    | 201 KAR 2:390   | 334A.020          | 907 KAR 1:047  |
| 315.4104    | 201 KAR 2:390   | 335.080           | 902 KAR 20:058 |
| 315.4106    | 201 KAR 2:390   | 335.100           | 902 KAR 20:058 |
| 315.4108    | 201 KAR 2:390   | 335.330           | 902 KAR 20:058 |
| 315.4110    | 201 KAR 2:390   | 335.500           | 201 KAR 36:060 |
| 316.010     | 201 KAR 15:110  |                   | 201 KAR 36:065 |
| 316.030     | 201 KAR 15:050  |                   | 201 KAR 36:070 |
|             | 201 KAR 15:110  | 335.500 – 335.599 | 201 KAR 36:030 |
| 316.125     | 201 KAR 15:030  | 335.505           | 201 KAR 36:060 |
|             | 201 KAR 15:110  |                   | 201 KAR 36:065 |
| 316.127     | 201 KAR 15:110  | 335.515           | 201 KAR 36:072 |
| 316.130     | 201 KAR 15:030  | 335.525           | 201 KAR 36:060 |
| 316.132     | 201 KAR 15:030  |                   | 201 KAR 36:065 |
| 316.140     | 201 KAR 15:030  |                   | 201 KAR 36:070 |
| 317A.020    | 201 KAR 12:030  |                   | 902 KAR 20:058 |
|             | 201 KAR 12:082  | 335.527           | 201 KAR 36:070 |
| 317A.040    | 201 KAR 12:010  | 335.540           | 201 KAR 36:050 |

| KRS SECTION       | REGULATION     | KRS SECTION       | REGULATION      |
|-------------------|----------------|-------------------|-----------------|
| 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  | 403.707           | 107 KAR 2:011   |
| 350.090           | 405 KAR 8:010  |                   | 802 KAR 3:020   |
|                   | 405 KAR 18:010 | 403.720           | 922 KAR 5:040   |
| 350.093           | 405 KAR 8:050  |                   | 922 KAR 5:090   |
|                   | 405 KAR 18:010 | 424.110 – 424.120 | 405 KAR 8:010   |
| 350.100           | 405 KAR 16:110 | 431.213 - 431.270 | 501 KAR 16:290  |
|                   | 405 KAR 18:060 |                   | 501 KAR 16:300  |
|                   | 405 KAR 18:110 |                   | 501 KAR 16:310  |
| 350.130           | 405 KAR 8:010  |                   | 501 KAR 16:330  |
| 350.135           | 405 KAR 8:010  |                   | 501 KAR 16:340  |
| 350.151           | 405 KAR 8:040  | 431.600           | 922 KAR 1:330   |
|                   | 405 KAR 18:010 | 433.750           | 603 KAR 5:025   |
|                   | 405 KAR 18:040 | 433.753           | 603 KAR 5:025   |
|                   | 405 KAR 18:060 | 439               | 501 KAR 6:020   |
|                   | 405 KAR 18:110 |                   | 501 KAR 6:110   |
|                   | 405 KAR 18:260 |                   | 501 KAR 6:230   |
|                   | 405 KAR 20:080 |                   | 501 KAR 6:270   |
|                   | 405 KAR 20:090 | 439.265           | 501 KAR 6:280   |
| 350.405           | 405 KAR 16:110 | 439.331           | 501 KAR 6:280   |
|                   | 405 KAR 18:110 | 439.348           | 501 KAR 6:280   |
| 350.410           | 405 KAR 18:010 | 439.480           | 501 KAR 6:280   |
| 350.420           | 405 KAR 16:110 | 439.3101          | 501 KAR 6:280   |
|                   | 405 KAR 18:040 | 439.3104          | 501 KAR 6:280   |
|                   | 405 KAR 18:060 | 439.3105          | 501 KAR 6:280   |
|                   | 405 KAR 18:110 | 440.170           | 907 KAR 3:066   |
| 350.421           | 405 KAR 8:040  | 446.010           | 501 KAR 6:280   |
|                   | 405 KAR 18:060 | 446.400           | 902 KAR 20:016  |
| 350.440           | 405 KAR 18:010 | 503.110           | 922 KAR 1:330   |
|                   | 405 KAR 18:060 | 510.010           | 107 KAR 2:011   |
| 350.450           | 405 KAR 8:010  | 514               | 921 KAR 2:015   |
| 350.445           | 405 KAR 8:050  | 527.070           | 922 KAR 2:100   |
| 350.450           | 405 KAR 8:050  |                   | 922 KAR 2:120   |
| 350.465           | 405 KAR 8:010  |                   | 922 KAR 2:180   |
|                   | 405 KAR 8:050  | 527.100           | 922 KAR 1:140   |
|                   | 405 KAR 16:110 | 527.110           | 922 KAR 1:140   |
|                   | 405 KAR 18:010 | 529.010           | 922 KAR 1:330   |
|                   | 405 KAR 18:040 | 532.130 - 532.140 | 501 KAR 16:290  |
|                   | 405 KAR 18:060 | 533.030           | 501 KAR 6:280   |
|                   | 405 KAR 18:110 | 600 – 645         | 505 KAR 1:130   |
|                   | 405 KAR 18:260 |                   | 505 KAR 1:170   |

| KRS SECTION       | REGULATION     | KRS SECTION | REGULATION     |
|-------------------|----------------|-------------|----------------|
| 600.010           | 922 KAR 1:330  |             | 922 KAR 2:120  |
|                   | 922 KAR 1:430  |             | 922 KAR 2:160  |
| 600.020           | 922 KAR 1:140  | 16 C.F.R.   | 201 KAR 15:110 |
|                   | 922 KAR 1:320  |             | 922 KAR 2:100  |
|                   | 922 KAR 1:330  |             | 922 KAR 2:120  |
|                   | 922 KAR 1:430  | 20 C.F.R.   | 907 KAR 17:005 |
|                   | 922 KAR 1:470  |             | 921 KAR 2:015  |
|                   | 922 KAR 1:480  |             | 922 KAR 2:160  |
|                   | 922 KAR 1:490  | 21 C.F.R.   | 902 KAR 55:015 |
|                   | 922 KAR 2:090  |             | 902 KAR 55:040 |
|                   | 922 KAR 2:100  |             | 902 KAR 55:041 |
|                   | 922 KAR 2:160  |             | 902 KAR 55:095 |
| 605.090           | 922 KAR 1:320  | 26 C.F.R.   | 105 KAR 1:140  |
|                   | 922 KAR 1:330  | 27 C.F.R.   | 405 KAR 8:010  |
|                   | 922 KAR 1:490  | 28 C.F.R.   | 505 KAR 1:170  |
| 605.102           | 922 KAR 1:550  | 29 C.F.R.   | 105 KAR 1:140  |
| 605.120           | 922 KAR 1:490  |             | 780 KAR 3:072  |
|                   | 922 KAR 2:160  |             | 803 KAR 1:100  |
| 605.130           | 922 KAR 1:330  |             | 803 KAR 2:425  |
|                   | 922 KAR 1:430  |             | 803 KAR 2:505  |
|                   | 922 KAR 1:490  |             | 900 KAR 1:009  |
| 610.010           | 922 KAR 1:330  |             | 902 KAR 20:016 |
| 610.110           | 922 KAR 1:140  |             | 902 KAR 20:360 |
| 610.125           | 922 KAR 1:140  | 30 C.F.R.   | 405 KAR 7:001  |
| 610.127           | 922 KAR 1:140  |             | 405 KAR 7:095  |
| 620               | 902 KAR 20:016 |             | 405 KAR 8:001  |
| 620.010 – 620.050 | 922 KAR 1:330  |             | 405 KAR 8:010  |
| 620.020           | 201 KAR 9:310  |             | 405 KAR 8:040  |
|                   | 907 KAR 17:005 |             | 405 KAR 10:001 |
|                   | 922 KAR 1:140  |             | 405 KAR 12:001 |
|                   | 922 KAR 1:320  |             | 405 KAR 16:001 |
|                   | 922 KAR 1:550  |             | 405 KAR 18:001 |
|                   | 922 KAR 2:090  |             | 405 KAR 18:010 |
|                   | 922 KAR 2:100  |             | 405 KAR 18:060 |
|                   | 922 KAR 2:160  |             | 405 KAR 20:001 |
|                   | 922 KAR 2:180  | 33 C.F.R.   | 106 KAR 1:350  |
| 620.030           | 922 KAR 2:090  | 34 C.F.R.   | 11 KAR 4:080   |
|                   | 922 KAR 2:100  |             | 922 KAR 2:160  |
|                   | 922 KAR 2:120  | 40 C.F.R.   | 401 KAR 31:002 |
|                   | 922 KAR 2:180  |             | 401 KAR 32:002 |
| 620.030 – 620.050 | 922 KAR 1:421  |             | 401 KAR 33:002 |
| 620.050           | 922 KAR 1:430  |             | 401 KAR 34:002 |
|                   | 922 KAR 1:470  |             | 401 KAR 35:002 |
|                   | 922 KAR 1:480  |             | 401 KAR 36:002 |
|                   | 922 KAR 1:490  |             | 401 KAR 37:002 |
|                   | 922 KAR 5:040  |             | 401 KAR 38:002 |
| 620.050 – 620.120 | 922 KAR 2:280  |             | 401 KAR 39:005 |
| 620.060           | 922 KAR 1:140  |             | 401 KAR 39:011 |
| 620.070           | 922 KAR 1:330  |             | 401 KAR 39:060 |
| 620.072           | 922 KAR 1:330  |             | 401 KAR 39:080 |
|                   | 922 KAR 1:430  |             | 401 KAR 39:090 |
| 620.090           | 922 KAR 1:140  |             | 401 KAR 39:120 |
| 620.140           | 922 KAR 1:140  |             | 401 KAR 43:002 |
| 620.180           | 922 KAR 1:140  |             | 401 KAR 44:002 |
|                   | 922 KAR 1:320  |             | 401 KAR 48:005 |
| 620.230           | 922 KAR 1:320  |             | 401 KAR 48:090 |
| 620.350           | 922 KAR 1:330  |             | 401 KAR 59:015 |
| 620.990           | 922 KAR 1:330  |             | 401 KAR 61:015 |
| 625               | 922 KAR 1:490  |             | 405 KAR 8:040  |
| 625.040           | 922 KAR 1:140  |             | 405 KAR 10:001 |
| 625.050 – 625.120 | 922 KAR 1:470  |             | 902 KAR 20:016 |
| 625.090           | 922 KAR 1:140  |             | 902 KAR 20:360 |
| 645               | 907 KAR 17:020 | 42 C.F.R.   | 105 KAR 1:140  |
| 7 C.F.R.          | 405 KAR 7:001  |             | 902 KAR 20:016 |
|                   | 405 KAR 8:001  |             | 902 KAR 20:360 |
|                   | 405 KAR 8:040  |             | 907 KAR 1:045  |
|                   | 405 KAR 10:001 |             | 907 KAR 1:047  |
|                   | 405 KAR 16:001 |             | 907 KAR 1:102  |
|                   | 405 KAR 18:001 |             | 907 KAR 1:104  |
|                   | 405 KAR 20:001 |             | 907 KAR 1:479  |
|                   | 921 KAR 3:025  |             | 907 KAR 3:005  |
|                   | 921 KAR 3:042  |             | 907 KAR 3:010  |
|                   | 921 KAR 3:045  |             | 907 KAR 3:066  |
|                   | 921 KAR 3:090  |             | 907 KAR 17:005 |

| KRS SECTION | REGULATION     | KRS SECTION                  | REGULATION     |
|-------------|----------------|------------------------------|----------------|
|             | 907 KAR 17:015 |                              | 405 KAR 8:010  |
|             | 907 KAR 17:020 |                              | 405 KAR 8:040  |
|             | 907 KAR 17:026 |                              | 405 KAR 10:001 |
|             | 907 KAR 17:035 |                              | 405 KAR 12:001 |
| 45 C.F.R.   | 105 KAR 1:140  |                              | 405 KAR 16:001 |
|             | 900 KAR 10:031 |                              | 405 KAR 18:001 |
|             | 902 KAR 20:016 |                              | 405 KAR 18:010 |
|             | 902 KAR 20:145 |                              | 405 KAR 18:060 |
|             | 907 KAR 17:010 |                              | 405 KAR 20:001 |
|             | 922 KAR 2:090  | 33 U.S.C.                    | 401 KAR 38:002 |
|             | 922 KAR 2:100  | 34 U.S.C.                    | 922 KAR 2:280  |
|             | 922 KAR 2:120  | 38 U.S.C.                    | 922 KAR 2:160  |
|             | 922 KAR 2:160  | 42 U.S.C.                    | 11 KAR 15:090  |
|             | 922 KAR 2:180  |                              | 31 KAR 6:020   |
|             | 922 KAR 2:260  |                              | 401 KAR 38:002 |
|             | 922 KAR 2:280  |                              | 401 KAR 39:060 |
| 49 C.F.R.   | 601 KAR 23:020 |                              | 505 KAR 1:170  |
|             | 807 KAR 5:027  |                              | 704 KAR 7:090  |
|             | 807 KAR 5:081  |                              | 900 KAR 10:031 |
|             | 922 KAR 2:100  |                              | 902 KAR 20:016 |
|             | 922 KAR 2:120  |                              | 902 KAR 20:058 |
| 50 C.F.R.   | 301 KAR 2:075  |                              | 902 KAR 20:145 |
|             | 907 KAR 1:047  |                              | 907 KAR 1:045  |
|             | 907 KAR 1:102  |                              | 907 KAR 1:047  |
|             | 907 KAR 1:479  |                              | 907 KAR 1:102  |
|             | 907 KAR 3:005  |                              | 907 KAR 1:104  |
|             | 921 KAR 3:025  |                              | 907 KAR 1:479  |
|             | 922 KAR 1:140  |                              | 907 KAR 3:005  |
|             | 922 KAR 1:320  |                              | 907 KAR 3:010  |
|             | 922 KAR 1:480  |                              | 907 KAR 3:066  |
|             | 922 KAR 1:490  |                              | 907 KAR 17:005 |
|             | 922 KAR 5:040  |                              | 907 KAR 17:010 |
| 7 U.S.C.    | 302 KAR 50:011 |                              | 907 KAR 17:015 |
|             | 302 KAR 50:020 |                              | 907 KAR 17:020 |
|             | 302 KAR 50:030 |                              | 907 KAR 17:026 |
|             | 302 KAR 50:040 |                              | 921 KAR 2:015  |
|             | 302 KAR 50:050 |                              | 922 KAR 1:140  |
|             | 302 KAR 50:060 |                              | 922 KAR 1:320  |
|             | 302 KAR 50:070 |                              | 922 KAR 1:330  |
|             | 302 KAR 50:080 |                              | 922 KAR 1:421  |
|             | 401 KAR 43:002 |                              | 922 KAR 1:430  |
|             | 921 KAR 3:025  |                              | 922 KAR 1:470  |
|             | 921 KAR 3:042  |                              | 922 KAR 1:480  |
|             | 922 KAR 2:160  |                              | 922 KAR 1:490  |
| 8 U.S.C.    | 921 KAR 2:015  |                              | 922 KAR 1:550  |
| 15 U.S.C.   | 806 KAR 3:210  |                              | 922 KAR 2:090  |
|             | 808 KAR 10:082 |                              | 922 KAR 2:100  |
| 16 U.S.C.   | 405 KAR 8:010  |                              | 922 KAR 2:120  |
| 18 U.S.C.   | 601 KAR 2:030  |                              | 922 KAR 2:160  |
| 20 U.S.C.   | 11 KAR 4:080   |                              | 922 KAR 2:180  |
|             | 702 KAR 7:065  |                              | 922 KAR 2:190  |
|             | 703 KAR 5:225  |                              | 922 KAR 2:260  |
|             | 703 KAR 5:270  |                              | 922 KAR 2:280  |
|             | 703 KAR 5:280  |                              | 922 KAR 5:040  |
|             | 902 KAR 20:058 |                              | 922 KAR 5:090  |
|             | 922 KAR 2:100  | 49 U.S.C.                    | 807 KAR 5:027  |
|             | 922 KAR 2:120  |                              | 807 KAR 5:081  |
|             | 922 KAR 2:180  | Pub.L. 104-191               | 105 KAR 1:140  |
| 21 U.S.C.   | 902 KAR 55:015 | Pub.L. 111-5                 | 105 KAR 1:140  |
|             | 902 KAR 55:040 | Pub.L. 114-198               | 201 KAR 20:065 |
|             | 902 KAR 55:041 | 2016 Ky Acts ch. 149         | 922 KAR 2:160  |
| 25 U.S.C.   | 922 KAR 1:140  | 2017 Ky Acts ch. 3           | 803 KAR 1:121  |
|             | 922 KAR 2:160  | 2017 Ky Acts ch.134, sec. 13 | 803 KAR 3:051  |
| 26 U.S.C.   | 103 KAR 18:070 |                              | 803 KAR 6:011  |
|             | 105 KAR 1:140  |                              |                |
|             | 900 KAR 1:009  |                              |                |
| 29 U.S.C.   | 201 KAR 15:110 |                              |                |
|             | 780 KAR 3:072  |                              |                |
|             | 803 KAR 1:100  |                              |                |
|             | 902 KAR 20:058 |                              |                |
|             | 922 KAR 2:160  |                              |                |
| 30 U.S.C.   | 405 KAR 7:001  |                              |                |
|             | 405 KAR 7:095  |                              |                |
|             | 405 KAR 8:001  |                              |                |

## TECHNICAL AMENDMENT INDEX

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), and was incorporated into a version that was already published in the *Administrative Register of Kentucky*.

| Regulation<br>Number |   | Date<br>Corrected | Regulation<br>Number | Date<br>Corrected |
|----------------------|---|-------------------|----------------------|-------------------|
| 101 KAR 1:365        |   | 1-22-2018         |                      |                   |
| 101 KAR 1:375        |   | 1-22-2018         |                      |                   |
| 103 KAR 18:060       |   | 6-22-2017         |                      |                   |
| 103 KAR 18:080       |   | 6-22-2017         |                      |                   |
| 103 KAR 18:090       |   | 6-22-2017         |                      |                   |
| 103 KAR 18:120       |   | 6-22-2017         |                      |                   |
| 103 KAR 26:010       |   | 8-3-2017          |                      |                   |
| 201 KAR 30:030       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:040       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:050       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:120       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:125       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:130       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:150       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:160       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:170       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:180       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:200       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:315       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:330       |   | 1-11-2018         |                      |                   |
| 201 KAR 30:380       |   | 1-11-2018         |                      |                   |
| 201 KAR 46:035       | ‡ | 11-30-2017        |                      |                   |
| 201 KAR 46:040       |   | 11-30-2017        |                      |                   |
| 201 KAR 46:045       |   | 11-30-2017        |                      |                   |
| 201 KAR 46:050       |   | 11-30-2017        |                      |                   |
| 201 KAR 46:060       |   | 11-30-2017        |                      |                   |
| 201 KAR 46:081       | ‡ | 11-30-2017        |                      |                   |
| 201 KAR 46:090       |   | 11-30-2017        |                      |                   |
| 401 KAR 5:037        |   | 7-14-2017         |                      |                   |
| 401 KAR 8:022        |   | 12-11-2017        |                      |                   |
| 401 KAR 8:030        |   | 12-11-2017        |                      |                   |
| 401 KAR 8:050        |   | 12-11-2017        |                      |                   |
| 401 KAR 8:150        |   | 12-11-2017        |                      |                   |
| 401 KAR 8:150        |   | 10-10-2017        |                      |                   |
| 401 KAR 8:200        |   | 10-10-2017        |                      |                   |
| 405 KAR 5:032        |   | 6-27-2017         |                      |                   |
| 405 KAR 5:070        |   | 6-27-2017         |                      |                   |
| 405 KAR 5:082        |   | 6-27-2017         |                      |                   |
| 907 KAR 1:006        |   | 10-6-2017         |                      |                   |
| 907 KAR 1:054        |   | 10-6-2017         |                      |                   |
| 907 KAR 1:065        |   | 10-30-2017        |                      |                   |
| 907 KAR 1:340        |   | 10-6-2017         |                      |                   |
| 907 KAR 1:604        |   | 10-6-2017         |                      |                   |
| 907 KAR 1:672        |   | 10-6-2017         |                      |                   |
| 907 KAR 3:225        |   | 10-6-2017         |                      |                   |
| 907 KAR 3:230        |   | 10-6-2017         |                      |                   |
| 907 KAR 9:005        |   | 10-6-2017         |                      |                   |
| 907 KAR 9:010        |   | 10-6-2017         |                      |                   |
| 907 KAR 10:015       |   | 11-16-2017        |                      |                   |
| 907 KAR 20:050       |   | 10-6-2017         |                      |                   |

## SUBJECT INDEX

### ADULT SERVICES

See:

*Community Based Services; 922 KAR Chapter 5*  
*Education; See Postsecondary Education*

### AGRICULTURE

Agricultural Marketing

Repeal of 302 KAR 38:010; 302 KAR 38:011

Consumer Protection, Office of

Requirements for operating and inspecting aerial recreational devices and facilities; 302 KAR 17:010

Marketing and Product Promotion

Repeal of .302 KAR 39:010; 302 KAR 39:011

Agricultural Marketing, Office of

Affiliated universities and colleges; 302 KAR 50:040

Fees and forms; 302 KAR 50:060

Materials incorporated by reference; 302 KAR 50:080

Policies and Procedures for Growers; 302 KAR 50:020

Policies and Procedures for Processors and Handlers; 302 KAR 50:030

Prohibited products; 302 KAR 50:070

Repeal of 302 KAR 50:010; 302 KAR 50:011

THC sampling and testing; post-testing actions; 302 KAR 50:050

### AIR QUALITY

Existing Source Standards

Existing indirect heat exchangers; 401 KAR 61:015

New Source Standards

New indirect heat exchangers; 401 KAR 59:015

### ALCOHOL AND DRUG COUNSELORS

Continuing education requirements; 201 KAR 35:040

Supervision experience; 201 KAR 35:070

Temporary registration or certification 201 KAR 35:055

Voluntary inactive and retired status; 201 KAR 35:080

### ALCOHOLIC BEVERAGE CONTROL

Alcoholic Beverage Control Board

Advisory opinions; 804 KAR 6:020

Repeal of 804 KAR 6:010; 804 KAR 6:011

Conduct of Business; Employees

Minors; 804 KAR 5:070

Licensing

Applications incorporated by reference; 804 KAR 4:400

License renewals; 804 KAR 4:390

Product registration and forms; 804 KAR 4:410

Repeal of 804 KAR 4:240; 804 KAR 4:241

Malt Beverage Equipment, Supplies, and Service

Equipment and supplies; 804 KAR 11:010

Transportation of Beverages

Signs on vehicles; 804 KAR 8:050

Quotas

Repeal of 804 KAR 9:010, 804 KAR 9:040, and 804 KAR 9:050; 804 KAR 9:051

### AUDITOR OF PUBLIC ACCOUNTS

Audits of:

County fee officials; 45 KAR 1:040

Fiscal courts; 45 KAR 1:050

Sheriffs' tax settlements; 45 KAR 1:030

### AVIATION

Airport Development

Fees for services and facilities of the Capitol City Airport; 602 KAR 15:030

### BOARDS AND COMMISSIONS

*See also Occupations and Professions*

*See listing below for specific subject headings:*

Alcohol and Drug Counselors; 201 KAR Chapter 35

Diabetes Educators; 201 KAR Chapter 45

Dietitians and Nutritionists; 201 KAR Chapter 33

Embalmers and Funeral Directors; 201 KAR Chapter 15

Emergency Medical Servicers; 202 KAR Chapter 7

Hairdressers and Cosmetologists; 201 KAR Chapter 12

Professional Counselors, Licensed; 201 KAR Chapter 36

Medical Imaging and Radiation Therapy; 201 KAR Chapter 46

Medical Licensure; 201 KAR Chapter 9

Nursing; 201 KAR Chapter 20

Occupational Therapy; 201 KAR Chapter 28

Ophthalmic Dispensers; 201 KAR Chapter 13

Optometric Examiners; 201 KAR Chapter 5

Pharmacy; 201 KAR Chapter 2

Physical Therapy; 201 KAR Chapter 22

Podiatry; 201 KAR Chapter 25

### CHARTER SCHOOLS

Appeal process; 701 KAR 8:030

Student application, lottery, and enrollment; 701 KAR 8:010

Conversion school petition, conversion, and operation; 701 KAR 8:040

Valuation of school authorizers; 701 KAR 8:020

### CHILD WELFARE

*See Community Based Services; 922 KAR Chapter 1*

*See also:*

*Daycare*

*Education*

### CLAIMS COMMISSION

Board of Claims

Practice and Procedure

Repeal of 108 KAR 1:010, 108 KAR 1:030, and 108 KAR 1:040; 108 KAR 1:011

Claims and Awards

Repeal of 107 KAR 1:005, 107 KAR 1:010, 107 KAR 1:015, 107 KAR 1:025, 107 KAR 1:030, 107 KAR 1:040; 107 KAR 1:011

Claims Before the Commission

Negligence claims before the Kentucky Claims Commission; 802 KAR 2:010

Crime Victim Claims

Crime victims compensation; 802 KAR 3:010

Payment schedule for sexual assault examinations; 802 KAR 3:020

Sexual Assault Examination Program

Repeal of 107 KAR 2:010 107 KAR 2:011

Tax Appeals

Tax appeal procedures; 802 KAR 1:010

### COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Volunteer fire department aid; 739 KAR 2:050

### COMMUNITY BASED SERVICES

Adult Services

General adult services; 922 KAR 5:090

Repeal of 922 KAR 5:100 and 922 KAR 5:102; 922 KAR 5:111

Standards for state-funded domestic violence shelters; 922 KAR 5:040

Child Welfare

Appeal of child abuse and neglect investigative findings; 922 KAR 1:480

Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements; 922 KAR 1:490

Central registry; 922 KAR 1:470

Child protective services; 922 KAR 1:330

Child protective services in-home case planning and service delivery; 922 KAR 1:430

Foster care and adoption permanency services; 922 KAR 1:140

Operator's license for children in the custody of the cabinet; 922 KAR 1:550

Repeal of 922 KAR 1:420; 922 KAR 1:421

## SUBJECT INDEX

Service appeals; 922 KAR 1:320  
Daycare  
Background checks for child care staff members, reporting requirements, and appeals; 922 KAR 2:280  
Certification of Family Child-Care Homes; 922 KAR 2:100  
Child Care Assistance Program; 922 KAR 2:160  
Child-care center licensure; 922 KAR 2:090  
Child care service appeals; 922 KAR 2:260  
Child-care center health and safety standards; 922 KAR 2:120  
Civil penalties; 922 KAR 2:120  
Repeal of 922 KAR 2:110; 922 KAR 2:111E  
Requirements for registered child care providers in the Child Care Assistance Program; 922 KAR 2:180  
K-TAP, Kentucky Works, Welfare to Work, State Supplementation  
Supplemental programs for persons who are aged, blind, or have a disability; 921 KAR 2:015  
Supplemental Nutrition Assistance Program  
Issuance procedures; 921 KAR 3:045  
Simplified assistance for the elderly program or "SAFE"; 921 KAR 3:090  
SNAP employment and training program; 921 KAR 3:042  
Technical requirements; 921 KAR 3:025

### CONTROLLED SUBSTANCES

See also *specific prescribing entities*  
See *listing below for specific subject headings*:  
Inspector General (Health); 902 KAR Chapter 55  
Medical Licensure; 201 KAR Chapter 9  
Nursing, 201 KAR Chapter 20  
Pharmacy; 201 KAR Chapter 2  
Podiatry; 201 KAR Chapter 25

### CORRECTIONS

Capital Punishment  
Electrocution protocol; 501 KAR 16:340  
Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators; 501 KAR 16:300  
Lethal injection protocols; 501 KAR 16:330  
Preliminary and post-execution procedures concerning condemned person; 501 KAR 16:290  
Pre-execution medical actions; 501 KAR 16:310  
Office of the Secretary  
Corrections policies and procedures; 501 KAR 6:020  
Roederer Correctional Complex; 501 KAR 6:110  
Little Sandy Correctional Complex; 501 KAR 6:230  
Probation and parole policies and procedures; 501 KAR 6:270  
Risk and needs assessment; 501 KAR 6:280

### DAYCARE

See *Community Based Services*; 922 KAR Chapter 2

### DEPARTMENT OF STATE

See *Election Finance*; KAR Title 32

### DIABETES EDUCATORS

Application procedures; 201 KAR 45:170  
Definitions for 201 KAR Chapter 45; 201 KAR 45:001  
Renewal, reinstatement, and inactive status; 201 KAR 45:120  
Repeal of 201 KAR 45:070; 201 KAR 45:071  
Supervision and work experience; 201 KAR 45:110

### DIETITIANS AND NUTRITIONISTS

Board  
Telehealth and telepractice; 201 KAR 33:070  
Scope of practice; 201 KAR 33:080

### EDUCATION

Assessment and Accountability  
Accountability system; 703 KAR 5:270  
Improvement planning for schools and districts; 703 KAR 5:225  
Improvement procedures, schools; 703 KAR 5:280  
Repeal of 703 KAR 5:190 and 703 KAR 5:260; 703 KAR 5:191

Charter Schools; See *701 KAR Title 8*  
Chief State School Officer, Office of  
Reduce unmet technology need, use of local monies to; 701 KAR 5:110  
Instruction, Office of  
Framework for personnel evaluation; 704 KAR 3:370  
Academic course codes, uniform; 704 KAR 3:540  
Learning Support Services  
Homeless Children and Youth Education Program; 704 KAR 7:090  
Repeal of 704 KAR 7:050  
Personnel System for Certified and Equivalent Employees  
Attendance, compensatory time, and leave for certified and equivalent service; 780 KAR 3:072  
Extent and duration of school term, use of school day and extended employment; 780 KAR 3:080  
School Terms, Attendance and Operation  
Designation of agent to manage middle and high school interscholastic athletics; 702 KAR 7:065

### EDUCATION AND WORKFORCE DEVELOPMENT

For *Education*, see *listing below*:  
Education; KAR Titles 702, 704, and 780 (See *Education*)  
Education Professional Standards Board; KAR Title 16 (See *Education Professional Standards Board*)  
Higher Education Assistance Authority; KAR Title 11 (See *Higher Education Assistance Authority*)  
Libraries and Archives; KAR Title 725 (See *Libraries and Archives*)  
Postsecondary Education; KAR Title 13 (See *Postsecondary Education*)  
For *Workforce Development*, see *listing below*:  
Workplace Standards; KAR Title 803 (See *Workplace Standards*)

### EDUCATION PROFESSIONAL STANDARDS BOARD

Administrative Certificates  
Admission, placement, and supervision in student teaching; 16 KAR 5:040  
Proficiency evaluation; 16 KAR 5:030  
General Administration  
Standards for certified teacher leader; 16 KAR 1:015  
Teaching Certificates  
Kentucky professional and provisional teacher certificates; 16 KAR 2:010

### ELECTION FINANCE

Reports and Forms  
Election Finance Statement – State Executive Committee Building Fund; 32 KAR 1:045  
Spending intent statement, appointment of campaign treasurer; 32 KAR 1:020

### ELECTIONS

See also *Election Finance*; KAR Title 32  
Forms and Procedures  
Absentee voting in county clerk's office; 31 KAR 4:040  
Voter identification cards; 31 KAR 4:010  
Help America Vote Act 2002  
Provisional voting; 31 KAR 6:020  
Statewide Voter Registration  
Current address of Kentucky registered voters and distribution of voter registration lists; 31 KAR 3:010

### EMBALMERS AND FUNERAL DIRECTORS

Apprenticeship and supervision requirements; 201 KAR 15:050  
Establishment criteria; 201 KAR 15:110  
Fees; 201 KAR 15:030

### EMERGENCY MEDICAL SERVICERS

Ambulance agency licensure; 202 KAR 7:501  
Clinical pilot programs; 202 KAR 7:565  
Ground agencies; 202 KAR 7:555  
Ground vehicle staff; 202 KAR 7:560



## SUBJECT INDEX

License classifications; 202 KAR 7:545  
Required equipment and vehicle standards; 202 KAR 7:550

### ENERGY AND ENVIRONMENT CABINET

*See listing below for specific subject headings:*

Environmental Protection, KAR Title 401

Natural Resources

Forestry, KAR Title 402 (Forestry)

Surface Mine Reclamation and Enforcement, KAR Title 405

Oil and Gas, KAR Title 805

Public Service Commission, KAR Title 807

Waste Management; KAR Title 401, Various Chapters (*See Waste Management*)

### ENVIRONMENTAL PROTECTION

Air Quality, 401 KAR Chapters 59 and 61 (*See Air Quality*)

### FAMILY SUPPORT

*See Community Based Services; KAR Title 921*

### FINANCE

*See also: Revenue; Title 103*

Office of the Controller

Repeal of 200 KAR 38:020 and 201 KAR 38:030; 200 KAR 38:021

### FISH AND WILDLIFE

Fish

Asian Carp and Scaled Rough Fish Harvest program; 301 KAR 1:152

Boat and motor restrictions; 301 KAR 1:015

Commercial fishing requirements; 301 KAR 1:155

Live bait for personal use; 301 KAR 1:130.

Repeal of 301 KAR 1:085; 301 KAR 1:086

Repeal of 301 KAR 1:192; 301 KAR 1:195

Taking of fish by nontraditional fishing methods; 301 KAR 1:410

Taking by traditional fishing methods; 301 KAR 1:201

Game

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

Elk hunting seasons, permits, zones, and requirements; 301 KAR 2:132

Falconry, raptor take, and raptor propagation; 301 KAR 2:195

Transportation and holding of live native wildlife; 301 KAR 2:081

Wildlife rehabilitation permit; 301 KAR 2:075

Hunting and Fishing

Commercial nuisance wildlife control; 301 KAR 3:120

License, tag, and permit fees; 301 KAR 3:022

Small game and furbearer hunting and trapping on public areas; 301 KAR 2:049

Licensing

License agent applications and agreements; 301 KAR 5:010

License agent requirements and responsibilities; 301 KAR 5:020

Water Patrol

Boat registration fees; 301 KAR 6:005

### FINANCIAL INSTITUTIONS

Credit Unions

Conduct; 808 KAR 3:050

Securities

Repeal of 808 KAR 10:080 and 808 KAR 10:310; 808 KAR 10:082

### FIRE DEPARTMENTS

Volunteer fire department aid; 739 KAR 2:050

### FOOD STAMPS

Now called Supplemental Nutrition Assistance Program

*See Community Based Services; 921 KAR Chapter 3*

### FORESTRY

Timber sales; 402 KAR 3:010

Timber harvesting operations, management practices; 402 KAR 3:030

### GEOLOGISTS, PROFESSIONAL

Fees; 201 KAR 31:010

### HAIRDRESSERS AND COSMETOLOGISTS

Administrator's duties; 201 KAR 12:010

Education requirements and school administration; 201 KAR 12:082

Fees; 201 KAR 12:260 Licensing, permits, and examinations; 201 KAR 12:030

Inspections; 201 KAR 12:060

Repeal of 201 KAR 12:020, 201 KAR 12:025, 201 KAR 12:031, 201 KAR 12:040, 201 KAR 12:045, 201 KAR 12:050, 201 KAR 12:055, 201 KAR 12:065, 201 KAR 12:070, 201 KAR 12:080; 201 KAR 12:083; 201 KAR 12:101, 201 KAR 12:105, 201 KAR 12:110, 201 KAR 12:120, 201 KAR 12:125, 201 KAR 12:130, 201 KAR 12:150, 201 KAR 12:220, and 201 KAR 12:270; 201 KAR 12:041

Sanitation standards; 201 KAR 12:100

### HEALTH AND FAMILY SERVICES

*See listing below for specific subject headings:*

Community Based Services; KAR Title 921

Health Benefit Exchange; KAR Title 900

Health Policy; KAR Title 900

Human Resource Management; KAR Title 900

Inspector General (Health); KAR Title 902

Medicaid Services; KAR Title 907

Public Health; KAR Title 902

Office of the Secretary (Health); KAR Title 900

### HEALTH BENEFIT EXCHANGE

Kentucky Health Benefit Exchange

Repeal of 900 KAR 10:030 and 900 KAR 10:100; 900 KAR 10:031

### HEALTH POLICY

Certificate of Need

Certificate of Need criteria for physician exemption; 900 KAR 6:130

Filing, hearing, show cause hearing; 900 KAR 6:090

Repeal of 900 KAR 6:120; 900 KAR 6:121

State Health Plan

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

### HELP AMERICA VOTE ACT 2002

*See Elections; 31 KAR Chapter 6*

### HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Higher Education Assistance Authority

Student aid applications; 11 KAR 4:080

Kentucky Educational Excellence Scholarship Program

Kentucky Educational Excellence Scholarship (KEES) program; 11 KAR 15:090

### HORSE RACING COMMISSION

Harness Racing

Harness racing at county fairs; 811 KAR 1:220

Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund; 811 KAR 1:215

### HOUSING, BUILDINGS AND CONSTRUCTION

Division of Plumbing, Boiler Section

Boilers and Pressure Vessels

Definitions for 815 KAR Chapter 15; 815 KAR 15:010

Existing boilers and pressure vessels; testing, repairs, inspection, and safety factors; 815 KAR 15:026

Fees and certificates for boiler and pressure vessel inspection; 815 KAR 15:027

New installations, general design, construction, and

## SUBJECT INDEX

inspection criteria for boilers, pressure vessels, and pressure piping; 815 KAR 15:025  
Repeal of 815 KAR 15:040, 815 KAR 15:051, and 815 KAR 15:060; 815 KAR 15:041

### HUNTING

*See Fish and Wildlife; KAR Title 301*

### INSPECTOR GENERAL (HEALTH)

#### Controlled Substances

Schedule II prescription for - authorization of oral prescriptions for immediate administration, fax transmission, partial filing; 902 KAR 55:095

Schedules of; 902 KAR 55:015

Excluded nonnarcotic substances; 902 KAR 55:040

Monitoring system for prescriptions of; 902 KAR 55:110

Repeal of 902 KAR 55:020, 902 KAR 55:025, 902 KAR 55:030, and 902 KAR 55:035; 902 KAR 55:041

#### Services and Facilities

Abortion facilities; 902 KAR 20:360

Hospitals; operations and services; 902 KAR 20:016

Operation and services; primary care center; 902 KAR 20:058

Operations and services; rural health clinics; 902 KAR 20:145

### INSURANCE

#### Agents, Consultants, Solicitors and Adjusters

Repeal of 806 KAR 9:050 and 806 KAR 9:300; 806 KAR 9:051

#### Authorization of Insurers and General Requirements

Privacy of consumer financial and health information; 806 KAR 3:210

Repeal of 806 KAR 3:010, 806 KAR 3:020, and 806 KAR 3:220; 806 KAR 3:011

#### Casualty Insurance Contracts

Declination, cancellation, and nonrenewal of property and casualty insurance; 806 KAR 20:010

Repeal of 806 KAR 20:020; 806 KAR 20:021

#### Domestic Stock and Mutual Insurers

Repeal of 806 KAR 24:020; 806 KAR 24:022

#### Group and Blanket Health Insurance

Group health insurance coordination of benefits; 806 KAR 18:030

Repeal of 806 KAR 18:010; 806 KAR 18:011

#### Insurance Contract

Property and casualty insurance form filings; 806 KAR 14:006

#### Investments

Repeal of 806 KAR 7:010; 806 KAR 7:011

#### Kinds of Insurance; Limits of Risk; Reinsurance

Repeal of 806 KAR 5:030 and 806 KAR 5:040

#### Motor Vehicle Reparations (No-fault)

Kentucky No-Fault Form; 806 KAR 39:030

### JAILS

*See Corrections; 501 KAR Chapter 6*

### JUSTICE AND PUBLIC SAFETY CABINET

*See also Corrections; KAR Title 501*

#### Breath Analysis Operators

Administration of breath alcohol tests and chemical analysis tests; 500 KAR 8:030

Certification of breath alcohol analysis instrument operators; 500 KAR 8:010

#### Kentucky Law Enforcement Council

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

*See Juvenile Justice; KAR Title 505*

### JUVENILE JUSTICE

#### Parole Board

Department of Juvenile Justice Policies and Procedures: juvenile services in community; 505 KAR 1:130

Department of Juvenile Justice Policies and procedures: Prison Rape Elimination Act of 2003 (PREA); 505 KAR 1:170

### K-TAP, KENTUCKY WORKS, WELFARE TO WORK, STATE SUPPLEMENTATION

*See Community Based Services; 921 KAR Chapter 2*

### LABOR CABINET

*See listing below for specific subject headings:*

Workplace Standards; KAR Title 803

### LIBRARIES AND ARCHIVES

#### Libraries

Certification renewal of public librarians; 725 KAR 2:070

### LICENSED PROFESSIONAL COUNSELORS

Application, education, and examination requirements; 201 KAR 36:070

Complaint management process; 201 KAR 36:050

Continuing education requirements; 201 KAR 36:030

Licensed professional clinical counselor supervisor; 201 KAR 36:065

Qualifying experience under supervision; 201 KAR 36:060

Reciprocity requirements for applicants licensed or certified in another state; 201 KAR 36:072

### LOTTERY COMMISSION

Retailers; 202 KAR 3:030

### MEDICAID SERVICES

#### Managed Care

Definitions for 907 KAR Chapter 17; 907 KAR 17:005

External independent third-party; 907 KAR 17:035

Managed care organization requirements and policies relating to enrollees; 907 KAR 17:010

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

Managed care organization service and service coverage requirements and policies; 907 KAR 17:020

Repeal of 907 KAR 17:026 and 907 KAR 17:030; 907 KAR 17:026

#### Services

Advanced Practice Registered Nurse:

Reimbursement for; 907 KAR 1:104

Services; 907 KAR 1:102

Community mental health center:

Reimbursement; 907 KAR 1:045

Services; 907 KAR 1:047

Durable medical equipment covered benefits and reimbursement; 907 KAR 1:479

#### Payment/Services

Nonemergency medical transportation waiver; 907 KAR 3:066

Physicians' Services:

Coverage; 907 KAR 3:005

Reimbursement; 907 KAR 3:010

### MEDICAL IMAGING AND RADIATION THERAPY

Administrative subpoena; 201 KAR 46:095

Definitions for 201 KAR Chapter 46.

Fees; 201 KAR 46:020

Limited x-ray machine operator; 201 KAR 46:081

Practice standards, scopes of practice, and ethical standards; 201 KAR 46:035

### MEDICAL LICENSURE

Continuing medical education; 201 KAR 9:310

Fee schedule regarding genetic counselors; 201 KAR 9:480

Professional standards for prescribing and dispensing controlled substances; 201 KAR 9:260

### MEDICAL REVIEW PANELS

Medical review panels; 900 KAR 11:010

### MILITARY AFFAIRS

Disaster and Emergency Services

Search and rescue training requirements; 106 KAR 1:390

## SUBJECT INDEX

Rescue squad minimum equipment; 106 KAR 1:350

### MILITARY ASSISTANCE TRUST FUNDS

Survivor benefits for death of a National Guard or Reserve  
Component member; 106 KAR 2:040

### MINING - PERMITS

Bond and Insurance Requirements

Definitions for 405 KAR Chapter 10; 405 KAR 10:001

General Provisions

Assessment of civil penalties; 405 KAR 7:095

Definitions for 405 KAR Chapter 7; 405 KAR 7:001

Inspection and Enforcement

Definitions for 405 KAR Chapter 12; 405 KAR 12:001

Oil and Gas; *KAR Title 805 (See Oil and Gas)*

Permits

Definitions for 405 KAR Chapter 8; 405 KAR 8:001

General provisions for permits; 405 KAR 8:010.

Permits for special categories of mining; 405 KAR 8:050

Underground coal mining permits; 405 KAR 8:040

Performance Standards for Surface Mining Activities

Definitions for 405 KAR Chapter 16; 405 KAR 16:001

Surface and groundwater monitoring; 405 KAR 16:110

Performance Standards for Underground Mining Activities

Casing, sealing underground openings; 405 KAR 18:040

Definitions for 405 KAR Chapter 18; 405 KAR 18:001

General hydrologic requirements; 405 KAR 18:060

General provisions; 405 KAR 18:010

Surface and groundwater monitoring; 405 KAR 18:110

Special Performance Standards

Definitions for 405 KAR Chapter 20; 405 KAR 20:001

In situ processing; 405 KAR 20:080

Underground only permits; 405 KAR 20:090

### MINING - SAFETY

Miner Training, Education and Certification

Annual retraining for underground and surface miners; 805  
KAR 7:030

Program approval; training; 805 KAR 7:060

Training of inexperienced miners; 805 KAR 7:020

Training of miners for new work assignments; 805 KAR 7:050

Training of newly employed miners; 805 KAR 7:040

Sanctions and Penalties

Criteria for the imposition and enforcement of sanctions  
against certified miners; 805 KAR 8:030

Criteria for the imposition and enforcement of sanctions  
against noncertified personnel; 805 KAR 8:050

Criteria for the imposition and enforcement of sanctions  
against owners and part-owners of licensed premises; 805  
KAR 8:040

### NATURAL RESOURCES

Coal Bed Methane

Repeal of 805 KAR 9:040; 805 KAR 9:041

Forestry, *KAR Title 402 (See Forestry)*

Mining

Permits; *KAR Title 405 (See Mining - Permits)*

Safety; *805 KAR Chapters 7 & 8 (See Mining - Safety)*

Oil and Gas; *805 KAR Chapter 1 (See Oil and Gas)*

### NURSING

APRN - Scope and standards of practice of; 201 KAR 20:057

APRN - Prescribing standards for Buprenorphine-Mono-  
Product or Buprenorphine-Combined-with-Naloxone for  
medication assisted treatment for opioid use disorder; 201  
KAR 20:065

Delegation of nursing tasks; 201 KAR 20:400

Enhanced nurse licensure compact; 201 KAR 20:505E

Nurse licensure compact; 201 KAR 20:506

Repeal of 201 KAR 20:500; 201 KAR 20:501

Retired nurse licensure status; 201 KAR 20:095

### OCCUPATIONS AND PROFESSIONS

*See listing below for specific subject headings:*

*See also Boards and Commissions*

Geologists, Professional; 201 KAR Chapter 31

### OCCUPATIONAL THERAPY

Continuing competence; 201 KAR 28:200

Telehealth services; 201 KAR 28:235

### HUMAN RESOURCE MANAGEMENT

Administration

Employee Access to Federal Tax Information (FTI); 900 KAR  
1:009

### OIL AND GAS

Plugging wells; 805 KAR 1:060

Repeal of 805 KAR 1:070; 805 KAR 1:071

### OPHTHALMIC DISPENSERS

Licensing; application, examination, experience, renewal, and  
inactive status; 201 KAR 13:040

Military service; reciprocity; endorsement; 201 KAR 13:060

### PERSONNEL

Board

Probationary periods; 101 KAR 1:325

Office of the Secretary: Personnel Cabinet, Classified

2018 Plan year handbook for the public employee health  
insurance program; 101 KAR 2:210

### PHARMACY

Outsourcing facility; 201 KAR 2:400

Protocols, board authorized; 201 KAR 2:380

Third-party logistics provider; 201 KAR 2:390

### PHYSICAL THERAPY

Eligibility and credentialing procedure; 201 KAR 22:020

Foreign-educated physical therapists, requirements; 201 KAR  
22:070

Physical Therapy Compact Commission; 201 KAR 22:170

Renewal or reinstatement of a credential for physical therapist  
or physical therapist assistant; 201 KAR 22:040

### PODIATRY

Prescribing and dispensing controlled substances; 201 KAR  
25:090

### POSTSECONDARY EDUCATION

Adult Education and Literacy

GED® eligibility requirements; 13 KAR 3:050

Public Educational Institutions

General fund (state funds) appropriations to:

Community and Technical College System institutions; 13  
KAR 2:130

Public universities; 13 KAR 2:120

### PUBLIC HEALTH

Public Health Protection and Safety

Technologically enhanced naturally occurring radioactive  
material related to oil and gas development; 902 KAR  
100:180

### PUBLIC PROTECTION CABINET

*See listing below for specific subject headings:*

Alcoholic Beverage Control; KAR Title 804

Claims Commission; KAR Title 107

Financial Institutions; KAR Title 808

Housing Buildings and Construction; KAR Title 815

Insurance; KAR Title 806

### PUBLIC SERVICE COMMISSION

Utilities

Gas pipeline safety; reports of leaks; drug testing; 807 KAR  
5:027

Repeal of 807 KAR 5:023 and 807 KAR 5:031; 807 KAR  
5:081

## SUBJECT INDEX

### RETIREMENT SYSTEMS

#### General Rules

Employer's administrative duties; 105 KAR 1:140

### REVENUE

#### General Administration

Employee access to federal tax information (FTI); 103 KAR 1:120

Protests and appeals; 103 KAR 1:010

#### Ad Valorem Tax; Administration

Transferring delinquent property tax bills to the county clerk, information for sheriff to provide; 103 KAR 5:230

#### Income Tax

##### Corporations

Deductibility of the Massachusetts corporate excise tax and West Virginia business and occupations tax in computing a corporation's net income; 103 KAR 16:360

Nexus standard for corporations and pass-through entities; 103 KAR 16:240

Repeal of 103 KAR 16:390 and 103 KAR 16:020; 103 KAR 16:391

##### General Administration

Filing dates and extensions; 103 KAR 15:050

##### Individual

Repeal of 103 KAR 17:150; 103 KAR 17:151

##### Withholding

Supplemental wages and other payments subject to withholding; 103 KAR 18:070

#### Sales and Use Tax

##### Administration and Accounting

Alternative fuel, gasification, and renewable energy facility refunds on construction costs; 103 KAR 31:190

Direct pay authorization; 103 KAR 31:030

Disaster area relief sales and use tax refunds; 103 KAR 31:170

Energy efficiency projects; 103 KAR 31:200

Rebate for governmental public facility; 103 KAR 31:102

Returned merchandise; 103 KAR 31:050

Sales and purchases for resale; 103 KAR 31:111

Signature project refunds on construction costs; 103 KAR 31:180

##### General Exemptions

Sales to the federal government; 103 KAR 30:235

##### Miscellaneous Retail Transactions

Collection of sales tax on certain motor vehicle sales; 103 KAR 28:150

Leases and rentals; 103 KAR 28:051

##### Miscellaneous Retailer Occupations

Vending machines; 103 KAR 27:180

##### Service and Professional Occupations

Advertising agencies; 103 KAR 26:120

Motor carrier repair and replacement parts; 103 KAR 26:110

#### Selective Excise Tax

##### Cigarettes

Retention of records; 103 KAR 41:120

##### Motor Vehicle Usage

Incorrect statement of origin or certificate of title; 103 KAR 44:120

Motor vehicle usage tax valuation; 103 KAR 44:060

Procedures for refund based on vehicle condition; 103 KAR 44:100

Taxation of loaner and rental motor vehicles; 103 KAR 44:070

#### Tax Increment Financing

Repeal of 103 KAR 50:020, 103 KAR 50:030 and 103 KAR 50:040; 103 KAR 50:021

### SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

*See Community Based Services; 921 KAR Chapter 3*

### TAXES

*See Revenue; KAR Title 103*

### TEACHERS' RETIREMENT SYSTEM

Application for retirement; 102 KAR 1:070

### TRANSPORTATION CABINET

*See Aviation; 602 KAR Chapter 15.*

*See Vehicle Regulation; 601 Chapter 23*

### TOURISM, ARTS AND HERITAGE CABINET

*See listing below for specific subject headings:*

Fish and Wildlife Resources; KAR Title 301

### VEHICLE REGULATION

#### Administration

Ignition interlock; 601 KAR 2:030

#### Certification of Title

Military surplus vehicle; 601 KAR 23:020

### VETERANS' AFFAIRS

Nursing home charges for veterans; 17 KAR 3:020

### VOLUNTEER FIRE DEPARTMENT

*See Community and Technical College System*

### WASTE MANAGEMENT

#### Certificates of Environmental Safety and Public Necessity

Repeal of 410 KAR 1:010 & 410 KAR 1:020; 410 KAR 1:002

#### Generators of Hazardous Waste, Standards Applicable to

Repeal of 401 KAR 32:005, 401 KAR 32:010, 401 KAR 32:020, 401 KAR 32:030, 401 KAR 32:040, 401 KAR 32:050, 401 KAR 32:060, 401 KAR 32:065, and 401 KAR 32:100; 401 KAR 32:002

#### Hazardous Waste Permitting Process

Repeal of 401 KAR 38:005, 401 KAR 38:010, 401 KAR 38:020, 401 KAR 38:025, 401 KAR 38:030, 401 KAR 38:040, 401 KAR 38:050, 401 KAR 38:060, 401 KAR 38:070, 401 KAR 38:080, 401 KAR 38:090, 401 KAR 38:150, 401 KAR 38:160, 401 KAR 38:170, 401 KAR 38:180, 401 KAR 38:190, 401 KAR 38:200, 401 KAR 38:210, 401 KAR 38:230, 401 KAR 38:240, 401 KAR 38:250, 401 KAR 38:260, 401 KAR 38:270, 401 KAR 38:290, 401 KAR 38:300, 401 KAR 38:310, 401 KAR 38:320, 401 KAR 38:330, 401 KAR 38:500; 401 KAR 38:002

#### Hazardous Waste Fees

Definitions for 401 KAR Chapter 39; 401 KAR 39:005

Repeal of 401 KAR 39:100 and 401 KAR 39:110; 401 KAR 39:011

General requirements; 401 KAR 39:060

Hazardous waste handlers; 401 KAR 39:080

Hazardous waste permit program; 401 KAR 39:090

Permit review, determination timetables, and fees; 401 KAR 39:120

#### Hazardous Waste, Identification and Listing of

Repeal of 401 KAR 31:005, 401 KAR 31:010, 401 KAR 31:020, 401 KAR 31:030, 401 KAR 31:035, 401 KAR 31:040, 401 KAR 31:050, 401 KAR 31:070, 401 KAR 31:100, 401 KAR 31:110, 401 KAR 31:160, and 401 KAR 31:170; 401 KAR 31:002

#### Hazardous Waste Storage, Treatment and Disposal Facilities, Standards for Owners and Operators of

Repeal of 401 KAR 34:005, 401 KAR 34:010, 401 KAR 34:020, 401 KAR 34:030, 401 KAR 34:040, 401 KAR 34:050, 401 KAR 34:060, 401 KAR 34:070, 401 KAR 34:080, 401 KAR 34:090, 401 KAR 34:100, 401 KAR 34:110, 401 KAR 34:120, 401 KAR 34:130, 401 KAR 34:180, 401 KAR 34:190, 401 KAR 34:200, 401 KAR 34:210, 401 KAR 34:220, 401 KAR 34:230, 401 KAR 34:240, 401 KAR 34:245, 401 KAR 34:250, 401 KAR 34:275, 401 KAR 34:280, 401 KAR 34:281, 401 KAR 34:285, 401 KAR 34:287, 401 KAR 34:290, 401 KAR 34:320, 401 KAR 34:330, 401 KAR 34:340, 401 KAR 34:350, 401 KAR 34:360, and 401 KAR 34:370; 401 KAR 34:002

## SUBJECT INDEX

### Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

Repeal of 401 KAR 35:005, 401 KAR 35:010, 401 KAR 35:020, 401 KAR 35:030, 401 KAR 35:040, 401 KAR 35:050, 401 KAR 35:060, 401 KAR 35:070, 401 KAR 35:080, 401 KAR 35:090, 401 KAR 35:100, 401 KAR 35:110, 401 KAR 35:120, 401 KAR 35:130, 401 KAR 35:180, 401 KAR 35:190, 401 KAR 35:200, 401 KAR 35:210, 401 KAR 35:220, 401 KAR 35:230, 401 KAR 35:240, 401 KAR 35:245, 401 KAR 35:250, 401 KAR 35:260, 401 KAR 35:270, 401 KAR 35:275, 401 KAR 35:280, 401 KAR 35:281, 401 KAR 35:285, 401 KAR 35:290, 401 KAR 35:310, 401 KAR 35:320, 401 KAR 35:330, 401 KAR 35:340, and 401 KAR 35:350; 401 KAR 35:002

### Land Disposal Restrictions

Repeal of 401 KAR 37:005, 401 KAR 37:010, 401 KAR 37:020, 401 KAR 37:030, 401 KAR 37:040, 401 KAR 37:050, 401 KAR 37:060, and 401 KAR 37:110; 401 KAR 37:002

### Solid Waste Facilities, Standards for

Definitions related to 401 KAR Chapter 48; 401 KAR 48:005  
Operating requirements for contained landfills; 401 KAR 48:090

### Special Collection System Wastes, Standards for

Repeal of 401 KAR 43:005, 401 KAR 43:010, 401 KAR 43:020, 401 KAR 43:030, 401 KAR 43:040, 401 KAR 43:050, 401 KAR 43:060, and 401 KAR 43:070; 401 KAR 43:002

### Special Waste

Special waste permit-by-rule; 401 KAR 45:060

### Specific Hazardous Wastes and Specific Types of Hazardous Waste, Standards for the Management of

Repeal of 401 KAR 36:005, 401 KAR 36:020, 401 KAR 36:025, 401 KAR 36:030, 401 KAR 36:060, 401 KAR 36:070, 401 KAR 36:080, and 401 KAR 36:090; 401 KAR 36:002

### Transporters of Hazardous Waste, Standards Applicable to

Repeal of 401 KAR 33:005, 401 KAR 33:010, 401 KAR 33:020, and 401 KAR 33:030; 401 KAR 33:002

### Used Oil, Standards for the Management of

Repeal of 401 KAR 44:005, 401 KAR 44:010, 401 KAR 44:020, 401 KAR 44:030, 401 KAR 44:040, 401 KAR 44:050, 401 KAR 44:060, 401 KAR 44:070, and 401 KAR 44:080; 401 KAR 44:002

## WATER QUALITY

### Public Water Supply

Disinfectant residuals, disinfection by-products, and disinfection by-product precursors; 401 KAR 8:510

## WATER PATROL

*See Fish and Wildlife; 301 KAR Chapter 5*

## WORKPLACE STANDARDS

### Labor Management Matching Grant Program

Repeal of 803 KAR 6:010; 803 KAR 6:011

### Labor Standards; Wages and Hours

Child labor; 803 KAR 1:100

Repeal of 803 KAR 1:030 and 803 KAR 1:040; 803 KAR 1:121

### Occupational Safety and Health

Cranes and derricks in construction; 803 KAR 2:505

Toxic and hazardous substances; 803 KAR 2:425